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

The Secretary of State for Transport

and

First TransPennine Express 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 TransPennine Express Limited** (company number 09111801), whose registered office is at 4th Floor Capital House, 25 Chapel Street, London, United Kingdom, 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 22 December 2015 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 2 to schedule 1 to this EMA.

## 7. MEETINGS

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

## 8. 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, Remedial Agreements, action plans pursuant to paragraph 3.8 of Schedule 7.1 of the Franchise Agreement or action plans pursuant to paragraph 2.4 of Schedule 7.2 of the Franchise Agreement 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, Remedial Agreement, action plan pursuant to paragraph 3.8 of Schedule 7.1 of the Franchise Agreement or action plan pursuant to paragraph 2.4 of Schedule 7.2 of the Franchise Agreement (as the case may be) 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 PROFIT SHARE MECHANISMS

The Parties acknowledge and agree that the profit share mechanism and any other relevant regimes that are prescribed in annual terms under the Franchise Agreement (prior to the implementation of the EMA) shall be treated for the Franchisee Year beginning in April 2019

as if that Franchisee Year had ended at the end of the twelfth Reporting Period in the same manner as may be provided for in the Franchise Agreement for an early termination and/or exercising part of a year in an optional extension period. If and to the extent that the Franchise Agreement does not already otherwise pro rate or otherwise make an allocation in relation to a part year, the Secretary of State will, acting reasonably, determine the appropriate pro rating for the relevant figures or metric.

## 11. **FUNDING DEED**

- 11.1 The Funding Deed shall remain in force and shall not be amended by this EMA.
- 11.2 The Franchisee will not pay any interest accruing in relation to any loans provided under the Funding Deed during the term of the EMA. Such interest shall remain due at the expiry of the EMA.
- 11.3 Subject to clause 11.4, the Franchisee shall not during the term of the EMA repay any part of any PCS Facility Loan (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) 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) of the Franchise Agreement after the expiry of the EMA.
- 12.4 In relation to Change events triggered before the EMA:
  - (a) the processing of the Change shall continue and be treated on the terms of the Franchise Agreement that existed before the entry into this EMA, taking into account the fact that the EMA has been in place since the execution of this EMA;
  - (b) any payments in respect of the relevant Change that are agreed or determined in accordance with that process shall be made as and when determined; and
  - (c) notwithstanding clauses 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.

13.3 **Recalibration of Benchmarks**

[REDACTED<sup>1</sup>]

14. **COMMITTED OBLIGATIONS**

14.1 Following execution of this EMA, the Parties shall within thirty (30) Weekdays of the EMA Start Date meet and consider, acting reasonably and in good faith, whether the completion of Committed Obligations will be:

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

14.2 In the event that the Committed Obligation involves Capital Expenditure the default assumption will be that the Committed Obligation shall continue unaffected during the period of the EMA.

14.3 In the event the Parties are unable to agree the approach to completion of a Committed Obligation within sixty (60) Weekdays of the EMA Start Date, the Secretary of State shall reasonably determine the approach.

14.4 If a delay, suspension or reduction agreed or determined in accordance with this clause 14 is such that it is reasonably likely to have an impact on the Franchisee's financial position or performance of the relevant obligation following the expiry of the EMA, then the Parties will also agree (or if they are unable to agree, the Secretary of State will reasonably determine) how that impact will be addressed (whether by way of a Variation or some other mechanism).

15. **COVID-19 RELATED SUPPORT**

15.1 The Franchisee shall use all reasonable endeavours to avail itself of, including applying for, any UK Government support that is offered in relation to the impact of COVID-19, including for example tax relief.

15.2 To the extent the Franchisee is successful in receiving such support, this shall be taken into account in relation to the application of the mechanisms in Schedule 8.A of the Franchise Agreement, as set out in Appendix 2 to 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 8A of the Franchise Agreement defines the parameters on the basis of which the compensation payment for discharging the public service obligations is to be calculated. In accordance

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<sup>1</sup> 4 May 2020 (Date of Redactions Approval) - Where text has been omitted from the document – this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

with Articles 4(1) and 6(1) of Regulation (EC) N° 1370/2007 of 23 October 2007 on public passenger transport services by rail and by road, these parameters have been determined in such a way that no compensation payment may exceed the amount required to cover the net financial effect on costs incurred and revenues generated in discharging the public service obligations, taking account of revenue relating thereto kept by the Train Operator and a reasonable profit. At the end of the EMA, the Secretary of State will carry out an ex-post check to ensure that there has been no overcompensation for the discharge of the public service obligations over the duration of the EMA. The Secretary of State will recover – in accordance with the EU State aid rules - any overcompensation in relation to the provision of the management role over the duration of the EMA or any other financial advantage that is identified as having been granted as a result of the EMA in violation of the EU State aid rules, whether such overcompensation or other advantage has been identified by the Secretary of State or by the European Commission and the Franchisee agrees to repay such monies promptly.

**17. EXPIRY OF THE EMA – RECALIBRATION ITEMS**

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

**18. WARRANTIES**

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

**19. ENTIRE AGREEMENT**

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

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

Print Name of Authorised Signatory:  
Position:  
Date:

[REDACTED<sup>2</sup>]

SIGNED FOR AND ON BEHALF OF )  
**First TransPennine Express Limited** )  
)

Print Name of Authorised Signatory:  
Position:  
Date:

[REDACTED<sup>3</sup>]

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<sup>2</sup> 4 May 2020 (Date of Redactions Approval) - Where text has been omitted from the document – this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

<sup>3</sup> 4 May 2020 (Date of Redactions Approval) - Where text has been omitted from the document – this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

**SCHEDULE 1**

**Amendments to the Franchise Agreement**



	<p><b><u>"Initial Budget"</u></b> <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><b>"Franchise Payment"</b> <i>means, in relation to any Reporting Period, the amount determined in accordance with <del>paragraph 1.1 of</del> Schedule 8.A<del>1</del> (Franchise Payments);</i></p> <p><b>"Payment Date"</b> <i>means the date for the payment of Franchise Payments in accordance with paragraph <del>3.3 2.3</del> of Schedule 8.A<del>1</del> (Franchise Payments);</i></p>
<p>7.1 – Entire Agreement</p>	<p>Clause 7.1 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>7A- General Obligations</p>	<p>The following new clause 7A ("Disputes under Schedule 8 (Payments) of this Agreement") shall be inserted as follows:</p> <p><b><u>"7A Disputes under Schedule 8 (Payments) of this Agreement</u></b></p> <p><u><i>The Parties shall comply with the terms of paragraph 3.7 of Schedule 8.A (Franchise Payments) of this Agreement."</i></u></p>

Schedule 1: Passenger Service Obligations	
1.1 - Service Development	N/A
1.2 - Operating Obligations	<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 <u>shall promptly notify the Secretary of State and the Franchisee agrees to cooperate with Network Rail in relation to such proposal, unless and until: (i) the Franchisee reasonably believes that such proposal would be likely to be materially detrimental to the interests of passengers on railway passenger services in Great Britain; or (ii) agrees (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></i></p> <ul style="list-style-type: none"> <li><i>(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);</i></li> <li><i>(b) make representations; and</i></li> <li><i>(c) withhold consent,</i></li> </ul> <p><i>in respect of <del>any</del>such actual or proposed omission or rescheduling of Passenger Services by Network Rail"</i></p> <p>Paragraph 3.5 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 4.3, 4.3A, 4.3B and 4.3C shall be inserted as follows:</p> <p><u>"4.3 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</u></p>

	<p><u>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>4.3A The Franchisee shall ensure that any proposals to Network Rail submitted pursuant to paragraphs 4.1 or 4.3:</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 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 4.3A(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>4.3B 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 4.3 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>4.3C 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 4.3."</u></p>
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	<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 “<u>and</u>” 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><b><u>“2A Communicating Emergency Timetables</u></b></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 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></p>
<p>1.5 – Information about Passengers</p>	<p>N/A</p>
<p>1.6 – Franchise Services</p>	<p>The text in each of paragraphs 5(c), 5(d), 5(e) and (k) shall be deleted and replaced with "<u>not used</u>".</p> <p>A new paragraph 5A shall be inserted as follows:</p> <p><u>"5A. 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></p> <p><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 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 5.1(a) to 5.1(b) inclusive, paragraphs 5.1(f)-(j) inclusive, 5.1(l)-(p) inclusive, paragraph 5A(i) or paragraphs 5A(iii) to 5A(v) inclusive, or engaged in any other activity which is permitted under this Schedule 1.6;</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>
1.7 – The Train Fleet	N/A
<b>Schedule 2: Assets, Leases, Third Parties, Other Franchise Operations and Schemes</b>	
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 – Third Party Delivery of Passenger Services and Other Franchisees	<p>Paragraph 1.2(d) shall be amended as follows:</p> <p><i>" the Train Mileage of the Passenger Services so delegated or subcontracted does not exceed 5 per cent. of the aggregate scheduled Train Mileage of the Franchisee in any Reporting Period <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>
2.4 – Other Franchise Operations	N/A
2.5 – Transport, Travel and Other Schemes	N/A
<b>Schedule 3: Not Used</b>	
-	N/A
<b>Schedule 4: Persons with Disabilities and Disability Discrimination</b>	
Persons with Disabilities and Disability Discrimination	N/A
<b>Schedule 5: Fares</b>	
5.1 – Purpose, Structure and Construction	N/A
5.2 – Franchisee's Obligation to Create Fares	N/A
5.3 – Allocation of Fares to the Protected Fares Basket	N/A
5.4 – Regulation of Protected 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
<b>Schedule 6: Committed Obligations and Franchise Specific Obligations</b>	
6.1 – Committed Obligations	<p>A new paragraph 37.3 shall be added as follows:</p> <p><u>“37.3</u></p> <p><u>(a) It is acknowledged that this paragraph 37 (Delayed Rolling Stock Franchise Payment Adjustment) makes 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 this paragraph 37 in association with Schedule 8A (Franchise Payments).</u></p> <p><u>(b) 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 37.3(a).</u></p> <p><u>(c) 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&amp;L account recognition and accruals in respect of any period before, during or after the term of the EMA).”</u></p>
6.2 – TransPennine Express Franchise Specific Provisions	N/A
<b>Schedule 7: Performance Benchmarks</b>	

7.1 – Performance Benchmarks	The text in paragraphs 3 and 4 shall be deleted and replaced with " <u>not used</u> ".
7.2 – National Rail Passenger Surveys and Customer and Communities Improvement Fund	Unless otherwise instructed by the Secretary of State, Schedule 7.2 shall <b>not</b> apply for the duration of the EMA.
<b>Schedule 8: Payments</b>	
8.1 – Franchise Payments	Schedule 8.1 shall be replaced with (together):  (i) the new Schedule 8.A attached at Appendix 2; and  (ii) the new Schedule 8.B attached at Appendix 3.
8.2 – Annual Franchise Payments	Unless otherwise instructed by the Secretary of State, Schedule 8.2 shall <b>not</b> apply for the duration of the EMA.
8.3 – Miscellaneous Payment Provisions	Unless otherwise instructed by the Secretary of State, Schedule 8.3 shall <b>not</b> apply for the duration of the EMA.
8.4 – Track Access Adjustments and Station Charge Adjustments	Unless otherwise instructed by the Secretary of State, Schedule 8.4 shall <b>not</b> apply for the duration of the EMA.
<b>Schedule 9: Changes</b>	
9.1 – Financial and Other Consequences of Change	Unless otherwise instructed by the Secretary of State, Schedule 9.1 shall <b>not</b> apply for the duration of the EMA.
9.2 – Identity of the Financial Model etc.	N/A
9.3 – Secretary of State Risk Assumptions	Unless otherwise instructed by the Secretary of State, Schedule 9.3 shall <b>not</b> apply for the duration of the EMA.
9.4 – Specified Infrastructure Related Change	Subject to the below, unless otherwise instructed by the Secretary of State, Schedule 9.4 shall <b>not</b> apply for the duration of the EMA.

	Notwithstanding the above, paragraph 4 ( <i>Infrastructure Issue Reviews</i> ) of Schedule 9.4 shall remain unamended and shall continue to apply.
9.5 – Variations to the Franchise Agreement and Incentivising Beneficial Changes	N/A
<b>Schedule 10: Remedies, Termination and Expiry</b>	
10.1 – Remedial Plans and Remedial Agreements	<p>Paragraph 1.1 shall be deleted and replaced with the following new paragraph:</p> <p><u><i>"1.1 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 "<b>Remedial Plan Notice</b>")."</i></u></p> <p>Paragraph 1.2(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 ("<b>Relevant Term</b>"); and</i></u></p> <p>Paragraph 1.4 shall be amended as follows:</p> <p><i>"1.4 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>(b) <i>an explanation of the reasons for the <u>Franchisee receiving, or being likely to receive, a score of "1" with respect to <del>contravention or likely contravention of</del> the Relevant Term</u>;</i></p> <p>(c) <i>the steps proposed for the purposes of <u>addressing and overcoming the shortfalls or failures that have led to the Franchisee receiving, or being likely to receive, a score of "1" with respect to the Relevant Term</u> <del>securing or facilitating compliance with the Relevant Term</del>; and</i></p> <p>(d) <i>the time period within which the Franchisee proposes to implement those steps."</i></p>
<p>10.2 – Termination and Expiry</p>	<p>N/A</p>
<p>10.3 – Events of Default and Termination Events</p>	<p>The text in paragraph 2.6 shall be deleted and replaced with "<u>not used</u>".</p> <p>The text in paragraph 2.8 shall be deleted and replaced with "<u>not used</u>".</p> <p>A new paragraph 2.15 shall be inserted as follows:</p> <p style="padding-left: 40px;"><u>"2.15     <b>Disallowable Costs</b></u></p> <p style="padding-left: 80px;"><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>10.4 – Force Majeure</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 style="padding-left: 40px;"><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 style="padding-left: 40px;"><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><i><u>"3.2A Notwithstanding any other provision of this Agreement, the Franchisee agrees that it shall not for the duration of the EMA be entitled to further relief from obligations pursuant to the Force Majeure provisions under this Schedule 10.3 as a direct or indirect impact of COVID-19."</u></i></p>
10.5 - Liability	N/A
<b>Schedule 11: Agreement Management Provisions</b>	
Agreement Management Provisions	<p>Paragraph 2.1(d) shall be amended as below:</p> <p><i>"a finance manager, whose role will include responsibility in relation to the <u>Financial Model- Budget, the Final Reviewed Accounts and the provision of other financial data to the Secretary of State;</u>"</i></p> <p>Paragraph 5.1(a) shall be amended as below:</p> <p><i>"to inspect and copy any records referred to in Schedule 13 (Information and Industry Initiatives) <u>or Schedule 8.A</u> and the Secretary of State may verify any such records;"</i></p> <p>Paragraph 5.4 shall be amended as below:</p> <p><i>"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 <u>and which, for the avoidance of doubt, shall be Disallowable Costs pursuant to Appendix 1 to Schedule 8.A.</u>"</i></p>
<b>Schedule 12: Financial Obligations and Covenants</b>	
Financial Obligations and Covenants	<p>Paragraph 1 shall be amended by:</p> <p>deleting the word "or" at the end of paragraph (c)</p> <p>amending subparagraph (d) as follows:</p>

	<p>"(d) <i>create or acquire any subsidiary or make or have any investment in any other entity, except for the deposit of cash with a Bank-; <u>or</u></i>"</p> <p>inserting a new subparagraph (e) as follows:</p> <p><i><u>"(e) borrow any sum, or enter into any loan or lending agreement for the purpose of borrowing from any person."</u></i></p> <p>The text in paragraph 2 shall be deleted and replaced with "<u>not used</u>".</p> <p>The heading of paragraph 3 shall be deleted and replaced with "<b><u>Lock-up Period</u></b>".</p> <p>Paragraph 3.2 shall be replaced with the following:</p> <p><i><u>"3.2 <b>"Lock-up Period"</b> 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></i></p> <p><i><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></i></p> <p><i><u>(b) by virtue of such notice, the Lock-Up Period has expired.</u></i></p> <p><i><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></i></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><i><u>"3A. The Franchisee shall use reasonable endeavours to plan its business activities and working capital position such that the Forecast Closing Cash Position does not fall below the Floor Cash Position."</u></i></p>
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	<p>Paragraph 4.3(c) shall be amended by inserting the following text at the end of the subparagraph:</p> <p><u>"The Parties acknowledge and agree that the Franchisee shall under no circumstances be entitled to reimbursement, pursuant to Schedule 8.A (Franchise Payments) or otherwise, in respect of any additional costs or expenses incurred by the Franchisee in procuring any new Performance Bond where required to do so pursuant to this paragraph 4.3(c)."</u></p> <p>Paragraph 4.5(a)(i)(A) shall be amended as follows:</p> <p><u>"either terminated or expired and, in either case, in circumstances where there are liabilities or obligations outstanding from the Franchisee to the Secretary of State including where the Franchise Period has terminated or expired but provisions of the Franchise Agreement remain in operation and effect (including Schedule 8.A (Franchise Payments)); and/or"</u></p> <p>The subparagraphs in paragraph 4.5(b) shall be amended as follows:</p> <p><u>"(i) early termination of the Franchise Agreement; and/or</u></p> <p><u>(ii) any failure by the Franchisee to perform or comply with any of its obligations to the Secretary of State under the Franchise Agreement or to a Successor Operator under the Supplemental Agreement—<del>and which are not otherwise recovered by the Secretary of State; and/or</del></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) 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 Repayment not paid to the Secretary of State in accordance with paragraph 10.4 of Schedule 8.A (Franchise Payments)."</u></p>
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	<p>A new paragraph 4.5(d) shall be inserted as follows:</p> <p><i><u>"(d) 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. <b>Survival</b></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><b>Schedule 13: Information and Industry Initiatives</b></p>	
<p>Information and Industry Initiatives</p>	<p>Schedule 13 shall be replaced with the new Schedule 13 attached at Appendix 4.</p>
<p><b>Schedule 14: Preservation of Assets</b></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>
<p><b>Schedule 15: Obligations Associated with Termination</b></p>	
<p>15.1 – Reletting Provisions</p>	<p>N/A</p>

<p>15.2 – Last 12 or 13 months of Franchise Period and Other Conduct of Business Provisions</p>	<p>A new paragraph 1.3 shall be inserted as follows:</p> <p><b><u>1.3</u></b> <b><u>EMA Period</u></b></p> <p><u>Notwithstanding paragraphs 1.1 and 1.2 above, the Parties agree that paragraphs 2 to 4 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><i>"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."</i></p> <p>Paragraph 2.5 shall be amended as follows:</p> <p><i>"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 <u>(12)</u> months of the Franchise Period the number of Franchise Employees such that:</i></p>
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	<p>(a) <i>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</i></p> <p>(b) <i>the total number of Franchise Employees is decreased,</i></p> <p><i>in each case, by more than five per cent (5%) during such <u>term of the EMA or</u> period of 12 months provided that where the last 12 or 13 months of the Franchise Period has been deemed to have commenced under paragraph 1.1 and the period of the restriction contemplated by this paragraph 2.5 lasts longer than 12 months such restriction shall apply in respect of the longer period."</i></p> <p>Paragraph 3.1(a) shall be amended as follows:</p> <p>"(a) <i>During <u>the term of the EMA or</u> the last 13 months of the Franchise Period the Franchisee shall not, without the prior written consent of the Secretary of State (not to be unreasonably withheld), set the Price or Child Price of or sell (except to the extent required to do so under the terms of the Ticketing and Settlement Agreement as a result of the Price or Child Price of a Fare being set by another person) any Fare which would entitle the purchaser of such Fare to travel on all or any of the Passenger Services after the <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 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."</i></p> <p>Paragraph 3.1(b)(i) shall be amended as follows:</p> <p>"(i) <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 13 month period and to which the purchaser would have been entitled before the commencement of such period;"</i></p> <p>Paragraph 3.2(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 13 Reporting Periods".</p> <p>Paragraph 4.1 shall be amended by inserting the words "<u>during the term of the EMA or</u>" before the words "during the last 12 months".</p>
15.3 – Handover Package	N/A

15.4 – Provisions Applying on and After Termination	N/A
<b>Schedule 16: Pensions</b>	
16- Pensions	In paragraphs 5.4 and 5.5, the reference to “Schedule 8 (Payments)” shall be deleted and replaced with “Schedule 8.A (Franchise Payments)”
<b>Schedule 17: Confidentiality and Freedom of Information</b>	
Confidentiality and Freedom of Information	N/A
<b>Schedule 18: Additional Reporting Periods</b>	
Additional Reporting Periods	N/A
<b>Schedule 19: Other Provisions</b>	
Other Provisions	N/A

**Appendix 1 to Schedule 1**

**NOT USED**

**Appendix 2 to Schedule 1**  
**Schedule 8.A (Franchise Payments)**

## 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):

<b>"Accrued Claims"</b>	has the meaning given in paragraph 5.7 of Schedule 8.A (Franchise Payments);
<b>"Accrued Disallowable Costs"</b>	has the meaning given in paragraph 5.7 of Schedule 8.A (Franchise Payments);
<b>"Accrued Revenue Foregone"</b>	has the meaning given in paragraph 5.7 of Schedule 8.A (Franchise Payments);
<b>"Actual Capex"</b>	means the actual Capital Expenditure of the Franchisee in the relevant period;
<b>"Actual Costs"</b>	means the actual Costs of the Franchisee in the relevant period;
<b>"Actual Revenue"</b>	means the actual Revenue of the Franchisee in the relevant period;
<b>"AFC Repayment Costs"</b>	means (in each case) the amount of any repayment by the Franchisee of any part of the Agreed Funding Commitment (as such term is defined in the Funding Deed);
<b>"Aggregated Costs and Revenues Liabilities"</b>	has the meaning given in paragraph 5.8 of Schedule 8.A (Franchise Payments);
<b>"Base Cash Position"</b>	<b>[REDACTED<sup>4</sup>]</b> or such other value as the Secretary of State may determine in accordance with paragraph 9.8 of Schedule 8.A (Franchise Payments);
<b>"Budget"</b>	means together: <ul style="list-style-type: none"> <li>(a) the periodic cost and revenues budget; and</li> <li>(b) the periodic capex budget,</li> </ul> <p>as such budget may be updated from time to time in accordance with paragraph 4 of Schedule 8.A (Franchise Payments);</p>

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

**“Budgeted 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);

**“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;
- (e) AFC Repayment Costs;

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;

<b>"Ceiling Cash Position"</b>	[REDACTED <sup>5</sup> ] or such other value as the Secretary of State may determine in accordance with paragraph 9.8 of Schedule 8.A (Franchise Payments);
<b>"Disallowable Costs"</b>	means any Costs or Capital Expenditure which are described within Appendix 1 (Disallowable Costs) to this Schedule 8.A (Franchise Payments);
<b>"EMA Start Date"</b>	means 1 April 2020;
<b>"Emergency Working Capital Payment"</b>	has the meaning given in paragraph 9.5 of Schedule 8.A (Franchise Payments);
<b>"Estimated Capital Expenditure"</b>	means the Capital Expenditure estimated by the Secretary of State using available resources as is practicable at the time of the estimation;
<b>"Estimated Costs"</b>	means the Costs reasonably estimated by the Secretary of State using available resources as is practicable at the time of the estimation;
<b>"Estimated Residual Components"</b>	means the Residual Components estimated by the Secretary of State using available resources as is practicable at the time of the estimation;
<b>"Estimated Revenue"</b>	means the Revenue reasonably determined by the Secretary of State using available resources as is practicable at the time of the determination;
<b>"Extended Performance Period"</b>	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);

<sup>5</sup> 4 May 2020 (Date of Redactions Approval) - Where text has been omitted from the document – this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

<b>“Final Reviewed Accounts”</b>	means the audited accounts provided pursuant to paragraph 16 of Schedule 8.A (Franchise Payments);
<b>“Floor Cash Position”</b>	<b>[REDACTED<sup>6</sup>]</b> or such other value as the Secretary of State may determine in accordance with paragraph 9.8 of Schedule 8.A (Franchise Payments);
<b>“Forecast Closing Cash Position”</b>	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) as at the last day of that Reporting Period and taking into account the Franchisee’s latest Management Accounts;
<b>“Franchise Payment Component”</b>	means: <ul style="list-style-type: none"> <li>(a) each of the components of “FP” as described in paragraph 2.1 of this Schedule 8.A (Franchise Payments); and</li> <li>(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;</li> </ul>
<b>“Good and Efficient Operator”</b>	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;
<b>“Management Fee and Performance Payment” or “MFPP”</b>	means the Franchise Payment Component calculated in accordance with paragraph 11 of this Schedule 8.A (Franchise Payments);
<b>“Performance Period”</b>	means each of:

<sup>6</sup> 4 May 2020 (Date of Redactions Approval) - Where text has been omitted from the document – this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

- (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:

<b>£FP =</b>	$PFP + PBCP + PADJ + WCP - WCR + FADJ + MFPP - FWCA + RCP$
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**where:**

<b>PFP</b>  <b>(Periodic Franchise Payment)</b>	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 <sub>(n-1)</sub> (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.	
<b>PBCP</b>  <b>(Periodic Budgeted)</b>	means an amount equal to the Budgeted Capex for the current Reporting Period (if any). PBCP may only be a positive number.	

<b>Capex Payment)</b>	
<b>PADJ</b>	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.
<b>WCP</b>	means any Working Capital Payment to be made on that Reporting Period's Payment Date. WCP may only be a positive number.
<b>WCR</b>	means any Working Capital Repayment to be made on that Reporting Period's Payment Date. WCR may only be a positive number.
<b>FADJ</b>	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.
<b>MFPP</b>	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.
<b>FWCA</b>	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.
<b>RCP</b>	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 8 (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 3.2 of Schedule 13 (Information and Industry Initiatives) 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 5.4 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 3.2 of Schedule 13 (Information and Industry Initiatives) 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 [REDACTED<sup>7</sup>]; 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 13 (Information and Industry Initiatives), 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:-

<sup>7</sup> 4 May 2020 (Date of Redactions Approval) - Where text has been omitted from the document – this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

- (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 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<sup>8</sup>]**; then

each Party will respectively procure that such matter or matters (as the case may be) will be escalated to any senior civil servant within the Department for Transport's Rail Group (excluding the Passenger Services Group) on behalf of the Secretary of State and any statutory director of any Affiliate of the Franchisee on behalf of the Franchisee. Those representatives will meet at the earliest convenient time and in any event within 20 Weekdays of the Escalation Trigger Date and negotiate in good faith and attempt to agree the relevant matters.

5.6C If:

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

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

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

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

<sup>8</sup> 4 May 2020 (Date of Redactions Approval) - Where text has been omitted from the document – this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

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

- (a) in the event that there has been no extension to the term of EMA, the sum of (i) the maximum potential Management Fee payable for the term of the EMA (which, for the avoidance of doubt, shall take account of any early expiry or termination of the EMA) calculated pursuant to paragraph 11.1; and (ii) the sum of all of the Performance Payments for the term of the EMA calculated in accordance with Schedule 8.B (Performance Payment); or
- (b) in the event that there has been an extension to the term of the EMA, the sum of (i) the maximum potential Management Fee payable for the term of the EMA (which, for the avoidance of doubt, shall take account of any early expiry or termination of the EMA) calculated pursuant 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

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

<b>ACRP<sub>n-2</sub></b>	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 <sub>n-2</sub> may only be a positive number
<b>BCRP<sub>n-2</sub></b>	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 <sub>n-2</sub> may only be a positive number.
<b>ACAP<sub>n-2</sub></b>	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 <sub>n-2</sub> may only be a positive number
<b>BCAP<sub>n-2</sub></b>	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 <sub>n-2</sub> may only be a positive number
<b>ARRP<sub>n-2</sub></b>	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.
<b>ERRP<sub>n-2</sub></b>	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 13 (Information and Industry Initiatives)) are received from the Franchisee within the timescale specified in paragraph 3.2(a) of Schedule 13 (Information and Industry Initiatives), 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 13 (Information and Industry Initiatives), 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:

<b>FADJ for the EMA =</b>	$(TotalAC - TotalAR) + TotalACAP - (TotalPFP + TotalPBCP) - TotalPADJ$
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**Where:**

<b>TotalAC</b>	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.
<b>TotalAR</b>	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.
<b>TotalACAP</b>	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.
<b>TotalPFP</b>	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.
<b>TotalPBCP</b>	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.
<b>TotalPADJ</b>	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 paragraphs 3.6 to 3.9 of Schedule 13 (Information and Industry Initiatives) 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:

<b>WCP</b> =	BCP – FCCP
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**Where:**

<b>BCP</b>	the Base Cash Position.
<b>FCCP</b>	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 meet 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 13 (Information and Industry Initiatives) 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:

<b>WCR =</b>	FCCP – BCP
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**Where:**

<b>FCCP</b>	the Forecast Closing Cash Position applicable to the preceding Reporting Period.
<b>BCP</b>	the Base Cash Position.

**Final Working Capital Adjustment**

10.3 The value of FWCA shall equal:

<b>FWCA =</b>	TotalWCP – TotalWCR
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**Where:**

<b>TotalWCP</b>	the aggregate of all Working Capital Payments and all Emergency Working Capital Payments paid to the Franchisee during the term of the EMA
<b>TotalWCR</b>	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 13 (Information and Industry Initiatives) 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:

<b>MFPP =</b>	<b>MF+PP – PPADC</b>
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Where:

<b>MF</b>	means the Management Fee for the term of the EMA and Reporting Period 13 which shall be [REDACTED <sup>9</sup> ] (exclusive of VAT) multiplied by the sum of the number of Reporting Periods in the term of the EMA and one.
<b>PP</b>	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.
<b>PPADC</b>	means the sum of the total value of the Aggregated Costs and Revenues Liabilities:  (a) calculated on the basis of the Franchisee’s Final Reviewed Accounts; and  (b) as agreed or reasonably determined (in accordance with paragraphs 5.4 to 5.6 of Schedule 8.A (Franchise Payments)) at the Payment Date for MFPP pursuant to paragraph 11.3.  Without limiting paragraph 11.2 of Schedule 8.A (Franchise Payments), PPADC may only be a positive number.

11.2 If the value of MFPP is a negative amount:

- (a) for the purposes of paragraph 2.1, MFPP shall be deemed to equal zero; and
- (b) the 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.

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

**12. 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 3.8(b) of Schedule 13 (Information and Industry Initiatives) 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 SoS will reasonably determine the amount and direction of this payment.

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

Any references in this Appendix 1 to Schedule 8.A to costs, payments, expenses, fees, liabilities or other amounts shall be deemed to refer to Costs and/or Capital Expenditure as the context may require.

- (a) Any costs that were incurred otherwise than in accordance with those expected to be incurred by a Good and Efficient Operator. Variations between Actual Costs and Budgeted Costs and/or Actual Capex and Budgeted Capex (as the case may be) likely to be considered to be inconsistent with those expected of a Good and Efficient Operator include but are not limited to:-
  - (i) staff, director or officer costs in excess of the Budget (except where evidenced by the Franchisee as appropriate for delivery of the Franchise or of reasonable scale given the requirement for delivery of the Franchise provided that any costs referred to in paragraph (b) or paragraph (c) of this Appendix shall not in any circumstance be considered appropriate for the delivery of the Franchise or of a reasonable scale given the requirement for delivery of the Franchise);
  - (ii) costs that do not reflect the contracted position under existing contracts as at the EMA Start Date unless such change has been agreed by the Secretary of State (such agreement not to be unreasonably withheld or delayed);
  - (iii) new contracts entered 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 or agreements unless such costs are specifically approved in writing by the Secretary of State;
  - (ii) in removing branding or Marks under paragraph 2.2 of Schedule 14.2 (Maintenance of Operating Assets) except for branding or Marks whose removal from particular assets the Secretary of State has explicitly agreed for the purpose of this provision should be an allowable cost;
  - (iii) in relation to the inspection costs referred to in paragraph 5 of Schedule 13 (Information and Industry Initiatives);

- (iv) in meeting FirstGroup 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 paragraph 7 of Schedule 19 (Other Provisions);
- (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 paragraph 4 of Schedule 10.3 (Events of Default and Termination Events);
- (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, 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 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 usually have discharged in the period following the expiry of the term of the EMA;
  - (s) Any costs incurred in relation to the discharge of Committed Obligations which are in excess of the amounts a Good and Efficient Operator would ordinarily have expended on discharging the Committed Obligation in accordance with the contractual programme and to minimum specification contractually required;
  - (t) Where costs are incurred during the term of the EMA as the result of an obligation to incur expenditure from a fund required to be maintained pursuant to the Franchise Agreement (including, but not limited to, Minor Works and the CCI Amount) such expenditure shall be a Disallowable Cost except and to the extent that it relates to expenditure required to be incurred in relation to Franchisee Years beginning after 31st March 2020;

After the expiry of the EMA, the Parties shall agree or the Secretary of State shall determine the remaining amounts in such funds with reference to the amounts available to be expended in the funds and the aggregate amount of expenditure incurred since the EMA Start Date in relation to obligations related to those funds;
  - (u) Interest paid or payable on PCS Advances (as defined in the Funding Deed);
  - (v) Except with the prior agreement of the Secretary of State (not to be unreasonably withheld), any costs, charges, penalties, compensation or similar payments that the Franchisee may incur as a result of the termination of any contract or other arrangement;
  - (w) Except with the prior agreement of the Secretary of State, losses on disposals of Fixed or Non-Current Assets;

- (x) Maintenance costs where the maintenance activity was previously scheduled to be undertaken prior to or after the term of the EMA or where (and to the extent that) it would have been reasonable and/or prudent for the maintenance to have been carried out prior to or after the term of the EMA;
- (y) Depreciation or Capital Expenditure to the extent that the capital cost of acquisition of the relevant assets was (or was assumed in the Financial Model) to be funded by a third party;
- (z) Costs of any audit pursuant to paragraph 3.13 of Schedule 13 (Information and Industry Initiatives);
- (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 Obligations and Covenants).

**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:

<b>ERP13</b> =	$((EC - ER) + ECE) + (ERC13 - AAP)$
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**Where:**

<b>EC</b>	means the Estimated Costs for Reporting Period 13. EC may only be a positive number.
<b>ER</b>	means the Estimated Revenue for Reporting Period 13. ER may only be a positive number.
<b>ECE</b>	means the Estimated Capital Expenditure for Reporting Period 13. ECE may only be a positive number.
<b>ERC13</b>	means an amount equal to the Estimated Residual Components for Reporting Period 13. ERC13 may be positive or negative.
<b>AAP</b>	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:

<b>IRP13</b> =	$((TotalACMA - TotalARMA) + TotalACEMA) + (RC13MA - AAP) - ERP13$
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**Where:**

<b>TotalACMA</b>	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.
<b>TotalARMA</b>	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.

<b>TotalACEMA</b>	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.
<b>RC13MA</b>	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.
<b>AAP</b>	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>ERP13</b>	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:

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

<b>TotalACRA</b>	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.
<b>TotalARRA</b>	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.
<b>TotalACERA</b>	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.
<b>RC13RA</b>	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.
<b>AAP</b>	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>ERP13</b>	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.

<b>IRP13</b>	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.
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- (d) Where:
- (i) **£ERP13, £IRP13 or £FRP13 (as applicable) is a positive number**, the Secretary of State shall pay that amount to the Franchisee on the date set out in the relevant paragraph above;
  - (ii) **£ERP13, £IRP13 or £FRP13 is a negative number**, the Franchisee shall pay the corresponding positive amount to the Secretary of State on the date set out in the relevant paragraph above.
- (e) The Parties acknowledge and agree that in determining either the Initial Reporting Period 13 Payment or the Final Reporting Period 13 Payment, the Secretary of State shall be entitled to review any relevant Franchisee information for the purpose of ensuring that costs accrued in Reporting Period 13 for the purposes the Management Accounts properly relate to that Reporting Period.
- (f) As soon as reasonably practicable following the EMA Start Date, the Parties shall agree a methodology for determining how any adjustments required to the Management Accounts in preparing the Annual Audited Accounts would be identified and allocated to Reporting Period 13. The procedures agreed shall include a reconciliation of the Franchisee's net assets at the start of the Reporting Period 13 and at the end of the Reporting Period 13.
- (g) The Management Accounts incorporating the adjustments identified for Reporting Period 13 pursuant to paragraph (f) of this Appendix 2 to Schedule 8.A (Franchise Payments) shall be the "Reviewed 2019/20 Accounts" for the purposes of this Schedule 8.A. If required by the Secretary of State, the Franchisee shall allow full access by their officials and/or representatives on an "open book" basis for the purposes of reviewing the incorporation of such adjustments; and
- (h) Any PCS up to the amount drawn down during Reporting Period 13 may be repayable from the amounts paid to the Franchisee pursuant to this Appendix 2 of Schedule 8.A (Franchise Payments).

**Appendix 3 to Schedule 1**  
**Schedule 8.B (Performance Payment)**

## 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 <sup>10</sup> ]
	2	[REDACTED]
	1	[REDACTED]
Customer experience	3	[REDACTED <sup>11</sup> ]
	2	[REDACTED]
	1	[REDACTED]
Acting as a Good and Efficient Operator	3	[REDACTED <sup>12</sup> ]
	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.

<sup>10</sup> 4 May 2020 (Date of Redactions Approval) - Where text has been omitted from the document - this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

<sup>11</sup> 4 May 2020 (Date of Redactions Approval) - Where text has been omitted from the document - this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

<sup>12</sup> 4 May 2020 (Date of Redactions Approval) - Where text has been omitted from the document - this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

**APPENDIX 1 TO SCHEDULE 8.B****EMA Review****1. PURPOSE OF THE EMA REVIEW**

- 1.1 The purpose of an EMA Review is for the Secretary of State to undertake a review of the Franchisee's performance in relation to the Franchise Services over the course of the relevant EMA Performance Period.
- 1.2 The Parties agree that more than one EMA Review may be undertaken by the Secretary of State where the variations to the Franchise Agreement imposed pursuant to the EMA are extended in accordance with clause 3.3 of the EMA.
- 1.3 The Secretary of State will carry out an EMA Review with respect to each EMA Performance Period.
- 1.4 At each periodic Franchise Performance Meeting, progress against the three EMA Criteria shall be discussed and reviewed by the Parties.
- 1.5 Each EMA Review shall be carried out in accordance with the process set out in this Schedule 8.B.

**2. NOTICE OF EMA REVIEW MEETING**

- 2.1 The Secretary of State shall notify the Franchisee of the date, time and location for the relevant EMA Review Meeting by no later than the end of the relevant EMA Performance Period, provided always that the EMA Review Meeting shall take place no earlier than the last day in the relevant EMA Performance Period and no later than 60 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 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**

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

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

**Appendix 4 to Schedule 1****SCHEDULE 13****Information and Industry Initiatives****1. General Information****Corporate Information**

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

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

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

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

1.3 The Franchisee shall provide to the Secretary of State the information specified in the Appendices to this Schedule 13 at the times specified therein.

1.4 The Appendices to this Schedule 13 shall be interpreted in accordance with any guidance issued by the Secretary of State from time to time for that purpose.

**Maintenance of Records**

1.5 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;
- (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).

- 1.6 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 13 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.
- 1.7 Each record required to be maintained by the Franchisee in accordance with this Schedule 13 shall be held for a period of six years following the date on which such record was required to be created.
- 1.8 References to records, books and materials in this Schedule 13 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 1.6 and 1.9, 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.
- 1.9 The Franchisee shall not be responsible for any records, books or materials maintained under any Previous Franchise Agreement, as referred to in paragraph 1.8, being true, complete and up to date. As soon as reasonably practicable after becoming aware that any such records are not true, complete and up to date, the Franchisee shall take all reasonable steps to remedy any such deficiency, and shall thereafter maintain such records in accordance with paragraph 1.5.

#### **Information to the Passengers' Council and Local Authorities**

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

#### **2. Business Plans**

##### **Initial Business Plan**

- 2.1 Not used.
- 2.2 Not used.

##### **Annual Business Plans**

- 2.3 The Franchisee shall, at all times during the Franchise Term, provide to the Secretary of State any annual business plan (in written or electronic form) that it provides to its Parent (or any other document or documents which individually or collectively can reasonably be considered to be an annual business plan) in relation to a Franchisee Year (other than the first Franchisee Year) and which describes the Franchisee's planned activities for such Franchisee Year or describes the manner in which the Franchisee will meet its obligations under the Franchise Agreement in respect of that Franchisee Year (the "**Annual Business Plan**"). Any such Annual Business Plan shall be provided to the Secretary of State within one month of submission of same to the Parent. Where the Franchisee does not produce an annual business plan it shall notify the Secretary of State of all the periodic plans that it does produce and:
- (a) the Secretary of State shall be entitled to copies of such periodic plans as he shall reasonably determine; and
- (b) any such periodic plans shall be deemed to be Annual Business Plans for the purposes of this paragraph 2.3.
- 2.4 The Franchisee shall, at the same time as it submits the Annual Business Plan to the Secretary of State in accordance with paragraph 2.3 (or to the extent that no Annual

Business Plan is submitted to the Parent in any Franchisee Year, not more than three Reporting Periods and not less than one Reporting Period prior to the start of each Franchisee Year), provide to the Secretary of State:

- (a) a revised profit and loss forecast, cash flow forecast and forecast balance sheet for each of the 13 Reporting Periods in the relevant Franchisee Year and each subsequent Franchisee Year of the Franchise Term;
  - (b)
    - (i) a forecast of the Franchisee's Forecast Closing Cash Position for the last day of each of the following thirteen (13) Reporting Periods; and
    - (ii) 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;
  - (c) an annual improvement plan providing:
    - (i) 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;
    - (ii) 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;
    - (iii) details of those technologies, processes, developments and/or proposals which the Franchisee proposes to implement during the relevant Franchisee Year; and
    - (iv) 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 that previous Franchisee Year.
  - (d) a statement from each of, a statutory director of the Franchisee and, a statutory director of the Parent confirming that the Annual Business Plan has been provided to, considered and endorsed by the board of directors of each Parent and that the board of directors of each Parent is not aware of any other plan which may alter, vary or impact on the Business Plan and shall at any time during the following 12 months notify the Secretary of State should any of them become aware of any such plan.
- 2.5 If at any time during a Franchisee Year the Franchisee produces any other annual business plan or periodic plan which is delivered to its Parent it shall at the same time as delivering such plan to its Parent notify the Secretary of State of all such plans and shall explain to the Secretary of State how (if at all) such further plan alters, amends or otherwise varies or impacts on the applicable Annual Business Plan or Initial Budget. The Secretary of State shall be entitled to copies of such further plans as the Secretary of State shall reasonably determine.
- 2.6 The Franchisee shall not be relieved of any of its obligations under the Franchise Agreement as a result of any comment or failure to comment by the Secretary of State on any Business Plan or any agreement with or approval, implicit or explicit, of any Business Plan by the Secretary of State at any time.

- 2.7 The Secretary of State may at any time require the Franchisee to produce a Business Action Plan in respect of any aspect of the Business Plan. Such Business Action Plan may include steps relating to:
- (a) timetable and service pattern development;
  - (b) Station facility improvement;
  - (c) performance management improvement;
  - (d) customer service improvement; and
  - (e) improvements in the quality of service delivery or the efficiency of delivery of the Franchise Services.
- 2.8 The Franchisee shall comply with any guidance issued by the Secretary of State about how and with whom any consultation on the content of a Business Action Plan is to take place.
- 2.9 Any proposal in a Business Action Plan shall only be implemented if and to the extent that the Secretary of State decides it is appropriate to do so and subject to any conditions which he may impose.

### 3. **Financial And Operational Information**

#### **Accounting Records**

- 3.1 The Franchisee shall prepare and at all times during the Franchise Term maintain true, up to date and complete accounting records as are required to be kept under Section 386 of the Companies Act 2006. Such records shall be prepared on a consistent basis for each Reporting Period. 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.

#### **Reporting Period Financial Information**

##### 3.2

- (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 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 Obligations and Covenants).
- (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 8.A 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 3.2(b) of this Schedule 13) 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 3.2(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 3.2(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 3.2(b)(iii) 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 Agreed Funding Commitment and PCS Advances (each as defined in the Funding Deed) provided during such Reporting Period and any repayments made during such Reporting Period in respect of (i) previously provided Agreed Funding Commitments as against the Funding Plan (as defined in the Funding Deed) and (ii) PCS Advances (as defined in the Funding Deed);
  - (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) and the Franchisee shall promptly provide such further information or analysis.

3.3 Not used.

3.4 The Franchisee shall ensure that the Management Accounts for each Reporting Period accurately identify (separately from other costs) any and all AFC Repayment Costs (as such term is defined in Schedule 8.A) incurred by the Franchisee in such Reporting Period.

### Annual Financial Information

3.5 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.

3.6 The Franchisee shall deliver to the Secretary of State:

- (a) in respect of any Franchisee Year other than the final Franchisee Year, its Annual Financial Statements for that Franchisee Year within three Reporting Periods of the end of that Franchisee Year; and
- (b) in respect of the final Franchisee Year, its Annual Financial Statements for the period from the start of that Franchisee Year to the end of the Franchise Period within three Reporting Periods of the end of the Franchise Period,

each together with a reconciliation to the Management Accounts for the same period.

3.7 Not used.

3.8

- (a) Within four (4) Reporting Periods after the end of each Franchisee Year, the Franchisee shall deliver to the Secretary of State the following information:
- (x) 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;
  - (xi) 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;
  - (xii) 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 3.9(a)(ii) has been undertaken accurately;
  - (xiii) **NOT USED.**
  - (xiv) a statement from the Franchisee's auditors confirming that GAAP has been applied in a fair and consistent manner; and
  - (xv) **NOT USED.**
- (b) 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 3.9(b)(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.

### **Accounting Standards and Practices**

3.9 Each set of Management Accounts and Annual Management Accounts shall:

- (a) be in the formats set out in the document in the agreed terms marked FF or in such other format as the Secretary of State may reasonably specify from time to time;
- (b) be prepared consistently in accordance with the Franchisee's normal accounting policies, details of which shall be supplied on request to the Secretary of State; and
- (c) identify to the reasonable satisfaction of the Secretary of State, any changes in such accounting policies from those policies that were applied in preparing each of the profit and loss account, the cash flow projection and the balance sheet used for the purposes of preparing the Budget.

3.10 Each set of Annual Financial Statements and Annual Audited Accounts shall:

- (a) be prepared and audited in accordance with GAAP, consistently applied and in accordance with the Companies Act 2006; and
- (b) give a true and fair view of:
  - (i) the state of affairs, profits and financial condition of the Franchisee for the period covered by such accounts; and
  - (ii) the amount of its total revenue (being all revenue whatsoever from any source obtained from any commercial or non-commercial activity or undertaking of the Franchisee, such revenue to be disaggregated by reference to revenue derived by the Franchisee from the sale of tickets, income received from Network Rail pursuant to Schedule 4 and Schedule 8 to the Track Access Agreement and other income (including car park revenue)).

#### **3.11A 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.

**Parent and Guarantor Accounts**

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

**Secretary of State Audit**

3.12

- (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 3.12(a).
- (c) If any audit carried out pursuant to paragraph 3.12(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 paragraph 12.1 or 12.2 of Schedule 8.A (Franchise Payments); and
  - (ii) the Franchisee shall pay all reasonable costs of any such audit as a monitoring cost pursuant to paragraph 1.11 of Schedule 10.1 (Remedial Plans and Remedial Agreements) which shall, for the avoidance of doubt, be treated as Disallowable Costs pursuant to Appendix 1 to Schedule 8.A.

3.13 Not Used.

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

- 3.14 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.

**4. Safety Information****Safety**

- 4.1 The Franchisee shall co-operate with any request from any relevant competent authority for provision of information and/or preparation and submission of reports detailing or identifying compliance with safety obligations set out in the Safety Regulations including any breaches of the Safety Regulations.

4.2 The Franchisee shall notify the Secretary of State as soon as practicable of the receipt and contents of any formal notification relating to safety or any improvement or prohibition notice received from ORR. Immediately upon receipt of such notification or notice, the Franchisee shall provide the Secretary of State with a copy of such notification or notice.

4.3 The Franchisee shall participate in industry groups and committees addressing the domestic and European safety agenda of the Railway Group.

## 5. Further Information

5.1 The Franchisee shall:

- (a) deliver to the Secretary of State, or procure the delivery to the Secretary of State of, such information, records or documents as he may request within such period as he may reasonably require and which relate to or are connected with the Franchisee's performance of the Franchise Agreement; and
- (b) procure that each Affiliate of the Franchisee complies with paragraph 5.1(a) in respect of any information, records or documents that relate to its dealings with the Franchisee in connection with the Franchisee's performance of its obligations under the Franchise Agreement.

5.2 The information referred to in paragraph 5.1(a) shall include:

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

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

- (a) the information required to be provided under this Schedule 13 more frequently than set out in this Schedule 13;
- (b) the information required to be provided under this Schedule 13, or, in the Secretary of State's discretion, more detailed financial information, at any time in connection with the re-letting of the Franchise; and
- (c) such unaudited accounts under such accounting policies as may be prescribed by the Secretary of State, acting reasonably, from time to time.

## 6. Contraventions of the Franchise Agreement

6.1 The Franchisee shall notify the Secretary of State, so far as possible before it may occur and in any event as soon as reasonably practicable thereafter, of any contravention by the Franchisee of any provision of the Franchise Agreement. This includes where the Franchisee is under an obligation to use all reasonable endeavours to achieve a particular result by a particular time, where such result is not achieved by such time.

6.2 The Franchisee shall deliver to the Secretary of State, or procure the delivery to the Secretary of State of, such information, records or documents as the Secretary of State may request within such period as the Secretary of State may reasonably require for the

purpose of determining the existence, likelihood, nature or scope of any contravention of, Event of Default or Termination Event under, the Franchise Agreement.

## 7. **Information from Third Parties**

- 7.1 The Franchisee shall, if the Secretary of State so requests, use all reasonable endeavours to ensure that the Secretary of State has direct access to any information, data or records relating to the Franchisee which is or are maintained by third parties and to which the Secretary of State is entitled to have access, or of which the Secretary of State is entitled to receive a copy under the Franchise Agreement.
- 7.2 The Franchisee shall, if the Secretary of State so requests, procure the provision by RSP to the Secretary of State of such information, data and records as the Franchisee is entitled to receive under the Ticketing and Settlement Agreement, in such form as the Secretary of State may specify from time to time.
- 7.3 The obligations of the Franchisee under this Schedule 13 to provide information to the Secretary of State shall not apply if the Secretary of State notifies the Franchisee that he has received the relevant information directly from any other person (including Network Rail or RSP). The Franchisee shall, if the Secretary of State so requests, confirm or validate any such information which is received from any such other person.
- 7.4 The Franchisee shall promptly advise the Secretary of State of any changes that are to be made to its systems or processes or the systems and processes of the RSP that will, in the reasonable opinion of the Franchisee, materially affect the continuity of any of the records that are provided pursuant to this Schedule 13. Any such advice shall include an assessment of the materiality of the relevant change.

## 8. **Compatibility of Information**

- 8.1 All financial, operational or other information, and any data and records required to be provided to the Secretary of State under the Franchise Agreement shall be provided, if so requested by the Secretary of State, in a form compatible with the Secretary of State's electronic data and records systems on the Start Date, as modified from time to time in accordance with paragraph 9.
- 8.2 The Franchisee shall ensure that the interconnection of such systems or the provision of such information, data and records to the Secretary of State under the Franchise Agreement will not result in any infringement of any third party Intellectual Property Rights to which its systems or such information, data or records may be subject.

## 9. **Development of Industry Systems**

The Franchisee shall fully and effectively co-operate, in a manner consistent with it being a responsible Train Operator of the Franchise, with Network Rail, the Secretary of State, ORR and all other relevant railway industry bodies and organisations in relation to the development of anything that can reasonably be considered to be a railway industry system including systems in relation to the attribution of train delay, the allocation of revenue and the collection and dissemination of industry wide information.

## 10. **Co-operation with Various Schemes**

The Franchisee shall co-operate (in good faith) with the Secretary of State, the relevant Local Authority and/or any other affected railway industry parties in the development and the implementation of initiatives relating to its participation in Integrated Transport Schemes, multi-modal fares schemes, Traveline and Transport Direct (the "**Industry Schemes**"), where such Industry Schemes relate to the Franchise.

## 11. **Cooperation With Network Rail And Alliancing**

- 11.1 The Franchisee shall:

- (a) use all reasonable endeavours to work with Network Rail to identify ways in which cooperation between the Franchisee and Network Rail can be enhanced, costs can be reduced and closer working and alignment of incentives can improve value for money within the parameters of this Agreement; and
- (b) within 6 months of the Start Date, use all reasonable endeavours to enter into an alliance agreement with Network Rail. The alliance agreement to be entered into by the Franchisee pursuant to this paragraph 11.1(b) shall be of the type that will not require the Franchisee's obligations under the Franchise Agreement to be varied in any way and shall include ways in which Network Rail and the Franchisee can work together in relation to:
  - (iii) the operation, maintenance and renewal of the assets and facilities at Stations and infrastructure relevant for the provision of the Passenger Services;
  - (iv) delivery of the infrastructure projects relevant to the Franchise;
  - (v) delivery of safety improvements;
  - (vi) delivery of improvements in operational performance of the Passenger Services (including improvements to service quality); and
  - (vii) developing joint initiatives and projects that deliver value for money for the railway.

11.2 Where the Franchisee considers pursuant to its obligations under paragraph 11.1 above that it is appropriate to enter into an alliance agreement with Network Rail that would require its obligations under this Agreement to be varied (an **Alliance Agreement**) it may make a proposal for the Secretary of State to consider. The Franchisee agrees that any such proposal (unless otherwise agreed by the Secretary of State) shall:

- (a) be for the purposes of improved delivery of some or all of the following:
  - (i) the efficient and cost effective operation of some or all of the network over which the Passenger Services operate;
  - (ii) the efficient and cost effective maintenance of some or all of the network over which the Passenger Services operate;
  - (iii) the efficient and cost effective renewal of some or all of the network over which the Passenger Services operate;
  - (iv) the efficient and cost effective delivery of some or all enhancement projects on the network over which the Passenger Services operate; and
  - (v) such other infrastructure enhancement projects as may be agreed by the Franchisee and Network Rail and approved by the Secretary of State during the Franchise Term;
- (b) be on terms which are commercially fair and reasonable so that:
  - (i) the incentives of the Franchisee and Network Rail are more effectively aligned in a way that gives a reasonable expectation that the matters subject to the alliance will be delivered in a more efficient and effective way;
  - (ii) the financial and operational risk of the Franchisee arising out of the operation of the Franchise is not unreasonably increased (including through the agreement of appropriate limitations of liability); and

- (iii) the Secretary of State has rights to require the termination of the Alliance Agreement in appropriate circumstances including so that the term of the alliance is aligned with the Franchise Term and liabilities do not accrue to any Successor Operator.
- 11.3 The Franchisee shall provide such information, updates and reports on the progress of its negotiation with Network Rail as the Secretary of State shall reasonably require and meet with the Secretary of State to discuss the progress of the negotiations when reasonably requested to do so.
- 11.4 On reaching agreement in principle with Network Rail on the terms of an Alliance Agreement the Franchisee shall present the draft Alliance Agreement to the Secretary of State for approval and shall not enter into any such agreement without the prior written consent of the Secretary of State (which he shall have an unfettered discretion to withhold).
- 11.5 The Franchisee agrees that any approval of an Alliance Agreement shall (without prejudice to the unfettered discretion of the Secretary of State to refuse to consent to such an alliance) be conditional upon:
- (a) the Secretary of State being satisfied that such Alliance Agreement is consistent with the provisions of paragraph 11.2(b) above;
  - (b) the Franchisee agreeing to a fair and reasonable allocation of the gain from such alliance being passed to the Secretary of State (whether through profit share or otherwise) consistent with the role of the Secretary of State in funding the railway network; and
  - (c) the Franchisee entering into a deed of amendment to the Franchise Agreement in a form reasonably determined by the Secretary of State.

## 12. **Sustainable Construction**

For construction projects (including building refurbishment or fit out):

- (a) which are either being funded by the Franchisee or in respect of which the Franchisee has design responsibility; and
- (b) in respect of which the total capital cost exceeds £250,000 (indexed by the Retail Prices Index in the same way as variable costs are indexed in Schedule 8.2 (Annual Franchise Payments)),

the Franchisee shall use reasonable endeavours to achieve at least an "excellent" rating from an accredited assessor using Building Research establishment environmental assessment methodology (or an equivalent recognised standard) at both the design stage and the post-construction stage unless the Secretary of State (acting reasonably) agrees that the relevant project is not of a suitable scale or type to be so assessed and the Franchisee shall provide to the Secretary of State such information in relation to any construction project as the Secretary of State may reasonably request.

## 13. **Environmental Management and Sustainability Accreditation**

The Franchisee shall, from the Start Date, attain and, at all times thereafter, maintain accreditation pursuant to ISO14001 and ISO50001 or equivalent standards.

## 14. **Not Used**

## 15. **Small and Medium-sized Enterprises**

- 15.1 The Franchisee shall at all times keep accurate and complete records of its use of and interaction with SMEs in delivering the Franchise Services.

15.2 By no later than 31 January in each year (and within one month of the end of the Franchise Period) the Franchisee shall deliver to the Secretary of State a breakdown of the number of SMEs used by the Franchisee in providing the Franchise Services during the calendar year (or part thereof) which ended on the immediately preceding 31 December or at the end of the Franchise Period (as applicable).

## 16. **Apprenticeships**

16.1 The Franchisee shall at all times keep accurate and complete records of the training and apprenticeships offered by the Franchisee and/or its immediate UK-based supply chain in delivering the Franchise Services.

16.2 By no later than 31 January in each year (and within one month of the end of the Franchise Period) the Franchisee shall deliver to the Secretary of State a breakdown of the number of training and apprenticeships offered by the Franchisee and/or its supply chain in providing the Franchise Services during the calendar year (or part thereof) which ended on the immediately preceding 31 December or at the end of the Franchise Period (as applicable).

## 17. **Environmental impact monitoring, data collection and contractual targets**

17.1 The Franchisee shall, by no later than 3 months after the Start Date, provide a report to the Secretary of State setting out:

- (a) which measures included in the Dataset the Franchisee is unable to provide, despite using reasonable endeavours to do so ("**Excluded Data**");
- (b) for each item of Excluded Data, the technical, operational or commercial reason why the Franchisee is unable to provide the Excluded Data; and
- (c) a plan ("**Environmental Data Implementation Plan**") detailing, in relation to each item of Excluded Data, the actions which the Franchisee would need to take in order to be able to provide such Excluded Data, the Franchisee's best estimate of the cost of taking such action and the date by which, if such actions were taken, the Franchisee would be able to begin providing such Excluded Data to the Secretary of State.

The Dataset, excluding any measures which the Secretary of State agrees, acting reasonably, that the Franchisee is, despite using reasonable endeavours, unable to provide, shall be referred to as the "**Initial Dataset**".

17.2 The Secretary of State may require:

- (a) the Franchisee to implement the Environmental Data Implementation Plan in whole or in part; and/or
- (b) the Franchisee to take such other actions as, in the reasonable opinion of the Secretary of State, would enable the Franchisee to provide any item of Excluded Data,

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

17.3 Where the Franchisee is:

- (a) undertaking works, whether at a station or depot or in respect of rolling stock;
- (b) procuring rolling stock; or
- (c) taking any other action which could enable the Franchisee to provide any 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).

- 17.4 With effect from the Start Date, unless not reasonably practicable in which case with effect from the date which is 3 months after the Start Date, the Franchisee shall measure and collect that data included on the Initial Dataset so as to allow the Secretary of State and the Franchisee to understand the current environmental performance of the Franchise and any potential for improvement in terms of environmental impact.
- 17.5 The Franchisee may, in its discretion, measure and collect additional data provided that the minimum required Initial Dataset is adhered to and the Franchisee will co-operate with the Secretary of State to seek to identify improvements in the efficiency and/or cost effectiveness of the collection of the data in the Dataset.
- 17.6 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 Appendix 1 to Schedule 13.
- 17.7 The Franchisee shall submit to the Secretary of State a report setting out the result of the data collection required by this paragraph 17 within three months following the end of each Franchisee Year.
- 17.8 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 audit of the data provided and the collection methodology in respect of each Franchisee Year.
- 17.9 The Franchisee shall procure that the independent audit report contains:
- (a) 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 17;
  - (b) a verification of the accuracy of past data submissions made in accordance with paragraph 17.7 above; and
  - (c) an assessment of the Franchisee's proposed data collection methodology and level of data granularity for the following Franchisee Year's data collection.

In each case where the independent audit report states that there are errors or concerns with any of the items described in paragraphs 17.9(a) to 17.9(c) above, the Franchisee shall procure that the independent auditor specifies whether these are material or minor errors or concerns.

- 17.10 The Franchisee shall submit a copy of the independent audit report covering the relevant Franchisee Year to the Secretary of State at the same time as the report is submitted in accordance with paragraph 17.7 above.
- 17.11 Where the independent audit report highlights errors or concerns with any of the items described in paragraphs 17.9(a) to 17.9(c) above, the Franchisee shall:
- (a) in the case of minor errors within past data which are capable of rectification without significant resource or significant expenditure, rectify those flaws and resubmit the relevant report to the Secretary of State as soon as reasonably practicable following submission of the independent audit report so that there is a complete and accurate record of the data in question;
  - (b) in the case of material errors within past data which are capable of rectification, rectify those flaws and resubmit the relevant report to the Secretary of State as

soon as reasonably practicable following submission of the independent audit report so that there is a complete and accurate record of the data in question; and

- (c) in the case of concerns in relation to the Franchisee's proposed data collection methodology and level of data granularity for the forthcoming Franchisee Year's data collection, make such changes to that proposed methodology so as to address those concerns.

#### **Environmental Impact Improvement Targets**

17.12 The following targets shall apply for the purpose of this paragraph 17. For the purpose of paragraphs 17.1 and 17.4, the data required in order to measure the Franchisee's performance against these targets is acknowledged to be data which it is reasonable for the Franchisee to measure and collect from the Start Date:

- (a) Traction carbon emissions: the target is a reduction of 30% in kg CO<sub>2</sub>e per vehicle km against the 2014 baseline figure of 1.39 kg CO<sub>2</sub>e per vehicle km over the Franchise Term, such reduction to be achieved in accordance with the annual trajectory set out in the Sustainable Development Plan agreed or determined in accordance with paragraph 18.3 (Sustainability), which will contain a target for each Franchisee Year for this purpose;
- (b) Non-traction energy use:
  - (i) target for the first Franchisee Year being a reduction in kilowatt hours (kWh) of 2.5% against the 2014 baseline figure of 7,478,626 kWh; and
  - (ii) the target for each subsequent Franchisee Year being a further reduction in kilowatt hours (kWh) of 4.75% against the baseline figure of 7,478,626 kWh;

up to a total reduction of 31% in kilowatt hours (kWh) against the 2014 baseline figure of 7,478,626 kWh over the Franchise Term;
- (c) Mains water use: a reduction in mains water use year on year, so that:-
  - (i) usage during the first Franchisee Year is less than the 2014 baseline of 42,333m<sup>3</sup>; and
  - (ii) usage in each subsequent Franchisee Year is less than in the preceding Franchisee Year; and
- (d) Waste: from the end of the second Franchisee Year, the Franchisee must send zero waste to landfill and must recycle or prepare for re-use, 90% of waste (by weight) per Franchisee Year.

#### **Performance against environmental impact improvement targets and remedial actions**

17.13 For each Franchisee Year the Secretary of State shall determine the Franchisee's performance against each target in paragraph 17.12 by comparing:

- (a) **for traction carbon emissions:** the Franchisee's performance (as submitted to the Secretary of State pursuant to paragraph 17.7 or (where it applies) paragraph 17.11) against the target for the relevant Franchisee Year, in accordance with the annual trajectory specified in the Sustainable Development Plan;
- (b) **for both non-traction energy use and mains water use:** the Franchisee's performance (as submitted to the Secretary of State pursuant to paragraph 17.7

or (where it applies) paragraph 17.11) against the annual targets set out in paragraphs 17.12(b) and (c); and

- (c) **for waste:** the Franchisee's performance (as submitted to the Secretary of State pursuant to paragraph 17.7 or (where it applies) paragraph 17.11) against the target set out in paragraph 17.12(d).
- 17.14 For the purposes of undertaking the comparison pursuant to paragraph 17.13, the results referred to in paragraphs 17.13(a), 17.13(b) or 17.13(c) (as the case may be) shall be rounded up to one decimal place with the midpoint (that is, 4.45) rounded upwards (that is, 4.5).
- 17.15 As soon as reasonably practicable following the Start Date, the Franchisee must produce an implementation plan which, in the opinion of the Secretary of State, is capable of achieving each target in paragraph 17.12 until the end of the Franchise Term. This includes, for the purpose of paragraph 17.13(a) the Franchisee Year targets provided for in the annual trajectory contained in the Sustainable Development Plan. The Franchisee shall use all reasonable endeavours to implement that plan.
- 17.16 In the event that a target set out in paragraph 17.12 is not met in any Franchisee Year, the Franchisee must as soon as reasonably practicable produce a revised implementation plan, which, in the reasonable opinion of the Secretary of State, is capable of achieving the targets. The Franchisee shall use all reasonable endeavours to implement that plan.
- 17.17 Without limiting paragraph 17.17, the Franchisee shall review its then current implementation plan and produce a revised implementation plan by the end of the fifth Franchisee Year which, in the opinion of the Secretary of State, is capable of achieving each target in paragraph 17.12 until the end of the Franchise Term. The Franchisee shall use all reasonable endeavours to implement that plan.
- 17.18 The Franchisee shall publish (in such format as the Secretary of State may reasonably require) details of its performance against the targets set out in paragraph 17.12 in widely accessible forms including, as a minimum, publishing them on its website and in each Customer Report.
18. **Sustainability**
- 18.1 The Franchisee shall at all times comply with the Sustainable Development Strategy.
- 18.2 By no later than six months following the Start Date, the Franchisee shall consult with the Rail Safety and Standards Board, and such other Stakeholders as agreed between the Secretary of State and the Franchisee (or, in the absence of agreement, such Stakeholders as the Secretary of State shall determine) on the Initial Sustainable Development Plan in order to finalise (i) the key priority sustainable development areas specified in the Initial Sustainable Development Plan and (ii) the targets associated with such key priority sustainable development areas.
- 18.3 The Franchisee shall revise the Initial Sustainable Development Plan to reflect such consultation and the Franchisee shall propose and agree a final version of the sustainable development plan with the Rail Safety and Standards Board and the Secretary of State by not later than 12 months after the Start Date. Such agreed plan shall be the Sustainable Development Plan for the purposes of the Franchise Agreement, provided that in the absence of agreement between the parties the Sustainable Development Plan shall be the plan determined by the Secretary of State (acting reasonably).
- 18.4 The Franchisee shall 1 year after the Sustainable Development Plan is agreed in accordance with paragraph 18.3 above, and annually thereafter, provide to the Secretary of State a report showing:
- (a) progress against the targets in key priority sustainable development areas;

- (b) progress on development of staff to ensure they have the skills and knowledge required to deliver a sustainable franchise;
  - (c) proposed revisions to the Sustainable Development Plan (such revisions to include those revisions reflecting feedback and advice from stakeholders, and which have been consulted on with Rail Safety and Standards Board).
- 18.5 Subject to the Secretary of State consenting to such amendments to the Sustainable Development Plan, such revised Sustainable Development Plan shall be the Sustainable Development Plan for the purposes of the Franchise Agreement.
- 18.6 On request by the Secretary of State, the Franchisee shall publish (in such form as the Secretary of State may reasonably determine):
- (a) all or any part of its Sustainable Development Strategy; and/or
  - (b) all or any of the information described in paragraphs 18.4(a), (b) and/or (c).

18.7 Rail Industry Sustainable Development Principles

The Franchisee will have regard to the Rail Industry Sustainable Development Principles in the management and operation of the Franchise Services. For this purpose the Rail Industry Sustainable Development Principles are those published by Rail Safety and Standards Board in February 2009 as varied from time to time.

19. **Innovation Account**

19.1 The Franchisee shall:

- (a) by no later than the date falling one year after the Start Date provide to the Secretary of State its Innovation Implementation Plan in accordance with the Innovation Guidelines; and
- (b) at all times comply with its Innovation Strategy.

**Establishment of Account**

19.2 Not later than seven days following the start of:

- (a) each Innovation Year the Franchisee shall deposit an amount equal to 1% of its Estimated Turnover for that Innovation Year (the "**Annual Innovation Account Contribution**") into the Innovation Account; and
- (b) the first Innovation Year, the Franchisee shall enter into a charge with the Secretary of State on the same terms as the document in the agreed terms IAC.

19.3 Not later than three months after the end of a Franchisee Year falling during the Innovation Period, the Franchisee shall:

- (a) where the Annual Innovation Account Contribution for that Franchisee Year was lower than 1% of the Turnover for that Franchisee Year, deposit into the Innovation Account an amount equal to the difference between the Annual Innovation Account Contribution for that Franchisee Year and 1% of the Turnover for that Franchisee Year; or
- (b) where the Annual Innovation Account Contribution for that Franchisee Year was higher than 1% of the Turnover for that Franchisee Year, withdraw from the Innovation Account an amount equal to the difference between the Annual Innovation Account Contribution for that Franchisee Year and 1% of the Turnover for that Franchisee Year ("**Excess Amount**") but subject to the Franchisee first having reimbursed to the Secretary of State an amount equal to the Excess Amount. Unless otherwise agreed by the parties any such

reimbursement shall be made, by way of adjustment to Franchise Payments, on the first Payment Date falling no less than seven days after the date that is 3 months after the end of the relevant Franchisee Year.

19.4 Not used

19.5 The Innovation Account shall be an interest bearing account.

#### **Proposals during the Innovation Period**

19.6 At any time during the Innovation Period, the Franchisee may make proposals to the Innovation Board in relation to initiatives, works or proposals to implement any aspect of its Innovation Implementation Plan or any other initiatives, works or proposals which fall within the aims specified in the Innovation Guidelines (each an "**Innovation Scheme**").

19.7 In relation to each Innovation Scheme proposed by the Franchisee pursuant to 19.6, the Franchisee shall provide to the Innovation Board (with a copy to the Secretary of State):

- (a) details of the new ideas that the Innovation Scheme will exploit and how such Innovation Scheme will be new to the company, organisation, industry or sector and whether it applies to products, services, business processes, models, marketing or enabling technologies and demonstrate how the Innovation Scheme falls within the aims specified in the Innovation Guidelines; and
- (b) details of how the Innovation Scheme will be implemented, in sufficient detail to allow the Innovation Board to evaluate the same, including:
  - (i) a timetable for the implementation of that Innovation Scheme, setting out the proposed commencement and completion date of such Innovation Scheme and other key dates and Innovation Milestones; and
  - (ii) details of the Projected Innovation Cost and the proposed milestone upon satisfaction of which withdrawals from the Innovation Account would be required; and
- (c) such other information as may be required to enable the Innovation Board to review an Innovation Scheme in accordance with the Innovation Guidelines.

19.8 The Franchisee shall provide the Innovation Board and/or the Secretary of State with;

- (a) details of all Background Intellectual Property and the proposed use of the Background Intellectual Property in connection with any Innovation Scheme proposed by the Franchisee pursuant to paragraph 19.6; and
- (b) such further information in relation to any Innovation Scheme proposed by the Franchisee pursuant to paragraph 19.6 as the Innovation Board and/or the Secretary of State may reasonably require.

19.9 The Franchisee grants (and shall procure that each of its Collaborators grants) to the Secretary of State an irrevocable, royalty-free, perpetual, transferable, worldwide, non-exclusive licence (including the right to grant sub-licences) to use or otherwise exploit the Background Intellectual Property referred to in paragraph 19.8(a) for the purpose of exploiting the Innovation Intellectual Property.

19.10 In calculating the Projected Innovation Cost (and the Actual Innovation Cost), the Franchisee shall not include the cost of any management time or employee time, save to the extent that additional personnel are employed or to be employed by the Franchisee solely in connection with the implementation of the Innovation Scheme.

19.11 An Innovation Scheme proposed by the Franchisee pursuant to paragraph 19.6 shall not be an Approved Innovation Scheme until:

- (a) the Innovation Board has notified the Secretary of State in writing that:
  - (i) the Innovation Scheme meets the requirements of the Innovation Guidelines; and
  - (ii) it approves the Innovation Scheme, subject to the further approval of the Secretary of State; and
- (d) the Secretary of State has notified the Franchisee in writing that the Franchisee may implement the Innovation Scheme. Without limitation, the Secretary of State may withhold its approval to any Proposed Innovation Scheme:
  - (i) which has not been identified in the Innovation Implementation Plan;
  - (ii) which does not, in the Secretary of State's opinion, exploit new ideas and/or is not new to the company, organisation, industry or sector;
  - (iii) where the Projected Innovation Cost for the Proposed Innovation Scheme, when considered in aggregate with (i) the Projected Innovation Cost (where the Actual Innovation Cost for an Approved Innovation Scheme is not known at the relevant time) and/or (ii) the Actual Innovation Cost, in each case for any other Approved Innovation Schemes would be greater than the Account Balance at the relevant time or the projected Account Balance at the time when a withdrawal from the Innovation Account would be required;
  - (iv) in relation to which the Secretary of State believes the Projected Innovation Cost to be too high or disproportionate to the benefits accruing from the Innovation Scheme;
  - (v) which the Franchisee is otherwise funded to undertake; and/or
  - (vi) which in the opinion of the Secretary of State, amounts to actions or steps which the Franchisee is otherwise obliged to take or which any competent train operator would other than for the requirement to innovate in this Schedule 13 take in relation to the operation of the Franchise.

19.12 Approved Innovation Schemes shall be included as Committed Obligations in Schedule 6.1 (Committed Obligations and Related Provisions).

#### **Withdrawals from the Innovation Account**

- 19.13 The Franchisee may only withdraw amounts from the Innovation Account in the following circumstances:
- (a) on the achievement of milestones agreed with the Secretary of State in respect of any Approved Innovation Scheme and for the amounts agreed with the Secretary of State, and following the provision of evidence satisfactory to the Secretary of State that such milestones shall have been satisfied;
  - (b) to transfer the Innovation Period Underspend to the Secretary of State as may be required pursuant to paragraph 19.22;
  - (c) at the request of the Secretary of State and in the amount and to the account directed by the Secretary of State in order to pay costs to a third party group providing advisory, project management and/or administration services in respect of the matters described in this paragraph 19 to the Secretary of State and/or the Innovation Board, provided that such costs, in relation to any Innovation Year, shall not exceed an amount equal to 3% of the Annual Innovation Account Contribution in respect of that Innovation Year; or

- (d) following receipt of confirmation from the Secretary of State, to recover any Excess Amount reimbursed to the Secretary of State pursuant to paragraph 19.3(b).

### **Intellectual Property**

- 19.14 All Innovation Intellectual Property shall be owned by the Franchisee or its Collaborators.
- 19.15 The Franchisee grants (and shall procure that each of its Collaborators grants) to the Secretary of State an irrevocable, royalty-free, perpetual, transferable, worldwide, non-exclusive licence (including the right to grant sub-licences) to use or otherwise exploit the Innovation Intellectual Property for any purpose.
- 19.16 The Franchisee shall:
- (a) maintain an accurate and up to date register of all Innovation Intellectual Property in such format as the Secretary of State may reasonably specify and shall provide copies of such register to the Secretary of State and the Innovation Board upon request and at least annually in any event; and
- (b) upon request and at the Franchisee's cost, provide assistance to the Secretary of State in relation to the protection, enforcement and defence of the Innovation Intellectual Property including the taking of any steps on behalf of the Secretary of State which the Secretary of State may specify.
- 19.16A Notwithstanding the scope of the licences granted to the Secretary of State in paragraphs 19.9 and 19.15, the Secretary of State may accept a lesser licence where the Innovation Board recommends that to the Secretary of State in respect of a specific Innovation Scheme or generally from time to time. As a minimum, the Secretary of State would require that:
- (a) the licences granted to the Secretary of State in respect of the Background Intellectual Property and the Innovation Intellectual Property extend to all the Background Intellectual Property and the Innovation Intellectual Property, be irrevocable, royalty-free, perpetual, transferable, non-exclusive licence (including the right to grant sub-licences) but only for the purposes of allowing use by persons within the United Kingdom rail industry. The Secretary of State would only exercise his right to grant such a sub-licence to a person where the owners of the Background Intellectual Property and the Innovation Intellectual Property have failed to grant a fair, reasonable and non-discriminatory licence to that person for use within the United Kingdom rail industry; and
- (b) the owners of the Background Intellectual Property and the Innovation Intellectual Property shall grant Licences for Permitted Use and the Secretary of State shall have the additional right to grant an irrevocable, royalty-free, perpetual, transferable, non-exclusive licence (including the right to grant sub-licences) in order to grant a Licence for Permitted Use in so far as the owners of the Background Intellectual Property and the Innovation Intellectual Property have failed to grant fair, reasonable and non-discriminatory Licences for Permitted Use.

### **Innovation Scheme Underspend**

- 19.17 Within 30 days of completion of each Approved Innovation Scheme, the Franchisee shall notify the Secretary of State of the Actual Innovation Cost.
- 19.18 Where, in respect of any Approved Innovation Scheme, withdrawals have been made from the Innovation Account based on the Projected Innovation Cost, any Innovation Scheme Underspend shall be deposited in the Innovation Account within 30 days of the Actual Innovation Cost being calculated and the Franchisee shall, on request by a Secretary of State provide such information as may be required to demonstrate that amounts withdrawn from the Innovation Account have been spent on the Approved Innovation Scheme.

- 19.19 In respect of each Innovation Year, at the end of that Innovation Year, the Secretary of State shall calculate the Indexation Sum and the Franchisee shall deposit such sum into the Innovation Account within 30 days.

### **Overspend**

- 19.20 If the Actual Innovation Cost incurred by the Franchisee in relation to any Approved Innovation Scheme exceeds the Projected Innovation Cost notified to the Secretary of State pursuant to paragraph 19.7(b)(ii), the Franchisee shall not be entitled to withdraw such excess from the Innovation Account.

### **Report**

- 19.21 Not later than three months after the end of each Innovation Year, the Franchisee shall:
- (a) submit a report to the Secretary of State which shall set out in respect of each Approved Innovation Scheme:
    - (i) all withdrawals from the Innovation Account made during each completed Innovation Year in relation to such Approved Innovation Scheme;
    - (ii) all anticipated withdrawals from the Innovation Account to be made in future years in respect of such Approved Innovation Scheme;
    - (iii) where an Approved Innovation Scheme was completed, the Actual Innovation Cost for such Approved Innovation Scheme and any Innovation Scheme Underspend; and
    - (iv) confirm the level of any Innovation Year Underspend, together with any other information which the Secretary of State may reasonably require in respect of any Approved Innovation Scheme and/or the Innovation Account.

### **Innovation Period Underspend**

- 19.22 If at the end of the Innovation Period, subject to paragraph 19.23 there is an amount remaining in the Innovation Account which has not been committed to an Approved Innovation Scheme (the "**Innovation Period Underspend**"), the Secretary of State may require the Franchisee to pay all or part of the Innovation Period Underspend to the Secretary of State.

### **Extension**

- 19.23 The Secretary of State, may, prior to 31 March 2019, extend the Innovation Period by notice in writing to the Franchisee and the definitions of "Innovation Period" and "Innovation" shall be construed accordingly and any such extension shall be a Change.

## **20. Publication of data**

### **Performance Data**

- 20.1 The Franchisee shall in accordance with paragraph 20.2 (and in such format as the Secretary of State may reasonably require) publish on the Franchisee's web site in relation to each Reporting Period during the Franchise Term the performance of the Franchisee by reference to:
- (a) the Short Formations Figures;
  - (b) the Cancellations Figures;
  - (c) PPM Figures;

- (d) Right Time Figures; and
- (e) CaSL Figures.

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

20.2 The Franchisee shall ensure that the data published by it pursuant to paragraph 20.1 shall in each case:

- (a) be shown in relation to all Passenger Services and also disaggregated by reference to Service Groups;
- (b) include details of:
  - (i) the number of Passenger Services operated by the Franchisee during each relevant Reporting Period which are late in arriving at their final scheduled destination in the Plan of the Day:
    - (A) by between thirty minutes and fifty nine minutes;
    - (B) by between sixty minutes and one hundred and nineteen minutes; and
    - (C) by one hundred and twenty minutes or more,
 and the percentage that each such category of delayed Passenger Services represents of the total number of Passenger Services scheduled to be provided in the Plan of the Day during such Reporting Period;
  - (ii) the number of Passenger Services formed with fewer vehicles than specified in the Train Plan during such Reporting Period and the percentage that this represents of all Passenger Services scheduled to be operated in that Reporting Period.

20.3 As part of each Customer Report to be provided by the Franchisee pursuant to paragraph 3.2 of Schedule 7.2, the Franchisee shall publish (in such format as the Secretary of State may reasonably require):

- (a) the mean average of the statistics required to be published pursuant to paragraph 20.1 in relation to each of the Short Formations Figures, Cancellations Figures, PPM Figures, Right Time Figures and CaSL Figures for the Reporting Periods that have elapsed since the last Reporting Period reported on in the previous Customer Report or, in the case of the first Customer Report, since the Start Date;
- (b) from the third Customer Report onwards a summary comparison of the mean average of the statistics provided pursuant to paragraph 20.3(a) as against the equivalent mean average statistics provided for the same Reporting Periods in the previous Franchisee Year;
- (c) an update on the key activities undertaken by the Franchisee to improve its performance in relation to achieving and exceeding its targets in relation to the Cancellations Figures, PPM Figures, Right Time Figures and CaSL Figures and minimising the number of Passenger Services recorded in the Short Formations Figures during the period referred to in paragraph 20.3(a); and
- (d) a summary of the key activities planned to be undertaken by the Franchisee in the period in relation to which the next Customer Report will report to improve its performance in relation to achieving its targets in relation to and exceeding

the Cancellations Figures, PPM Figures, Right Time Figures and CaSL Figures and minimising the number of Passenger Services recorded in the Short Formations Figures.

### Complaints and Faults Handling Data

- 20.4 As part of each Customer Report to be provided by the Franchisee pursuant to paragraph 3.2 of Schedule 7.2, the Franchisee shall publish (in such format as the Secretary of State may reasonably require) in relation to the Reporting Periods that have elapsed since the last Reporting Period reported on in the previous Customer Report or, in the case of the first Customer Report, since the Start Date:
- (a) a summary of the data published by the ORR from time to time in relation to the handling of passenger complaints regarding the Franchisee's operation of the Passenger Services;
  - (b) details of the number of faults notified to the Franchisee by passengers or station users through specified channels including the website of the Franchisee (each a "**Notified Fault**") in each case identifying the total numbers of Notified Faults (by reference to whether such Notified Faults relate to rolling stock or stations), with such numbers further disaggregated by Service Group and broken down into relevant sub-categories of Notified Fault;
  - (c) the mean average time taken by the Franchisee:
    - (i) to resolve Notified Faults; and
    - (ii) where Notified Faults are not resolved within 20 Weekdays, to provide feedback to applicable passengers and/or station users on its progress in seeking resolution of such Notified Faults; and
  - (d) from the third Customer Report onwards a summary comparison of:
    - (i) the mean average number of Notified Faults notified to the Franchisee;
    - (ii) the mean average time taken by the Franchisee to resolve Notified Faults; and
    - (iii) the mean average time taken by the Franchisee, where Notified Faults have not been resolved within 20 Weekdays. to provide feedback to applicable passengers and/or station users on its progress in seeking resolution of such Notified Faults,

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

### Customer Service and Satisfaction Data

- 20.5 As part of each Customer Report to be provided by the Franchisee pursuant to paragraph 3.2 of Schedule 7.2, the Franchisee shall publish (in such format as the Secretary of State may reasonably require) details of the Franchisee's:
- (a) level of adherence to scheduled ticket office opening hours at Stations (so that the Customer Report shows, as a percentage, the proportion of scheduled ticket office opening hours not delivered aggregated across all ticket offices at all Stations); and
  - (b) performance by reference to such benchmarks as may be agreed between the Franchisee and the ORR as part of the Franchisee's Disabled People's Protection Policy in respect of the Passenger Assistance service operated by the Franchisee,

in each case in relation to the Reporting Periods that have elapsed since the last Reporting Period reported on in the previous Customer Report or, in the case of the first Customer Report, since the Start Date, along with (from the third Customer Report onwards) a comparison with the relevant statistics or results (as applicable) provided for the same Reporting Periods in the previous Franchisee Year.

- 20.6 Within 20 Weekdays of the publication of each National Rail Passenger Survey carried out by the Passengers' Council during the Franchise Term, the Franchisee shall publish on its web site (in such format as the Secretary of State may reasonably require) details of:
- (a) the scores achieved by the Franchisee in such National Rail Passenger Survey in respect of each NRPS Measure; and
  - (b) the scores achieved by the Franchisee in such National Rail Passenger Survey in respect of passengers' "overall satisfaction".
- 20.7 The Franchisee shall ensure that the NRPS scores published by it pursuant to paragraph 20.6 are also recorded in the subsequent Customer Report which relates to the Reporting Periods during which the applicable NRPS scores were achieved, along with:
- (a) from the third Customer Report onwards, a comparison with the NRPS scores achieved for the same Reporting Periods in the previous Franchisee Year accompanied by a supporting narrative describing the outcomes and implications of the results of such comparison exercise;
  - (b) a comparison against the applicable NRPS Benchmarks for the Reporting Periods in question accompanied by a supporting narrative describing the outcomes and implications of the results of such comparison exercise;
  - (c) details of any remedial work either:
    - (i) planned by the Franchisee to occur in the period in relation to which the next Customer Report will report to improve the Franchisee's performance in relation to achieving and exceeding the NRPS Benchmarks (for instance, the planned application of Additional Expenditure); or
    - (ii) undertaken by the Franchisee during the Reporting Periods that have elapsed since the last Reporting Period reported on in the previous Customer Report or, in the case of the first Customer Report, since the Start Date, for the purposes of improving the Franchisee's performance in relation to achieving and exceeding the NRPS Benchmarks (for instance, the planned application of Additional Expenditure); and
  - (d) details of any other initiatives planned to be implemented by the Franchisee to improve passenger experience.
- 20.8 The Franchisee shall also ensure that a summary of the then current Customer Report is made available at all staffed Stations (in such format as the Secretary of State may reasonably require), and that such summary includes instructions to enable passengers to locate and obtain a full copy of the applicable Customer Report.

#### **Sustainability Performance and Environmental Impact Data**

- 20.9 In addition and without prejudice to the Franchisee's other obligations under the Franchise Agreement, including under paragraph 17.18, the Franchisee shall:
- (a) within 30 days of the end of each Reporting Period commencing from 1 April 2016 publish on its website, data relating to the Franchisee's sustainability performance and environmental impact for each such Reporting Period; and

- (b) by no later than 1 July 2016 and every 3 months thereafter, display posters at all Stations publicising data relating to the Franchisee's sustainability performance and environmental impact. The Franchisee and the Secretary of State agree that the sustainability performance and environmental impact data to be published pursuant to this paragraph 20.9(b) shall:
- (i) for the data to be published by 1 July 2016, relate to each Reporting Period preceding 1 July 2016; and
  - (ii) for the data to be published every 3 months thereafter relate to the three months immediately preceding the required date for publication of such data.

## APPENDIX 1 TO SCHEDULE 13

## Environmental Impact Monitoring Dataset

Environmental Impact Monitoring Dataset SUBJECT (UNIT)		GRANULARITY	REGULARITY
<b>TRACTION</b>	EC4T (kWh)	Breakdown per distinct fleet - metered	4-week period
	EC4T (kWh)	Breakdown per distinct fleet - unmetered	4-week period
	Gas-oil (litres)	Breakdown per distinct fleet	4-week period
<b>NONTRACTION</b>	Electricity (kWh)	Total	4-week period or monthly
	Gas (kWh)	Total	4-week period or monthly
	Gas-oil (litres)	Total	4-week period or monthly
<b>CARBON</b>	Scope 1 emissions (tonnes)	Total	Annual
	Scope 2 emissions (tonnes)	Total	Annual
	Embodied carbon in new infrastructure projects over £250,000	Total	Per project
<b>WATER</b>	Mains Water consumption (m <sup>3</sup> )	Total	Annual
	Water recycling initiatives	Narrative	Annual
<b>WASTE</b>	Waste generated (tonnes)	Total	Annual
	Waste recycled (tonnes)	Total	Annual
	Waste subject to other recovery (tonnes)	Total	Annual
	Waste to landfill (tonnes)	Total	Annual
	Hazardous waste	Total	Annual
<b>ENVIRONMENTAL MANAGEMENT SYSTEM</b>	Enforcement/information Notices	Total	Annual
	Environmental fines or prosecutions	Total	Annual
	Environmental incidents reported through EMS	Total	Annual
	Environmental training records % personnel briefed/trained	Total	Annual

**APPENDIX 2 TO SCHEDULE 13****Key Assets****1. Information About Assets Used In The Franchise**

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

- (a) for each Primary Franchise Asset or other asset which is the subject of, or operated under, a Key Contract:
  - (i) the progress and completion of all work described in the maintenance schedules and manuals;
  - (ii) all operating manuals (including any safety related regulations); and
  - (iii) all permits, licences, certificates or other documents required to operate such asset;
  - (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.

**APPENDIX 3 TO SCHEDULE 13**

**Operational Information**

**1. Information about the Performance of the Franchisee**

1.1 The Franchisee shall at all times during the Franchise Term maintain records in relation to its operational performance under the Franchise Agreement, covering the areas and the information described in this Appendix 3. Such information shall include details as to whether or not any curtailment, diversion, delay or failure to attain any connection is attributable, in the Franchisee's opinion, to either a Force Majeure Event or the implementation of a Service Recovery Plan.

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

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

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

1.4 The following key shall apply to the table in this Appendix 3:

- A = Information to be provided on or before any Passenger Change Date;
- B = Information to be provided for every Reporting Period within 17 days of the last day of each Reporting Period; and
- C = Information to be provided annually within 10 days of the last day of each Franchisee Year.

**Table 1 Operational Information**

<b>Information to be provided</b>	<b>Information (format)</b>	<b>When information to be provided</b>
<b>Number of Passenger Services</b>		
Number of Passenger Services in the Timetable	[number]	B
Number of Passenger Services in the Enforcement Plan of the Day	[number]	B
<b>Number of Cancellations and Partial Cancellations</b>		
Number of Passenger Services in the Enforcement Plan of the Day which were the subject of a Cancellation	[number]	B

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	[number]	B
Number of Passenger Services in the Enforcement Plan of the Day which were the subject of a Cancellation attributable to the Franchisee's implementation of a Service Recovery Plan	[number]	B
Number of Passenger Services in the Enforcement Plan of the Day which were the subject of a Partial Cancellation attributable to the Franchisee's implementation of a Service Recovery Plan	[number]	B
Number of Passenger Services in the Enforcement Plan of the Day which were the subject of a Network Rail Cancellation	[number]	B
Number of Passenger Services in the Enforcement Plan of the Day which were the subject of a Network Rail Partial Cancellation	[number]	B
Number of Passenger Services in the Enforcement Plan of the Day which were the subject of a Disputed Cancellation	[number]	B
Number of Passenger Services in the Enforcement Plan of the Day which were the subject of a Disputed Partial Cancellation	[number]	B
Number of Disputed Cancellations and Disputed Partial Cancellations for the 12 preceding Reporting Periods for which the attribution remains in dispute between Network Rail and the Franchisee	[number]	B
Number of Disputed Cancellations and Disputed Partial Cancellations from the 12 preceding Reporting Periods for which disputed attribution has been resolved or determined since the Franchisee's previous report pursuant to paragraph 2.1 of Schedule 7.1 (Performance Benchmarks) including whether each relevant Disputed Cancellation and/or Disputed Partial Cancellation was attributed to Network Rail or to the Franchisee	[number]	B
<p>Where there is a difference between the Timetable and the Plan of the Day on any day the following:</p> <p>(a) the fact of such difference (together with an annotation showing whether the difference was initiated by Network Rail or the Franchisee); and</p> <p>(b) the number of:</p>	[number]	B

<b>Information to be provided</b>	<b>Information (format)</b>	<b>When information to be provided</b>
(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		
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
Number of Passenger Services in the Enforcement Plan of the Day which were the subject of a partial cancellation and which satisfied the conditions of the term Partial Cancellation, except that such partial cancellations occurred for reasons attributable to the occurrence of a Force Majeure Event	[number]	B
<b>Short Formation</b>		
Number of Short Formation Passenger Services that have less than the required Passenger Carrying Capacity specified in the Train Plan	[number]	B
Number of Short Formation Passenger Services that have less than the required Passenger Carrying Capacity specified in the Train Plan attributable to the Franchisee's implementation of a Service Recovery Plan	[number]	B
Number of Short Formation 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
<b>Minutes Delay and Punctuality</b>		
Number of Minutes Delay attributable to the Franchisee	[minutes]	B

<b>Information to be provided</b>	<b>Information (format)</b>	<b>When information to be provided</b>
Number of Minutes Delay attributable to Network Rail	[minutes]	B
Number of Minutes Delay attributable to any other Train Operator	[minutes]	B
Number of Minutes Delay for such Reporting Period for which the attribution is in dispute between Network Rail and the Franchisee	[minutes]	B
Number of Minutes Delay for the 12 preceding Reporting Periods for which the attribution remains in dispute between Network Rail and the Franchisee	[minutes]	B
Number of Minutes Delay from the 12 preceding Reporting Periods for which disputed attribution has been resolved or determined since the Franchisee's previous report pursuant to paragraph 2.9 of Schedule 7.1 (Performance Benchmarks) and the number of such Minutes Delay attributed to each of the Franchisee and Network Rail as a result of such resolution or determination	[minutes]	B
Number of Minutes Delay attributed to the occurrence of a Force Majeure Event	[minutes]	B
<b>Train Mileage</b>		
Aggregate Train Mileage scheduled in the Timetable	[mileage]	A
Aggregate Train Mileage operated	[mileage]	B
Year to Date Loaded Train Miles	[mileage]	B

## APPENDIX 4 TO SCHEDULE 13

## Estimated Turnover

Innovation Year	Estimated Turnover
Franchisee Year 2	£[REDACTED <sup>13</sup> ]
Franchisee Year 3	£[REDACTED <sup>14</sup> ]
Franchisee Year 4	£[REDACTED <sup>15</sup> ]

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<sup>13</sup> 4 May 2020 (Date of Redactions Approval) - Where text has been omitted from the document – this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

<sup>14</sup> 4 May 2020 (Date of Redactions Approval) - Where text has been omitted from the document – this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

<sup>15</sup> 4 May 2020 (Date of Redactions Approval) - Where text has been omitted from the document – this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.