

RAIL PUBLIC REGISTER COPY

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Dated 19 September 2020

THE SECRETARY OF STATE FOR TRANSPORT

and

M40 TRAINS LIMITED

and

THE CHILTERN RAILWAY COMPANY LIMITED

EMERGENCY RECOVERY MEASURES AGREEMENT ("ERMA")

This Agreement is made on the 19 September 2020 **between:**

- (1) **SECRETARY OF STATE FOR TRANSPORT**, whose principal place of business is at Great Minster House, 33 Horseferry Road, London SW1P 4DR (the "**Secretary of State**"); and
 - (2) **M40 TRAINS LIMITED** (company number 3005018), whose registered office is at 1 Admiral Way, Doxford International Business Park, Sunderland SR3 3XP (the "**Franchisee**"); and
 - (3) **THE CHILTERN RAILWAY COMPANY LIMITED** (company number 3007939), whose registered office is at 1 Admiral Way, Doxford International Business Park, Sunderland SR3 3XP (the "**Franchise Operator**"),
- each a "**Party**" and, together, the "**Parties**".

Recitals:

- (A) The Strategic Rail Authority, the Franchisee and the Franchise Operator entered into a franchise agreement dated 1 March 2002 in respect of certain railway passenger services designated by the Strategic Rail Authority (the "**Franchise Agreement**"). The functions of the Strategic Rail Authority transferred to the Secretary of State in accordance with the Railways Act 2005.
- (B) On 11 March 2020 the World Health Organisation declared the coronavirus disease 2019 ("**COVID-19**") a pandemic. COVID-19 has had (and it is anticipated that COVID-19 will continue to have) a significant impact on the operation of rail services in the United Kingdom.
- (C) The Secretary of State, the Franchisee and the Franchise Operator amended 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 in accordance with the terms of, and for the duration of the term of, an emergency measures agreement which was entered into on 31 March 2020 and took effect on 1 April 2020 (the "**EMA Start Date**") between the Secretary of State, the Franchisee and the Franchise Operator (the "**EMA**").
- (D) The Parties now wish to record their agreement regarding further amendments to the Franchise Agreement by further suspending, supplementing and/or amending certain provisions of the Franchise Agreement (including certain amendments to protect taxpayers' interests and to reflect the ongoing reduction in rail travel as a result of COVID-19) to address the ongoing direct and indirect impacts of COVID-19 during the term of this Agreement by entering into this Emergency Recovery Measures Agreement (the "**ERMA**") to replace the EMA following its expiry at 01:59 on 20 September 2020.
- (E) The Franchise Operator acknowledges that this ERMA 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 ERMA (unless the context otherwise requires):

- 1.1.1 words and expressions defined under the Franchise Agreement and the Act shall have the same meanings when used in this ERMA provided that, except to the extent

expressly stated, "railway" shall not have the wider meaning attributed to it by section 81(2) of the Act;

- 1.1.2 words and expressions defined in the Interpretation Act 1978 shall have the same meanings when used in this ERMA;
- 1.1.3 the words "including", "include" and "in particular" are to be construed without limitation;
- 1.1.4 references to a person include its successors, transferees and assignees;
- 1.1.5 references in this ERMA to Clauses and Schedules are to Clauses and Schedules of this ERMA unless expressly specified to the contrary;
- 1.1.6 headings and references to headings shall be disregarded in construing this ERMA;
- 1.1.7 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;
- 1.1.8 words importing the masculine gender include the feminine gender and vice versa and words in singular include the plural and vice versa;
- 1.1.9 wherever provision is made for the giving or issuing of any notice, endorsement, consent, approval, waiver, certificate, direction, guidance or determination by any person, unless otherwise specified, such notice, endorsement, consent, approval, waiver, certificate or determination shall be in writing and the words "**notify**", "**endorse**", "**consent**", "**approve**", "**waive**", "**certify**", "**direct**", "**guide**" or "**determine**" and other cognate expressions shall be construed accordingly;
- 1.1.10 references to sums of money being expended by the Franchise Operator shall be to such sums exclusive of Value Added Tax; and
- 1.1.11 wherever provision is made for the Franchise Operator to "**procure**" or "**ensure**" the delivery of an obligation under the Franchise Agreement, unless otherwise specified, that provision shall be construed as a primary obligation on the Franchise Operator to deliver that obligation.

1.2 Construction

- 1.2.1 This ERMA shall succeed the EMA immediately upon the expiry of the EMA in accordance with its terms on 20 September 2020.
- 1.2.2 This ERMA is supplemental to and shall be read and construed together with the Franchise Agreement and this ERMA and the Franchise Agreement shall together constitute one and the same document.
- 1.2.3 In the event of conflict between:
 - (i) the terms of this ERMA and the terms of the Franchise Agreement, subject to Clause 2.1.2, the terms of this ERMA shall prevail; and
 - (ii) the terms of the Passenger Survey Methodology and the terms of the Franchise Agreement (as amended pursuant to the terms of this ERMA), the terms of the Franchise Agreement (as amended pursuant to the terms of this ERMA) shall prevail.

1.2.4 Save as expressly provided for in this ERMA, the Franchise Agreement shall continue in full force and effect.

1.2.5 Any reference to the "term" or "duration" of this ERMA shall mean the ERMA Term and any Extended Term (if applicable) in accordance with Clause 3 (*Commencement and Term*) of this ERMA.

2 Purpose of this ERMA and survival of EMA provisions

2.1 The Parties acknowledge that:

2.1.1 this ERMA is based on the following overriding principles:

- (i) the Parties recognising the circumstances presented by COVID-19 and the ongoing direct and indirect impacts of COVID-19 on, among other things, rail passenger numbers and public finances;
- (ii) the Parties seeking to ensure that, as far as possible, operational performance and the provision of Passenger Services continues to be maintained and (if applicable) improved;
- (iii) the Parties seeking to ensure the Franchise Operator is incentivised to maintain or improve performance standards, financial performance and co-operation with Network Rail and other relevant third parties through a performance-based fee structure in connection with the re-allocation of cost and revenue risk as between the Parties, including the removal of and imposition of certain other obligations from or on the Franchise Operator; and
- (iv) the Parties co-operating with an overall goal of acting in the national interest; and

2.1.2 this ERMA has been prepared as an emergency measure in response to the ongoing direct and indirect impacts of COVID-19 following the expiry of the EMA. If and to the extent that there are any anomalies or inconsistencies within this ERMA or with the terms of the Franchise Agreement, as a result of the variations imposed by this ERMA, the Parties shall discuss such matters in good faith and work towards a practical and sensible solution, and/or to further amend the Franchise Agreement to reflect the overriding principles of this ERMA as set out in Clause 2.1.1. If the Parties cannot agree such solution and/or amendments within one (1) month of the Franchisee and/or the Franchise Operator notifying the Secretary of State (or the Secretary of State notifying the Franchisee and/or the Franchise Operator) of the relevant anomaly or inconsistency, the Secretary of State may reasonably determine (having regard to the overriding principles of this ERMA as set out in Clause 2.1.1) the solution and/or amendment to the Franchise Agreement that shall apply and the Franchise Operator shall act in accordance with such determination.

2.2 The Parties agree that, notwithstanding the provisions of the EMA, the following provisions of the EMA and any other provisions of the EMA reasonably required for the purpose of giving such provisions full effect shall survive the termination or expiry of the EMA and the ERMA and continue in full force and effect in accordance with their terms except as otherwise specified in this ERMA:

2.2.1 clause 10 (*Treatment of Annual Mechanisms and Other Regimes*);

- 2.2.2 schedule 6.A (*Franchise Payments*) and schedule 6.B (*Performance Payment*) insofar as is necessary to determine the Franchise Payments that relate to the term of the EMA or to give effect to the provisions of this ERMA; and
- 2.2.3 the amendments to clauses 5.4 (*Force Majeure*) and 21 (*Events of Default*) of the Franchise Agreement set out in schedule 1 (*Amendments to the Franchise Agreement*) to the EMA.

3 Commencement and Term

- 3.1 This ERMA shall take effect from 2.00 a.m. on 20 September 2020 (the "**ERMA Start Date**") and shall, subject to Clauses 3.2 and 3.3, continue until 2.00 a.m. on 31 December 2021 (the "**ERMA Term**").
- 3.2 The Secretary of State may, at the Secretary of State's sole discretion and by written notice to the Franchise Operator given no later than 14 December 2020, terminate this ERMA with effect from 01:59 on 10 January 2021 (the "**Early ERMA Termination Date**") if:
 - 3.2.1 the Franchise Operator informs the Secretary of State that it does not accept the Expiry Sum (as defined in Schedule 2 (*Expiry*)) pursuant to paragraph 3.6 of Schedule 2 (*Expiry*) or is deemed not to have accepted the Expiry Sum pursuant to paragraph 3.7 of Schedule 2 (*Expiry*);
 - 3.2.2 the Franchise Operator fails to procure the amendments to the, Performance Bond specified in Clause 11; or
 - 3.2.3 any legal action or other challenge brought by a third party or any investigation by a competent authority under UK or EU Law is commenced in respect of this ERMA or any part of it on or before the date of any notice given under this Clause 3.2.
- 3.3 The Secretary of State may, at the Secretary of State's sole discretion, on one occasion only and with at least three (3) months' written notice (or any shorter period as agreed between the Parties) extend this ERMA and the variations to the Franchise Agreement effected by this ERMA by such further period as shall be specified by the Secretary of State at the Secretary of State's sole discretion (such extension being the "**Extended Term**"), but provided that the Extended Term may not extend beyond the maximum term of the Franchise Agreement pursuant to clause 20.2 of the Franchise Agreement.
- 3.4 The Secretary of State shall have an unfettered discretion in proposing any extensions to the ERMA Term pursuant to Clause 3.3 (save as provided therein).
- 3.5 Subject to Clause 3.6 and as otherwise provided in this Agreement, the amendments to the Franchise Agreement pursuant to this ERMA shall, unless otherwise required by the Secretary of State or pursuant to this ERMA, cease to have effect on the later of the expiry of the ERMA Term or the relevant Extended Term (as applicable).
- 3.6 The following provisions and any other provisions of this ERMA and/or the Franchise Agreement (as applicable) reasonably required for the purpose of giving full effect to such provisions or the overriding principles of this ERMA shall survive the termination or expiry of this ERMA and the Franchise Term (however arising) and continue in full force and effect in accordance with their terms and the continued operation of such provisions following the termination or expiry of this ERMA and the Franchise Term shall not constitute a Variation

for the purpose of any of the limbs of the definition of "Net Loss" or "Net Gain" for the purposes of the Franchise Agreement:

- 3.6.1 Clause 3.10;
 - 3.6.2 Clause 4 (*Expiry*);
 - 3.6.3 Clause 8 (*Meetings*);
 - 3.6.4 Clause 10.2;
 - 3.6.5 Clause 11 (Performance Bond);
 - 3.6.6 Clause 12.2;
 - 3.6.7 Clause 16.1;
 - 3.6.8 Clause 18.2;
 - 3.6.9 NOT USED
 - 3.6.10 the following schedules to the Franchise Agreement as effected pursuant to the terms of this ERMA:
 - (i) Schedule 6.1A (Franchise Payments) but only insofar as is necessary to determine the Franchise Payments that relate to the ERMA Term and/or the relevant Extended Term (as applicable);
 - (ii) Schedule 6.1B (Performance Based Fee), but only insofar as is necessary to determine the Franchise Payments that relate to the ERMA Term and/or the relevant Extended Term (as applicable), subject to paragraph 1.1.10 of Schedule 3 (*Early ERMA Termination*) if the Secretary of State exercises the Secretary of State's right to terminate this ERMA pursuant to Clause 3.2; and
 - (iii) (to the extent necessary for the purpose of giving effect to any surviving provisions of schedule 6.1B (*Performance Based Fee*), or as instructed by the Secretary of State under paragraph 2 of Schedule 3 (*Early ERMA Termination*)), and subject to paragraph 1 of Schedule 3 (*Early ERMA Termination*) if the Secretary of State exercises the Secretary of State's right to terminate this ERMA pursuant to Clause 3.2:
 - (a) Schedule 6.1D (*National Passenger Surveys*); and
 - (b) Schedule 6.1E (*Operational Performance*);
 - 3.6.11 paragraph 9 (*Financial Information*) of schedule 6.1B (*Management Information*) to the Franchise Agreement as amended pursuant to Schedule 1 (*Amendments to the Franchise Agreement*), subject to paragraph 1 of Schedule 3 (*Early ERMA Termination*) if the Secretary of State exercises the Secretary of State's right to terminate this ERMA pursuant to Clause 3.2; and
 - 3.6.12 Schedule 2 (*Expiry*).
- 3.7 Subject to Clause 3.8, the Franchise Agreement shall terminate concurrently with the expiry of this ERMA.

- 3.8** Subject to Schedule 3 (*Early ERMA Termination*), if this ERMA expires on the Early ERMA Termination Date, the Franchise Agreement shall not terminate and the terms of the Franchise Agreement that prevailed immediately prior to the EMA Start Date (save as amended pursuant to any variation agreed between the Parties during the period from the EMA Start Date until the Early ERMA Termination Date other than the variation constituted by the EMA or this ERMA) shall apply from the Early ERMA Termination Date.
- 3.9** The Parties agree that the Recalibration Items (as defined in the EMA) shall not be required following the expiry of the EMA and neither Party shall be under any obligation in relation thereto.
- 3.10** The Franchise Operator:
- 3.10.1** acknowledges that the decisions by the Secretary of State:
- (i) not to extend the EMA beyond 20 September 2020; and/or
 - (ii) to enter into this ERMA; and/or
 - (iii) to offer this ERMA on the terms set out herein and conditional on the termination of the underlying Franchise Agreement,
- including the policy and procedure adopted by the Secretary of State to reach and implement these decisions (together, the "**Decisions**") are reasonable; and
- 3.10.2** covenants that it will not, and will procure that none of its Related Parties will, make, maintain, support, assist or encourage any Claim of any kind against the Secretary of State or any other party in connection with or arising out of the Decisions.
- 3.11** For the purposes of Clause 3.10:
- 3.11.1** "**Claim**" means any action, suit or other proceeding of any kind whatsoever, in or by way of legal proceedings or otherwise, in England and Wales or any other jurisdiction; and
- 3.11.2** "**Related Parties**" means the Franchise Operator's Affiliates and their respective assigns, transferees, representatives, principals, agents, officers or directors.

4 Expiry

The Parties acknowledge and agree that, unless the Secretary of State exercises the Secretary of State's right to terminate this ERMA pursuant to Clause 3.2, the provisions of Schedule 2 (Expiry) shall have effect between them and each Party shall comply with its respective obligations thereunder.

5 Amendments to the Franchise Agreement

Subject to Clause 3.6, with effect from the ERMA Start Date until the expiry of the ERMA Term or the Extended Term (as applicable), the Franchise Agreement shall be varied as set out in Schedule 1 (*Amendments to the Franchise Agreement*) to this ERMA and by Clauses 6 (*Co-operation*) to 18 (*Long Term Arrangements*) below.

6 Co-operation

- 6.1** The Franchise Operator agrees to co-ordinate and co-operate with other Train Operators, Network Rail and other rail industry bodies, to ensure the continuation of Passenger Services across the network in a co-ordinated manner, and in line with the priorities and directions, as may be set out by the Secretary of State from time to time, including:
- 6.1.1** co-ordinating 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 fully perform their own Franchise Services;
 - 6.1.2** 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
 - 6.1.3** continuing where possible and appropriate to enforce any agreements with third parties to deliver quality and value for money.
- 6.2** The Franchise Operator agrees to co-operate with the Secretary of State in an open and transparent manner, which shall include an obligation on the Franchise Operator to disclose to the Secretary of State anything which the Secretary of State would reasonably expect notice of in connection with the matters arising under this ERMA or the Franchise Agreement.

7 Additional Services

- 7.1** The Franchise Operator acknowledges that the Secretary of State may require special measures, in the form of increased co-operation or additional services, to be implemented during the ERMA Term and/or the Extended Term and the Franchise Operator shall use its best endeavours to accommodate such requests and act in the national interests.
- 7.2** The Franchise Operator, if requested by the Secretary of State, shall use its best endeavours to provide additional services, such as enhanced cleaning regimes to a standard reasonably proposed by the Secretary of State.
- 7.3** The reasonable and proper costs incurred by the Franchise Operator in performing its obligations under this Clause 7 shall be recoverable from the Secretary of State as part of the Actual Costs, subject to the provisions of schedule 6.1A (*Franchise Payments*) to the Franchise Agreement.

8 Meetings

Where the Franchise Agreement or this ERMA 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 or the Parties and any relevant third parties (as applicable).

9 Remedial Plans

9.1 Definitions

In this Clause 9:

"**EMA Remedial Plan**" means any Remedial Plan or Remedial Agreement that was put in place during the term of the EMA;

"**ERMA Plan**" means any Remedial Plan, Remedial Agreement, Action Plan or Improvement Plan in relation to:

- (i) any matter that arises during the term of this ERMA; and/or
- (ii) any matter that arose prior to the ERMA Start Date and is continuing during the term of this ERMA,

in each case that is put in place during the term of this ERMA; and

"**Pre-EMA Plan**" means any action plan under clause 8.4 of the Franchise Agreement or a recovery plan under Schedule 15 (Targets and Performance Reviews) to the Franchise Agreement that was in place prior to the EMA Start Date and continues to be in place as at the ERMA Start Date.

9.2 Pre-EMA Plans

9.2.1 The Secretary of State may review and determine (at the Secretary of State's sole discretion) whether any Pre-EMA Plan shall be:

- (i) implemented or continued in its original form;
- (ii) implemented or continued in accordance with such amended scope and application as may have been determined during the EMA;
- (iii) implemented or continued in accordance with such amended scope and application as the Secretary of State may determine in light of the Secretary of State's latest review;
- (iv) delayed (or further delayed);
- (v) suspended (in whole or in part); or
- (vi) actioned in accordance with such other instructions as the Secretary of State may direct.

9.2.2 Unless otherwise agreed by the Secretary of State, the costs of implementing a Pre-EMA Plan shall be a Disallowable Cost for the purposes of the Franchise Agreement.

9.2.3 The Secretary of State shall act reasonably and in good faith in making the determinations contemplated in this Clause 9.

9.3 EMA Remedial Plans

Pursuant to clause 2.2, the terms of schedule 6.B (*Performance Payment*) to the EMA shall apply to any EMA Remedial Plan.

9.4 ERMA Plans

9.4.1 Save to the extent the Secretary of State otherwise directs from time to time, any ERMA Plan shall be treated in accordance with the provisions of:

- (i) Schedule 6.B (*Performance Payment*) to the Franchise Agreement (for a Remedial Plan or Remedial Agreement);

- (ii) Schedule 6.1D (*National Passenger Surveys*) to the Franchise Agreement (for an Improvement Plan); or
- (iii) Schedule 6.1E (*Operational Performance*) to the Franchise Agreement (for an Action Plan).

9.4.2 Unless otherwise agreed by the Secretary of State:

- (i) the costs of developing an ERMA Plan shall be a Disallowable Cost for the purposes of the Franchise Agreement; and
- (ii) the costs of implementing an ERMA Plan (the "**Implementation Costs**") shall be for the account of the Secretary of State, provided that:
 - (a) the Secretary of State's liability pursuant to this Clause 9.4.2(ii) shall be limited to costs that would have been incurred by a Good and Efficient Operator; and
 - (b) if and to the extent that the Implementation Costs are greater than the cost that the Franchise Operator would have incurred in performing the obligation which is the subject of the relevant ERMA Plan (the "**Original Cost**") as a result of the Franchise Operator having failed to comply with such obligation or otherwise having failed to act as a Good and Efficient Operator prior to the implementation of the ERMA Plan then the Franchise Operator shall be liable for the difference between the Implementation Costs and the Original Cost.

10 Fares

10.1 The Franchise Operator shall remain responsible for the collection of fare revenue and in doing so shall act as a Good and Efficient Operator, 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 any replacement body or organisation) or other relevant authority in relation to public interaction.

10.2 If and to the extent that a ticket is sold which relates:

10.2.1 partially to the period when the EMA subsisted and partially to the period before the EMA subsisted; and/or

10.2.2 partially to the period when the EMA subsisted and partially to the ERMA Term or, if extended, the Extended Term; and/or

10.2.3 partially to the ERMA Term or, if extended, the Extended Term and partially to the period after the expiry of the ERMA Term or, if extended, the Extended Term,

(the "**Cross-Term Fares**"), the Franchise Operator shall account for the Cross-Term Fares on a consistent basis such that:

10.2.4 the principles applied to account for the Cross-Term Fares at the EMA Start Date shall continue to apply to the Cross-Term Fares at the ERMA Start Date; and

10.2.5 the principles applied to account for the Cross-Term Fares at the ERMA Start Date shall continue to apply to the Cross-Term Fares for the duration of the term of this ERMA up

to and including the date on which this ERMA and the Franchise Agreement are terminated in accordance with the terms of this ERMA.

11 Performance Bond

11.1 The Franchise Operator shall procure that, from the ERMA Start Date, the Performance Bond shall be on terms that it is payable without further enquiry by the Bond Provider to the Authority in full in London on first written demand by the Authority on the Bond Provider, certifying as to any one or more of the following:

11.1.1 the Franchise Agreement has terminated and the Franchise Operator has failed to perform or comply with its obligations under any Supplemental Agreement or Part V or Clauses 12.2, 12.3(a) or (c), 12.4(a) or (b), 12.5(a), 12.6(a), 12.7 (a), 12.11 or 13.4 of the Franchise Agreement;

11.1.2 termination of the Franchise Agreement as a result of an Event of Default;

11.1.3 the making of a railway administration order in relation to the Franchise Operator pursuant to sections 60 to 62 of the Act;

11.1.4 the Franchise Agreement has either terminated or expired and, in either case, in circumstances where there are liabilities or obligations outstanding from the Franchise Operator to the Authority including where the Franchise Period has terminated or expired but provisions of the Franchise Agreement remain in operation and effect (including Schedule 6.1A (Franchise Payments)).

11.2 The Franchise Operator shall procure that, from 27 November 2020 or such later date as the Secretary of State may agree, the Performance Bond shall be on terms that it is payable without further enquiry by the Bond Provider to the Authority in full in London on first written demand by the Authority on the Bond Provider, certifying as to any one or more of the following:

11.2.1 the events listed in clauses 11.1.1 to 11.1.4;

11.2.2 any portion of the ERMA Costs and Claims Amount is outstanding after its due date, provided that Bond Provider's liability shall be limited to the total amount of the Performance Bond.

11.3 In clause 11.2.2, "**ERMA Costs and Claims Amount**" means the Aggregated Costs and Revenue Liabilities (as defined in Schedule 6.1A (*Franchise Payments*)) which have not been offset by the Fixed Fee and, where applicable, the Performance Based Fee in the relevant period (being the ERMA Term or, in relation to the Extended Term (if any) the relevant Franchise Operator Year).

12 No Net Loss, No Net Gain

12.1 Save as specified in Schedule 1 (*Amendments to the Franchise Agreement*) to this ERMA, the provisions of schedule 9 (*Change Assessment Procedures and Accounting*) to the Franchise Agreement shall be suspended for the duration of this ERMA.

12.2 If the Secretary of State exercises the Secretary of State's right to terminate this ERMA pursuant to Clause 3.2, then any impact of COVID-19 will only constitute a Variation for the

purpose of any of the limbs of the definition of "Net Loss" or "Net Gain" if and to extent that such impact falls within the scope of any of those limbs and the Parties agree that the occurrence of the COVID-19 pandemic will not of itself constitute such a Variation. The Parties acknowledge that the provisions of schedule 9 (*Change Assessment Procedures and Accounting*) to the Franchise Agreement were suspended during the term of the EMA pursuant to schedule 1 (*Amendments to the Franchise Agreement*) to the EMA and remain suspended during the term of this ERMA pursuant to Schedule 1 (*Amendments to the Franchise Agreement*).

12.3 In relation to any Net Loss or Net Gain that is suffered or made prior to the EMA Start Date:

- 12.3.1 the processing of the Net Loss or Net Gain shall continue and be treated on the terms of the Franchise Agreement that existed before the Parties entered into the EMA;
- 12.3.2 any payments in respect of the relevant Net Loss or Net Gain that are agreed or determined in accordance with that process shall be made as and when determined; and
- 12.3.3 notwithstanding Clauses 12.3.1 and 12.3.2, any interim adjustments pursuant to schedule 9 (*Change Assessment Procedures and Accounting*) to the Franchise Agreement shall not be payable until the termination or expiry of the term of this ERMA.

12.4 In relation any Net Loss or Net Gain that is suffered or made during the term of the EMA ("**EMA NLNG**"), the Parties acknowledge and agree that:

- 12.4.1 notwithstanding the provisions of the EMA, clause 12.3 of the EMA shall not apply following the expiry of the EMA;
- 12.4.2 save as specified in schedule 1 (*Amendments to the Franchise Agreement*) to the EMA, the provisions of Schedule 9 (*Change Assessment Procedures and Accounting*) to the Franchise Agreement were suspended for the duration of the EMA pursuant to the terms of the EMA;
- 12.4.3 except as otherwise provided in this Clause 12.4, there shall be no processing of any Net Loss or Net Gain at any time during the term of the ERMA or upon the termination of the ERMA and the Franchise Agreement in accordance with the terms of this ERMA; and
- 12.4.4 if the Secretary of State exercises the Secretary of State's right to terminate this ERMA pursuant to Clause 3.2, any EMA NLNG shall, after the Early ERMA Termination Date, be evaluated in accordance with the provisions of schedule 9 (*Change Assessment Procedures and Accounting*) to the Franchise Agreement.

12.5 In relation to any Net Loss or Net Gain that is suffered or made during the term of this ERMA ("**ERMA NLNG**"), the Parties acknowledge and agree that:

- 12.5.1 except as otherwise provided in this Clause 12.5, there shall be no processing of any ERMA NLNG at any time during the term of the ERMA or upon the termination of the ERMA and the Franchise Agreement in accordance with the terms of this ERMA; and
- 12.5.2 if the Secretary of State exercises the Secretary of State's right to terminate this ERMA pursuant to Clause 3.2, any ERMA NLNG shall, after the Early ERMA Termination Date, be evaluated in accordance with the provisions of schedule 9 (*Change Assessment Procedures and Accounting*) to the Franchise Agreement.

12.6 The Parties agree that nothing in the EMA or this ERMA shall constitute a Variation for the purpose of any of the limbs of the definition of "Net Loss" or "Net Gain" unless explicitly stated in this ERMA.

13 Early ERMA Termination

If the Secretary of State exercises the Secretary of State's right to terminate this ERMA pursuant to Clause 3.2, the provisions of Schedule 3 (*Early ERMA Termination*) shall apply.

14 Franchise Plan

14.1 The Parties acknowledge and agree that the terms of the Franchise Plan were reviewed and, where relevant either delayed, suspended or reduced in scope or application in accordance with the EMA.

14.2 For the purposes of this Clause 14, "**EMA Review Agreement**" means the EMA Review Agreement of Amendment to the Franchise Agreement which may be entered into by the Parties on or after the date of this ERMA. The Parties agree that:

14.2.1 the entry into this ERMA shall not cause any of the EMA Review Variations (as defined in the EMA Review Agreement) to expire; and

14.2.2 any references to the "EMA Period" contained in the EMA Review Variations shall be defined as "the period commencing on 1 March 2020 and ending upon the expiry of the term of the ERMA".

15 Covid-19 Related Support

15.1 The Franchise Operator shall use all reasonable endeavours to avail itself of, including applying for, any governmental support or support from any local authority or other such body that is offered in relation to the impact of and/or recovery from the impacts of COVID-19 from time to time.

15.2 If and to the extent the Franchise Operator is successful in receiving such support, this shall be taken into account in relation to the application of the mechanisms in schedule 6.1A (*Franchise Payments*) to the Franchise Agreement, such that the Franchise Operator does not benefit from double recovery.

16 State Aid and Procurement

16.1 The Franchise Operator acknowledges and agrees that the EMA and this ERMA must not result in any financial advantage being granted to the Franchise Operator that is incompatible with the EU rules on State aid and, in particular, Articles 107 and 108 of the Treaty on the Functioning of the European Union. In that regard, it is noted in particular that the replacement schedule 6.1A (*Franchise Payments*) to the Franchise Agreement defines the parameters on the basis of which the compensation payment for discharging the public service obligations is to be calculated. In accordance with Articles 4(1) and 6(1) of Regulation (EC) N° 1370/2007 of 23 October 2007 on public passenger transport services by rail and by road, these parameters have been determined in such a way that no compensation payment may exceed the amount required to cover the net financial effect on costs incurred and revenues generated in discharging the public service obligations, taking account of

revenue relating thereto kept by the Train Operator and a reasonable profit. At the end of the term of this ERMA, 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 and this ERMA. 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 and/or this ERMA or any other financial advantage that is identified as having been granted as a result of the EMA and/or this ERMA in violation of the EU State aid rules, whether such overcompensation or other advantage has been identified by the Secretary of State or by the European Commission and the Franchise Operator agrees to repay such monies promptly.

- 16.2** The Franchise Operator shall maintain and comply with a procurement policy that is consistent with all requirements (including all publication or notification requirements that apply from time to time) of the Utilities Contracts Regulations 2016 ("**Procurement Policy**"). The Franchise Operator shall act in accordance with such Procurement Policy in relation to all processes to procure goods and services that are commenced during the ERMA Term or, if extended, the Extended Term.

17 Warranties

The Franchise Operator shall, within ten (10) days of the execution of this ERMA, provide a warranty in writing, from a statutory director of the Franchise Operator to the Secretary of State confirming that:

- (i) the information relating to claims and endogenous factors provided by the Franchise Operator in response to the Secretary of State's request for information for the purposes of the non-COVID trajectory model made on 3 September 2020 was true and accurate and not misleading in all material respects as at the date it was provided;
- (ii) the budget submitted by the Franchise Operator prior to the ERMA Start Date was prepared on the basis of recent historical financial information and reasonable assumptions, was arrived at after careful consideration and was a true and valid reflection of the Franchise Operator's actual and forecast financial position; and
- (iii) in the preparation of such budget, no measures have been undertaken to:
 - (a) suppress revenue and/or increase costs during the term of the EMA and/or this ERMA;
 - (b) reallocate costs to, or revenues from, the period when the EMA and/or this ERMA was or is in place; or
 - (c) act in a way that is contrary to the principles of the EMA and/or this ERMA by using the existence or cessation of the EMA and/or this ERMA to increase profitability.

18 Long Term Arrangements

- 18.1** The Franchise Operator shall not, without the prior written consent of the Secretary of State, enter into or extend the duration or scope of any agreements with third parties (including

Affiliates), where the termination date for such agreement is later than the end of the ERMA Term or, if applicable, the Extended Term, as applicable.

18.2 If:

- 18.2.1 the Franchise Operator enters into or extends the duration or scope of an agreement with a third party during the ERMA Term or the Extended Term; and
- 18.2.2 such agreement requires the Franchise Operator to pay a fee in relation to the termination of such agreement or the Franchise Operator incurs or will incur any other sum or cost in relation to the early termination of such agreement in connection with the termination of the Franchise Agreement in accordance with this ERMA or the termination of this ERMA pursuant to Clause 3.2,

such fee shall be for the account of the Franchise Operator and shall be a Disallowable Cost for the purposes of the Franchise Agreement.

19 Confidentiality and Disclosure

19.1 Clause 39 (Confidentiality) of the Franchise Agreement shall apply to this ERMA mutatis mutandis.

19.2 Subject to Clauses 19.3 and 19.4 below the Franchise Operator agrees to provide to the Secretary of State in advance for approval the detail of any announcement disclosing the existence or terms of this ERMA that it considers it is required to make by law or pursuant to an order of any court of competent jurisdiction or the rules of a recognised stock exchange or a formal or informal request of any Taxation authority and the Secretary of State agrees to act reasonably and promptly in terms of providing that approval and/or in relation to any amendments the Secretary of State proposes to make to the form provided.

19.3 The Secretary of State may make disclosure in relation to the existence and subject matter of this ERMA to:

- 19.3.1 any United Kingdom government body for any proper purpose of the Secretary of State or of the relevant United Kingdom government body;
- 19.3.2 parliament and parliamentary committees or if required by any parliamentary reporting requirement; and
- 19.3.3 the extent that the Secretary of State (acting reasonably) deems disclosure necessary or appropriate in the course of carrying out the Secretary of State's public functions.

19.4 Each Party may make disclosure in relation to the existence and subject matter of this ERMA to any outside consultants or advisers engaged by or on behalf of such Party and acting in that capacity subject to any such consultant or advisers being subject to an undertaking of confidentiality.

20 Entire Agreement

20.1 This ERMA contains all the terms which the Parties have agreed in relation to the subject matter of this ERMA and supersedes any prior written or oral agreements, representations or understandings between the Parties in relation to such subject matter.

20.2 The Franchise Operator acknowledges that this ERMA has not been entered into wholly or partly in reliance on, nor has the Franchise Operator been given any warranty, statement, promise or representation other than as expressly set out in this ERMA. If any such warranties, statements, promises or representations have been given the Franchise Operator unconditionally and irrevocably waives any claims, rights or remedies which it might otherwise have had in relation to them.

20.3 Nothing in this Clause 20 shall exclude any liability which one Party would otherwise have to the other Party in respect of any statements made fraudulently.

21 Counterparts

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

22 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 ERMA and all documents ancillary to it.

23 Governing Law

This ERMA (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 ERMA except as specified to the contrary.

24 Rights of Third Parties

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

This Agreement has been entered into on the date stated at the beginning of this Agreement.

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

Print Name of Authorised Signatory: [REDACTED]

Position: [REDACTED]

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

SIGNED FOR AND ON BEHALF OF
M40 TRAINS LIMITED

)
)
)
)

[REDACTED²]

Print Name of Authorised Signatory:

[REDACTED]

Position:

[REDACTED]

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

SIGNED FOR AND ON BEHALF OF) [REDACTED³]
THE CHILTERN RAILWAY COMPANY)
LIMITED)
)

Print Name of Authorised Signatory: [REDACTED]

Position: [REDACTED]

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

Schedule 1
Amendments to the Franchise Agreement

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

For the avoidance of doubt:

- any reference to "N/A" in the table below shall mean that the version of the schedule that prevailed immediately prior to the EMA Start Date (save as amended pursuant to any variation agreed between the parties following the EMA Start Date other than the variation constituted by the EMA or this ERMA) remains unamended and continues to apply;
- any text that appears in blue and is underlined shall be added to existing clauses, paragraphs or schedules (as applicable) of the Franchise Agreement; and
- any text that appears in blue and is struck-out shall be deleted from existing clauses, paragraphs/schedules of the Franchise Agreement.

REFERENCE (CLAUSE / PARAGRAPH / SCHEDULE)	AMENDMENT	
PART I - PRELIMINARY		
1 – Definitions and Interpretation	The following new definitions shall be inserted into clause 1.1:	
	<u>"Accessibility Panel"</u>	<u>means the regular forum of disabled passengers, including users of assisted travel, which the Franchise Operator must operate and consult on accessibility issues by virtue of section B5 of the Accessible Travel Policy Guidance and which the Franchise Operator will establish by no later than 31 January 2021;</u>
	<u>"Accessible Travel Policy"</u>	<u>means the Franchise Operator's policy for accessible travel which the Franchise Operator is required to establish and review from time to time in</u>

			<i>accordance with the conditions of its Licences in respect of the operation of railway passenger services and/or stations;</i>
		<u>"Accessible Travel Policy Guidance"</u>	<i>means the "Accessible Travel Policy: Guidance for Train and Station Operators", published by the ORR in July 2019 as amended and/or replaced from time to time;</i>
		<u>"Actual All Cancellations Performance Level"</u>	<i>means, in respect of a Reporting Period, All Cancellations as most recently published by Network Rail for that Reporting Period in relation to the Franchise Operator;</i>
		<u>"Actual T-3 Performance Level"</u>	<i>means, in respect of a Reporting Period, Time to 3 Minutes as most recently published by Network Rail for that Reporting Period in relation to the Franchise Operator;</i>
		<u>"Actual T-15 Performance Level"</u>	<i>means, in respect of a Reporting Period, Time to 15 Minutes as most recently published by Network Rail for that Reporting Period in relation to the Franchise Operator;</i>
		<u>"All Cancellations"</u>	<i>means the sum of Cancellations, Partial Cancellations, Network Rail Cancellations and Network Rail Partial Cancellations relating to the Franchise as produced and/or published by Network Rail;</i>
		<u>"Annual Management Accounts"</u>	<i>means the management accounts of the Franchise Operator which:</i>

			<p>(a) <u>comply with paragraph 9.5(a) of Schedule 6.1C (Management Information); and</u></p> <p>(b) <u>are delivered to the Authority by the Franchise Operator in accordance with paragraph 9.4(a) of Schedule 6.1C (Management Information);</u></p>
		<p><u>“Approved D&I Strategy”</u></p>	<p><u>means such D&I Strategy as agreed by the parties in accordance with paragraph 51A.1(b) of Schedule 13 (Franchise Plan) or as reasonably determined by the Authority in accordance with paragraph 51A.1(c) of Schedule 13 (Franchise Plan);</u></p>
		<p><u>“Breach Performance Level”</u></p>	<p><u>means, in relation to an Enforcement Benchmark for any Reporting Period, the number agreed or determined as such in accordance with paragraph 4.5 of Schedule 6.1B (Performance Based Fee);</u></p>
		<p><u>“COVID-19”</u></p>	<p><u>means the coronavirus disease 2019;</u></p>
		<p><u>“CPAY Agreement”</u></p>	<p><u>means an agreement dated 30 July 2014 between Transport Trading Limited and train operators operating in London relating to the acceptance of certain contactless payment cards for “pay as you go” journeys in London;</u></p>
		<p><u>“Customer Experience Fee” or “CE”</u></p>	<p><u>means the element of the Performance Based Fee, the purpose of which is to measure the Franchise Operator's effectiveness in delivering:</u></p> <p>(a) <u>high levels of satisfaction and positive sentiment amongst users of the Passenger Services; and/or</u></p>

			<p>(b) <u>high-quality provision of facilities, services, customer care and other outputs that affect passengers' satisfaction and sentiment;</u></p>	
		<p><u>“D&I Annual Report”</u></p>	<p><u>means a report produced by the Franchise Operator developed in accordance with paragraph 51A.3(e) of Schedule 13 (Franchise Plan) in respect of the previous twelve (12) months or, if shorter, the period since the ERMA Start Date;</u></p>	
		<p><u>“D&I Annual Reporting Date”</u></p>	<p><u>means the date on which the Franchise Operator must provide the D&I Annual Report to the Authority as stated in the D&I Strategy, provided that if this date, in any Franchise Operator Year, occurs after the expiry of the term of the ERMA then the D&I Annual Reporting Date shall be one (1) month before the expiry of the term of the ERMA;</u></p>	
		<p><u>“D&I Champion”</u></p>	<p><u>means the director or senior executive that is accountable and responsible for implementing the D&I Strategy and ensuring that the Franchise Operator complies with its obligations relating to diversity and inclusion (excluding the obligations in paragraph 51A.4 of Schedule 13 (Franchise Plan));</u></p>	
		<p><u>“D&I Characteristics KPIs”</u></p>	<p><u>means the KPIs set out in the Franchise Operator’s D&I Strategy used to assess the impact of the Franchise Operator’s initiatives on diversity at different levels of the workforce and in connection with different characteristics (including gender, age, ethnicity and disability) compared to the region and/or nationally;</u></p>	

		<p><u>“D&I Improvement Plan”</u></p>	<p><i>has the meaning given to it in paragraph 51A.7(a) of Schedule 13 (Franchise Plan);</i></p>
		<p><u>“D&I Initiatives KPIs”</u></p>	<p><i>means the KPIs set out in the Franchise Operator’s D&I Strategy used to measure its performance against diversity initiatives and policies, which may include KPIs along the following lines:</i></p> <ul style="list-style-type: none"> (a) <i>the number of positive action initiatives implemented and maintained by the Franchise Operator;</i> (b) <i>the number of adverts in targeted publications;</i> (c) <i>membership of diversity and inclusion networks and forums;</i> (d) <i>the percentage of staff trained annually in diversity and inclusion;</i> (e) <i>the number of line managers completing diversity and inclusion training;</i> (f) <i>the number of members of the board of directors completing diversity and inclusion training; and</i> (g) <i>the number of diversity and inclusion training sessions;</i>
		<p><u>“D&I Strategy”</u></p>	<p><i>means the Franchise Operator’s diversity and inclusion strategy developed in accordance with paragraph 51A.1 of Schedule 13 (Franchise Plan) (substantially in the form set out in Appendix 15 to Schedule 13 (Franchise Plan)) and references to</i></p>

			<u><i>the D&I Strategy shall include the Approved D&I Strategy;</i></u>
		<u><i>"Default Performance Level"</i></u>	<u><i>means, in relation to an Enforcement Benchmark for any Reporting Period, the number agreed or determined pursuant to paragraph 4.5 of Schedule 6.1B (Performance Based Fee);</i></u>
		<u><i>"Delay Attribution Principles and Rules"</i></u>	<u><i>means the version of the document known as the Delay Attribution Principles and Rules referenced in the Network Rail Network Code;</i></u>
		<u><i>"Devolved Transport Body"</i></u>	<u><i>means, any public sector body which has been given responsibility for public passenger transport in the United Kingdom including Transport for London, Transport for Wales, Transport Scotland, Rail North, any Passenger Transport Executive or Combined Authority and any other public body with relevant public passenger transport responsibilities;</i></u>
		<u><i>"Disputed Cancellation"</i></u>	<u><i>means a Passenger Service:</i></u> <ul style="list-style-type: none"> (a) <u><i>which is included in the Enforcement Timetable and which is cancelled; or</i></u> (b) <u><i>which is included in the Enforcement Timetable and which operates less than fifty per cent (50%) of its scheduled mileage (as prescribed in the Enforcement Timetable),</i></u> <u><i>in either case, in circumstances where attribution of responsibility for the same is, at the relevant time, in dispute between Network Rail and the Franchise Operator pursuant to the Track Access Agreement;</i></u>

	<p><u>"Disputed Partial Cancellation"</u></p>	<p><u>means a Passenger Service which is included in the Enforcement Timetable and which:</u></p> <p>(a) <u>misses a stop; or</u></p> <p>(b) <u>completes fifty per cent (50%) or more, but less than one hundred per cent (100%) of its scheduled mileage as prescribed in the Enforcement Timetable.</u></p> <p><u>in either case, in circumstances where attribution of responsibility for the same is, at the relevant time, in dispute between Network Rail and the Franchise Operator pursuant to the Track Access Agreement;</u></p>
	<p><u>"EMA"</u></p>	<p><u>means the Emergency Measures Agreement entered into by the Parties on or around 1 April 2020 to deal with the impacts of COVID-19;</u></p>
	<p><u>"EMA Start Date"</u></p>	<p><u>means 1 April 2020;</u></p>
	<p><u>"EMA Review"</u></p>	<p><u>has the meaning given to it in paragraph 1 (Definitions) of schedule 6.B (Performance Payment) to the Franchise Agreement as effected by the EMA;</u></p>
	<p><u>"EMA Review Scorecard"</u></p>	<p><u>has the meaning given to it in paragraph 1 (Definitions) of schedule 6.B (Performance Payment) to the Franchise Agreement as effected by the EMA;</u></p>
	<p><u>"EMA Scorecard Criterion"</u></p>	<p><u>has the meaning given to "EMA Criterion" in paragraph 1 (Definitions) of schedule 6.A</u></p>

			<i>(Franchise Payments) to the Franchise Agreement as effected by the EMA;</i>
		<u>"Enforcement Benchmark"</u>	<i>means the:</i> <i>Enforcement Cancellations Benchmark for each Reporting Period during a PBF Assessment Period;</i> (c) <i>Enforcement Short Formation Benchmark for each Reporting Period during a PBF Assessment Period; and</i> (d) <i>Enforcement Minutes Delay Benchmark for each Reporting Period during a PBF Assessment Period;</i>
		<u>"Enforcement Cancellations Benchmark"</u>	<i>means the benchmark that applies to Cancellations in relation to a Reporting Period during the PBF Assessment Period, as agreed or determined in accordance with paragraph 4.5 of Schedule 6.1B (Performance Based Fee);</i>
		<u>"Enforcement Short Formation Benchmark"</u>	<i>means the benchmark that applies to Short Formations in relation to a Reporting Period during the PBF Assessment Period as agreed or determined in accordance with paragraph 4.5 of Schedule 6.1B (Performance Based Fee);</i>
		<u>"Enforcement TOC Minutes Delay Benchmark"</u>	<i>means the benchmark that applies to TOC Minutes Delay in relation to a Reporting Period during the PBF Assessment Period, as agreed or determined in accordance with paragraph 4.5 of Schedule 6.1B (Performance Based Fee);</i>

		<p><u>"Enhanced Disability Awareness Training"</u></p>	<p><i><u>means training compliant with the requirements set out in section 4 paragraph B6 of the Accessible Travel Policy Guidance;</u></i></p>
		<p><u>"ERMA"</u></p>	<p><i><u>means the Emergency Recovery Measures Agreement entered into by the Parties on or around the ERMA Start Date to deal with the impacts of COVID-19;</u></i></p>
		<p><u>"ERMA Start Date"</u></p>	<p><i><u>means 20 September 2020;</u></i></p>
		<p><u>"ERMA Stub Reporting Period"</u></p>	<p><i><u>means the period comprising the Reporting Periods following the period covered by the most recently delivered Annual Audited Accounts to the end of the ERMA Term or Extended Term, as applicable;</u></i></p>
		<p><u>"ERMA Term"</u></p>	<p><i><u>has the meaning given to that term in the ERMA;</u></i></p>
		<p><u>"Extended Term"</u></p>	<p><i><u>has the meaning given to that term in the ERMA;</u></i></p>
		<p><u>"Final Accounts"</u></p>	<p><i><u>means the set of financial statements prepared in accordance with GAAP and delivered to the Authority in accordance with the requirements set out in paragraph 9.4A(m) of Schedule 6.1C (Management Information) which comprise, as a minimum, a profit and loss account, balance sheet and a cashflow statement containing only transactions properly accounted for which relate to the ERMA Stub Reporting Periods, to a level of</u></i></p>

			<i>disaggregation which the Authority may reasonably require;</i>
		<u>"Final Adjustment"</u>	<i>has the meaning given to it in paragraph 1A (Definitions) of Schedule 6.1A (Franchise Payments);</i>
		<u>"Final PBF Assessment Period"</u>	<i>has the meaning given to it in paragraph 1 (Definitions) of Schedule 6.1B (Performance Based Fee);</i>
		<u>"Improvement Plan Level"</u>	<i>means an NPS Improvement Plan Level;</i>
		<u>"ITSO Certified Smart Media"</u>	<i>means the contactless smartcards, devices or other media designed to hold fare and travel information with the monetary or other value encoded which are ITSO-certified;</i>
		<u>"Lock-up Period"</u>	<i>has the meaning given in paragraph 21 of Schedule 6.1A (Franchise Payments);</i>
		<u>"Management Accounts"</u>	<i>means, in relation to any Reporting Period, the Franchise Operator's management accounts which:</i> <i>(a) <u>comply with paragraph 9.5(a) of Schedule 6.C (Management Information); and</u></i> <i>are required to be delivered to the Authority by the Franchise Operator in accordance with paragraphs 9.2(a) and 9.2(b) of Schedule 6.C (Management Information);</i>

		<p><u>"Minutes Delay"</u></p>	<p><u>means the minutes of delay to the Passenger Services that are attributed to the Franchise Operator or Network Rail (as the case may be) pursuant to the Track Access Agreement and disregarding any minutes of delay that are imputed to Passenger Services that were cancelled;</u></p>
		<p><u>"Modernising Retail"</u></p>	<p><u>means the work in relation to modernising the retail of train tickets that is being developed pursuant to and in accordance with the 'Memorandum of Understanding for Modernising Retail' between the Authority and the RDG dated 29 July 2020;</u></p>
		<p><u>"Network Rail"</u></p>	<p><u>means in respect of:</u></p> <p><u>(a) the network or any relevant facility:</u></p> <p><u>(i) Network Rail Infrastructure Limited, a company registered in England with registered number 02904587 whose registered office is 1 Eversholt Street, London NW1 2DN; and</u></p> <p><u>(ii) any successor in title to the network or any relevant railway facility; or</u></p> <p><u>(b) any new or other sections of network or any relevant new or other railway facilities, the owner (if different);</u></p>
		<p><u>"Network Rail Cancellation"</u></p>	<p><u>means a Passenger Service:</u></p> <p><u>(a) which is included in the Enforcement Timetable and which is cancelled; or</u></p>

			<p>(b) <u>which is included in the Enforcement Timetable and which operates less than fifty per cent (50%) of its scheduled mileage (as prescribed in the Enforcement Timetable),</u> <u>in either case, in circumstances where responsibility for the same is attributed to Network Rail pursuant to the Track Access Agreement;</u></p>
		<p><u>"Network Rail Partial Cancellation"</u></p>	<p><u>means a Passenger Service which is included in the Enforcement Timetable and which:</u></p> <p>(a) <u>misses a stop; or</u></p> <p>(b) <u>completes fifty per cent (50%) or more, but less than one hundred per cent (100%), of its scheduled mileage as prescribed in the Enforcement Timetable,</u> <u>in circumstances where responsibility for the same is attributed to Network Rail pursuant to the Track Access Agreement;</u></p>
		<p><u>"Non-Recoverable Costs"</u></p>	<p><u>means any costs and expenses incurred by the Franchise Operator during a Reporting Period (as stated in the Franchise Operator's profit and loss account for that Reporting Period) which are inconsistent with the definitions of Costs, EMA Costs, Capital Expenditure and EMA Capital Expenditure;</u></p>
		<p><u>"NPS Improvement Plan Level"</u></p>	<p><u>means, in relation to a NPS Measure, the target (expressed as a specific value) which the Franchise Operator's performance is expected to equal or exceed during each PBF Assessment Period, as</u></p>

			<p><i>agreed or determined in accordance with paragraph 4.5 of Schedule 6.1B (Performance Based Fee) (and "NPS Improvement Plan Levels" shall be construed accordingly);</i></p>
		<p><u>"OP Target"</u></p>	<p><i>means the target, expressed as a range within which the Franchise Operator's performance is expected to fall, which applies to an Operational Performance Component in relation to a Reporting Period during the relevant PBF Assessment Period, as agreed or determined in accordance with paragraph 4.5 of Schedule 6.1B (Performance Based Fee);</i></p>
		<p><u>"Operational Performance Components"</u></p>	<p><i>means each of the matters in relation to which the Operational Performance Fee is assessed using the Quantified Target Methodology, being:</i></p> <ul style="list-style-type: none"> <i>(a) Cancellations;</i> <i>(b) TOC Minutes Delay;</i> <i>(c) Short Formations;</i> <i>(d) T-3;</i> <i>(e) T-15; and</i> <i>(f) All Cancellations;</i>
		<p><u>"Operational Performance Fee" or "OP"</u></p>	<p><i>means the element of the Performance Based Fee, the purpose of which is to measure the Franchise Operator's effectiveness in delivering punctual and reliable journeys and in providing an appropriate amount of passenger-carrying capacity;</i></p>

		<p><u>"Outturn Cost" or "OTC"</u></p>	<p><i>means all Costs (excluding Disallowable Costs, Unreimbursed Disallowable Costs and Capital Expenditure) expressed as a positive number, as set out in the Audited Accounts Reconciliation provided pursuant to paragraph 9.4 (Annual Financial Information) of Schedule 6.1C (Management Information);</i></p>
		<p><u>"Outturn Profit" or "OTP"</u></p>	<p><i>means, in relation to the relevant PBF Assessment Period, the aggregate of all Revenue (expressed as a positive number) and all Costs (excluding Disallowable Costs and Capital Expenditure and expressed as a negative number), as set out in the Audited Accounts Reconciliation provided pursuant to paragraph 9.4 (Annual Financial Information) of Schedule 6.1C (Management Information);</i></p>
		<p><u>"Partial Cancellation"</u></p>	<p><i>means a Passenger Service which is included in the Enforcement Timetable and which:</i></p> <ul style="list-style-type: none"> (a) <i>misses a stop; or</i> (b) <i>completes fifty per cent (50%) or more, but less than one hundred per cent (100%), of its scheduled mileage as prescribed in the Enforcement Timetable,</i> <p><i>in each case, for reasons which are attributed to the Franchise Operator pursuant to its Track Access Agreement;</i></p>
		<p><u>"Payment Date"</u></p>	<p><i>means the date for the payment of Franchise Payments in accordance with paragraph 2.3 of Schedule 6.1A (Franchise Payments);</i></p>

	<p><u>"PBF Assessment Period"</u></p>	<p><u>means each of the following periods:</u></p> <ul style="list-style-type: none"> (a) <u>the Initial PBF Assessment Period;</u> (b) <u>the Final PBF Assessment Period; and</u> (c) <u>each period in the intervening period comprising:</u> <ul style="list-style-type: none"> (i) <u>the first to the sixth Reporting Period (inclusive) to fall in the relevant Reporting Year; and/or</u> (ii) <u>the seventh to the thirteenth Reporting Period (inclusive) to fall in the relevant Reporting Year,</u> <p><u>as the case may be;</u></p>
	<p><u>"Performance Based Fee"</u></p>	<p><u>means the performance-based element of the Franchise Payments as calculated pursuant to Schedule 6.1B (Performance Based Fee);</u></p>
	<p><u>"Quantified Target Methodology"</u></p>	<p><u>means, in relation to a QTM PBF Component, the methodology set out in Appendix 5 (Quantified Target Methodology) of Schedule 6.1B (Performance Based Fee);</u></p>
	<p><u>"Quarterly Forecast"</u></p>	<p><u>has the meaning given to it in paragraph 9.3(a) of Schedule 6.1C (Management Information);</u></p>
	<p><u>"Recognised Accreditation Scheme"</u></p>	<p><u>means any of the following diversity accreditation schemes:</u></p> <ul style="list-style-type: none"> (a) <u>Investors in Diversity;</u> (b) <u>Clear Assured;</u> (c) <u>National Equality Standards;</u>

			<p>(d) <u>Diversity Development Standard;</u> (e) <u>Inclusive Employers; and/or</u> (f) <u>such other scheme as the Secretary of State may designate as a Recognised Accreditation Scheme from time to time;</u></p>	
		<p><u>"Remedial Agreement"</u></p>	<p><u>has the meaning given in paragraph 7.5 of Appendix 1 of Schedule 6.1B (Performance Based Fee);</u></p>	
		<p><u>"Remedial Plan"</u></p>	<p><u>has the meaning given in paragraph 7.2(b) of Appendix 1 of Schedule 6.1B (Performance Based Fee);</u></p>	
		<p><u>"Request for Data"</u></p>	<p><u>has the meaning given to it in paragraph 12.4(a) of Schedule 6.1C (Management Information);</u></p>	
		<p><u>"Required Performance Improvement"</u></p>	<p><u>means an improvement in the Franchise Operator's performance against:</u></p> <p>(a) <u>the OP Target for Cancellations so that such performance is within or better than the OP Target for Cancellations; and/or</u> (b) <u>the OP Target for TOC Minutes Delay so that such performance is within or better than the OP Target for TOC Minutes Delay; and/or</u> (c) <u>the OP Target for T-3 so that such performance is within or better than the OP Target for T-3; and/or</u> (d) <u>the OP Target for T-15 so that such performance is within or better than the OP Target for T-15; and/or</u></p>	

			<p>(e) <u>the OP Target for All Cancellations so that such performance is within or better than the OP Target for All Cancellations;</u></p> <p>(f) <u>the OP Target for Short Formations so that such performance is within or better than the OP Target for Short Formations;</u></p>	
		<p><u>"RSSB"</u></p>	<p><u>means Rail Safety and Standards Board Limited, a company registered in England with registered number 04655675 whose registered office is at The Helicon, 4th Floor, One South Place, London, EC2M 2RB;</u></p>	
		<p><u>"Short Formations"</u></p>	<p><u>means Passenger Services in any Reporting Period formed with fewer passenger vehicles than] specified in the Train Plan;</u></p>	
		<p><u>"Smart Media"</u></p>	<p><u>means any of the following which can be used as part of a Smart Ticketing Scheme:</u></p> <p>(a) <u>digital barcodes;</u></p> <p>(b) <u>a barcode printed on paper either by customers (e.g. at home, office) or by Franchise Operator staff at Stations or on board trains;</u></p> <p>(c) <u>ITSO Certified Smart Media;</u></p> <p>(d) <u>contactless payment media (cEMVs);</u></p> <p>(e) <u>Oyster (TfL's smartcard); and</u></p> <p>(f) <u>any of the above formats stored and presented on a portable electronic device;</u></p>	

		<p><u>"Smart Ticketing Scheme"</u></p>	<p><u>means a scheme that uses Smart Media that can be fulfilled electronically. It must:</u></p> <ul style="list-style-type: none"> (a) <u>either provide passengers with an electronic way of buying (including at home, on the move or at stations), receiving or collecting and using their ticket; or identify that a passenger has entered and left the rail network at particular stations, and deducts the cost of the journey from their debit/credit card, pre-pay account or other permissible funding mechanism;</u> (b) <u>evidence the purchase of a single or multiple Fare(s) for a passenger; and</u> (c) <u>provide management information that a journey is being/has been made to the relevant back office;</u> 	
		<p><u>"Target Cost" or "TC"</u></p>	<p><u>means, in relation to any PBF Assessment Period, the aggregate of all forecast Costs falling within the relevant PBF Assessment Period (excluding any Capital Expenditure, forecast Non-Recoverable Costs or forecast Disallowable Costs) set out in the profit and loss accounts included in the most recent Quarterly Financial Information provided prior to the commencement of the relevant PBF Assessment Period, expressed as a positive number;</u></p>	
		<p><u>"Target Cost Record of Assumptions"</u></p>	<p><u>means a record of assumptions setting out:</u></p> <ul style="list-style-type: none"> (a) <u>the non-trivial assumptions, methodologies and data sources used to prepare the Target Cost Template in sufficient detail to document a line-</u> 	

			<p><u>by-line understanding of the contents of the Target Cost Template;</u></p> <p>(b) <u>an explanation in relation to any deviations from preceding cost trends; and</u></p> <p>(c) <u>any updates to the Budget Supporting Materials;</u></p>	
		<p><u>"Target Profit" or "TP"</u></p>	<p><u>means, in relation to any PBF Assessment Period, the aggregate of:</u></p> <p>(a) <u>all items of Revenue set out in the profit and loss accounts included in the Quarterly Financial Information, expressed as a positive number; and</u></p> <p>(b) <u>all items of Cost (excluding any Capital Expenditure, forecast Non-Recoverable Costs or forecast Disallowable Costs) included in the Quarterly Financial Information, expressed as a negative number;</u></p>	
		<p><u>"Target Profit Record of Assumptions"</u></p>	<p><u>means a record of assumptions setting out:</u></p> <p>(a) <u>the non-trivial assumptions, methodologies and data sources used to prepare the Target Profit Template in sufficient detail to document a line-by-line understanding of the contents of the Target Profit Template;</u></p> <p>(b) <u>an explanation in relation to any deviations from preceding cost and/or revenue trends; and</u></p> <p>(c) <u>any updates to the Budget Supporting Materials;</u></p>	

		<p><u>"TOC Minutes Delay"</u></p>	<p><u>means the minutes of delay to the Passenger Services that are attributed to the Franchise Operator pursuant to the Track Access Agreement and disregarding any minutes of delay that are imputed to Passenger Services that were cancelled;</u></p>	
		<p><u>"T-3"</u></p>	<p><u>means the percentage of recorded station stops called at within three (3) minutes of the planned time relating to the Passenger Services as produced and/or published by Network Rail;</u></p>	
		<p><u>"T-15"</u></p>	<p><u>means the percentage of recorded station stops called at within fifteen (15) minutes of the planned time relating to the Passenger Services as produced and/or published by Network Rail;</u></p>	
		<p><u>"Workforce Diversity Data"</u></p>	<p><u>means data on the diversity of the Franchise Operator's workforce including statistics showing:</u></p> <p>(a) <u>the gender, race, disability, sexual orientation and working pattern breakdown for specified jobs, categories and levels;</u></p> <p><u>religion and gender reassignment across the whole workforce;</u></p> <p><u>the promotion of the Franchise Operator's workforce that fall into the following groups:</u></p> <p><u>_____ marriage and civil partnership; pregnancy and maternity; social mobility; and parental leave and caring responsibilities; and</u></p>	

		<p><u>such other data as the Secretary of State may notify the Franchise Operator in accordance with paragraph 51A.6.(b)(i);</u></p>	
		<p>The following new defined terms shall be inserted into clause 1.1 (in alphabetical order) and for each of these the definition shall be "<u>has the meaning given in paragraph 1A (Definitions) of Schedule 6.1A (Franchise Payments)</u>":</p> <p><u>"Accrued Claims"</u> <u>"Accrued Disallowable Costs"</u> <u>"Accrued Revenue Foregone"</u> <u>"Actual Capex"</u> <u>"Actual Costs"</u> <u>"Actual EMA Capex"</u> <u>"Actual EMA Costs"</u> <u>"Actual EMA Revenue"</u> <u>"Actual Revenue"</u> <u>"Aggregated Costs and Revenues Liabilities"</u> <u>"Annual Adjustment" or "AADJ"</u> <u>"Base Cash Position"</u> <u>"Budget"</u> <u>"Budgeted Capex"</u> <u>"Budgeted Costs"</u> <u>"Budgeted EMA Capex"</u> <u>"Budgeted EMA Costs"</u> <u>"Capital Expenditure"</u> <u>"Cash Balance"</u> <u>"Ceiling Cash Position"</u> <u>"Costs"</u> <u>Contingent SoS Claim</u> <u>"Disallowable Costs"</u> <u>"EMA Budget"</u> <u>"EMA Disallowable Costs"</u> <u>"EMA Emergency Working Capital Payments"</u></p>	

	<p><u>"EMA Estimated Revenue" or "EER"</u> <u>"EMA Final Adjustment"</u> <u>"EMA Final Reviewed Accounts"</u> <u>"EMA Finance Review Meeting"</u> <u>"EMA FWCA"</u> <u>"EMA Periodic Adjustment Payment"</u> <u>"EMA Revenue Foregone"</u> <u>"EMA SoS Claims"</u> <u>"EMA Working Capital Payments"</u> <u>"EMA Working Capital Repayments"</u> <u>"Emergency Working Capital Payment"</u> <u>"Estimated Capital Expenditure"</u> <u>"Estimated Costs"</u> <u>"Estimated Revenue"</u> <u>"EWCR"</u> <u>"Escalation Trigger Date"</u> <u>"Final Working Capital Adjustment" or "FWCA"</u> <u>"First Franchise Payment" or "FFP"</u> <u>"First Reporting Period"</u> <u>"Fixed Fee"</u> <u>"Fixed Fee and Performance Based Fee" or "FFPBF"</u> <u>"Floor Cash Position"</u> <u>"Forecast Closing Cash Position"</u> <u>"Franchise Payment Component"</u> <u>"Good and Efficient Operator"</u> <u>Initial SoS Claim Amount</u> <u>"Periodic Adjustment"</u> <u>"Periodic Budgeted Capex Payment" or "PBCP"</u> <u>"Periodic Franchise Payment" or "PFP"</u> <u>"Periodic Finance Review Meeting"</u> <u>"Quarter"</u> <u>"Quarterly Budget Forecast Review Meeting"</u> <u>"Reporting Period 13"</u></p>	
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	<p><u>"Residual Components"</u> <u>"Revenue"</u> <u>"Revenue Foregone"</u> <u>"SoS Claim"</u> <u>"Supporting Materials"</u> <u>"Unreimbursed Disallowable Costs"</u> <u>"Working Capital Payment"</u> <u>"Working Capital Repayment"</u> <u>"Working Capital Shortfall"</u></p> <p>The following new defined terms shall be inserted into clause 1.1 (in alphabetical order) and for each of these the definition shall be "<u>has the meaning given in paragraph 1 (Definitions) of Schedule 6.1B (Performance Based Fee)</u>":</p> <p><u>"Amendment Amount"</u> <u>"Amendable Financial Target"</u> <u>"Assumed Schedule of Contributions"</u> <u>"Audited Accounts Reconciliation"</u> <u>"Budget Supporting Materials"</u> <u>"Category A Target Amendment Trigger Event"</u> <u>"Category B Target Amendment Trigger Event"</u> <u>"Category C Target Amendment Trigger Event"</u> <u>"CB Components"</u> <u>"CE(NPS)"</u> <u>"CE(SC)"</u> <u>"Collaborative Behaviour Fee" or "CB"</u> <u>"Combined Scorecard/NPS Methodology"</u> <u>"Cost Target Methodology"</u> <u>"COVID-19 Guidance and Regulation"</u> <u>"Customer Experience Component"</u> <u>"ERMA Evidence Report"</u> <u>"Exceptional Event"</u> <u>"Final PBF Assessment Period"</u></p>	
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	<p><u>"Financial Performance Fee" or "FIN"</u></p> <p><u>"Financial Targets"</u></p> <p><u>"Franchise Performance Meeting"</u></p> <p><u>"Initial PBF Assessment Period"</u></p> <p><u>"Maximum Performance Based Fee" or "MPBF"</u></p> <p><u>"Network Rail Collaboration" or "NRC"</u></p> <p><u>"Notifying Party"</u></p> <p><u>"NPS Methodology"</u></p> <p><u>"NPS Target"</u></p> <p><u>"Other Collaboration" or "OC"</u></p> <p><u>"PBF Assessment Period Review"</u></p> <p><u>"PBF Assessment Period Review Checklist"</u></p> <p><u>"PBF Assessment Period Review Meeting"</u></p> <p><u>"PBF Assessment Period Scorecard"</u></p> <p><u>"PBF Component"</u></p> <p><u>"Performance Fee Target Amendment"</u></p> <p><u>"Primary Delay"</u></p> <p><u>"Profit Target Methodology"</u></p> <p><u>"Remedial Plan Notice"</u></p> <p><u>"Relevant Term"</u></p> <p><u>"Remedial Plan Period"</u></p> <p><u>"QTM Matters"</u></p> <p><u>"QTM PBF Components"</u></p> <p><u>"QTM Targets"</u></p> <p><u>"Quarterly Financial Information"</u></p> <p><u>"Reactionary Delay"</u></p> <p><u>"Relevant Threshold Amount"</u></p> <p><u>"Threshold Amount"</u></p> <p><u>"Revenue"</u></p> <p><u>"Scorecard Criterion"</u></p> <p><u>"Scorecard Methodology"</u></p> <p><u>"SoS Collaboration" or "SC"</u></p> <p><u>"Subsequent CE Methodologies"</u></p>	
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	<p> <u>"Subsequent FP Methodologies"</u> <u>"Subsequent PBF Assessment Period Notification"</u> <u>"Subsequent PBF Assessment Period"</u> <u>"Target Amendment Trigger Event"</u> <u>"Target Cost Cap" or "TCC"</u> <u>"Target Cost Floor" or "TCF"</u> <u>"Target Profit Cap" or "TPC"</u> <u>"Target Profit Floor" or "TPF"</u> <u>"Target Cost Template"</u> <u>"Target Profit Template"</u> <u>"WCB"</u> <u>"WCC"</u> <u>"WCE"</u> <u>"WCESC"</u> <u>"WFIN"</u> <u>"WNPS"</u> <u>"WOP"</u> <u>"WP"</u> <u>"WADD"</u> </p> <p> The following new defined terms shall be inserted into clause 1.1 (in alphabetical order) and for each of these the definition shall be "<u>has the meaning given in paragraph 1 (Definitions) of Schedule 6.1D (National Passenger Surveys)</u>": </p> <p> <u>"NPS Improvement Plan"</u> <u>"NPS Improvement Proposal"</u> <u>"NPS Measure"</u> <u>"Passengers' Council"</u> <u>"Passenger Survey Methodology"</u> </p> <p> The following new defined terms shall be inserted into clause 1.1 (in alphabetical order) and for each of these the definition shall be "<u>has the meaning given in paragraph 1 (Definitions) of Schedule 6.1E (Operational Performance)</u>": </p>	
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		<p><u>"Action Plan"</u> <u>"Cancellations Re-Calculation"</u> <u>"Draft Action Plan"</u> <u>"Initial Cancellations Calculation"</u> <u>"Initial TOC Minutes Delay Calculation"</u> <u>"Passenger Carrying Capacity"</u> <u>"Route-Specific Required Performance Improvement"</u> <u>"Service Recovery Plan"</u> <u>"TOC Minutes Delay Re-Calculation"</u> <u>"Undisputed Cancellation"</u> <u>"Undisputed Network Rail Cancellation"</u> <u>"Undisputed Network Rail Partial Cancellation"</u> <u>"Undisputed Partial Cancellation"</u></p>	
<p>The following definitions in clause 1.1 shall be amended as follows:</p>		<p>"Franchise Payment"</p>	<p><i>means a payment either by the Authority to the Franchise Operator or by the Franchise Operator to the Authority, as the case may be, which is determined, subject to adjustment in accordance with the other terms of this Franchise Agreement, in accordance with paragraph 1 of Part 2 of <u>paragraph 1 of Part 2 of</u> Schedule 6.1A;</i></p>
<p>"Reporting Period"</p>		<p><i>means a period of 28 days, provided that:</i></p> <p>(a) <i>the first such period during the Franchise Period shall exclude any days up to but excluding the Franchise Commencement Date;</i></p>	

			<p>(b) <i>the first and last such period in any Reporting Year may be varied by up to 7 days by notice from the Authority to the Franchise Operator;</i></p> <p>(c) <i>each such period shall start on the day following the last day of the preceding such period; and</i></p> <p>(d) <i>the last such period during the Franchise Period shall end on the expiry of the Franchise Period, <u>except for the purpose of giving effect to any provision which survives the end of the Franchise Period including those provisions in Schedule 6.1A (Franchise Payments) which anticipate Franchise Payments being made after the end of the Franchise Period;</u></i></p>	
		<p>Clause 1.2 shall be amended by deleting the word "and" from the end of clause (r), replacing the full stop at the end of clause (s) with "<u>: and</u>" and inserting the following new clause (t):</p> <p><u>"(t) a reference to a sum being calculated in accordance with Schedule 6 (including references to RPI having the meaning given in Schedule 6, or references to amounts or costs being varied or indexed as amounts or costs are indexed in Schedule 6) shall be interpreted as a reference to Schedule 6 in the form which applied immediately prior to the EMA Start Date."</u></p>		
2 – Conditions Precedent	N/A			
3 – Warranty	N/A			
PART II – OPERATION OF THE FRANCHISE				

4 – The Franchise Operator	N/A
5 – Passenger Service Requirement	<p>Clause 5.2(d) shall be amended as follows:</p> <p><i>"Without limiting Clause 5.1, the Franchise Operator shall use all reasonable endeavours to ensure that:</i></p> <ul style="list-style-type: none"> <li data-bbox="831 435 1955 491"><i>(i) its ability to comply with its obligations under Clause 5.1 at any time will not be affected; and</i> <li data-bbox="831 528 1995 647"><i>(ii) the passenger timetable of the Franchise Operator will not be required to be amended between any two consecutive Passenger Change Dates such that, if such amendment had been made in connection with the setting of the Timetable in effect on the preceding Passenger Change Date, would have resulted in non-compliance with Clause 5.1</i> <p><i>in either case, by virtue of any of the matters referred to in Clause 5.2(c). Unless otherwise expressly agreed by the Authority in advance, the Franchise Operator shall accordingly, whether requested by the Authority or not, <u>promptly notify the Authority under Clause 5.2(c) and the Franchise Operator agrees to co-operate with Railtrack and / or LUL in relation to such proposal, unless and until: (i) the Franchise Operator reasonably believes that the relevant proposal from Railtrack and / or LUL is likely to be materially detrimental to the interests of passengers on railway passenger services in Great Britain; or (ii) the Authority specifically instructs the Franchise Operator otherwise, in which case the Franchise Operator shall,</u> and subject always to Clause 5.2(f), exercise all relevant rights it may have under any relevant agreement (including any rights under the Railtrack Track Access Conditions or the LUL Track Access Conditions) to object and not to consent to <u>any such</u> act or omission, or proposed act or omission, of Railtrack, LUL or any relevant other person <u>(except, for the avoidance of doubt, the Authority)</u> which might result in it being unable to comply with its obligations under Clause 5.1, whether at the relevant time or in the future, or in its passenger timetable being so amended between two Passenger Change Dates. For the avoidance of doubt, the exercise of such rights may require the Franchise Operator to dispute any act or omission or proposed act or omission of Railtrack or LUL, to submit such dispute to any relevant dispute resolution arrangements or procedures and to appeal against any relevant award or determination under such arrangements or procedures, including to the Regulator."</i></p>

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

5.2A Timetable changes proposed by the Franchise Operator

- (a) The Franchise Operator agrees, subject to clause 5.2A(c), not to propose to Railtrack or LUL:
- (i) the addition to the Applicable Timetable of any railway passenger services which are not included in the Timetable;
 - (ii) the omission from the Applicable Timetable of any Passenger Services included in the Timetable; or
 - (iii) the rescheduling in the Applicable Timetable of any Passenger Services from their scheduling in the Timetable,
- without the Authority's prior consent.
- (b) The Franchise Operator shall submit to the Authority an amended Train Plan in respect of each Timetable change proposal.
- (c) Subject to clause 5.2A(g), if, in the opinion of the Franchise Operator (acting reasonably), it would not be reasonably practicable to obtain the Authority's consent prior to proposing any of the items referred to in clauses 5.2A(a)(i), (ii) or (iii) to Railtrack or LUL (as the case may be), the Franchise Operator shall be entitled to propose such items to Railtrack or LUL without the Authority's prior consent provided that the Franchise Operator shall inform the Authority of such proposals as soon as is reasonably practicable.
- (d) Subject to clause 5.2A(g), the Franchise Operator shall ensure that any proposals to Railtrack or LUL submitted pursuant to clauses 5.2A(a) or (c):
- (i) take full and proper account of the likely passenger demand (including a reasonable assessment of key workers) considering any known or anticipated impacts of COVID-19 (including without limitation any guidance published by Public Health England, and

	<p><u>any Legislation, direction or instruction issued by any relevant local, governmental or other competent authority in the United Kingdom from time to time);</u></p> <p><u>(ii) utilise an appropriate number of Franchise Employees to support the likely passenger demand (as determined having taking into consideration the matters referred to in paragraph (i)); and</u></p> <p><u>(iii) ensure that the train fleet is deployed in an optimal manner taking account of all relevant circumstances, including the latest available official guidance relating to social distancing.</u></p> <p><u>(e) The Franchise Operator shall use all reasonable endeavours to co-operate with other Train Operators in respect of the Franchise Operator's proposals to Railtrack or LUL pursuant to paragraphs 5.2A(a) and (c) or any emergency timetables proposed by other Train Operators to ensure that a reasonable pattern of railway passenger service is provided on the relevant route(s) to enable passengers to make Connections (particularly where low frequency railway passenger services are operated or first trains or last trains are involved, taking account of the likely fluctuations in passenger demand as a result of COVID-19 and the time needed to make any such Connection).</u></p> <p><u>(f) The Franchise Operator shall use reasonable endeavours to take into account the requirements of operators of rail freight services in respect of the Franchise Operator's proposals to Railtrack or LUL pursuant to clauses 5.2A(a) and (c).</u></p> <p><u>(g) The Franchise Operator acknowledges and agrees that the Authority may, at any time, direct that all or any part of clauses 5.2A(c) and/or (d) shall cease to apply. Any such direction by the Authority shall have effect from such date as may be reasonably specified by the Authority and, in such circumstances, the relevant parts of clause 5.2A(c) and/or (d) and, where applicable, any references to the provisions of those provisions shall be deemed to be deleted."</u></p> <p><u>5.2B Communicating Emergency Timetables</u></p> <p><u>(a) Subject to clause 5.2B(c) the Franchise Operator shall publish:</u></p>
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	<p><u>(i) any amendments to the Timetable made pursuant to paragraphs 5.2A or otherwise as soon as reasonably practicable:</u></p> <p><u>(A) at each Station, by displaying the relevant information on information displays;</u></p> <p><u>(B) at each other station at which any train calls as part of the Passenger Services, by providing to the operator of each such station the departure and arrival times of the Passenger Services that call at each such station and the principal Connections to any other transport services relevant to each such station in the same forms as are specified in paragraph (a);</u></p> <p><u>(C) on the Franchise Operator's website;</u></p> <p><u>(D) via the Franchise Operator's social media accounts (through which the Franchise Operator shall in any event publish any such amendments to the Timetable no later than 2 hours following agreement of such amendments); and</u></p> <p><u>(E) via any other direct means of communication with passengers available to the Franchise Operator including but not limited to email and/or text messaging services; and</u></p> <p><u>(ii) 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>(A) at each Station, by displaying the relevant information on information displays; and</u></p> <p><u>(B) on the Franchise Operator's website.</u></p> <p><u>(b) To the extent that this clause 5.2B requires the Franchise Operator to undertake activities that it would otherwise be obliged to perform pursuant to clause 7.1 or 7.2, and there are any discrepancies between the timescales or other requirements relating to such activities</u></p>
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	<p><u>between this clause 5.2B and clauses 7.1 or 7.2, the relevant requirements of this clause shall take precedence over those in clause 7.1 or 7.2 (as applicable).</u></p> <p><u>(c) The Authority may, at any time, direct that this clause 5.2B shall cease to apply and/or shall no longer take precedence over the timescales and/or the other requirements set out in clauses 7.1 or 7.2. Any such direction shall have effect from such date as may be reasonably specified by the Authority and, in such circumstances, the entirety of this clause 5.2B and any references to the provisions of this clause 5.2B shall be deemed to be deleted."</u></p> <p>Clause 5.3(b)(i) shall be amended by inserting a new clause (f) as follows:</p> <p><u>"(f) the impact, and emerging projections relating to the likely or potential impact, from time to time, of COVID-19 on the Franchise Operator's ability to provide the Passenger Services and/or the level of passenger demand or reasonably expected passenger demand for the Passenger Services;"</u></p> <p>The text in clause 5.3(f) shall be deleted and replaced with "<u>NOT USED</u>".</p> <p>Clause 5.4(c)(vi)(c) shall be amended by deleting the word "or" at the end; and clause 5.4(c)(vi)(d) shall be amended by adding the word "<u>or</u>" at the end.</p> <p>Clause 5.4(c)(vi) shall be amended by inserting a new clause 5.4(c)(vi)(e) as follows:</p> <p><u>"(e) for the duration of the ERMA, the occurrence and impact, whether direct or indirect, of COVID-19; and"</u></p> <p>Clause 5.4(c) shall be amended by inserting the following text at the end of the clause:</p> <p><u>"The definition of "Force Majeure Event" shall for the duration of the ERMA exclude the occurrence and impact, whether direct or indirect, of COVID-19."</u></p> <p>Clause 5.4 shall be amended by inserting the following new clause 5.4(e):</p>
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	<p><u>"(e) Notwithstanding any other provision of this Agreement, and without prejudice to the Parties' positions as to whether the Force Majeure provisions would otherwise be engaged, the Franchise Operator agrees that it shall not for the duration of the ERMA be entitled to further relief from obligations pursuant to the Force Majeure provisions as a direct or indirect impact of COVID-19."</u></p> <p>Clause 5.9(a)(iv) shall be amended as follows:</p> <p><u>"the Train Mileage of the Passenger Services so delegated or subcontracted does not exceed 5 per cent. of the aggregate scheduled Train Mileage of the Franchise Operator in any Reporting Period (provided that, if as a result of the impact of COVID-19 it is not reasonably practicable to obtain the prior written consent of the Authority to a higher percentage of the aggregate scheduled Train Mileage being delegated or subcontracted in advance of subcontracting or delegating the provision of such Passenger Services, the Franchise Operator may subcontract or delegate the provision of such Passenger Services provided that the Authority receives notification of, and has not objected to, any such subcontracting or delegation)."</u></p>
<p>6 – Provision of Capacity</p>	<p>Clause 6 shall be amended by inserting the following new clauses 6.12, 6.13 and 6.14:</p> <p><u>"6.12 The Train Fleet</u></p> <p><u>The Authority may request the Franchise Operator to:</u></p> <ul style="list-style-type: none"> (a) <u>change the composition of the train fleet during the term of the ERMA;</u> (b) <u>sub-let some of its train fleet to another Train Operator or to sub-lease a train fleet from another Train Operator;</u> (c) <u>procure modifications to the train fleet and to manage any such modification programme, subject to payment of the Franchise Operator's reasonable costs by the Authority or a relevant third party; and</u> (d) <u>work in collaboration with the Authority to identify and secure additional or replacement rolling stock vehicles during the term of the ERMA, in which case the Authority may</u>

	<p><u>require the Franchise Operator to set the specification for such rolling stock vehicles, subject to the Authority's prior written consent.</u></p> <p><u>6.13 Where the Authority requires the Franchise Operator to sub-let some of its train fleet to another Train Operator under the terms of clause 6.12, then the Franchise Operator shall:</u></p> <p><u>(a) provide the sub-lessee with access to any applicable maintenance and mileage records;</u></p> <p><u>(b) give the sub-lessee reasonable access to the relevant rolling stock vehicles prior to the handover of such rolling stock vehicles to assist with the relevant handover in relation to both operation and maintenance;</u></p> <p><u>(c) use reasonable endeavours to offer the sub-lessee "knowledge transfer" sessions (including technical and operation support) to enable recipient engineers and operational personnel to learn from informed peers;</u></p> <p><u>(d) provide the sub-lessee all relevant information in relation to property arrangements at any Depot relevant to the sub-leased rolling stock vehicles (a "Relevant Depot"), including any stabling arrangements; and</u></p> <p><u>(e) procure such access to each Relevant Depot as the sub-lessee may reasonably require.</u></p> <p><u>6.14 In clauses 6.12 and 6.13, references to the "train fleet" includes all Rolling Stock Units and Vehicles.</u></p>
7 – The Timetable	<p>Clause 7 shall be amended by inserting the following new clause 7.A before clause 7.1:</p> <p><u>"7.A The obligations in clauses 7.1 and 7.2 are subject to clause 5.2B."</u></p>
8 – Passengers	<p>The text in clause 8.4 (National Passenger Surveys) shall be deleted and replaced with "<u>NOT USED</u>".</p>
9 – Fares and Fare Schemes	<p>N/A</p>
10 – Stations and Depots	<p>N/A</p>

<p>11 – PSR/ASC Changes</p>	<p>N/A</p>
<p>12 – Industry Arrangements</p>	<p>Clause 12 shall be amended by inserting the following new clause 12.6A:</p> <p><u>"12.6A Cascaded Rolling Stock</u></p> <p><u>(a) Without limiting clause 12.6 (Rolling Stock Related Contracts):</u></p> <p><u>(I) each Rolling Stock Lease entered into on or after the ERMA Start Date must allow the Authority to make a direction under clause 12.6A(a)(II) below, including allowing Cascaded Rolling Stock to be sub-leased to the Prior Train Operator; and</u></p> <p><u>(II) if a Relevant Delay occurs, the Authority may in the Authority's sole discretion direct the Franchise Operator to make the Cascaded Rolling Stock available for use by the Prior Train Operator during such period as the Authority may require, and the Franchise Operator shall comply with such direction. Any such direction may include the Authority requiring the Franchise Operator to sublease the Cascaded Rolling Stock back to the Prior Train Operator and/or to delay the date on which the Cascaded Rolling Stock is required to be delivered to the Franchise Operator under such Rolling Stock Lease</u></p> <p><u>(b) In this clause 12.6A:</u></p> <p><u>(I) "Cascaded Rolling Stock" means rolling stock proposed to be used by the Franchise Operator in the provision of the Passenger Services the availability of which is, in the opinion of the Authority, directly or indirectly dependent upon the successful introduction into service of any Relevant Rolling Stock by any other Train Operator;</u></p> <p><u>(II) "Prior Train Operator" means the Train Operator which used or is using the Cascaded Rolling Stock immediately prior to its proposed use by the Franchise Operator;</u></p> <p><u>(III) "Relevant Delay" means any delay to the successful introduction into service of any Relevant Rolling Stock; and</u></p>

	<p><u>(IV) "Relevant Rolling Stock" means rolling stock to be acquired by another Train Operator which, when acquired, will initiate the "cascade" of rolling stock that directly or indirectly makes the Cascaded Rolling Stock available for use by the Franchise Operator."</u></p>
<p>13 – Pensions</p>	<p>Clause 13.5.4 shall be amended as follows:</p> <p><i>"If the Trustee does not certify under Clause 13.5.3 in relation to the Franchise Sections that the Franchise Operator has fully complied with its obligations under the Railways Pension Scheme or if the Authority otherwise reasonably considers that the Franchise Operator has not complied with such obligations, <u>then, without prejudice to the other duties and obligations of the Franchise Operator and to any other rights the Authority may have, it is acknowledged that the provisions in Schedule 6.1A (Franchise Payments) will operate to adjust the Franchise Payments payable under Schedule 6.1A (Franchise Payments) may withhold from any Franchise Payments payable by him under Part III – Financial Provisions – an amount which is, in his opinion, no greater than the amount to take account of any contribution or payment that the Franchise Operator has thereby failed to make or avoided making.</u>"</i></p> <p>The text in clause 13.5.5 shall be deleted and replaced with "<u>Not used</u>".</p> <p>New clauses 13.8, 13.9 and 13.10 shall be added as follows</p> <p><u>13.8. Franchise Operator obligations to participate in any Investigation and reform</u></p> <p><u>13.8.1 In this clause:</u></p> <p><u>(a) "Investigation" means any investigation, threatened use, or use of any statutory powers by the Pensions Regulator in relation to a section of the Railways Pension Scheme which has or had as its designated employer the Franchise Operator or another Train Operator (including a Successor Operator). For the avoidance of doubt, this includes any powers under section 231 of the Pensions Act 2004 or any other power which could affect the contributions</u></p>

	<p><u>payable by the employer or the liabilities of any other person in respect of that section; and</u></p> <p><u>(b) "Reasonable Commercial Manner" means:</u></p> <p><u>(i) acting in the long-term interests of the Franchise taking into account the long-term affordability, sustainability and financial robustness of the Franchise Section(s) as if the Franchise Operator and its employees (as appropriate) were solely responsible for the funding of the Franchise Section(s) and, at all times, disregarding the actual allocation of cost risk as between the Franchise Operator and the Authority in this Franchise Agreement;</u></p> <p><u>(ii) or (at the option of the Authority) acting in such other manner as the Authority directs.</u></p> <p><u>13.8.2 The Franchise Operator shall:</u></p> <p><u>(a) act in good faith and in a Reasonable Commercial Manner at all times; and</u></p> <p><u>(b) engage appropriately with the RDG, the Pensions Regulator and the relevant trade unions,</u></p> <p><u>in discharging its obligations under clause 13.8.3.</u></p> <p><u>13.8.3 The Franchise Operator shall take all reasonable steps to participate in:</u></p> <p><u>(a) the development and implementation of the RDG's response to the current and any future Investigation and the associated concerns raised by the Pensions Regulator regarding those sections of the Railways Pension Scheme for which a Train Operator is the designated employer;</u></p> <p><u>(b) any Investigation concerning one or more of the Franchise Sections, in which case the Franchise Operator shall use all reasonable endeavours to achieve an outcome from that Investigation with which a reasonable franchisee, who was in the position of the Franchise Operator and acting in a Reasonable Commercial Manner, would be satisfied; and</u></p>
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(c) any industry wide efforts to reform the pension arrangements or benefits payable under the Railways Pension Scheme or offered to employees of Train Operators, recognising the need for the British passenger rail industry to be affordable and offer value for money in the interests of relevant stakeholders including taxpayers.

13.9. Information Powers

Where required by the Authority, the Franchise Operator agrees to allow the Authority or the Authority's representatives to attend any meeting between the Franchise Operator and the Trustee and/or the Pensions Regulator where the meeting in whole or part relates to matters to which clause 13.8 or 13.10 applies.

13.10. Pension Directions by the Authority

13.10.1 The Authority may, at any time, by written notice to the Franchise Operator, direct that the Franchise Operator take such action in relation to pensions for employees and workers of the Franchise Operator as the Authority may in the Authority's sole discretion determine. The Authority may consult with the Franchise Operator before issuing any such direction under this paragraph. The Authority may issue more than one direction to the Franchise Operator under this clause.

13.10.2 Without limiting the generality of clause 13.10.1, such directions may include:

- (a) directing the Franchise Operator to propose a schedule of contributions or recovery plan to the Trustee of the Railways Pension Scheme incorporating such employer and employee contributions and over such period as the Authority may determine;
- (b) directing the Franchise Operator to offer such alternative pension arrangements to employees or workers of the Franchise Operator as the Authority may determine; and
- (c) directing the Franchise Operator to make proposals to the Trustee of the Railways Pension Scheme in relation to benefits, contributions or investments.

13.10.3 Where the Franchise Operator receives a direction under clause 13.10.1, the Franchise Operator will use all reasonable endeavours to implement the direction and to work in good

	<p><u>faith and act in a Reasonable Commercial Manner with other parties to give effect to the direction.</u></p> <p><u>13.10.4 To the extent that the terms of any direction given under clause 13.10.1 conflict with any of the other terms of this clause 13, the terms of the direction shall prevail to the extent of that inconsistency.</u></p> <p><u>13.10.5 The Franchise Operator will provide the Authority with any documents or information which it may reasonably request in connection with any matter which is relevant to the subject of any direction given under clause 13.10.1 or its implementation.</u></p> <p><u>13.10.6 Nothing in this clause 13.10 shall require the Franchise Operator to breach any legal obligation to which it is subject. Where the Franchise Operator reasonably considers that the implementation of any aspect of the direction will cause it to breach any legal obligation of the Franchise Operator the Authority shall work in co-operation with the Franchise Operator with a view to agreeing an approach to discuss changes to avoid or otherwise mitigate the risk of such breach.”</u></p>
<p>14 – Other Covenants</p>	<p>Clause 14.3 shall be amended by inserting the following new clause (g):</p> <p><u>"(g) The Parties acknowledge and agree that the Franchise Operator shall under no circumstances be entitled to reimbursement, pursuant to Schedule 6.1A (Franchise Payments) or otherwise, in respect of any additional costs or expenses incurred by the Franchise Operator in procuring any new Performance Bond where required to do so pursuant to clause 14.3(f)."</u></p> <p>Clause 14.4(g) shall be amended as follows:</p> <p><u>"(g) The Franchise Operator and the Authority may agree to increase or reduce the amount covered or required to be covered under a Season Ticket Bond from time to time, and the Authority may direct the Franchise Operator to amend the amount covered or required to be covered under a Season Ticket Bond when, in the Authority's sole discretion, the STBA calculated pursuant to clause 14.4(c) may not accurately represent the value of the Season Ticket suspense liabilities held by the Franchise Operator."</u></p>

<p>15 – Monitoring and Provision of Information</p>	<p>Schedule 6.1C (Management Information) attached at Appendix 3 shall apply in addition to the obligations in clause 15.</p> <p>Notwithstanding that, the Parties shall within thirty (30) Weekdays of the ERMA Start Date meet and consider, acting reasonably and in good faith, whether there is any unnecessary duplication between Schedule 6.1C (Management Information) and clause 15 and, where there is, to disapply the relevant obligation in clause 15.</p> <p>In the event the Parties are unable to agree on the approach to disapplying any relevant obligation in clause 15 within sixty (60) Weekdays of the ERMA Start Date, the Authority shall reasonably determine the approach.</p>
<p>PART III – FINANCIAL PROVISIONS</p>	
<p>16 – Franchise Payments</p>	<p>In clause 16.1 the references to "Schedule 6" shall be deleted and replaced with "Schedule 6.1A and (in respect of the Fixed Sum Payment and SRAOr as defined in paragraph 18.2 only) Schedule 6, Part 2 paragraphs 17 and 18".</p> <p>In clauses 16.2 the reference to "Schedule 6" shall be deleted and replaced with "Schedule 6.1A".</p> <p>The text in clause 16.A shall be deleted and replaced with "NOT USED".</p>
<p>17 – Incentive Payments</p>	<p>The text in clause 17 shall be deleted and replaced with "NOT USED".</p>
<p>18 – Financial Review</p>	<p>N/A</p>
<p>19 – Franchise Viability</p>	<p>N/A</p>
<p>PART IV – TERM AND TERMINATION</p>	
<p>20 – Franchise Term</p>	<p>Clause 20.1 shall be amended as follows:</p>

	<p><i>"Subject to Clauses 20.2 and 20.4, the Franchise Term shall expire at 2.00 a.m. on 31 December 2021 <u>or any such later date to which the Franchise Agreement is continued in accordance with clause 3.3 of the ERMA.</u> Subject to Clause 23 or any prior termination hereof, this Franchise Agreement shall terminate on the expiry of the Franchise Term."</i></p>
<p>21 – Events of Default</p>	<p>The text in clause 21.7 shall be deleted and replaced with.</p> <p><u>"21.7 Default Performance Levels</u></p> <p><u><i>The Franchise Operator's performance in relation to any Enforcement Benchmark is equal to or worse than the Default Performance Level for that Enforcement Benchmark for:</i></u></p> <p><u><i>(a) any three (3) consecutive Reporting Periods;</i></u></p> <p><u><i>(b) any four (4) Reporting Periods within a period of thirteen (13) consecutive Reporting Periods; or</i></u></p> <p><u><i>(c) any five (5) Reporting Periods within a period of twenty six (26) consecutive Reporting Periods."</i></u></p> <p>Notwithstanding that amendment, unless otherwise instructed by the Secretary of State, the text in clause 21.7 shall not apply during the term of the ERMA, provided that the Parties agree that clause 21.7 shall automatically apply if the Parties agree (or the Secretary of State determines, as applicable) that the Quantified Target Methodology shall apply to the Operational Performance Fee pursuant to and in accordance with the terms of Schedule 6.1B (<i>Performance Based Fee</i>).</p> <p>A new clause 21.7A shall be inserted as follows:</p> <p><u>"21.7A Non-compliance with Remedial Agreements</u></p> <p><u><i>Non-compliance by the Franchise Operator with a Remedial Agreement, where such non-compliance is reasonably considered by the Authority to be material."</i></u></p> <p>The text in clause 21.8(d) shall be deleted and replaced with "<u>NOT USED</u>".</p>

	<p>In clause 21.16 the words in brackets shall be amended as follows:</p> <p style="text-align: center;"><i>"(other than such non-performance or non-compliance as may constitute an Event of Default under Clauses 21.1 to 21.15 <u>(including, for the avoidance of doubt, clause 21.7A) and / or 21.17</u>)"</i></p> <p>A new clause 21.17 shall be inserted as follows:</p> <p style="text-align: center;"><u>"21.17 Aggregated Costs and Revenues Liabilities</u></p> <p style="text-align: center;"><i><u>The Franchise Operator's Aggregated Costs and Revenues Liabilities exceed the maximum value for Aggregated Costs and Revenues Liabilities as specified in paragraph 9.12 of Schedule 6.1A (Franchise Payments) to this Agreement."</u></i></p>
22 – Consequences of Events of Default	N/A
23 – Consequences of Termination	N/A
PART V – OBLIGATIONS ASSOCIATED WITH CHANGE OF FRANCHISE OPERATOR	
24 – Reletting of Franchise	N/A
25 – Maintenance of Franchise	<p>Clause 25.6 shall be deleted and replaced with:</p> <p style="text-align: center;"><i><u>"The Parties acknowledge and agree that any reference in this Part V, or elsewhere in this Franchise Agreement, to the "last twelve or thirteen months" of the Franchise Period (or "last 12 or 13 months", "last twelve months", "last 12 months", "last 13 months" or "last thirteen months"), shall be deemed to be replaced with a reference to the duration of the ERMA Term or, where applicable, the Extended Term."</u></i></p>
26 – Restrictions on Activities	N/A
27 – Key Contracts	N/A
28 – [Intentionally Not Used]	N/A

<p>29 – Franchise Employees</p>	<p>Clauses 29.1 and 29.2 shall be deleted and replaced with "Not used".</p> <p>Clause 29.3 shall be amended as follows:</p> <p><i>"Subject to and excluding any increase in the remuneration of Franchise Employees permitted under Clause 29.1, the Franchise Operator shall not, and shall secure that each other relevant employer shall not, without the prior consent of the Authority (which shall not be unreasonably withheld or delayed) increase or decrease in the last twelve months of the Franchise Period during the term of the ERMA the number of Franchise Employees either such that the total number of Franchise Employees or the total cost per annum to the Franchise Operator and each other relevant employer of employing all Franchise Employees is increased or such that the total number of Franchise Employees is decreased, in each case, by more than 5 per cent. During such compared to the previous period of twelve months."</i></p>
<p>30 – Fares</p>	<p>Clause 30.2(a) shall be amended as follows:</p> <p><i>"During the term of the ERMA or during the last thirteen months of the Franchise Period (whichever is the longer) the Franchise Operator shall not, without the consent of the Authority (not to be unreasonably withheld), set the Price or Child Price of, or sell (except to the extent required to do so under the terms of the Ticketing and Settlement Agreement as a result of the Price or Child Price, as the case may be, of a Fare being set by another person), any Fare which would entitle the purchaser thereof to travel on all or any of the Passenger Services after the term of the ERMA or after the Franchise Period (as applicable) for an amount which is less than the Price or the Child Price, as the case may be, of that Fare immediately before the ERMA Start Date or such thirteen month period (as applicable) or, in the case of a new Fare, the Price of its nearest equivalent immediately before the commencement of such period."</i></p> <p>Clause 30.2(b)(i) shall be amended as follows:</p> <p><i>"presenting a Discount Card (or any equivalent replacement thereof) issued by the Franchise Operator before the commencement of such period ERMA Start Date or such thirteen month period (or any equivalent replacement thereof) and to which the purchaser would have been entitled before the commencement of such period;"</i></p>

	<p>Clauses 30.3(a) and 30.3(b) shall be amended by inserting the words "during the term of the ERMA or," before the words "in the last thirteen months" and adding the words "(whichever is the longer)" after the words "in the last thirteen months".</p>
<p>31 – Inter-Operator Schemes</p>	<p>Clauses 31.1 shall be amended as follows:</p> <p><i>"Subject to Clause 31.2, during During the term of the ERMA last twelve months of the Franchise Period the Franchise Operator shall give the Authority reasonable notice of any meeting of a scheme council of an Inter-Operator Scheme on which the Franchise Operator is represented or a scheme management group of any Inter-Operator Scheme on which the Franchise Operator has a permanent position or employs a member and of the resolutions to be voted upon thereat and shall notify the Authority at the same time of its voting intentions- recommendations, together with its reasons. The Franchise Operator shall not without the consent of the Authority (not to be unreasonably withheld or delayed) cast its vote in favour of or against any resolution to be decided at any such meeting. Once consent has been given, the Franchise Operator shall vote in the manner so approved by the Authority- vote at any such meeting in the manner required by the Authority and present any documents or other information which the Authority may request at any such meeting."</i></p> <p>Clause 31.2 shall be deleted and replaced with "Not used".</p>
<p>32 – Franchise Assets</p>	<p>N/A</p>
<p>33 – Spares</p>	<p>N/A</p>
<p>34 – Intellectual Property</p>	<p>N/A</p>
<p>35 – Transfer of Primary Franchise Assets</p>	<p>Clause 35.5(b)(iv) shall be amended by deleting "." and inserting "; or".</p> <p>Clause 35.5 shall be amended by inserting the following new clauses 35.5(b)(v) and (vi) and additional un-numbered clause:</p> <p><i>"(v) any of the following amounts which (A) in respect of any Performance Period (as defined in paragraph 1 (Definitions) of schedule 6.A (Franchise Payments) to the Franchise Agreement</i></p>

	<p><u>as amended by the EMA), the Authority has not offset against MFPP in accordance with paragraph 11 (Management Fee and Performance Payment) of schedule 6.A (Franchise Payments) to the Franchise Agreement as amended by the EMA, (B) in respect of the relevant period (being the ERMA Term or, in relation to the Extended Term (if any) the relevant Franchise Operator Year), the Secretary of State has not offset against FFPBF in accordance with paragraph 15 (Fixed Fee and Performance Based Fee) of Schedule 6.1A (Franchise Payments):</u></p> <p><u>(a) EMA SoS Claims, SoS Claims, Disallowable Costs, Non-Recoverable Costs and Revenue Foregone;</u></p> <p><u>(b) any other sums which the Authority has the right in accordance with schedule 6.A (Franchise Payments) to the Franchise Agreement as amended by the EMA to offset against MFPP;</u></p> <p><u>(c) any other sums which the Authority has the right in accordance with Schedule 6.1A (Franchise Payments) to offset against FFPBF; and/or</u></p> <p><u>(vi) any amount of the Final Working Capital Adjustment not paid to the Authority in accordance with paragraph 10.4 of Schedule 6.1A (Franchise Payments),</u></p> <p><u>which, in the case of the amounts in (i) and (ii), are not otherwise recovered by the Authority."</u></p> <p>Clause 35 shall be amended by inserting the following new clause 35.6:</p> <p><u>"35.6 No reimbursement</u></p> <p><u>The Parties acknowledge and agree that the Franchise Operator shall under no circumstances be entitled to reimbursement, pursuant to Schedule 6.1A (Franchise Payments) or otherwise, of any losses, liabilities, costs or expenses incurred by the Franchise Operator arising out of or in connection with any lawful demand made by the Authority under the Performance Bond pursuant to clause 35.5."</u></p>
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36 – Associated Obligations on Termination	Clause 36.2 shall be amended by inserting the words " (or, in relation to the rolling stock vehicles, shall use all reasonable endeavours to procure that any sub-lessee shall authorise) " after the words "The Franchise Operator hereby authorises".
PART VI – GENERAL PROVISIONS	
37 – Compliance with Laws	N/A
38 – Exclusion of Liability	<p>Clause 38.3(a) shall be amended as follows:</p> <p><i>"This Franchise Agreement contains the entire agreement between the parties, except as amended, in relation to the subject matter of this Franchise Agreement and supersedes all prior agreements and arrangements other than such confidentiality agreements or undertakings as the Franchise Operator may have entered into in connection with its proposal to secure the provision of the Passenger Services under this Franchise Agreement."</i></p>
39 – Confidentiality	<p>Clause 39.3(a) shall be amended by:</p> <p>Amending the words in brackets to read as follows:</p> <p><i>"(for purposes including section 73 of the Act and whether to the press, the public or to one or more individuals, companies or other bodies, including to prospective Successor Operators)"</i></p> <p>And by inserting a new sub-clause (xvi) as follows:</p> <p><i>"(xvi) any information provided to the Authority pursuant to any provision of the Franchise Agreement including pursuant to a Request for Data where in the opinion of the Authority publication is appropriate for the purposes of properly carrying out its duties; and"</i></p> <p>Clause 39.4 shall be amended as follows:</p> <p><i>"Nothing in this Clause 39 shall be deemed to prohibit, prevent or hinder, or render the Authority liable for, the disclosure of any information by the Authority to the Regulator, the Parliamentary Commissioner for Administration, a Minister of the Crown or any department of the government of</i></p>

	<i>the United Kingdom or the Scottish Parliament, National Assembly of Wales, Mayor of London, Greater London Authority, any Devolved Transport Body or any department or officer of any of them or of information which is otherwise disclosed for the purpose of facilitating the carrying out of its functions."</i>
40 – Notices	N/A
41 – Assignment	N/A
42 – Delegation	N/A
43 – Settlement of Disputes	N/A
44 – Miscellaneous Provisions	N/A
45 – Governing Law	N/A
SCHEDULES	
Schedule 1 – Conditions Precedent and Other Documents	N/A
Schedule 2 – Franchise Services	The amendments to Part 4 are set out below.
Part 1 – Passenger Services	N/A
Part 2 – Station Services	N/A
Part 3 – Light Maintenance Services	N/A
Part 4 – Ancillary Services	Part 4 shall be amended as follows: "Part 4 — Ancillary Services

	<p>(a) <i>The selling, lending or hiring of any goods or rights and the provision of any services (whether for a charge or not) on any train used in the provision of the Passenger Services where such goods or services are sold or provided principally for consumption or use on the relevant train, including the sale of any Fares, meals, light refreshments, newspapers, magazines, books or phone cards.</i></p> <p>(b) <i>The provision of any service at any station served by the Passenger Services which, if provided on a train used in the provision of the Passenger Services, would fall within paragraph (a) of this Part 4 of Schedule 2, or which, if provided at a Station, would fall within Part 2 of Schedule 2 and which, in each case, is made available only or principally to persons at such stations who either are about to travel or have recently travelled on a train used by the Franchise Operator in the provision of the Passenger Services.</i></p> <p>(c) <i>In any Reporting Period, the subleasing, hiring or licensing of up to 15 per cent. of the rolling stock used by the Franchise Operator from time to time in the provision of the Passenger Services (such percentage to be determined by reference to the aggregate period of time for which such rolling stock is sub-let, hired or licensed and the aggregate period of time for which it is used in the provision of the Passenger Services). NOT USED.</i></p> <p>(d) <i>The lending, seconding, hiring or contracting out during any Reporting Period to another person or persons (whether for a charge or not) of:</i></p> <p style="padding-left: 20px;"><i>(i) — up to one per cent. of the number of employees of the Franchise Operator during such Reporting Period (or, if greater, on the Franchise Commencement Date) for over 90 per cent. of their normal working hours during such Reporting Period (including on a full-time basis); and</i></p> <p style="padding-left: 20px;"><i>(ii) — up to one per cent. of any other employees of the Franchise Operator during such Reporting Period (such percentage to be determined on the basis of the aggregate number of hours in such Reporting Period for which each employee is employed by the Franchise Operator (or, if greater, such aggregate number of hours in the first Reporting Period under this Franchise Agreement pro rata to the number of days in the relevant Reporting Period) and the aggregate number of hours in such Reporting Period for which any such employee is so lent, seconded, hired or contracted out)</i></p>
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	<p>(provided that no employee lent, seconded, hired or contracted out under any other paragraph of this Part 4 and, for the avoidance of doubt, no employee who is engaged in any other activity which is permitted under this Schedule 2 shall constitute an employee who is lent, seconded, hired or contracted out under this paragraph).</p> <p>For the purpose of Clause 26 of the Franchise Agreement, the Authority consents to the seconding of up to a further three per cent of the number of employees of the Franchise Operator during such Reporting Period subject to the following conditions:-</p> <p>(A) such employees are seconded to the Franchise Operator to undertake work in relation to:</p> <p>(i) bidding for; and/or</p> <p>(ii) carrying out of developments in respect of franchised passenger rail services included or intended to be included in one or more franchise agreements other than this Franchise Agreement;</p> <p>(B) the Authority shall be entitled, from time to time, to give notice to the Franchise Operator withdrawing such consent in whole or in part if, in the opinion of the Authority, some or all of such number of employees are reasonably required for the provision of the Franchise Services, in accordance with this Agreement; and</p> <p>(C) the activities referred to in sub-paragraph (A) are not included in the “Franchise Services” for the purpose of this Franchise Agreement, and accordingly:-</p> <p>(i) except to the extent that such employees are, at the expiry of the Franchise Period, engaged in the provision of the Franchise Services, the contract of employment and/or liabilities arising from a contract of employment or employment relationship in respect of any of such employees is not intended by the parties to transfer to a Successor Operator following the expiry of the Franchise Period by virtue of the operation of Law (including the Transfer of Undertakings (Protection of Employment) Regulations 1981 (as amended, replaced or substituted from time to time)); and</p> <p>(ii) except as aforesaid, if any such contract of employment or liability shall, notwithstanding (i) above, transfer to a Successor Operator, then such employees shall not be “Relevant</p>
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	<p><i>Employees” and shall be regarded as “Undisclosed Employees” for the purposes of the Supplemental Agreement, with the intention and effect that the Franchise Operator shall indemnify the Successor Operator in accordance with the Supplemental Agreement in respect of liabilities incurred by the Successor Operator in relation to such employees. The Authority shall be entitled to amend the Supplemental Agreement to the extent necessary to give effect to this sub-paragraph (C).</i></p> <p><i>The restrictions set out in this paragraph (d) or paragraph (bb) below shall not be applicable to employees of the Franchise Operator who are lent, seconded, hired or contracted out to the Franchise Operator provided that such employees remain exclusively engaged in the provision of such services as are necessary to enable the Franchise Operator to perform its obligations under this Franchise Agreement.</i></p> <p>(e) <i>The heavy maintenance of rolling stock and other railway vehicles on behalf of any other person at the following light maintenance depots:</i></p> <p><i>Aylesbury Maintenance Depot</i></p> <p><i>subject to the number of persons engaged or employed in such activity in relation to rolling stock and other railway vehicles which are not operated by the Franchise Operator not exceeding by more than 10 per cent. the numbers so engaged or employed on the Previous Franchise Commencement Date. <u>NOT USED.</u></i></p> <p>(f) <i>The selling at any location of any Fare which is valid, in whole or in part, on the Passenger Services and the selling of any other Fare at any location where such Fares may be purchased from the Franchise Operator on or before the date of signature of this Franchise Agreement or at any new location provided that the majority of Fares sold at any such new location shall be Fares which are valid, in whole or in part, on the Passenger Services.</i></p> <p>(g) <i>The selling, in conjunction with any Fare, of any other rights which entitle the purchaser thereof to:</i></p> <ul style="list-style-type: none"> (iii) <i>travel on any other train within Great Britain; or</i> (iv) <i>travel on any shipping or ferry service within or from within Great Britain; or</i>
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	<ul style="list-style-type: none"> (v) <i>travel on any train whose journey commences or ends within the European Union; or</i> (vi) <i>travel on any bus whose journey commences or ends at, or at a location reasonably proximate to, a station served by the Passenger Services;</i> (vii) <i>attend any event or attraction or enter any location which is situated reasonably proximate to the end of an intended journey by train within Great Britain.</i> <p>(h) <i>The lending, seconding, hiring or contracting out of employees of the Franchise Operator to other train operators in order to enable such persons to provide services at the Stations to passengers travelling on their trains.</i></p> <p>(i) <i>The provision of telephone information relating to railway passenger services within Great Britain to passengers.</i></p> <p>(j) <i>The supervision, management and training of train crew of other train operators provided such activity is necessarily incidental to the provision of the Passenger Services and could not reasonably be carried out by or through an Affiliate of the Franchise Operator.</i></p> <p>(k) <i>The subleasing, hiring, licensing, lending, selling of any rolling stock or other assets of the Franchise Operator or the lending, hiring or contracting out of any employees of the Franchise Operator or the provision of any other services to Railtrack or any other train operator on an emergency basis. NOT USED</i></p> <p>(l) <i>The licensing or permitting of any other person (including Affiliates of the Franchise Operator) to carry out any activity or business, in connection with the provision of the Franchise Services or otherwise, on any train operated by the Franchise Operator, at any station served by the Passenger Services, at any Depot or otherwise (including the letting, leasing or licensing (on an exclusive basis or otherwise) of any part or all of a Station or Depot to such other person).</i></p> <p>(m) <i>Such other activity or business as may be reasonably necessary for the purpose of providing the other Franchise Services specified in this Schedule 2 or complying with this Franchise Agreement provided that it could not reasonably be carried out by or through an Affiliate of the Franchise Operator.</i></p>
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	<p>(mm) <i>The On-Train Wi-Fi Services.</i></p> <p>(n) <i>The provision or operation of Charter Services, subject to the Train Mileage of such Charter Services not exceeding in any Reporting Period 2 per cent. of the scheduled Train Mileage of Passenger Services provided by the Franchise Operator in such Reporting Period.</i></p> <p>(o) <i>Any services or activity not falling within Parts 1 to 3 of this Schedule 2 or paragraphs (a) to (n) above, subject to the gross value of any such services or activity (excluding any attribution of costs) not exceeding £50,000 per annum each and in aggregate no more than £250,000 per annum in each Franchise Operator Year, provided that in the second and each subsequent Franchise Operator Year these amounts will be increased by RPI where RPI is the quotient of the Retail Prices Index for the month falling two months before the relevant Franchise Operator Year divided by the Retail Prices Index for the month falling two months before the first Franchise Operator Year.</i></p> <p><u><i>Subject to obtaining the Secretary of State's prior written consent (such consent not to be unreasonably withheld or delayed) save in respect of paragraph (dd), for which no such consent shall be required, the Franchise Operator may, and (to the extent required in order to best serve the needs of passengers on railway passenger services within Great Britain from time to time) shall use all reasonable endeavours to, carry out the following Ancillary Services:</i></u></p> <p><u><i>(aa) In any Reporting Period, the subleasing, hiring or licensing of the rolling stock used by the Franchise Operator from time to time in the provision of the Passenger Services.</i></u></p> <p><u><i>(bb) The lending, seconding, hiring or contracting out during any Reporting Period to another person or persons (whether for a charge or not) of employees of the Franchise Operator;</i></u></p> <p><u><i>(cc) The heavy maintenance of rolling stock and other railway vehicles on behalf of any other person at the following light maintenance depots:</i></u></p> <p><u><i>Aylesbury Maintenance Depot</i></u></p> <p><u><i>(dd) The subleasing, hiring, licensing, lending, selling of any rolling stock or other assets of the Franchise Operator or the lending, hiring or contracting out of any employees of the</i></u></p>
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	<u>Franchise Operator or the provision of any other services to Railtrack or any other train operator on an emergency basis.</u>
Schedule 3 – Passenger Services Requirement	N/A
Schedule 4 – Station Standards	N/A
Schedule 5 – Fares	<p>A new Part 5 shall be inserted as follows:</p> <p><u>"1. Fares, Ticketing and Retail Reform</u></p> <p><u>1.1 The Franchise Operator shall:</u></p> <p><u>(a) co-operate with the Authority as may be required from time to time in respect of the planning and/or development (as applicable) of industry reform with respect to Fares, ticketing and the retailing of tickets, including:</u></p> <p><u>(i) co-operating and collaborating with other Train Operators and rail industry parties and other organisations in respect of such reforms; and</u></p> <p><u>(ii) developing pilot schemes in respect of such reforms,</u></p> <p><u>in each case, as directed by the Authority; and</u></p> <p><u>(b) co-operate and collaborate with the RDG (as defined in Schedule 13.A), other Train Operators and other organisations as directed by the Authority to develop Modernising Retail proposals to accelerate and facilitate a transition to online and pay-as-you-go retailing of tickets and the changes to industry retail operations enabled by such changes, including the ultimate withdrawal of "magstripe" paper tickets; and</u></p> <p><u>(c) [REDACTED⁴]</u></p> <p><u>each a "FTR Co-operation Requirement".</u></p>

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

	<p><u>1.2 If requested by the Authority, the Franchise Operator shall also bring forward specific and suitable proposals to implement any plans and/or proposals developed pursuant to a FTR Co-operation Requirement (a "Proposed Reform Activity") which may be contracted pursuant to and in accordance with a variation under clause 44.1.</u></p> <p><u>1.3 When requested by the Authority, the Franchise Operator shall provide the Authority its assessment of:</u></p> <ul style="list-style-type: none"><u>(a) any capital investment required to implement a Proposed Reform Activity;</u><u>(b) the cost of implementing a Proposed Reform Activity;</u><u>(c) any revenue impact associated with or caused by implementing a Proposed Reform Activity;</u><u>(d) estimates of significant change to passenger demand and/or patterns of travel that could be caused by a Proposed Reform Activity; and</u><u>(e) any material change to the Franchise Operator's assessment of any of the matters outlined in paragraphs (a) to (d) above,</u> <p><u>in each case promptly and in any event within seven (7) Weekdays of having calculated the same (unless the Authority directs otherwise) and accompanied by all supporting evidence to substantiate each such calculation or change.</u></p> <p><u>1.4 The Franchise Operator shall:</u></p> <ul style="list-style-type: none"><u>(a) continue undertaking any reform work related to a FTR Co-operation Requirement or other reform work requested or directed by the Authority prior to the ERMA Start Date in accordance with any programme schedule agreed between the Franchise Operator and the Authority (or in the absence of any such schedule, within such timescales as the Authority may direct); and</u><u>(b) commence undertaking and continue to undertake any FTR Co-operation Requirement requested or directed by the Authority after the ERMA Start Date promptly and in any event in accordance with any schedule agreed between the Franchise Operator and the Authority (or in the absence of any such schedule, within such timescales as the Authority may direct).</u>
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	<p><u>1.5 The Franchise Operator shall use all reasonable endeavours to:</u></p> <p><u>(a) bring forward new proposals for implementing; and/or</u></p> <p><u>(b) introduce and implement,</u></p> <p><u>such amendments to the Ticketing and Settlement Agreement, the Pay As You Go Agreement, the CPAY Agreement and any other applicable industry agreements (including any successor arrangements or any other agreement between the Franchise Operator and one or more other Train Operators, rail industry parties and other relevant organisations (including Transport for London) relating to ticketing, fares, fares settlement, the operation of discount schemes or any related matter) as may be directed by the Authority from time to time.</u></p> <p><u>1.6 During the term of the ERMA, the Franchise Operator shall not enter into any new arrangements or material amendments to existing arrangements for the delivery of Fares, ticketing or the retailing of tickets without the prior written consent of the Authority.</u></p> <p><u>1.7 The Franchise Operator shall promptly (and in any event within any timeframes specified by the Authority) provide to the Authority such information and data in relation to Fares, ticketing and the retail of tickets as the Authority may require from time to time.</u></p> <p><u>2. Further provision on Smart Ticketing</u></p> <p><u>2.1 The Franchise Operator shall ensure that all Weekly Season Tickets, Monthly Season Tickets and Annual Season Tickets which are ordered through the Franchise Operator's online retail channels or at ticket offices are, as the default option offered to the customer on Smart Media."</u></p>
<p>Schedule 6 – Franchise Payments</p>	<p>Schedule 6 shall be deleted, with the exception of paragraphs 17 and 18 which shall continue to apply in respect of the Fixed Sum Payment and SRAOr (as defined in paragraph 18.2).</p> <p>Appendix 4 (Schedule 6.1A (Franchise Payments)) to this Schedule 1 to the ERMA shall be inserted as a new Schedule 6.1A (Franchise Payments) to the Franchise Agreement.</p>

	<p>Appendix 5 (Schedule 6.1B (Performance Based Fee)) to this Schedule 1 to the ERMA shall be inserted as a new Schedule 6.1B (Performance Based Fee) to the Franchise Agreement.</p>		
	<p>Appendix 6 (Schedule 6.1C (Management Information)) to this Schedule 1 to the ERMA shall be inserted as a new Schedule 6.1C (Management Information) to the Franchise Agreement.</p>		
	<p>Appendix 7 (Schedule 6.1D (National Passenger Surveys)) to this Schedule 1 to the ERMA shall be inserted as a new Schedule 6.1D (National Passenger Surveys) to the Franchise Agreement.</p> <p>Notwithstanding that insertion, unless otherwise instructed by the Secretary of State, paragraphs 2.3, 2.5, 2.6, 3, 4 and 5 of Schedule 6.1D (National Passenger Surveys) shall not apply during the term of the ERMA.</p>		
	<p>Appendix 3 (Schedule 6.1E (Operational Performance)) to this Schedule 1 to the ERMA shall be inserted as a new Schedule 6.1E (Operational Performance) to the Franchise Agreement.</p> <p>Notwithstanding that insertion, unless otherwise instructed by the Secretary of State, Schedule 6.1E (Operational Performance) shall not apply during the term of the ERMA.</p> <p>Where Schedule 6.1E (Operational Performance) applies, the definition of "Cancellation" in clause 1.1 shall be amended to read as follows:</p> <table border="1" data-bbox="819 954 1939 1283"> <tr> <td data-bbox="819 954 1312 1283"> <p><u>"Cancellation"</u></p> </td> <td data-bbox="1312 954 1939 1283"> <p><u>means a Passenger Service which is included in the Enforcement Timetable and which:</u></p> <p>(a) <u>is cancelled for reasons attributed to the Franchise Operator pursuant to its Track Access Agreement; or</u></p> <p>(b) <u>operates less than fifty per cent (50%) of its scheduled mileage (as prescribed in the Enforcement Timetable) for reasons attributed</u></p> </td> </tr> </table>	<p><u>"Cancellation"</u></p>	<p><u>means a Passenger Service which is included in the Enforcement Timetable and which:</u></p> <p>(a) <u>is cancelled for reasons attributed to the Franchise Operator pursuant to its Track Access Agreement; or</u></p> <p>(b) <u>operates less than fifty per cent (50%) of its scheduled mileage (as prescribed in the Enforcement Timetable) for reasons attributed</u></p>
<p><u>"Cancellation"</u></p>	<p><u>means a Passenger Service which is included in the Enforcement Timetable and which:</u></p> <p>(a) <u>is cancelled for reasons attributed to the Franchise Operator pursuant to its Track Access Agreement; or</u></p> <p>(b) <u>operates less than fifty per cent (50%) of its scheduled mileage (as prescribed in the Enforcement Timetable) for reasons attributed</u></p>		

			to the Franchise Operator pursuant to its Track Access Agreement;
Schedule 7 – Incentive Regime	Unless otherwise instructed by the Authority, Schedule 7 shall not apply for the duration of the ERMA.		
Schedule 8 – Franchise Records	Part 3 (Operational Information) shall be deleted.		
Schedule 9 – Change Assessment Procedures and Accounting	Unless otherwise instructed by the Authority, Schedule 9 shall not apply for the duration of the ERMA.		
Schedule 10 – Financial Covenants	The amendments to Parts 1 and 2 are set out below.		
Part 1 – Liquidity Maintenance	The text in paragraphs 2.1 and 2.5 shall be deleted and replaced with " NOT USED ".		
Part 2 – Other Obligations	Paragraph 1 shall be amended by inserting the following new paragraph (vii): "(vii) borrow any sum, or enter into any loan or lending agreement for the purpose of borrowing from any person;"		
Schedule 11 – Franchise Assets and Key Contracts	N/A		
Schedule 12 – Handover Packages	N/A		
Schedule 13 – Franchise Plan	New paragraphs 6A to 6K shall be inserted as follows: "6A Licence Accessibility Obligations 6A.1 Subject to paragraph 6A.3 below, it is acknowledged that the Franchise Operator is subject to obligations regarding accessibility under the terms of its Licences (including under the		

	<p><u>form of its Accessible Travel Policy as approved from time to time by the ORR in connection with the requirements of its Licences) (the "Licence Accessibility Obligations").</u></p> <p><u>6A.2 Where any matter included in this Schedule 13 is the subject of a Licence Accessibility Obligation, it is agreed that compliance with the Licence Accessibility Obligation shall take precedence over this Schedule 13 such that compliance with the Licence Accessibility Obligation shall be deemed to fulfil the obligation of the Franchise Operator in respect of that matter under this Schedule 13 and any failure by the Franchise Operator in respect of that matter shall be addressed under that Licence and not under this Franchise Agreement.</u></p> <p><u>6B. Specific Additional Obligations relating to Persons with Disabilities</u></p> <p><u>6B.1 To the extent the Franchise Operator did so prior to the ERMA Start Date, it shall continue to implement procedures necessary to:</u></p> <p><u>(a) record the making of reservations for seating accommodation and for spaces for wheelchairs for and/or the provision of assistance to, persons with disabilities which are made through the passenger assistance service provided by train operating companies and referred to by the ORR as "Passenger Assist" ("Passenger Assistance") (or whatever service may replace it from time to time for the purposes of ORR's most recent guidance on the Accessible Travel Policies);</u></p> <p><u>(b) record whether such seating accommodation and/or assistance is actually provided, whether there has been a delay in providing such assistance at either departing, arrival or any interchange stations, and whether the journeys planned using Passenger Assistance have been completed successfully (e.g. by surveying a representative sample of users); and</u></p> <p><u>(c) provide the results of such records to the Authority, and publish a summary of the data on the relevant section of the Franchise Operator's website.</u></p> <p><u>6B.2 By no later than 30 November 2020, the Franchise Operator shall notify the Authority of:</u></p> <p><u>a) the extent to which it recorded the matters described in paragraphs 6B.1(a) and 6B.1(b) above (collectively referred to as the "Seating and Assistance Provisions"), as at the date of the notification; and</u></p>
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	<p><u>b) if and to the extent to which it did not previously record the Seating and Assistance Provisions, its assessment of the costs, practicalities and timescales involved in putting in place the necessary systems and processes to enable them to do so.</u></p> <p><u>6B.3 Following the notifications referred to in paragraph 6B.2:</u></p> <p><u>(a) if the Franchise Operator already records the Seating and Assistance Provisions, it shall continue to do so and shall provide the results of such records to the Authority, and publish a summary of the data on the relevant section of the Franchise Operator's website; and</u></p> <p><u>(b) if the Franchise Operator does not record the Seating and Assistance Provisions, then the Authority may require them to establish and implement the necessary systems and processes by such date as the Authority may reasonably specify (having regard to any assessment provided by the Franchise Operator pursuant to paragraph 6B.1 above), and with effect from such date, it shall record Seating and Assistance Provisions and shall provide the results of such records to the Authority and publish a summary of the data on the relevant section of the Franchise Operator's website.</u></p> <p><u>6B.4 The Franchise Operator shall promptly send to the Authority a copy of:</u></p> <p><u>(a) each set of results of the surveys of Passenger Assistance users that the Franchise Operator undertakes pursuant to its Accessible Travel Policy; and</u></p> <p><u>(b) any reports that the Franchise Operator submits to ORR in connection with the effectiveness of, and satisfaction with, the Passenger Assistance service.</u></p> <p><u>6B.5 The Franchise Operator shall comply with the requirements set out in paragraph 6C of this Schedule 13 in respect of the provision of accessible transport arrangements for persons with disabilities.</u></p> <p><u>6C. Accessible Transport Arrangements</u></p> <p><u>6C.1 References in this paragraph 6C to passengers are references to passengers with disabilities who are wheelchair users or otherwise severely mobility impaired.</u></p> <p><u>6C.2. Subject to paragraph 6C.4, where:</u></p>
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	<p><u>(a) a passenger wants to travel on a Passenger Service; and</u></p> <p><u>(b) the design of the station at which the passenger's journey on such Passenger Service is to start (the "Departure Station") or finish (the "Destination Station") prevents the passenger from using that station to access or disembark from that Passenger Service.</u></p> <p><u>the Franchise Operator shall provide accessible transport arrangements for that passenger in accordance with paragraph 6C.3.</u></p> <p><u>6C.3. The Franchise Operator shall provide accessible transport arrangements for the passenger referred to in paragraph 6C.2:</u></p> <p><u>(a) from the Departure Station to the next station at which the Passenger Service is scheduled to call and at which it is possible for the passenger to access that Passenger Service;</u></p> <p><u>(b) to the Destination Station, from the station closest to such station at which the Passenger Service is scheduled to call and which it is possible for the passenger to use to disembark from that Passenger Service; and/or</u></p> <p><u>(b) to or from such other station as the Franchise Operator may, having regard to the journey and the needs of the passenger, agree,</u></p> <p><u>and, in any case, at no cost additional to the price of the Fare which would otherwise be payable for the passenger's rail journey.</u></p> <p><u>6C.4. The Franchise Operator's obligations under this paragraph 6C are subject to:</u></p> <p><u>(a) reasonable prior notice of the passenger's requirement for accessible transport arrangements; and</u></p> <p><u>(b) the availability of suitable accessible transport arrangements (provided that the Franchise Operator has used all reasonable endeavours to ensure that it has arrangements in place to meet requirements for the provision of such accessible transport arrangements).</u></p> <p><u>6D. Annual Accessibility Update</u></p>
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	<p><u>6D.1</u> <i>The parties acknowledge that the Franchise Operator, pursuant to its Licence Accessibility Obligations (as defined in paragraph 6A of this Schedule 13), is required to submit reports from time to time to ORR in respect of accessibility matters, including, in relation to:</i></p> <p><i>(a) the activities undertaken by the Franchise Operator to improve accessibility to the Franchise Services; and</i></p> <p><i>(b) the approach that the Franchise Operator has taken to assessing the accessibility requirements of passengers pursuant to the requirements of the EA for example when making decisions about operations, design and service improvements; and</i></p> <p><i>(c) the action(s) taken by the Franchise Operator to remedy any failure (whether identified by the Franchise Operator or ORR) to comply with the Franchise Operator's Accessible Travel Policy or any other accessibility related obligation arising by pursuant to its Licence Accessibility Obligations.</i></p> <p><u>6D.2</u> <i>The Franchise Operator shall provide a copy of any report submitted to ORR pursuant to paragraph 6D.1 to the Authority within seven (7) days of it being submitted to ORR".</i></p> <p><u>6E. Accessibility Director and Accessibility Manager</u></p> <p><u>6E.1</u> <i>As soon as reasonably practicable and by no later than 31 January 2021, the Franchise Operator shall nominate (to the extent that the Franchise Operator has not already done so):</i></p> <p><i>(a) a director to the board of directors of the Franchise Operator; and</i></p> <p><i>(b) an operational manager,</i></p> <p><i>each with specific responsibility of ensuring the Franchise Operator complies with its obligations in connection with accessibility, including pursuant to its Accessible Travel Policy requirements.</i></p> <p><u>6E.2</u> <i>The Franchise Operator shall ensure that such roles referred to in paragraph 6E.1 are filled as soon as reasonably practicable after such roles become vacant throughout the Franchise Term.</i></p> <p><u>6F. Accessibility Panel</u></p>
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	<p><u>6F.1 The Franchise Operator shall:</u></p> <ul style="list-style-type: none"> <u>(a) consult the Accessibility Panel on operational and policy decisions that may have an impact on the needs of passengers with accessibility requirements;</u> <u>(b) develop the design of the Enhanced Disability Awareness Training referred to in paragraph 6G below, and the co-design of physical assets, electronic services and applications, and other services and facilities relating to accessibility as appropriate, in each case, actively engaging with the Accessibility Panel as may be appropriate; and</u> <u>(c) provide the Accessibility Panel the opportunity to report to the board of directors of the Franchise Operator on a quarterly basis.</u> <p><u>6G. Enhanced Disability Awareness Training</u></p> <p><u>6G.1 By no later than 31 July 2021 (or such later date as may be agreed by the Authority and the Franchise Operator) the Franchise Operator shall deliver Enhanced Disability Awareness Training to all Franchise Employees. The Franchise Operator shall also ensure it delivers the Enhanced Disability Awareness Training to any Franchise Employees appointed following 31 July 2021 (excluding Franchise Employees appointed less than two (2) months prior to the expiry of the Franchise Term (as extended pursuant to clause 3.3 of the ERMA, if applicable) if it is not reasonably practicable to deliver Enhanced Disability Awareness Training to such Franchise Employees) as soon as reasonably practicable after their appointment.</u></p> <p><u>6G.2 In developing the Enhanced Disability Awareness Training, the Franchise Operator shall:</u></p> <ul style="list-style-type: none"> <u>(a) take into account of a wide range of disabilities (including non-visible disabilities); and</u> <u>(b) ensure the content complies with the requirements of the ORR's Accessible Travel Policy guidance.</u> <p><u>6G.3 The Franchise Operator shall involve people with disabilities and/or groups representing people with disabilities (which may include the Accessibility Panel) in the delivery of the Enhanced Disability Awareness Training.</u></p>
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	<p><u>6H. Social Media Engagement with Passengers with Disabilities</u></p> <p><u>6H.1 By no later than 31 January 2021, the Franchise Operator shall develop and share with the Authority a twelve (12) month plan describing how it shall (or if the Franchise Term expires earlier than 20 January 2022, its Successor Operator may) increase its use of social media for the purpose of:</u></p> <p><u>(a) advising passengers with disabilities on matters, including:</u></p> <p><u>(i) planned and/or unplanned disruptions to Passenger Services;</u></p> <p><u>(ii) changes to Passenger Services in operation; and</u></p> <p><u>(iii) rail replacement bus services;</u></p> <p><u>(b) responding to queries and questions from passengers with disabilities and in a timely manner;</u></p> <p><u>(c) receiving feedback and comments from passengers with disabilities; and</u></p> <p><u>(d) promoting the Franchise Operator's additional services for passengers with disabilities, including Passenger Assistance.</u></p> <p><u>6H.2 Subject to the Authority's consent to the plan shared pursuant to paragraph 6H.1 (such consent not unreasonably withheld or delayed), the Franchise Operator shall implement this plan (the "Social Media Plan").</u></p> <p><u>6H.3 By no later than one (1) month prior to the expiry of the Franchise Term, the Franchise Operator shall provide the Authority with a report detailing the extent to which the Social Media Plan is achieving the purposes referred to in paragraph 6H.1 and any proposed revisions to the Social Media Plan to help achieve those purposes.</u></p> <p><u>6H.4 Any revision to the Social Media Plan proposed by the Franchise Operator pursuant to paragraph 6H.3 shall be subject to the consent of the Authority before implementation (such consent not unreasonably withheld or delayed).</u></p> <p><u>6I. Accessible Formats of Passenger Facing Information</u></p> <p><u>6I.1 By no later than 31 January 2021, the Franchise Operator shall ensure (and continue to ensure throughout the Franchise Term) that, if and to the extent reasonably practicable,</u></p>
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passenger facing information (in whatever form or media) is presented or made available in a range of accessible formats, taking into account the requirements of Disabled People in relation to communication (such as passengers who use British Sign Language or "easy read").

6I.2 The parties acknowledge that:

(a) the ORR licensing regime requires the publication of certain documents (the "Relevant Documents") in accessible formats; and

(b) insofar as the obligation in paragraph 6I.1 above applies to the Relevant Documents, enforcement action is within the remit of the ORR and accordingly a failure to comply with paragraph 6I.1 in respect of the Relevant Documents shall not be treated as a contravention of the Franchise Agreement (but the Franchise Operator nevertheless acknowledges that it will remedy any such failure, as soon as practicable and in accordance with any directions as may be given by the ORR)".

6J. Diversity Impact Assessments

6J.1 The Franchise Operator shall, from the ERMA Start Date and throughout the Franchise Term, ensure that it conducts a diversity impact assessment on all projects that will or may affect the interests of persons with protected characteristics (as defined under the Equalities Act 2010) carried out by the Franchise Operator (except where in the reasonable opinion of the Franchise Operator, the project is sufficiently completed such that a diversity impact assessment is not reasonably expected to materially influence the outcome of the project, in which case the requirement to conduct a diversity impact assessment in respect of that particular project shall not apply). The Franchise Operator shall take such steps as it considers appropriate (acting reasonably) in light of the conclusions of the diversity impact assessment to ensure that issues affecting people with protected characteristics (as defined under the Equalities Act 2010) are properly addressed in compliance with applicable Laws".

6K. Station Accessibility Data Collection Plan

6K.1 The Franchise Operator shall comply with any reasonable request by the Authority in connection with the development and implementation of a station accessibility data collection plan which may include (but shall not be limited to):

	<p><u>(a) supporting the Authority in developing and designing the methodology for data collection;</u></p> <p><u>(b) completing questionnaires and/or using reasonable endeavours to procure that the relevant station Facility Owner completes the relevant questionnaire;</u></p> <p><u>(c) providing information in relation to Station accessibility and/or using reasonable endeavours to procure that the relevant station Facility Owner provides such information; and</u></p> <p><u>(d) providing access to Stations to facilitate accessibility data collection and/or using reasonable endeavours to procure that the relevant station Facility Owner provides such access.</u></p> <p><u>in each case, in a timely manner."</u></p>
	<p>New paragraph 49A shall be inserted as follows:</p> <p><u>"49A. Infrastructure Projects</u></p> <p><u>49A.1 For the purposes of this paragraph 49A, "Infrastructure Project" shall mean Oxford SPEED and such other projects as the Authority may designate as an Infrastructure Project from time to time.</u></p> <p><u>49A.2 The Franchise Operator shall from the ERMA Start Date until completion of each Infrastructure Project engage constructively with all relevant parties responsible for the delivery of such Infrastructure Project with the intention of assisting its timely, efficient and effective completion.</u></p> <p><u>49A.3 To the extent that any Infrastructure Project leads to the Franchise Operator having rights under railway industry procedures (including Network Change and Station Change) the Franchise Operator shall not act in a way designed to directly or indirectly prevent, prejudice or frustrate the delivery of such Infrastructure Project and the Franchise Operator shall not unreasonably raise any objection under any railway industry procedure (including Network Change or Station Change) and any reasonable objections shall be raised by the Franchise Operator in accordance with the relevant railway industry procedures. It is acknowledged that the Franchise Operator may make reasonable objections with a view</u></p>

	<p><u>to mitigating the impact of the Infrastructure Projects and their implementation on passengers and the Franchise Services, while recognising the need for the Infrastructure Projects to be able to be undertaken in a reasonable manner.</u></p> <p><u>49A.4 The Franchise Operator shall throughout the Franchise Term allocate such appropriate Franchise Employees and other relevant resource as is reasonably required for the purposes of complying with its obligations in relation to all of the Infrastructure Projects pursuant to both the Franchise Agreement and the Access Agreements to which it is a party.</u></p> <p><u>49A.5 The Franchise Operator shall provide within ten (10) Weekdays of the end of each Reporting Period a detailed report complying with the reasonable requirements of the Authority describing progress in relation to matters relating to each Infrastructure Project and identifying and quantifying so far as the Franchise Operator is reasonably able the emerging risk position in relation to each such Infrastructure Project as it affects passengers and the Franchise Services. The Franchise Operator shall provide such additional information as the Authority shall reasonably request and if requested by the Authority it shall develop such alternative and contingency plans as the Authority may reasonably require for the purpose of mitigating relevant risk and ensuring that the adverse impacts on passengers and the Franchise Services of any relevant risk arising is mitigated to the greatest extent reasonably practicable."</u></p>
	<p>New paragraph 51A shall be inserted as follows:</p> <p><u>"51A. Diversity and Inclusion</u></p> <p><u>51A.1 Diversity and Inclusion Strategy</u></p> <p><u>(a) Within 12 weeks after the ERMA Start Date, the Franchise Operator shall prepare a draft of its D&I Strategy and submit it to the Authority. The draft shall include details of:</u></p>

	<p><u>(i) the diversity and inclusion principles that the Franchise Operator maintains and/or will establish within its organisation, including but not limited to, in relation to recruitment practices, working environments and procedures</u></p> <p><u>(ii) the activities, policies and procedures that the Franchise Operator will employ (for example, including in relation to targeted recruitment policies, promotion of flexible working, mentoring programmes, school visits and annual staff diversity and inclusion surveys) that will demonstrate that it is an inclusive employer;</u></p> <p><u>(iii) how the Franchise Operator will evidence compliance with its diversity principles, policies and procedures against the Diversity KPIs (as defined in paragraph 51A.3);</u></p> <p><u>(iv) how it will achieve and/or maintain diversity accreditation in accordance with a Recognised Accreditation Scheme in accordance with paragraph 51A.2; and</u></p> <p><u>(v) how the Franchise Operator will comply with its Recruitment Objectives.</u></p> <p><u>(b) The Authority may provide comments on the draft D&I strategy to the Franchise Operator and the parties shall use all reasonable endeavours to agree the form of D&I Strategy within four (4) months of the date on which it was provided to the Authority pursuant to paragraph 51A.1(a).</u></p> <p><u>(c) If the Parties are unable to agree a D&I Strategy within the period set out in paragraph 51A.1(b) the Authority may reasonably determine the D&I Strategy.</u></p> <p><u>(d) The Authority may, from time to time, recommend such changes to the Approved D&I Strategy as it considers reasonable.</u></p> <p><u>(e) The Franchise Operator shall use all reasonable endeavours to implement and comply with the Approved D&I Strategy.</u></p> <p><u>(f) In respect of any new contract or arrangements it enters into with third parties during the Franchise Term, the Franchise Operator shall use all reasonable</u></p>
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endeavours to ensure it obliges its counterparty to comply with and implement suitable diversity and inclusion policies.

- (g) To the extent the Franchise Operator is entering into any material amendments to any existing contracts or arrangements with third parties, it shall use all reasonable endeavours to ensure that the contract or arrangement (as amended) does not materially adversely affect the Franchise Operator's ability to comply with its D&I Strategy.

51A.2 Diversity Accreditation

The Franchise Operator shall use all reasonable endeavours to attain and/or maintain at least one diversity accreditation from a Recognised Accreditation Scheme within such timeframe as may be set out in its D&I Strategy which shall comply with the timescales set by the relevant Recognised Accreditation Scheme or as otherwise agreed between the parties.

51A.3 Performance reporting

- (a) The Franchise Operator shall develop D&I Initiatives KPIs and D&I Characteristics KPIs (together, the "Diversity KPIs").
- (b) The Franchise Operator shall design its Diversity KPIs with a focus on such areas as the Authority may notify to it and in accordance with any guidance as the Authority may provide.
- (c) The Franchise Operator shall collect suitable data to evidence its performance against the Diversity KPIs of which it shall:
- (i) provide details on as part of the D&I Annual Report; and
 - (ii) make available, in an orderly fashion, to any Successor Operator.
- (d) The Franchise Operator shall submit a D&I Annual Report to the Authority on the D&I Annual Reporting Date.
- (e) The parties acknowledge and agree that the Franchise Operator's D&I Annual Report shall be provided substantially in the same form as the Authority may request and shall include:

- (i) evidence of the Franchise Operator's performance against, and impact of implementing, its D&I Strategy;
- (ii) evidence of the Franchise Operator's performance against the Diversity KPIs;
- (iii) evidence of the Franchise Operator working towards achieving and maintaining diversity accreditation in accordance with paragraph 51A.2;
- (iv) evidence of the Franchise Operator establishing diversity in its procurement process and using a diverse supply chain;
- (v) evidence of the Franchise Operator's performance against its Recruitment Objectives;
- (vi) a record of any other diversity data collected by the Franchise Operator in respect of its workforce; and
- (vii) such other information and data as the Authority may reasonably request at least three (3) months prior to the D&I Annual Reporting Date.

51A.4 Diversity and Inclusion Champion

- (a) As soon as reasonably practicable and by no later than 31 October 2020, the Franchise Operator shall (to the extent that the Franchise Operator has not already done so) nominate a board director of the Franchise Operator or a member of the senior executive team of the Franchise Operator to act as D&I Champion.
- (b) The Franchise Operator shall ensure that the D&I Champion role is filled as soon as reasonably practicable after such role becomes vacant throughout the term of this Franchise Agreement.

51A.5 Recruitment Targets and Objectives

- (a) The Franchise Operator shall set out suitable recruitment targets and associated timeframes from time to time in respect of all new recruits across all grades, jobs, positions and roles (the "Recruitment Targets") in its D&I Strategy which, amongst other things, shall include:

	<p><u>(i) gender equality targets, including a target of 50% female new recruits across all grades, jobs, positions and roles; and</u></p> <p><u>(ii) targets specifying the percentage of new recruits across all grades, jobs, positions and roles which will be ethnic minorities.</u></p> <p><u>(b) The Authority shall consider the proportionality of the Recruitment Targets by reference to:</u></p> <p><u>(i) the demographics of the workforce in each region as indicated by the most recent Labour Force Survey produced by the Office for National Statistics;</u></p> <p><u>(ii) the individual circumstances of the Franchise Operator; and</u></p> <p><u>(iii) any other information the Authority reasonably determines to be relevant.</u></p> <p><u>(c) The Franchise Operator shall provide to the Authority all evidence to allow the Authority to reasonably determine whether any Recruitment Target is proportionate, as reasonably requested by the Authority.</u></p> <p><u>(d) The Franchise Operator shall use all reasonable and lawful endeavours to:</u></p> <p><u>(i) be objective, transparent and fair in its recruitment processes;</u></p> <p><u>(ii) meet Recruitment Targets; and</u></p> <p><u>(iii) improve retention rates of underrepresented groups</u></p> <p><u>(together, the “Recruitment Objectives”).</u></p> <p><u>(e) The Franchise Operator shall report on its performance against its Recruitment Objectives as part of its D&I Annual Report, together with relevant supporting evidence. Such supporting evidence may include details of Franchise Operator policies and procedures such as: advertising across a variety of channels to reach a broad range of candidates; blind sifting applications; engaging in CV blind interviewing; engaging in outreach programmes; establishing a returners policy; and/or establishing mentoring schemes.</u></p>
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	<p><u>(f) The Authority shall review the Franchise Operator's performance against the Franchise Operator's Recruitment Objectives as part of the Franchise Operator's D&I Annual Report.</u></p> <p><u>(g) The Authority shall keep the Recruitment Targets under review and may adjust and/or suspend any Recruitment Target the Authority reasonably determines to no longer be proportionate.</u></p> <p><u>(h) Nothing in this paragraph 51A.5 is intended to impose or require any quota.</u></p> <p><u>51A.6 Data – collecting, monitoring and reporting</u></p> <p><u>(a) During the Franchise Term, the Franchise Operator shall monitor the diversity profile of its workforce and collect Workforce Diversity Data.</u></p> <p><u>(b) Within 6 weeks of the date of the ERMA, the Authority may notify the Franchise Operator of any further data requirements it may have, including:</u></p> <p style="padding-left: 40px;"><u>(i) any additions to the scope of the Workforce Diversity Data the Franchise Operator is required to monitor and collect;</u></p> <p style="padding-left: 40px;"><u>(ii) the frequency in which it shall be measured or collected; and</u></p> <p style="padding-left: 40px;"><u>(iii) the form in which the Franchise Operator is required to deliver this to the Authority via such data hub as the Authority may direct.</u></p> <p><u>(c) The Franchise Operator shall use reasonable endeavours to collect and submit this data in accordance with the Authority's data requirements.</u></p> <p><u>(d) The Franchise Operator acknowledges and agrees that the Authority may use any data provided to it by the Franchise Operator pursuant to this paragraph 51A for analytical and policy development purposes.</u></p> <p><u>(e) The Franchise Operator shall provide a summary report to the Authority of its Workforce Diversity Data by no later than the date which is six (6) months after date of the ERMA.</u></p>
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	<p><u>(f) The Franchise Operator shall provide a detailed report to the Authority of its Workforce Diversity Data by no later than the date which is twelve (12) months after the date of this ERMA and on each anniversary of this date thereafter.</u></p> <p><u>(g) The Franchise Operator shall organise the detailed report in accordance with the characteristics listed in the definition of Workforce Diversity Data.</u></p> <p><u>51A.7 Improvement and Remedial Plans</u></p> <p><u>(a) If and to the extent that the Authority considers that the Franchise Operator has not adequately:</u></p> <ul style="list-style-type: none"> <u>(i) delivered its D&I Strategy;</u> <u>(ii) achieved accreditation in accordance with its D&I Strategy or has otherwise lost its accreditation;</u> <u>(iii) used all reasonable and lawful endeavours to deliver against its Recruitment Objectives; or</u> <u>(iv) collected, monitored and reported on data pursuant to paragraph 51A.6, it may notify the Franchise Operator that it requires it to deliver a plan for how it will improve its performance in the relevant area (a “D&I Improvement Plan”) for its approval. The D&I Improvement Plan shall include the Franchise Operator’s proposed timeline for implementing any changes or actions.</u> <p><u>(b) If the parties cannot agree the D&I Improvement Plan within 20 Weekdays from the Authority’s notification pursuant to paragraph 51A.7(a), the Authority may impose such D&I Improvement Plan as it considers reasonable.</u></p> <p><u>(c) If the Franchise Operator fails to implement the D&I Improvement Plan, then the Authority may serve a Remedial Plan Notice on the Franchise Operator in accordance with paragraph 7 of Schedule 6.1B (Performance Based Fee).”</u></p> <p>A new paragraph 52A shall be inserted as follows:</p>
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	<p><u>"52A. European Train Control System</u></p> <p><u>52A.1 The Franchise Operator shall co-operate in good faith acting reasonably and with each of the Department for Transport, Network Rail, any relevant ROSCO and any other third party in connection with the development, implementation and operational introduction on the routes of any system which is intended to provide European Train Control System ("ETCS").</u></p> <p><u>52A.2 In accordance with paragraph 52A.1, the Franchise Operator shall provide reasonable assistance to the Authority, Network Rail, any relevant ROSCO and any other relevant third party, which may, amongst other things, include:</u></p> <ul style="list-style-type: none"> <u>(i) providing advice to the Authority in respect of any ETCS proposals and plans;</u> <u>(ii) supporting planning activities alongside other key stakeholders;</u> <u>(iii) ensuring that suitable equipment is fitted to rolling stock;</u> <u>(iv) developing driver training programmes and procuring that drivers are suitably trained; and</u> <u>(v) other associated amendments or variations."</u> <p>Appendix 8 (Appendix 15 (D&I Strategy)) to this Schedule 1 to the ERMA shall be inserted as a new Appendix 15 (D&I Strategy) to Schedule 13 (Franchise Plan) to the Franchise Agreement.</p> <p>Appendix 2 (Schedule 13.A (ERMA Specific Obligations)) to this Schedule 1 to the ERMA shall be inserted as a new Schedule 13.A (ERMA Specific Obligations) to the Franchise Agreement.</p>
	<p>N/A</p>
<p>Schedule 15 – Targets and Performance Reviews</p>	<p>The amendments to Part 2 are set out below.</p>
<p>Part 1 – Definitions</p>	<p>N/A</p>

<p>Part 2 – Operation of Targets and Performance Review Provisions</p>	<p>Paragraph 2.2 shall be deleted and replaced with "<u>NOT USED</u>".</p> <p>Paragraph 3.2 shall be amended by deleting the word "or" at the end; and paragraph 3.1 shall be amended by adding the word "<u>or</u>" at the end.</p> <p>Paragraph 3.3 shall be deleted and replaced with "<u>NOT USED</u>".</p> <p>Paragraph 4.5 shall be deleted and replaced with "<u>NOT USED</u>".</p> <p>The Parties shall within thirty (30) Weekdays of the ERMA Start Date meet and consider, acting reasonably and in good faith, what amendments are required to Part 2 of Schedule 15 (and any related provisions of the Franchise Agreement) such that the Targets (as defined in Part 1 of Schedule 15) shall not apply for the duration of the ERMA to the extent that such Targets are superseded by anything in this ERMA (including the regime in Schedules 6.1B (Performance Based Fee), 6.1D (National Passenger Surveys) and 6.1E (Operational Performance) to the Franchise Agreement (Appendices 5, 7 and 3 to this Schedule 1 to the ERMA)).</p> <p>In the event the Parties are unable to agree on the approach to the Targets within sixty (60) Weekdays of the ERMA Start Date, the Authority shall reasonably determine the approach.</p>
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**Appendix 1 to Schedule 1
NOT USED**

**Appendix 2 to Schedule 1
Schedule 13.A (ERMA Specific Obligations)**

Schedule 13.A

ERMA Specific Obligations

Part 1 (<i>Cooperation</i>)	Paragraph 1: Development, Design and Implementation of Future Initiatives
	Paragraph 2: Incentive Regimes
	Paragraph 3: Improvement Initiatives
	Paragraph 4: NOT USED
	Paragraph 5: Integrated Control Centres Initiative
	Paragraph 5A: NOT USED
	Paragraph 6: Co-operation
	Paragraph 7: Operational Planning
	Paragraph 8: Infrastructure Projects
	Paragraph 9: Sharing Data with Network Rail
	Paragraph 10: Sharing on-train data with Network Rail
	Paragraph 11: Station Accessibility Data Collection
	Paragraph 12: Compensation
Paragraph 13: TD Academy	
Part 2 (<i>Pay and Industrial Relations and Dispute Handling</i>)	Paragraph 1: Notification of the Authority
	Paragraph 2: Reward and People Principles
	Paragraph 3: Terms of Employment
	Paragraph 4: In-Scope Matters
	Paragraph 5: Industrial Action
	Paragraph 6: Reform
	Paragraph 7: Duties of the Franchise Operator
	Paragraph 8: Cooperation
	Paragraph 9: Disallowable Costs
	Paragraph 10: Workers
Part 3 (<i>Miscellaneous</i>)	Paragraph 1: Digital Signalling
	Paragraph 2: Wavelength

PART 1 – CO-OPERATION**1. Development, Design and Implementation of Future Initiatives**

1.1 The Franchise Operator shall, at the request of the Authority, fully and effectively co-operate with the Authority in connection with the development, design, and implementation of future initiatives which, in the opinion of the Authority (acting reasonably) are likely to:

- (a) improve outcomes for passengers on any or all parts of the railway network;
 - (b) improve cost-efficiency and/or reduce costs in relation to any or all parts of the railway network;
 - (c) generate additional revenue for all or part of the railway network; or
 - (d) deliver any other benefits or support any government policy objective,
- (each a “**Future Initiative**”).

1.2 The Authority may from time to time (and at all times acting reasonably) issue a notice to the Franchise Operator specifying any assistance that the Authority requires from the Franchise Operator in relation to the development, design and/or implementation of a Future Initiative and the date by when any deliverable required pursuant to this paragraph 1.2 must be undertaken or delivered (a “**Future Initiative Notice**” or “**FIN**”). Without limiting the foregoing, a Future Initiative Notice may, but shall not be required to, request the Franchise Operator to, among other things:

- (a) prepare and submit to the Authority a proposal or proposals in relation to achieving any of the outcomes described in paragraphs 1.1(a) to 1.1(d) of this part 1 of this Schedule 13.A;
- (b) prepare and submit to the Authority an implementation plan and cost and revenue forecasts in relation to the relevant Future Initiative;
- (c) prepare and submit to the Authority any relevant data, reports, feasibility studies, business cases or other information that is held by the Franchise Operator or which the Franchise Operator can reasonably be expected to obtain (including any such documents or information prepared or procured pursuant to paragraph (d) of this part 1 of this Schedule 13.A);
- (d) identify, develop, design, assess and/or advise on options or proposals for delivering specified outputs or outcomes in connection with a Future Initiative, including undertaking or commissioning feasibility studies; developing implementation plans; analysing financial, operational, practical and other impacts and risks; developing business cases; reviewing and commenting on documents; and participating in meetings or other discussions; and

- (e) collaborate and co-operate with the Authority, Network Rail, other Train Operators, industry bodies and other relevant third parties to undertake any of the above activities jointly.
- 1.3 The Authority may (acting reasonably) issue to the Franchise Operator:
 - (a) any number of FINs in relation to a Future Initiative; and
 - (b) FINs in relation of any number of Future Initiatives at any given time.
- 1.4 The Authority may at any time, by proposing a variation in accordance with clause 44.1, request the Franchise Operator to develop, design and/or implement any changes to the Franchise Services or any provision of the Franchise Agreement in connection with a Future Initiative.
- 1.5 In consultation with the Authority, the Franchise Operator shall assign a Franchise Employee with appropriate seniority to oversee and facilitate the Franchise Operator's compliance with its obligations pursuant to this paragraph 1 (a "**Franchise Operator FI Contact**"). The Franchise Operator shall confirm the identity of such Franchise Operator FI Contact to the Authority by no later than as soon as reasonably practicable after the ERMA Start Date, and in any event by 16 October 2020
- 1.6 The Franchise Operator FI Contact shall act as the Franchise Operator's primary point of contact with the Authority in relation to all matters contemplated by this paragraph 1.
- 1.7 The Franchise Operator shall procure that the Franchise Operator FI Contact shall be supported from time to time by such other Franchise Operator Employees as shall be reasonably required to ensure the Franchise Operator's compliance with this paragraph 1.
- 1.8 This paragraph 1 is subject to the Authority's rights pursuant to clause 7 (*Additional Services*) of the ERMA.

2. **Incentive Regimes**

- 2.1 The Franchise Operator shall, as required by the Authority, fully and effectively co-operate with the Authority to design, develop and (as applicable) implement and provide to the Authority such data as the Authority may require in relation to potential new incentive regimes (which may be used in future contracts with Train Operators and/or may be introduced into the Franchise Agreement by means of a variation in accordance with clause 44.1, provided that no such new incentive regime may be introduced into the calculation of the Performance Based Fee pursuant to Schedule 6.1B (*Performance Based Fee*) without the prior written agreement of the Parties), including designing:
 - (a) new models for assessing customer satisfaction and sentiment;
 - (b) new measures of operational performance;
 - (c) alternative cost or other financial incentive mechanisms;

- (d) a new regime for assessing service quality standards delivered by the Franchise Operator; and/or
 - (e) a new regime for assessing the Franchise Operator's performance in relation to deterring and preventing ticketless travel.
- 2.2 The Franchise Operator's obligations pursuant to paragraph above may include:
- (a) developing, reviewing and/or commenting on proposals in relation to such new incentive regimes;
 - (b) providing advice on the feasibility, costs and other implications of any such proposals made by the Authority;
 - (c) attending meetings to discuss such proposals and any related matters; and
 - (d) supporting the Authority in preparing to implement such new incentive mechanisms, including by collecting and providing relevant data to the Authority in accordance with any requirements specified by the Authority from time to time.

3. Improvement Initiatives

3.1 In this paragraph 3:

"Franchise Operator Initiatives" means any Improvement Initiatives which are identified by the Franchise Operator and which relate specifically to the Franchise Services.

"Further Industry Initiatives" means any Improvement Initiatives (other than Specified Industry Initiatives) which are intended to secure improvements on a railway industry wide basis.

"Improvement Initiatives" means any measures or initiatives which may apply to any aspect of the railway industry which are intended to secure improvements in relation to passenger outcomes, cost-efficiency and/or environmental outcomes or otherwise support the achievement of government policy objectives, including any Franchise Operator Initiatives, Specified Industry Initiatives and Further Industry Initiatives.

"Specified Industry Initiatives" means such Improvement Initiatives which are intended to secure improvements on a railway industry wide basis as the Authority and/ or Network Rail may, from time to time, notify the Franchise Operator, which may include (but shall not be limited to) measures or initiatives in relation to:

- (a) improving level crossing safety and risk mitigation;
- (b) prevention of suicide, trespass and vandalism on the railway;
- (c) improving track worker safety;

- (d) promoting decarbonisation and other environmental improvements;
- (e) improving passenger information including during perturbation;
- (f) the reopening of disused or freight-only railway routes to passenger services;
- (g) Network Rail's long-term strategy and planning activities;
- (h) reforming the manner in which train service requirements are specified by funders and procurers;
- (i) the West Midlands Recovery Plan;
- (j) West Midlands Grand Rail Collaboration; and
- (k) planning of rail provision and infrastructure relating to the 2022 Commonwealth Games.

"West Midlands Rail Executive" or **"WMRE"** means West Midlands Rail Limited (No. 08991160) whose registered office is at 16 Summer Lane, Birmingham B19 3SD who are a partnership of local transport authorities that have plans to gain greater influence and control over local rail services, leading to the creation of a fully devolved West Midlands Rail Contract;

"West Midlands Recovery Plan" means collaboration with Network Rail, other Train Operators and other relevant stakeholders to improve performance and capacity allocation in the West Midlands area;

"WMGRC" means the West Midlands Grand Rail Collaboration, a partnership of Network Rail, train service operators and the West Midlands Rail Executive, providing collegiate responsibility for the delivery of rail services to customers in the West Midlands travel to work area, intended to enable operators to meet shared objectives and rigorous new standards on key issues.

3.2 Subject to paragraph 3.4, the Franchise Operator shall:

- (a) proactively identify, develop, assess the business case for and implement Franchise Operator Initiatives.
- (b) co-operate and collaborate with, any or all of, the Authority, Network Rail, Train Operators, freight operators, railway industry bodies and any other relevant third parties (as may be applicable), to jointly plan, develop and fully participate in the implementation of Specified Industry Initiatives; and
- (c) proactively co-operate and collaborate with, any or all of, the Authority, Network Rail, Train Operators, freight operators, railway industry bodies and any other relevant third parties (as may be applicable), to jointly identify, plan, develop and fully participate in the implementation of Further Industry Initiatives.

3.3 For the purposes of paragraphs 3.2(b) and 3.2(c), the Franchise Operator's obligation to co-operate and collaborate may require the Franchise Operator to use all reasonable endeavours to support the planning, development and

implementation of the relevant Improvement Initiative in a manner satisfactory to the Authority. In particular, this may require the Franchise Operator to:

- (a) provide advice to, or otherwise share its expertise with, the Authority or Network Rail, including inputting into the business case for the relevant Improvement Initiative;
- (b) collect, analyse, share and/or report on certain information and data as may be necessary to inform the relevant Improvement Initiative;
- (c) attend and participate in relevant meetings or workshops in relation to the relevant Improvement Initiative;
- (d) implement such actions as may be agreed with relevant stakeholders in respect of the relevant Improvement Initiative, unless such actions cannot reasonably be expected to be implemented by the Franchise Operator taking account of the resources available to it and what could reasonably be expected of a competent and efficient operator; and
- (e) collaborate with, and respond to requests from, relevant stakeholders in respect of the relevant Improvement Initiative, unless such collaboration or responses (as the case may be) cannot reasonably be expected of the Franchise Operator taking account of the resources available to it and what could reasonably be expected of a competent and efficient operator.

3.4 Notwithstanding any other provision of this paragraph 3, if the Franchise Operator reasonably considers that pursuing the implementation of any Improvement Initiative or otherwise actioning any requests in connection with the planning, development or implementation of any Improvement Initiative would, or is reasonably likely to, result in:

- (a) it incurring additional costs, over and above those a Good and Efficient Operator would incur; or
- (b) in the case of Specified Industry Initiatives or Further Industry Initiatives, it being required to increase its staffing resources,

it shall notify the Authority of the same and shall not proceed unless (i) the Authority so directs or gives consent for it to do so or (ii) such additional staffing resources or costs were contemplated when the Authority agreed or reasonably determined the Franchise Operator's most recent business plan and cost budget in accordance with the terms of Schedule 6.1A, and Schedule 6.1C. If the Authority directs or gives consent in relation to an Improvement Initiative pursuant to this paragraph 3.4, the Franchise Operator shall plan, develop or implement (as applicable) such Improvement Initiative in accordance with the Authority's instructions.

3.5 Any notice issued pursuant to paragraph 3.4 shall include:

- (a) details of the proposed Improvement Initiative;
- (b) the Franchise Operator's assessment of the wider benefits for passengers, the wider economy, the environment and others;

- (c) the Franchise Operator's assessment of any financial or other benefits to Network Rail or other industry parties; and
 - (d) the Franchise Operator's reasonable estimate of the associated cost or staffing requirements (as applicable).
- 3.6 From the ERMA Start Date and throughout the Franchise Term, the Franchise Operator shall be a member of the WMGRC and cooperate in good faith with the other members of the WMGRC in the development and implementation of initiatives relating to its participation.
- 3.7 The Franchise Operator shall, from the ERMA Start Date until (and including) the closing of the 2022 Commonwealth Games to be held in the West Midlands, fully and effectively co-operate and engage constructively with all relevant stakeholders responsible for the delivery of the 2022 Commonwealth Games with the intention of assisting in ensuring the delivery of the additional passenger services and/or capacity required to meet passenger demand in relation to the 2022 Commonwealth Games.

4. NOT USED

5. Integrated Control Centres Initiative

- 5.1 In this paragraph 5:

"Control Centres" means each integrated control centre, signalling centre, rail operating centre and other equivalent operational locations.

"Integrated Control Centres Implementation Plan" means a detailed plan jointly produced between the Franchise Operator, Network Rail and any other Train Operators setting out how and when they will implement the Integrated Control Centres Initiative.

"Integrated Control Centres Initiative" means measures and initiatives to improve performance outcomes between Network Rail and the Franchise Operator through collaboration, co-location and unified policies such that an integrated and cost-efficient approach to operations is adopted at specified Control Centres.

- 5.2 During the Franchise Term, the Franchise Operator shall, where required to do so in accordance with this Franchise Agreement or where requested to do so by the Authority or Network Rail, consult, co-ordinate and co-operate with Network Rail and other Train Operators (as applicable) in respect of the planning, development and/or implementation (as applicable) of the Integrated Control Centres Initiative at such Control Centres as the Authority or Network Rail may specify.
- 5.3 If required to do so in accordance with paragraph 5.2, and subject always to paragraph 5.7, the Franchise Operator shall use all reasonable endeavours to agree an Integrated Control Centres Implementation Plan with Network Rail within such timescale as the Authority or Network Rail may reasonably specify and shall update this as necessary for consistency with the Integrated Control Centres Initiative from time to time.

- 5.4 If the Franchise Operator and Network Rail fail to agree an Integrated Control Centres Implementation Plan in accordance with paragraph 5.3, the Franchise Operator shall promptly notify the Authority and the Franchise Operator agrees that it shall accept such Integrated Control Centres Implementation Plan as the Authority may specify (acting reasonably and having due regard to the information provided by the Franchise Operator in its notice). In any notice issued to the Authority pursuant to this paragraph 5.4, the Franchise Operator shall include reasonable details of the points of difference between the Franchise Operator and Network Rail, together with its reasons for not accepting any proposal made by Network Rail.
- 5.5 If required to do so in accordance with paragraph 5.2, the Franchise Operator shall collaborate and cooperate with Network Rail and, where applicable, any other Train Operators to:
- (a) identify any alternative operational delivery models which could be developed and implemented to promote an integrated approach to joint control at any Control Centres; and
 - (b) assess the business case for the industry (as a whole) for implementing any such proposals.
- 5.6 As soon as practicable following agreement of any Integrated Control Centres Implementation Plan under paragraph 5.3 or otherwise following any instructions from the Authority in accordance with paragraph 5.4, the Franchise Operator shall take such action as may be necessary to discharge its obligations under this plan and shall promptly notify the Authority of any material failure to discharge such obligations.
- 5.7 If the Franchise Operator reasonably considers that any provision of this paragraph 5 requires, or is likely to require, it do anything inconsistent with acting as a Good and Efficient Operator, it shall notify and consult with the Authority as soon as reasonably practicable following becoming aware of the same and proceed in accordance with any guidance or directions that the Authority may reasonably provide or direct (which may include a direction or guidance to agree and implement a proposal on such terms as the Authority may reasonably specify).
- 5.8 **NOT USED.**
- 5.9 **NOT USED.**
- 5A **NOT USED.**
6. **Co-operation**
- 6.1 In this paragraph 6:
- “Performance Improvement Management System”** means the rail industry framework for the management of performance risks;
- “Reactionary Minutes Delay”** means the minutes of delay to the Passenger Services that are attributed as ‘Reactionary Delay’ in accordance with the Delay

Attribution Principles and Rules, disregarding any minutes of delay that are imputed to Passenger Services that were cancelled; and

“**RM3P**” means the ‘Risk Management Maturity Model for Performance’ system to monitor and manage operational performance within the rail industry.

6.2 The Franchise Operator shall work fully and effectively with Network Rail as required to:

- (a) analyse Reactionary Minutes Delay and develop and deliver performance improvement plans to address areas of underperformance, focusing on improving Timetable robustness and contingency planning;
- (b) record, monitor and reduce sub-threshold delay;
- (c) implement industry best practice approaches to improving performance, including, if requested by the Authority, the deployment of the RM3P and the Performance Improvement Management System; and
- (d) review ‘TRUST Delay Codes’ (as set out in the Delay Attribution Principles and Rules) and identify opportunities to improve the delay attribution process set out in the Delay Attribution Principles and Rules.

7. Operational Planning

7.1 In this paragraph 7:

“**Event Steering Groups**” has the meaning given to it in the Network Rail Network Code.

“**Required Establishment**” means the number of train crew required in order to operate the Passenger Services, which in the case of drivers shall be calculated in accordance with the Rail Delivery Group’s “Guidance Note on Driver Establishment Calculation (December 2013)” and otherwise in accordance with an equivalent methodology.

“**Train Crew Numbers Data**” has the meaning given to it in paragraph 7.3.

7.2 The Franchise Operator shall consult, co-ordinate and co-operate with Network Rail and any relevant Train Operators in respect of the planning, development and implementation of proposals to support the continuous improvement of train timetabling and train planning functions. Amongst other things, this shall include developing improvements to:

- (a) the quality of the Franchise Operator’s and Network Rail’s timetable planning activities, through, amongst other things:
 - (i) adequate resourcing of train planning and diagramming activities for both rolling stock and traincrew;
 - (ii) collaborative working between the Franchise Operator’s and Network Rail or other Train Operators’ planning teams;

- (iii) the timely sharing of plans for rolling stock and traincrew, including ancillary moves;
 - (iv) timely sharing of rolling stock characteristics required to support timetable simulation and performance modelling; and
 - (v) an increased focus on the advance development of major timetable changes, including through Event Steering Groups;
- (b) the robustness and resilience of the Franchise Operator's and Network Rail's train plans through collaborative working, to ensure jointly developed train regulation policies, contingency and service recovery plans including but not limited to data in relation to, and plans for:
- (i) diversionary route availability (including traincrew knowledge and rolling stock clearance); and
 - (ii) traincrew flexibility (including route and traction knowledge, and spare cover).
- 7.3 The Franchise Operator shall, as soon as reasonably practicable following any request, provide Network Rail with such information as it may reasonably request, including:
- (a) information in relation to current and projected future numbers of train crew employed, in aggregate and in respect of each individual train crew depot or link, and distinguishing in each case between different types of train crew and between fully qualified individuals and trainee (the "**Train Crew Numbers Data**"); and
 - (b) a comparison of the Train Crew Numbers Data against the Franchise Operator's most recent assessment of the current and expected future Required Establishment in each case.

8. Infrastructure Projects

The Franchise Operator shall, throughout the Franchise Term, consult, co-ordinate and co-operate with Network Rail and any relevant Train Operators in respect of the planning, development and/or implementation (as applicable) of such renewals, enhancements and associated possessions as Network Rail may notify to the Franchise Operator. In particular, the parties shall work collaboratively to:

- (a) identify opportunities to coordinate and combine the delivery of infrastructure enhancements and planned renewals; and
- (b) plan possessions,

in each case, in such manner as achieves the optimum compromise between outcomes for passengers and cost-efficiency for the railway industry as a whole.

9. Sharing Data with Network Rail

9.1 In this paragraph 9:

“Financial and Commercial Data” means financial and commercial data and information in respect of:

- (a) the number of passengers using the Passenger Services, including as may be sourced from MOIRA, Lennon, passenger counts, yield management data and gate line data; and
- (b) operating costs.

“NR Data Sharing Objectives” means the aims and objectives of data sharing as may be agreed between the Franchise Operator and Network Rail and documented in the NR Data Sharing Strategy, including for the purposes of improving the planning and delivery of the day to day operational activities, supporting business planning, supporting train planning, informing service change and timetabling proposals, planning access and possessions, assessing the railway industry business case for specified proposals and to support strategic planning.

“NR Data Sharing Strategy” means the data sharing strategy to be developed in accordance with paragraph 9.2, as may be updated from time to time.

“Operational Data” means data and information in relation to the day to day operation of the passenger services including in relation to traincrew diversionary route and traction knowledge, Train Plan, rolling stock configuration, stock and crew diagrams and fleet reliability data.

9.2 By no later than 31 January 2021, the Franchise Operator shall, jointly with Network Rail, develop and use all reasonable endeavours to agree a strategy, which sets out the basis on which the Franchise Operator will, subject to any guidance or instructions that the Authority may provide or issue from time to time, share specified operational, financial and commercial data and information with Network Rail. As a minimum, the strategy will include:

- (a) the agreed NR Data Sharing Objectives;
- (b) the types of data to be shared by the Franchise Operator and Network Rail (including Operational Data and Financial and Commercial Data);
- (c) the format and frequency of the data sharing;
- (d) how the Franchise Operator and Network Rail intend to receive, use and safely store the data;
- (e) approach to cost-sharing and apportionment in respect of the data sharing; and
- (f) approach to overcoming any confidentiality or other restrictions in respect of data sharing or storage which may arise (including as matter of law).

9.3 If the Franchise Operator:

- (a) is unable to agree the NR Data Sharing Strategy with Network Rail by 31 January 2021 or
- (b) reasonably considers that any proposal pursuant to this paragraph 9 requires, or is likely to require, it to do anything inconsistent with acting as a Good and Efficient Operator,

it shall notify and consult with the Authority as soon as reasonably practicable following becoming aware of the same and proceed in accordance with such guidance or directions as the Authority may reasonably provide or direct (which may include a direction or guidance to agree and implement a proposal on such terms as the Authority may reasonably specify).

- 9.4 The Franchise Operator shall use all reasonable endeavours to implement the NR Data Sharing Strategy in accordance with its terms, and shall continue to consult, collaborate and co-operate with Network Rail to agree any reasonable amendments or updates to the NR Data Sharing Strategy from time to time.
- 9.5 The Franchise Operator shall propose and use all reasonable endeavours to agree with Network Rail suitable amendments to the NR Data Sharing Strategy to ensure compliance with any guidance or instructions issued or provided by the Authority from time to time.
- 9.6 The Franchise Operator shall not unreasonably withhold or delay its consent to any amendments which Network Rail may reasonably propose to the NR Data Sharing Strategy, provided that the Franchise Operator shall not agree to any amendments which would not be in compliance with any guidance the Authority may provide or issue from time to time.
- 9.7 Notwithstanding any other term of this paragraph 9, the Franchise Operator shall not be required to do anything which would put it in breach of any obligation on the Franchise Operator arising under applicable Law or the terms of its Licences.

10. **Sharing on-train data with Network Rail**

- 10.1 The Franchise Operator shall, to the extent reasonably requested by Network Rail, share with Network Rail all relevant data including GPS data and data derived from geometry measurement systems, forward facing CCTV, driver advisory systems and train condition monitoring systems fitted to any rolling stock within the Train Fleet. Any such data provided to Network Rail shall be provided in such format as Network Rail may reasonably request without charge.
- 10.2 The Franchise Operator shall, if so requested by Network Rail, provide advice to Network Rail on the feasibility, costs and associated practicalities of providing Network Rail with access to real-time (or near-real-time) footage from on-train forward-facing CCTV systems.

11. Station Accessibility Data Collection

The Franchise Operator shall comply with any reasonable request by the Authority in connection with the development and implementation of a station accessibility data collection which may include (but shall not be limited to):

- (a) supporting the Authority in developing and designing the methodology for data collection;
- (b) completing questionnaires and/or using reasonable endeavours to procure that the relevant station Facility Owner completes the relevant questionnaire;
- (c) providing information in relation to Station accessibility and/or using reasonable endeavours to procure that the relevant station Facility Owner provides such information; and
- (d) providing access to Stations to facilitate accessibility data collection and/or using reasonable endeavours to procure that the relevant station Facility Owner provides such access,

in each case, in a timely manner.

12. Compensation

Save with the prior written consent (such consent not to be unreasonably withheld or delayed) of the Authority, the Franchise Operator shall not:

- (a) enter into any new agreement, contract or other arrangement which relates to the receipt, review, response to, or processing of passengers' compensation claims;
- (b) materially amend, vary or waive the terms of any existing agreement, contract or other arrangement which relates to the receipt, review, response to, or processing of passengers' compensation claims;
- (c) extend the term of any agreement, contract or other arrangement which relates to the receipt, review, response to, or processing of passengers' compensation claims; or
- (d) make any material change to the Franchise Operator's system(s) relating to the receipt or processing of passengers' compensation claims.

13. TD Academy

13.1 In this paragraph 13 of part 1 of Schedule 13.A (*ERMA Specific Obligations*):

"Rail Delivery Group" or **"RDG"** means the Rail Delivery Group Limited (company number 08176197) (including any of its successors and assigns) whose principal place of business is at 2nd Floor, 200-202 Aldersgate Street, London, EC1A 4HD, which is responsible for preserving and enhancing the

benefits for passengers of Britain's national rail network policy formulation and communications on behalf of the whole rail industry

"**TD Academy Board**" means the board of the TD Academy.

"**TD Academy Objectives**" means:

- (i) improving the consistency and quality of driver training;
- (ii) improving and increasing driver training throughout with the objective of eliminating the shortage of drivers;
- (iii) improving driver skills and qualifications, including through increased uptake of the Train Driver Apprenticeship (Level 3) (as supported by the Institute for Apprenticeships and Technical Education);
- (iv) improving, increasing and promoting diversity of drivers in the industry in accordance with the Approved D&I Strategy;
- (v) providing information to the TD Academy Board for assurance on training quality to stakeholders; and
- (vi) promoting synergies, efficiencies and consistency through collaboration between TD Academy Stakeholders on driver training programmes and initiatives,

(each, a "**TD Academy Objective**").

"**TD Academy Plan**" has the meaning given to it in paragraph 13.3(b), including as updated from time to time.

"**TD Academy Stakeholders**" means the Franchise Operator, the Authority, Train Operators, the RDG, any other relevant rail industry bodies and any other stakeholders which the Authority may notify the Franchise Operator of from time to time.

"**Train Driver Academy**" or "**TD Academy**" means the scheme to promote driver training programmes (including through online learning platforms) which was originally established by the RDG in 2019, including as it may be amended, supplemented or replaced from time to time.

- 13.2 During the term of the ERMA, the Franchise Operator shall consult, co-ordinate and co-operate with the TD Academy Stakeholders as appropriate (or as may be required by the Authority) from time to time in respect of the planning, development and/or implementation (as applicable) of the Train Driver Academy and/or in connection with promoting the TD Academy Objectives.
- 13.3 By no later than 30 November 2020, the Franchise Operator shall provide the Authority with a report:
- (a) setting out how it is currently engaging with the TD Academy and/or promoting the TD Academy Objectives; and

- (b) how it intends to engage with the TD Academy and/or promote the TD Academy Objectives during the term of the ERMA, including its proposed timing for achieving any key milestones (the "**TD Academy Plan**"), together with an assessment of the costs and practicalities involved in implementing the TD Academy Plan.
- 13.4 Following the report referred to in paragraph 13.2, the Franchise Operator shall implement its TD Academy Plan and shall promptly notify the Authority of any material departures or failure to do so.
- 13.5 The Authority may, from time to time:
 - (a) recommend specified changes to the Franchise Operator's TD Academy Plan as it considers reasonable to promote the achievement of the TD Academy Objectives; and
 - (b) direct the Franchise Operator to comply with and or implement instructions which the Authority considers necessary to promote the achievement of the TD Academy Objectives.
- 13.6 The Franchise Operator shall:
 - (a) take account of, and update its TD Academy Plan in respect of, any Authority recommendations pursuant to paragraph 13.5(a) and implement its TD Academy Plan (as amended); and
 - (b) implement and or comply with any Authority instructions pursuant to paragraph 13.5(b) and update its TD Academy Plan accordingly.
- 13.7 During the term of the ERMA, the Franchise Operator shall not enter into any new contracts or other arrangements which may materially adversely affect the Franchise Operator's ability to comply with this paragraph 13, without the prior written consent of the Authority.

PART 2 – PAY AND INDUSTRIAL RELATIONS AND DISPUTE HANDLING**1. Notification of the Authority**

1.1 In this part 2 of Schedule 13.A (*ERMA Specific Obligations*):

“Collective Agreement” has the meaning given to it in the Trade Union and Labour Relations (Consolidation) Act 1992.

“Dispute Handling Policy” means the policy issued by the Authority with the same name on or about the ERMA Start Date, as may be amended, supplemented or replaced from time to time.

“Employment Agreement” means the terms and conditions of employment of any Franchise Employee whether contained in or otherwise incorporated or implied, including by way of custom or practice, into any Collective Agreement, individual contract of employment, employee handbook or otherwise, in each case whether or not in writing.

“Employment Policy Framework” has the meaning given to it in paragraph 2.1 of this part 2 of Schedule 13.A

“Industrial Action” means any concerted action taken in connection with the employment of any employees of:

- (i) the Franchise Operator;
- (ii) Network Rail;
- (iii) LUL;
- (iv) the operator of any other rail facility;
- (v) any person with whom the Franchise Operator has a contract or arrangement for the lending, seconding, hiring, contracting out, or supervision by that person of train drivers, conductors, other train crew or station or depot staff used by the Franchise Operator in the provision of the Franchise Services,

or of the agents or sub-contractors of any such person listed in paragraphs (ii) to (v) above, (whether or not that action involves any breach of such employees' conditions of employment, and including any action taken in furtherance of a dispute, or with a view to improving the terms of employment of the relevant employees by way of support for any other person) subject always, in the case of any official industrial action, to the Franchise Operator being able to demonstrate to the occurrence of such unofficial industrial action to the reasonable satisfaction of the Authority.

“In-Scope Matters” means any of the following matters in relation to any Franchise Employees:

- (i) pay negotiation strategies;

- (ii) changes to any remuneration, strategy, pension arrangements or staff benefits;
- (iii) any proposed restructuring or redundancy plans;
- (iv) any proposed changes affecting Franchise Employees (including proposed changes to the terms of any Employment Agreement, any proposed changes to working practices or procedures, howsoever these are recorded or have become established, and whether these apply nationally or locally) which either party reasonably believes (a) is likely to give rise to material industrial relations risks (including a risk of Industrial Action); and/or (b) could have a material negative impact on productivity; and/or (c) would not be in train passengers' interests;
- (v) any other matter notified to the Franchise Operator by the Authority from time to time; and/or
- (vi) any negotiation or consultation strategies regarding any of the matters at (i) to (v) above,

(each, an **"In-Scope Matter"**).

"Mandate" means in relation to any In-Scope Matter any mandate formally agreed from time to time in writing (other than through email or other informal correspondence unless the email in question includes express confirmation from the Authority that its content (or stipulated part of it) is to form a Mandate) between the Franchise Operator and the Authority regarding: (i) the objective or objectives of negotiations or consultation; (ii) any parameters or constraints on such objective(s), or the substance of such negotiations or consultation; and/or (iii) how such negotiations or consultation are to be approached, structured or handled.

"Relevant Employer" means any of the Franchise Operator's Affiliates to whom the Franchise Services or services which are in support of or ancillary to the Franchise Services have been subcontracted (at any tier) or delegated by the Franchise Operator, which employs Franchise Employees performing or in support of or ancillary to the Franchise Services.

"Reward and People Principles" means any policy or policies, high level objectives, principles, instructions or guidance issued to the Franchise Operator or any Relevant Employer by the Authority (a) with the title "Reward and People Policy", "Reward Policy" and/or "People Policy"; and/or (b) which relates to remuneration, pensions, benefits, working arrangements, working practices or terms and conditions of employment in respect of any Franchise Employee, in each case (a) and (b) as may be amended, supplemented or replaced by the Authority from time to time.

"Trade Union" means any trade union(s) recognised by the Franchise Operator or any Relevant Employer in respect of Franchise Employees.

"Unrepresented Employees" has the meaning given to it in paragraph 1.7(a).

"Workers" has the meaning given to it in paragraph 10.

- 1.2 The Franchise Operator shall, and shall procure that each other Relevant Employer, shall:
- (a) as soon as reasonably practicable prior to engaging with any Trade Union or other employee representative body in relation to any In-Scope Matter; or
 - (b) promptly and in any event three (3) Weekdays following any communication from any Trade Union or other employee representative body to the Franchise Operator (or the Relevant Employer, as applicable) in relation to any potential In-Scope Matter which is not covered by an existing Mandate,

and where reasonably practicable in each case in good time to allow for proper engagement with the Authority, inform the Authority of all relevant information relating to any such matters and any other information the Authority may request from time to time in relation to such matters. Where there is any doubt as to whether a matter requires notification in accordance with this paragraph 1.2, the Franchise Operator shall, and shall procure that each other Relevant Employer shall, make a notification in any event. In determining whether to make a notification and/or what information must be provided to the Authority by the Franchise Operator, the Franchise Operator shall have regard to its obligations under paragraph 7.1 of this Part 2 of this Schedule 13.A.

- 1.3 Following notification to the Authority pursuant to paragraph 1.2 above, the Franchise Operator shall, and shall procure that each Relevant Employer shall, prior to any further communication with any Trade Union or other employee representative body in relation to the applicable In-Scope Matter, consult with the Authority with a view to reaching agreement with the Authority on a Mandate.

- 1.4 If,
- (a) a Mandate cannot be agreed and the Franchise Operator or a Relevant Employer acts or omits to act in respect of a relevant In-Scope Matter without a Mandate;
 - (b) the Authority determines that the Franchise Operator or Relevant Employer has incorrectly treated a matter as not being an In-Scope Matter and the Franchise Operator or Relevant Employer acts or omits to act in respect of that matter without a Mandate; or
 - (c) the Franchise Operator or Relevant Employer breaches a Mandate or acts outside the scope of a Mandate in relation to the relevant In-Scope Matter,

and, in any such case, in doing so incurs costs, or loses revenue, then the Authority may in the Authority's sole discretion direct that:

- (i) any loss of revenue shall be treated as Revenue Foregone; and
- (ii) any increase in costs shall be treated as a Disallowable Cost,

in each case where the Authority in the Authority's sole discretion determines that such loss of revenue or increased costs (as the case may be) arises in

connection with actions taken (or omitted to be taken) by the Franchise Operator or Relevant Employer in relation to the relevant In-Scope Matter.

- 1.5 Once a Mandate has been agreed, the Franchise Operator shall and shall procure that each Relevant Employer shall:
- (a) act in accordance with the Mandate; and
 - (b) act in accordance with paragraph 2 below,
- in relation to the In-Scope Matter to which that Mandate relates.
- 1.6 For the purposes of this paragraph 1, communications shall include any verbal discussions or written communications, in each case of a formal or informal nature.
- 1.7 Where any Franchise Employees are not subject to collective representation (whether by a Trade Union or any other employee representative body):
- (a) any issue which would require notification in paragraphs 1.2(a) and 1.2(b) in relation to an In-Scope Matter shall require notification if the issue arises in respect of any group of more than one such unrepresented Franchise Employees ("**Unrepresented Employees**"); and
 - (b) when paragraph 1.7(a) applies, once a Mandate is required, the provisions of this part 2 of Schedule 13.A shall apply in full in respect of the relevant Unrepresented Employees.

2. **Reward and People Principles**

- 2.1 In relation to any In-Scope Matter (and whether or not a Mandate has been agreed in respect of that matter) the applicable principles for reward and working arrangements will be set out in Reward and People Principles and the Parties intend that these shall take precedence over other arrangements between the Authority and the Franchise Operator which are in place immediately prior to the ERMA Start Date, subject to the remainder of this paragraph 2.1. Specifically:
- (a) the Franchise Operator agrees that the Reward and People Principles and any other policies, high level instructions or guidance that the Authority may reasonably introduce or direct from time to time (including in accordance with the provisions of paragraph 6 below) (together, the "**Employment Policy Framework**"), shall, in the case of any conflict or inconsistency, take precedence over any arrangements which form the substance of an In-Scope Matter between the Authority and the Franchise Operator which are in place immediately prior to the ERMA Start Date, including:
 - (i) any multi-year pay awards;
 - (ii) staffing budgets (whether pre-approved or otherwise, and including where any assumptions relating to pay growth may have been made); and

- (iii) any other agreement or arrangement relating to any In-Scope Matters,

in each case which may take effect following the ERMA Start Date; however

- (b) without prejudice to paragraph 2.2, the Employment Policy Framework shall not take precedence over any such In-Scope Matters which, prior to the ERMA Start Date, have become legally binding on the Franchise Operator or Relevant Employer (whether by reason of individual contract of employment, collective agreement or by custom and practice) and, for the avoidance of doubt, including agreements made which have not yet taken effect at the ERMA Start Date or any changes which the Franchise Operator or Relevant Employer is required to make by law.
- 2.2 Nothing in this part 2 of Schedule 13.A shall prevent the Franchise Operator or Relevant Employer from seeking to reach agreement with any Trade Union, other employee representative body or Relevant Employees or taking such other steps as are appropriate or necessary regarding new or revised terms and conditions of employment in order to implement the Employment Policy Framework or any Mandate.
- 2.3 The Franchise Operator shall, and shall procure that each Relevant Employer shall, unless otherwise directed by the Authority, conduct any negotiations or consultation with any Trade Union, other employee representative body or group of employees (within paragraph 1.7(a)) regarding the subject of a Mandate in accordance with the Employment Policy Framework.
- 2.4 Subject to paragraph 2.3, the Franchise Operator shall, or shall procure that the Relevant Employer shall, lead and have full day to day conduct of the relevant negotiations or consultation and implementation of any Mandate.

3. Terms of Employment

- 3.1 In addition to the obligations set out in paragraph 1 above but subject to the provisions of paragraph 3.2 below, the Franchise Operator shall not, and shall procure that each other Relevant Employer shall not, without the Authority's consent (which shall not be unreasonably withheld) effect, or purport or promise to effect, or otherwise implement any In-Scope Matter other than in accordance with the relevant Mandate.
- 3.2 Without limiting paragraph 3.1, subject to paragraph 3.4, the Franchise Operator shall not, and shall procure that each Relevant Employer shall not, without the prior consent of the Authority (which shall not be unreasonably withheld or delayed), vary, or purport or promise to vary the terms or conditions of employment with any Franchise Employee (in particular, the Franchise Operator shall not, and shall procure that each Relevant Employer shall not, promise to make any additional payment or provide any additional benefit or vary any term or condition relating to holiday, leave or hours to be worked) where the revised terms of employment of any existing Franchise Employee may take effect on or after the ERMA Start Date if and to the extent that such terms or conditions are more favourable than the standard terms or conditions of employment of the equivalent or nearest equivalent Franchise Employee role at the date on which such revised terms and conditions are scheduled to take effect.

- 3.3 Without limiting paragraph 3.1, subject to paragraph 3.4, the Franchise Operator shall not, and shall procure that each other Relevant Employer shall not, without the prior consent of the Authority (which shall not be unreasonably withheld or delayed), create or grant, or promise to create or grant, terms or conditions of employment for any prospective Franchise Employee where the employment of such prospective Franchise Employee by the Franchise Operator or such other Relevant Employer may commence on or after the ERMA Start Date if and to the extent that:
- (a) such terms or conditions are more favourable than the standard terms or conditions of employment of the equivalent or nearest equivalent Franchise Employee role at the date on which such employment is scheduled to commence; and
 - (b) if such terms or conditions were granted to such equivalent Franchise Employee already employed by the Franchise Operator by way of variation to their terms or conditions of employment, the Franchise Operator would be in contravention of paragraph 3.2.
- 3.4 For the purposes of the matters falling within paragraphs 3.2 and 3.3, no consent will be required from the Authority in respect of any changes or proposed changes made or proposed in the ordinary course of business in accordance with human resources policies (in relation to the day to day management of the Franchise Operator's and Relevant Employer's business) which exist prior to the ERMA Start Date which: (a) are not likely to give rise to material industrial relations risks (including a risk of Industrial Action); and / or (b) will not have a material negative impact on productivity; and / or (c) are not contrary to train passengers' interests.

4. In-Scope Matters

- 4.1 The Authority may at any time, in the Authority's sole discretion, determine that a matter is, or is not, an In-Scope Matter. Save where either paragraph 4.4 or 4.5 applies, a determination that a matter is an In-Scope Matter will be final and conclusive but will not prevent the Parties agreeing that a matter is no longer an In-Scope Matter.
- 4.2 Without prejudice to paragraphs 3.2 and 3.3, if a matter is not an In-Scope Matter, no Mandate is required. For these purposes, matters in respect of which a Mandate is not required will include changes to working practices made in the ordinary course of business in accordance with human resources policies (in relation to the day to day management of the Franchise Operator's or the Relevant Employer's business) which exist prior to the ERMA Start Date which: (a) are not likely to give rise to material industrial relations risks (including a risk of Industrial Action); and / or (b) will not have a material negative impact on productivity; and / or (c) are not contrary to train passengers' interests..
- 4.3 Where a Franchise Operator (or a Relevant Employer) is in any doubt as to whether any matter is an In-Scope Matter requiring a Mandate, it must, or must procure that the Relevant Employer shall, inform the Authority in good time prior to steps being taken to implement such matter or change and the Franchise Operator must, or must procure that the Relevant Employer shall, if requested by the Authority, provide an explanation of why it believes the proposed matter or change is not an In-Scope Matter requiring a Mandate. Thereafter, the Authority may make a determination in accordance with paragraph 4.1. Provided

the Authority, acting reasonably, is satisfied that the Franchise Operator complied with its obligations under this paragraph 4.3 and paragraph 7.1, the Authority's determination shall, subject to paragraph 4.5, be final and conclusive. Where the Authority has determined that a matter is an In-Scope Matter, nothing will prevent the Parties subsequently agreeing that the matter is no longer an In-Scope Matter.

- 4.4 Where a matter is not an In-Scope Matter, the Parties acknowledge and agree that further developments in relation to, and/or escalation of, that matter may be such that it could result in (a) material industrial relations risks (including a risk of Industrial Action); and/or (b) a material negative impact on productivity; and/or (c) be contrary to train passengers' interests. In any such event, the Franchise Operator will make a notification to the Authority in accordance with paragraph 4.3 with a view to seeking a determination from the Authority as to whether the matter has become an In-Scope Matter.
- 4.5 Any determination by the Authority that any matter is an In-Scope Matter is conditional on the Authority, acting reasonably, being and remaining satisfied that the Franchise Operator and, where relevant, the Relevant Employer have disclosed all relevant information relating to such matter and complying and continuing to comply with the duty in paragraph 7.1. If, in the Authority's opinion, acting reasonably, there is or has been any material non-disclosure of relevant information or a material breach of paragraph 7.1 by the Franchise Operator or Relevant Employer, the Authority may determine that the Mandate is void in which case for the purposes of this part 2 of Schedule 13.A costs, losses and revenues shall be treated as if that Mandate had never been agreed and paragraph 1.4(a) of this part 2 of Schedule 13.A shall apply in respect of any acts or omissions of the Franchise Operator, or the Relevant Employer, in relation to that matter. The Parties acknowledge and agree that where this paragraph 4.5 applies, the Authority may take such action and/or instruct such changes as it considers reasonably necessary to correct the apportionment of costs, losses and revenues between the Parties.

5. Industrial Action

- 5.1 The Franchise Operator shall, and shall procure that each Relevant Employer shall, comply with the Dispute Handling Policy. Without prejudice to any obligations under the Dispute Handling Policy, to the extent the Franchise Operator, acting reasonably, believes that Industrial Action is likely to occur as a result of its (or any Relevant Employer's) compliance with any aspect of this part 2 of Schedule 13.A (including any Mandate agreed to pursuant to it), or for any other reason, it shall promptly notify the Authority of its reason for that belief and the effect, or the anticipated effect, of such event on the performance of the Franchise Services and provide the Authority with such further information as the Authority may request.
- 5.2 As soon as reasonably practicable following a notification set out in paragraph 5.1 above, and in any event within three (3) Weekdays following such notification, the Franchise Operator shall propose a process it intends to adopt to deal with the relevant Industrial Action in accordance with and subject to the Dispute Handling Policy. The Franchise Operator and the Authority shall use reasonable endeavours to agree how the relevant Industrial Action shall be handled, bearing in mind the Dispute Handling Policy, provided however that the Franchise Operator's handling of such Industrial Action will be subject always to the Authority's direction, such agreement and/or direction being the "**Dispute**

Handling Plan". The Franchise Operator shall, and shall procure that each Relevant Employer shall, act in accordance with the Dispute Handling Plan.

5.3 If:

- (a) agreement is not reached regarding how relevant Industrial Action is to be handled; or
- (b) in the event that Industrial Action occurs which, the Authority determines (at the Authority's sole discretion, acting reasonably), has arisen as a result of the Franchise Operator or any Relevant Employer not complying with its or their obligations under this part 2 of Schedule 13.A (including any Mandate agreed pursuant to it, any failure to act in accordance with the Dispute Handling Plan, to make a notification required by paragraph 1.2 or to provide all relevant information in relation to such notification and/or to comply with paragraphs 7.1 and 7.3),

either of which has resulted in a loss of revenue, an increase or decrease in costs, or a combination of the foregoing, as a consequence (direct or otherwise) of the disruption to Passenger Services (however so related), the Authority may in the Authority's sole discretion:

- (c) if the Cost Target Methodology or the Profit Target Methodology applies in relation to the Financial Performance Fee during the PBF Assessment Period in which such event occurs, designate such event as a Category A Target Amendment Trigger Event;
- (d) direct that any such increase in costs shall be treated as Disallowable Costs and the Franchise Operator shall not, in any circumstances, be entitled to claim back such costs from the Authority whether pursuant to Schedule 6.1A (*Franchise Payments*) or otherwise; and/or
- (e) direct that any such lost revenue shall be treated as Revenue Foregone.

5.4 To the extent that the Franchise Operator:

- (a) has complied with this part 2 of Schedule 13.A (including any applicable Mandate); and
- (b) has complied with the Dispute Handling Plan,

then

- (c) the Authority, will not treat any increase in costs or loss of revenue of the Franchise Operator arising from the relevant Industrial Action (however caused and of whatever nature) as a Disallowable Cost or Revenue Foregone (respectively); and
- (d) if the Cost Target Methodology or the Profit Target Methodology applies in relation to the Financial Performance Fee during the PBF Assessment Period in which relevant Industrial Action occurs, the occurrence of such Industrial Action shall constitute a Category A Target Amendment Trigger Event,

in circumstances where the Authority is satisfied that the Franchise Operator has acted reasonably in taking all reasonable steps (and procuring that any Relevant Employer has taken all reasonable steps) to avoid the Industrial Action and that, Industrial Action having nevertheless occurred, the Franchise Operator has taken all reasonable steps (and has procured that any Relevant Employer has taken all reasonable steps) to mitigate its effects.

6. Reform

6.1 The Franchise Operator shall, and shall procure that each Relevant Employer shall:

- (a) co-operate with the Authority as may be required by the Authority from time to time in respect of the planning, development and/or implementation (as applicable) of industry reform with respect to the Employment Policy Framework and the Dispute Handling Policy, including co-operating and collaborating with other Train Operators and other organisations in respect of planning, developing and implementing such reforms to the extent permitted by applicable laws; and
- (b) provide to the Authority, such information and data in relation to the Employment Policy Framework and/or the Dispute Handling Policy (or any aspect of it/them) as the Authority may require from time to time.

6.2 The Franchise Operator shall, and shall procure that each Relevant Employer shall, use all reasonable endeavours to introduce, implement and comply with such amendments to the Dispute Handling Policy, the Employment Policy Framework generally and any other applicable industry agreements (including any successor arrangements or any other agreement between the Franchise Operator and one or more third parties relating to the sustainability of the Franchise Operator's staffing model, people practices, engagement with related industry stakeholders or any related matter) as may be directed by the Authority from time to time.

6.3 During the term of this ERMA, the Franchise Operator shall not, and shall procure that each Relevant Employer shall not, enter into any new Employment Agreements otherwise than in accordance with the terms of this part 2 of Schedule 13.A (including any applicable Mandate) and the Employment Policy Framework without the prior written consent of the Authority.

7. Duties of the Franchise Operator

7.1 In relation to any matters dealt with in this part 2 of Schedule 13.A, the Franchise Operator shall, and shall procure that each Relevant Employer shall, deal with the Authority in an open and cooperative way, and must disclose to the Authority on an ongoing basis anything relating to the Franchise Employees (and any Trade Union or other employee representative body representing any such employees) of which the Authority would reasonably expect notice in respect of anything which might reasonably be expected to be relevant to an In-Scope Matter.

7.2 The Franchise Operator shall (and shall procure that each Relevant Employer shall) act within the spirit of this part 2 of Schedule 13.A in its communications and dealings with any Trade Union, employee representative body or any Franchise Employee, both locally and nationally.

- 7.3 The Franchise Operator's duty to act as a Good and Efficient Operator shall apply to the discharge of its obligations under this part 2 of Schedule 13.A.

8. **Cooperation**

Where the Franchise Operator or Relevant Employer reasonably considers that complying with any aspect of this Schedule, including any aspect of the Employment Policy Framework or any Mandate, will cause it to breach any legal obligation of the Franchise Operator or Relevant Employer in their capacity as employer (whether arising under legislation or at common law) including breaches of legislation relating to unlawful discrimination or equal pay, the Authority and Franchise Operator shall work in cooperation (and/or, as appropriate, the Authority shall, and the Franchise Operator shall use reasonable endeavours to procure that the Relevant Employer shall, work in cooperation) with a view to agreeing an approach to, as the case may be, compliance with such obligations under this part 2 of Schedule 13.A or avoidance or mitigation of the risk of such breach by the Franchise Operator or Relevant Employer. Once such an approach is agreed, the Franchise Operator shall, and will procure that the Relevant Employer shall, implement it on its terms.

9. **Disallowable Costs**

Save as provided in this part 2 of Schedule 13.A or as expressly agreed with the Authority, any losses and liabilities (including costs, charges, penalties, compensation or similar payments) incurred as result of termination of a contract of employment of, or reaching any settlement or compromise with, a Franchise Operator Employee shall be Disallowable Costs.

10. **Workers**

To the extent that the Franchise Operator or any Relevant Employer engages individuals to work on the Franchise Services as workers (howsoever "workers" is defined in relevant English employment legislation from time to time, but excluding "agency workers" as defined in the Agency Worker Regulations 2010, as amended from time to time) ("**Workers**") rather than employees, the provisions in this part 2 of Schedule 13.A shall be deemed to cover such Workers. In such circumstances, the engaging party shall be the Franchise Operator or the Relevant Employer, as applicable, and references to terms and conditions of employment shall be construed as references to terms and conditions of engagement and references to Franchise Employees shall include such workers.

PART 3 – MISCELLANEOUS**1. Digital Signalling**

- 1.1 The Franchise Operator shall co-operate in good faith acting reasonably and with each of the Department for Transport, Network Rail, any relevant ROSCO and any other third party in connection with the development, implementation and operational introduction on the routes of any system which is intended to provide European Train Control System (“**ETCS**”).
- 1.2 In accordance with paragraph 1.1 of this part 3 of this Schedule 13.1A, the Franchise Operator shall use all reasonable endeavours to provide reasonable assistance to the Authority, Network Rail, any relevant ROSCO and any other relevant third party, which may, amongst other things, include:
- (a) providing advice to the Authority in respect of any ETCS proposals and plans;
 - (b) supporting planning activities alongside other key stakeholders;
 - (c) ensuring that suitable equipment is fitted to rolling stock;
 - (d) developing driver training programmes and procuring that drivers are suitably trained; and
 - (e) other associated amendments or variations.

2. Wavelength

- 2.1 For the purpose of this paragraph 2:
- (a) “**Wavelength Programme**” means the programme of work being developed by the rail industry which involves collecting a wide range of information about the customer experience by tracking, amongst other things, the Franchise Operator’s performance against certain journey touchpoints (as specified in the Wavelength Survey) and certain key commitments based on core passenger priorities; and
 - (b) “**Wavelength Survey**” means the weekly survey relating to the Passenger Services (in such form as may be agreed from time to time), which is undertaken as part of the Wavelength Programme to monitor, amongst other things, the Franchise Operator’s performance against certain journey touchpoints (as specified in the Wavelength Survey) and certain key commitments based on core passenger priorities.
- 2.2 Unless otherwise directed by the Authority, the Franchise Operator shall:
- (a) fully and effectively engage with the Wavelength Programme;
 - (b) subject to the relevant information being made available to the Franchise Operator via the Wavelength Programme portal, provide to the Authority by no later than seven (7) Weekdays following the end of each Reporting Period, a report setting out the results of the Wavelength Survey undertaken during that Reporting Period, such results to be presented in

such aggregated or disaggregated format as the Authority may specify from time to time; and

- (c) subject to the relevant information being made available to the Franchise Operator via the Wavelength Programme portal, provide to the Authority by no later than fourteen (14) Weekdays following the end of each quarter, a report detailing:
 - (i) how the Franchise Operator has used the full range of Wavelength Programme insights (including the analysis of data received through the Wavelength Survey) to implement and/or invest in:
 - (A) customer-focused initiatives; and/or
 - (B) tangible benefits or improvements for customers; and
 - (ii) whether such initiatives, benefits or improvements referred to in paragraph 2.2(c)(i) of this part 3 of this Schedule 13 have:
 - (A) resulted in any improvement in the Wavelength Survey scores collected to date; and/or
 - (B) any other improvements or benefits to the Franchise Operator.

Appendix 3 to Schedule 1
Schedule 6.1E (*Operational Performance*)

Schedule 6.1E

OPERATIONAL PERFORMANCE

1 Definitions and Track Access Agreement

1.1 For the purposes of this Schedule 6.1E only, the following words and expressions shall have the following meanings unless otherwise set out in Clause 3 (*Definitions*):

"Action Plan"	has the meaning given to it in paragraph 9.1(e) of this Schedule 6.1E;
"Cancellations Re-Calculation"	has the meaning given to it in paragraph 3.1(b) of this Schedule 6.1E;
"Draft Action Plan"	has the meaning given to it in paragraph 9.1(b)(i) of this Schedule 6.1E;
"Initial Cancellations Calculation"	has the meaning given to it in paragraph 3.1(a) of this Schedule 6.1E;
"Initial TOC Minutes Delay Calculation"	has the meaning given to it in paragraph 4.1(a) of this Schedule 6.1E;
"Passenger Carrying Capacity"	means, in relation to a Passenger Service, the capacity of the Vehicles from which the Passenger Service is formed;
"Route-Specific Required Performance Improvement"	has the meaning given to it in paragraph 9.1(a)(ix) of this Schedule 6.1E;
"Service Recovery Plan"	means, in the event of a prevention or restriction of access to the track or a section of the track (howsoever caused) which results in any Cancellation, Partial Cancellation, and/or any Passenger Service being operated with less capacity than specified for such Passenger Service in the Train Plan, a plan implemented by the Franchise Operator: (a) to minimise the disruption arising from such prevention or restriction of access by operating, during such period of disruption, the best possible level of service given such disruption, including by:

	<ul style="list-style-type: none"> (i) keeping service intervals to reasonable durations; (ii) keeping extended journey times to reasonable durations; and (iii) managing any resulting overcrowding; <p>(b) to:</p> <ul style="list-style-type: none"> (i) return the level of service to that level specified in the Timetable as soon as reasonably practicable; and (ii) prior to the attainment of the level of service specified in paragraph (b)(i) operate any reduced level of service agreed with the Infrastructure Manager for the purpose of minimising such disruption pursuant to paragraph (a); <p>(c) in accordance with the principles of service recovery set out in the “Approved Code of Practice: Contingency Planning for Train Service Recovery Service Recovery 2013” or any document of a similar or equivalent nature; and</p> <p>(d) where the particulars of such plan in relation to the requirements of paragraphs (a) and (b) have been:</p> <ul style="list-style-type: none"> (i) agreed at an initial and, where required, subsequent telephone conference between the Franchise Operator, the Infrastructure Manager and any other affected Train Operator; and (ii) on each occasion, recorded in an official control log by the relevant Region Control Manager of the Infrastructure Manager, <p>and prevention or restriction of access to the track or a section of the track shall mean that no trains are permitted to be operated on the relevant section or part of track, or the</p>
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	number of trains so permitted is reduced from that which, but for the prevention or restriction, would have been scheduled to operate;
"TOC Minutes Delay Re-Calculation"	has the meaning given to it in paragraph 4.1(b) of this Schedule 6.1E;
"Undisputed Cancellation"	means a Cancellation that is not a Disputed Cancellation;
"Undisputed Network Rail Cancellation"	means a Network Rail Cancellation that is not a Disputed Cancellation;
"Undisputed Network Rail Partial Cancellation"	means a Network Rail Partial Cancellation that is not a Disputed Partial Cancellation; and
"Undisputed Partial Cancellation"	means a Partial Cancellation that is not a Disputed Partial Cancellation.

1.2 [Not used.]

1.3 [Not used.]

1.4 [Not used.]

1.5 [Not used.]

1.6 [Not used.]

1.7 [Not used.]

1.8 [Not used.]

1.9 [Not used.]

1.10 [Not used.]

1.11 [Not used.]

1.12 **Track Access Agreement**

The Franchise Operator agrees with the Authority to comply with the requirements of the Track Access Agreement in respect of cancellations attribution (Cancellations, Partial Cancellations, Network Rail Cancellations and Network Rail Partial Cancellations) and Minutes Delay attribution.

1.13 [Not used.]

1.14 **Notice of Performance Results**

As soon as reasonably practicable after the end of each Reporting Period and each PBF Assessment Period, the Authority shall notify the Franchise Operator of the results of the calculations performed pursuant to this Schedule 6.1E.

2 Reporting Requirements

The Franchise Operator shall at the end of each Reporting Period and in accordance with the relevant requirements of Appendix 2 (*Operational Performance Information*) of Schedule 6.1C (*Management Information*) report to the Authority the operational information as specified in Appendix 2 (*Operational Performance Information*) of Schedule 6.1C (*Management Information*) and such further information as may be required for the purposes of the Authority undertaking any of the calculations required to be performed by the Authority pursuant to this Schedule 6.1E.

3 Cancellation Calculation

3.1 For each Reporting Period during the term of the ERMA the Authority shall:

- (a) calculate the Franchise Operator's performance in respect of Cancellations (and, if applicable, calculate the Franchise Operator's performance in respect of Cancellations against the OP Target for Cancellations) in accordance with the formula set out in Table 1 below (each an "**Initial Cancellations Calculation**"); and
- (b) other than for the first and second Reporting Periods following the ERMA Start Date, re-calculate the Franchise Operator's performance in respect of Cancellations (and, if applicable, re-calculate the Franchise Operator's performance in respect of Cancellations against the OP Target for Cancellations) for the two (2) Reporting Periods immediately preceding the relevant Reporting Period using the formula set out in Table 1 below (each a "**Cancellations Re-Calculation**").

3.2 In the event that a Cancellations Re-Calculation demonstrates that the Initial Cancellations Calculation or an earlier Cancellations Re-Calculation was incorrect, the Initial Cancellations Calculation and/or the relevant earlier Cancellations Re-Calculation shall, for the relevant Reporting Period, be replaced with the latest Cancellations Re-Calculation.

3.3 If the Performance Based Fee attributable to the Cancellations Operational Performance Component for the relevant PBF Assessment Period is calculated using the Quantified Target Methodology, the Franchise Operator shall not be entitled to receive payment of such element of the Performance Based Fee for the relevant PBF Assessment Period until the Authority has undertaken all Cancellations Re-Calculations in relation to that PBF Assessment Period.

Table 1		
A	=	$\frac{B}{C} \times 100$
where:		

B	<p>is the total number of Cancellations or Partial Cancellations of Passenger Services scheduled to be operated in the Enforcement Timetable for that Reporting Period, on the basis that:</p> <ul style="list-style-type: none"> (a) a Cancellation shall count as one (1); (b) a Partial Cancellation shall count as zero point five (0.5); and (c) any Cancellations or Partial Cancellations during that Reporting Period which were caused by: <ul style="list-style-type: none"> (i) the Franchise Operator's implementation of a Service Recovery Plan during that Reporting Period; or (ii) the occurrence or continuing effect of a Force Majeure Event, <p>shall, if the Franchise Operator has complied with paragraph 7.1 of this Schedule 6.1E, be disregarded in determining such total number of Cancellations and Partial Cancellations;</p>
C	<p>is the total number of Passenger Services scheduled to be operated in the Enforcement Timetable for that Reporting Period, disregarding, if the Franchise Operator has complied with paragraph 7.1 of this Schedule 6.1E, any Cancellations or Partial Cancellations during that Reporting Period which were caused by:</p> <ul style="list-style-type: none"> (a) the Franchise Operator's implementation of a Service Recovery Plan during that Reporting Period; or (b) the occurrence or continuing effect of a Force Majeure Event.

4 TOC Minutes Delay Calculations

- 4.1 For each Reporting Period during the term of the ERMA the Authority shall:
 - (a) calculate the Franchise Operator's performance in respect of TOC Minutes Delay (and, if applicable, calculate the Franchise Operator's performance in respect of TOC Minutes Delay against the OP Target for TOC Minutes Delay) in accordance with the formula set out in Table 2 below (each an "**Initial TOC Minutes Delay Calculation**"); and
 - (b) other than for the first and second Reporting Periods following the ERMA Start Date, re-calculate the Franchise Operator's performance in respect of TOC Minutes Delay (and, if applicable, re-calculate the Franchise Operator's performance in respect of TOC Minutes Delay against the OP Target for TOC Minutes Delay) for the two (2) Reporting Periods immediately preceding the relevant Reporting Period using the formula set out in Table 2 below (each a "**TOC Minutes Delay Re-Calculation**").
- 4.2 In the event that a TOC Minutes Delay Re-Calculation demonstrates that the Initial TOC Minutes Delay Calculation or an earlier TOC Minutes Delay Re-Calculation was incorrect, the Initial TOC Minutes Delay Calculation and/or the

relevant earlier TOC Minutes Delay Re-Calculation shall, for the relevant Reporting Period, be replaced with the latest TOC Minutes Delay Re-Calculation.

- 4.3 If the Performance Based Fee attributable to the TOC Minutes Delay Operational Performance Component for the relevant PBF Assessment Period is calculated using the Quantified Target Methodology, the Franchise Operator shall not be entitled to receive payment of such element of the Performance Based Fee for the relevant PBF Assessment Period until the Authority has undertaken all TOC Minutes Delay Re-Calculations in relation to that PBF Assessment Period.

Table 2		
$\frac{MD_{SRP}}{H_{SRP}}$		
where:		
MD_{SRP}	is the sum of Minutes Delay that are attributable to the Franchise Operator in that Reporting Period.	
H_{SRP}	is ascertained as follows:	
	$\frac{V}{1000}$	
	where:	
	V	is the sum of Actual Train Mileage in that Reporting Period.

5 Short Formations

5.1 Short Formation Calculation

For each Reporting Period during the Franchise Term the Authority shall calculate the Franchise Operator's performance in respect of Short Formations (and, if applicable, calculate the Franchise Operator's performance in respect of Short Formations against the OP Target for Short Formations) in accordance with the following formula:

Table 3		
A^{SF}	=	$\frac{B_{SF}}{C_{SF}} \times 100$
where:		

B_{SF}	is the total number of Passenger Services in that Reporting Period operated with less Passenger Carrying Capacity than that specified for each such Passenger Service in the Train Plan disregarding, if the Franchise Operator has complied with paragraph 7.1 of this Schedule 6.1E, any such Passenger Services which were operated in that way as a result of: (a) the Franchise Operator's implementation of a Service Recovery Plan during that Reporting Period; or (b) the occurrence or continuing effect of a Force Majeure Event; and
C_{SF}	is the total number of Passenger Services scheduled to be operated in that Reporting Period disregarding, if the Franchise Operator has complied with paragraph 7.1 of this Schedule 6.1E, any such Passenger Service operated with less Passenger Carrying Capacity than that specified for each such Passenger Service in the Train Plan as a result of: (a) the Franchise Operator's implementation of a Service Recovery Plan during that Reporting Period; or (b) the occurrence or continuing effect of a Force Majeure Event.

5.2 For the purposes of the calculation to be undertaken by the Authority pursuant to paragraph 5.1 above:

- (a) if and to the extent that any Passenger Service is operated in excess of the Passenger Carrying Capacity specified for that Passenger Service in the Train Plan, the excess capacity shall be disregarded; and
- (b) any Passenger Service that is the subject of a Cancellation or a Partial Cancellation shall be disregarded.

6 Calculations

The Authority shall perform the calculations referred to in paragraphs 3.1, 4.1 and 5.1 of this Schedule 6.1E rounded to two (2) decimal places with the midpoint (that is, 11.115) rounded upwards (that is, 11.12).

7 Service Recovery Plans and Force Majeure

7.1 The Franchise Operator shall, within eight (8) weeks of the end of each Reporting Period for which a Service Recovery Plan has been implemented (or such other period as may be agreed by the Authority), submit to the Authority all the comprehensive records (as more particularly described in the "*Approved Code of Practice 2013*" or any document of a similar equivalent nature) which relate to the implementation of such Service Recovery Plan during that Reporting Period.

7.2 In performing the calculations pursuant to paragraph 4.1 of this Schedule 6.1E the Authority shall disregard any Minutes Delay that are caused by the occurrence or continuing effect of a Force Majeure Event.

8 Consequences for Poor Performance – Benchmarks

8.1 The Franchise Operator shall ensure that its performance in each Reporting Period as calculated by the Authority in accordance with the requirements of this Schedule 6.1E, **is not equal to or worse than** each Breach Performance Level in respect of the relevant PBF Assessment Period.

8.2 Without limiting the provisions of paragraph 8.4 below, if in any Reporting Period the Franchise Operator's performance, as calculated by the Authority in accordance with the requirements of this Schedule 6.1E, is **equal to or worse than** any Breach Performance Level relating to an Enforcement Benchmark in respect of the relevant Reporting Period, then a contravention of the Franchise Agreement shall occur and the Authority may serve a Remedial Plan Notice in accordance with the provisions of paragraph 7 of Schedule 6.1B (*Performance Based Fee*).

8.3 For the purposes of paragraph 7 of Schedule 6.1B (*Performance Based Fee*) the steps to be proposed by the Franchise Operator pursuant to that paragraph are those which ensure that the Franchise Operator's performance against the relevant Enforcement Benchmark will be **better than** the Breach Performance Level relating to such Enforcement Benchmark.

8.4 Certain consequences of the Franchise Operator's performance being **equal to or worse than** the Breach Performance Levels and Default Performance Levels relating to each Enforcement Benchmark are set out in Clause 21.7.

8.5 This paragraph 8 shall only apply if the parties have agreed (or the Authority has determined, if applicable) that the Quantified Target Methodology shall apply to the Operational Performance Fee pursuant to paragraph 4 (*Calculation of the Performance Based Fee for each Subsequent PBF Assessment Period*) of Schedule 6.1B (*Performance Based Fee*).

9 Consequences for Poor Performance

9.1 Action Plans

- (a) If in any three (3) consecutive Reporting Periods the:
- (i) Franchise Operator's performance against the OP Target for Cancellations is worse than the OP Target for Cancellations; and/or
 - (ii) Franchise Operator's performance against the OP Target for TOC Minutes Delay is worse than the OP Target for TOC Minutes Delay; and/or

- (iii) Franchise Operator's performance against the OP Target for Short Formations is worse than the OP Target for that Short Formations; and/or
- (iv) Actual T-3 Performance Level is worse than the OP Target for T-3; and/or
- (v) Actual T-15 Performance Level is worse than the OP Target for T-15;
- (vi) Actual All Cancellations Performance Level is worse than the OP Target for All Cancellations; and/or
- (vii) the Authority considers the Franchise Operator's performance on a route or group of routes (as applicable) to be unacceptably poor notwithstanding the fact that the Franchise Operator's overall performance in respect of any applicable target or level measured pursuant to this Schedule 6.1E meets the relevant target or threshold,

then the Authority shall be entitled to request from the Franchise Operator a plan in order to secure:

- (viii) in respect of paragraphs 9.1(a)(i) to (vi) above, a Required Performance Improvement; and
 - (ix) in respect of paragraph 9.1(a)(vii) above, an improvement of the Franchise Operator's performance level on a route or group of routes (as applicable) to the satisfaction of the Authority (acting reasonably) (a "**Route-Specific Required Performance Improvement**").
- (b) Within one (1) month of the Authority's request pursuant to paragraph 9.1(a) above, the Franchise Operator shall:
- (i) produce, at its own cost (which cost shall be a Disallowable Cost pursuant to Appendix 1 (*Disallowable Costs*) to Schedule 6.1A (*Franchise Payments*)), and deliver to the Authority its draft plan for securing a Required Performance Improvement and/or Route-Specific Required Performance Improvement (as applicable) (the "**Draft Action Plan**"); and
 - (ii) subject to paragraph 9.1(d)(iv) below:
 - A. obtain the Authority's approval of the Draft Action Plan in accordance with paragraph 9.1(d) below; and
 - B. commence the implementation of a resulting Action Plan.
- (c) The Draft Action Plan shall contain specific tangible action points and indicate in the case of each action point:

- (i) how that action will contribute to achieving the Required Performance Improvement and/or Route-Specific Required Performance Improvement (as applicable);
 - (ii) where the action is to be implemented;
 - (iii) when the action is to be commenced and by when it is to be implemented provided always that where any action is expressed to be ongoing the Draft Action Plan shall include specific review dates;
 - (iv) how performance of the action is to be measured; and
 - (v) set out the additional expenditure associated with each action.
- (d) The Authority shall be entitled to:
- (i) request further information from the Franchise Operator with respect to its Draft Action Plan and the Franchise Operator shall submit such further information to the Authority within the timescales as reasonably requested by the Authority; and/or
 - (ii) propose amendments to the Draft Action Plan and the parties shall agree and, in the absence of agreement, the Authority shall reasonably determine the amendments to the Draft Action Plan, in which case paragraph 9.1(e) below shall apply; or
 - (iii) accept the Draft Action Plan, in which case paragraph 9.1(e) below shall apply; or
 - (iv) not accept the Draft Action Plan, in which case the Franchise Operator shall not be obliged to undertake any further action with respect to its Draft Action Plan.
- (e) The Draft Action Plan as agreed, determined or accepted by the Authority (as the case may be) in accordance with paragraph 9.1(d) above, shall be referred to as the "**Action Plan**". The Franchise Operator shall implement the Action Plan in accordance with its terms.
- (f) The Franchise Operator acknowledges and agrees that the approval or lack of approval by the Authority of each Draft Action Plan as contemplated in this paragraph 9.1 shall not relieve the Franchise Operator of its obligations under this Schedule 6.1E or any other provisions of the Franchise Agreement.
- 9.2 Except where an Action Plan is required and implemented pursuant to paragraph 9.1(a)(vii), this paragraph 9 shall only apply if the parties have agreed (or the Authority has determined, if applicable) that the Quantified Target Methodology shall apply to the Operational Performance Fee pursuant to paragraph 4 (*Calculation of the Performance Based Fee for each Subsequent PBF Assessment Period*) of Schedule 6.1B (*Performance Based Fee*).

10 Allocation of Disputed Cancellations/Disputed Partial Cancellations

10.1 For the purpose of performing the calculations referred to in paragraph 3.1 of this Schedule 6.1E and/or paragraph 2 (*Operational Performance*) of Appendix 5 (*Quantified Target Methodology*) of Schedule 6.1B (*Performance Based Fee*) the Authority shall allocate any Disputed Cancellations and/or Disputed Partial Cancellations between the Franchise Operator and Network Rail at the end of a Reporting Period in the following ratio of:

Table 4	
F: G	
where:	
F	is the total number of Undisputed Cancellations and/or Undisputed Partial Cancellations from the twelve (12) preceding Reporting Periods including any Disputed Cancellations or Disputed Partial Cancellations which were resolved or determined (and attributed to the Franchise Operator) during such twelve (12) preceding Reporting Periods; and
G	is the total number of Undisputed Network Rail Cancellations and/or Undisputed Network Rail Partial Cancellations from the twelve (12) preceding Reporting Periods including any Disputed Cancellations or Disputed Partial Cancellations which were resolved or determined (and attributed to Network Rail) during such twelve (12) preceding Reporting Periods.

11 Allocation of Disputed Minutes Delay

11.1 Where the attribution of any Minutes Delay is in dispute between Network Rail and the Franchise Operator at the end of a Reporting Period the Authority shall for the purpose of performing the calculations referred to in paragraph 4.1 of this Schedule 6.1E and/or paragraph 2 (*Operational Performance*) of Appendix 5 (*Quantified Target Methodology*) of Schedule 6.1B (*Performance Based Fee*), allocate any disputed Minutes Delay between the Franchise Operator and Network Rail in the ratio of:

Table 5	
FF: GG	
where:	

FF	is the total number of undisputed Minutes Delay, in each case, from the twelve (12) preceding Reporting Periods that are attributable to the Franchise Operator including any disputed attributions which were resolved or determined (and attributed to the Franchise Operator) during such twelve (12) preceding Reporting Periods; and
GG	is the total number of undisputed Minutes Delay, in each case from the twelve (12) preceding Reporting Periods that are attributable to Network Rail including any disputed attributions which were resolved or determined (and attributed to Network Rail) during such twelve (12) preceding Reporting Periods.

**Appendix 4 to Schedule 1
Schedule 6.1A (*Franchise Payments*)**

Schedule 6.1A Franchise Payments

1A Definitions

For the purposes of this Schedule 6.1A only, the following words and expressions shall have the following meanings unless otherwise set out in Clause 1.1 (*Definitions*):

"Accrued Claims"	has the meaning given in paragraph 9.10 of this Schedule 6.1A (<i>Franchise Payments</i>);
"Accrued Disallowable Costs"	has the meaning given in paragraph 9.10 of this Schedule 6.1A (<i>Franchise Payments</i>);
"Accrued Revenue Foregone"	has the meaning given in paragraph 9.10 of this Schedule 6.1A (<i>Franchise Payments</i>);
"Actual Capex"	means the actual Capital Expenditure of the Franchise Operator in the relevant period;
"Actual Costs"	means the actual Costs of the Franchise Operator in the relevant period;
"Actual EMA Capex"	has the meaning given to "Actual Capex" in schedule 6.A (<i>Franchise Payments</i>) of the EMA (and, for the purposes of this definition and the definition of "Actual Capex" in schedule 6.A (<i>Franchise Payments</i>) of the EMA, " Capital Expenditure " shall have the meaning given to that term in schedule 6.A (<i>Franchise Payments</i>) of the EMA);
"Actual EMA Costs"	has the meaning given to "Actual Costs" in schedule 6.A (<i>Franchise Payments</i>) of the EMA (and, for the purposes of this definition and the definition of "Actual Costs" in schedule 6.A (<i>Franchise Payments</i>) of the EMA, " Costs " shall have the meaning given to that term in schedule 6.A (<i>Franchise Payments</i>) of the EMA);
"Actual EMA Revenue"	has the meaning given to "Actual Revenue" in schedule 6.A (<i>Franchise Payments</i>) of the EMA (and, for the purposes of this definition and the definition of "Actual Revenue" in schedule 6.A (<i>Franchise Payments</i>) of the EMA, " Revenue " shall have the meaning given to that term in schedule 6.A (<i>Franchise Payments</i>) of the EMA);

"Actual Revenue"	means the actual Revenue of the Franchise Operator in the relevant period;
"Aggregated Costs and Revenues Liabilities"	has the meaning given in paragraph 9.11 of this Schedule 6.1A;
"Annual Adjustment" or "AADJ"	means an adjustment determined in accordance with paragraph 11 (<i>Annual Adjustments</i>) of this Schedule 6.1A;
"Base Cash Position"	means [REDACTED ⁵] cash at hand (excluding the value of amounts on deposit as notified by the Franchise Operator to the Authority on 4 September 2020 or such other value as the Authority may determine in accordance with paragraph 12.8 of this Schedule 6.1A;
"Budget"	means together: the periodic cost and revenues budget; and the periodic capex budget, in relation to the period from the beginning of the seventh Reporting Period during Franchise Operator Year 2020/21 to the end of the thirteenth Reporting Period during Franchise Operator Year 2021/22 or the end of the Extended Term (if applicable), as agreed between the Authority and the Franchise Operator on or around the ERMA Start Date or (if the parties have not been able to agree the Budget by the ERMA Start Date) as reasonably determined by the Authority, as such Budget may be updated and/or extended from time to time in accordance with paragraph 8 (<i>Revisions to the Budget</i>) of this Schedule 6.1A;
"Budgeted Capex"	means the Capital Expenditure budgeted to be incurred by the Franchise Operator in a Reporting Period and specified in the Budget, as such Budget may be updated and/or extended from time to time in accordance with paragraph 8 (<i>Revisions to the Budget</i>) of this Schedule 6.1A (Franchise Payments);
"Budgeted Costs"	means the Costs budgeted to be incurred by the Franchisee in each Reporting Period and specified in the Budget, as such Budget may be updated and/or extended from time to time in accordance

⁵ December 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 paragraph 8 (<i>Revisions to the Budget</i>) of this Schedule 6.1A (<i>Franchise Payments</i>);
"Budgeted EMA Capex"	has the meaning given to "Budgeted Capex" in schedule 6.A (<i>Franchise Payments</i>) of the EMA (and, for the purposes of this definition and the definition of "Budgeted Capex" in schedule 6.A (<i>Franchise Payments</i>) of the EMA, " Capital Expenditure " and " Budget " shall have the meaning given to those terms in schedule 6.A (<i>Franchise Payments</i>) of the EMA);
"Budgeted EMA Costs"	has the meaning given to "Budgeted Costs" in schedule 6.A (<i>Franchise Payments</i>) of the EMA (and, for the purposes of this definition and the definition of "Budgeted Costs" in schedule 6.A (<i>Franchise Payments</i>) of the EMA, " Costs " and " Budget " shall have the meaning given to those terms in schedule 6.A (<i>Franchise Payments</i>) of the EMA);
"Capital Expenditure"	means costs of creating non-current or fixed assets which are not Costs and which are properly accrued during the term of the ERMA and relating to the Franchise Operator's performance of the Franchise Agreement;
"Cash Balance"	means in respect to any Weekday during the Franchise Term, the Franchise Operator's actual cash balance excluding the value of Season Ticket Fare suspense liabilities as at the end of business hours on the previous Weekday;
"Ceiling Cash Position"	means [REDACTED ⁶] cash at hand (excluding the value of amounts on deposit as notified by the Franchise Operator to the Authority on 4 September 2020 or such other value as the Authority may determine in accordance with paragraph 12.8 of this Schedule ;
"Costs"	means costs and expenses properly incurred during the term of the ERMA and relating to the Franchise Operator's performance of the Franchise Agreement and stated in the Franchise Operator's profit and loss account (including accruals and prepayments recognised in the Reporting Period in which the related costs are incurred) but excluding:

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	<p>(a) Franchise Payments (which shall include the value of any Fixed Fee and Performance Based Fee);</p> <p>(b) corporation tax and any deferred tax charge in the Franchise Operator's profit and loss account;</p> <p>(c) any accounting transaction which does not require the Franchise Operator to make a cash payment, including notional pensions accounting adjustments and the accounting impact of financial instrument revaluations, other than depreciation and amortisation; and</p> <p>(d) Capital Expenditure;</p>
	<p>provided that:</p> <p>(i) if the Franchise Operator's relevant 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</p> <p>(ii) any liability of the Franchise Operator to the Authority arising under or in connection with the Franchise Agreement prior to 1 March 2020 shall not be treated as or give rise to a cost or expense for the purpose of the Franchise Operator's profit and loss account;</p>
"Disallowable Costs"	means any Costs or Capital Expenditure which are described within Appendix 1 (<i>Disallowable Costs</i>) to Schedule 6.1A (<i>Franchise Payments</i>) and may include amounts stated in the Budget;
"EMA Budget"	has the meaning given to the term "Budget" in schedule 6.A (<i>Franchise Payments</i>) of the EMA;
"EMA Disallowable Costs"	has the meaning given to the term "Disallowable Costs" in schedule 6.A (<i>Franchise Payments</i>) of the EMA and for the purposes of this definition and the

	definition of term "Disallowable Costs" in schedule 6.A (<i>Franchise Payments</i>) of the EMA, "Costs" and "Capital Expenditure" shall have the meanings given to those terms in schedule 6.A (<i>Franchise Payments</i>) of the EMA);
"EMA Emergency Working Capital Payments"	has the meaning given to the term "Emergency Working Capital Payments" in schedule 6.A (<i>Franchise Payments</i>) of the EMA;
"EMA Estimated Revenue" or "EER"	has the meaning given to the term "Estimated Revenue" in schedule 6.A (<i>Franchise Payments</i>) of the EMA (and, for the purposes of this definition and the definition of "Estimated Revenue" in schedule 6.A (<i>Franchise Payments</i>) of the EMA, " Revenue " shall have the meaning given to that term in schedule 6.A (<i>Franchise Payments</i>) of the EMA);
"EMA Final Adjustment"	has the meaning given to the term "Final Adjustment" in schedule 6.A (<i>Franchise Payments</i>) of the EMA;
"EMA Final Reviewed Accounts"	has the meaning given to the term "Final Reviewed Accounts" in schedule 6.A (<i>Franchise Payments</i>) of the EMA;
"EMA FWCA"	has the meaning given to "FWCA" in schedule 6.A (<i>Franchise Payments</i>) of the Franchise Agreement as effected by the EMA, (and, for the purposes of this definition and the definition of "FWCA" in schedule 6.A (<i>Franchise Payments</i>) of the Franchise Agreement as effected by the EMA, " Final Working Capital Adjustment " shall have the meaning given to that term in paragraph 10.3 of schedule 6.A (<i>Franchise Payments</i>) of the Franchise Agreement as effected by the EMA and all definitions related to "Final Working Capital Adjustment" shall have the meanings given to them in schedule 6.A (<i>Franchise Payments</i>) of the Franchise Agreement as effected by the EMA);
"EMA Periodic Adjustment Payment"	means, in relation to the Franchise Payment payable in respect of the second and third Reporting Periods during the term of the ERMA, a sum calculated in accordance with Appendix 2 (<i>EMA Periodic Adjustment Payment</i>) payable to either the Authority or the Franchise Operator, as applicable;
"EMA Revenue Foregone"	has the meaning given to "Revenue Foregone" in schedule 6.A (<i>Franchise Payments</i>) of the EMA (and, for the purposes of this definition and the

	definition of "Revenue Foregone" in schedule 6.A (<i>Franchise Payments</i>) of the EMA, " Revenue " and " Good and Efficient Operator " shall have the meanings given to those terms in schedule 6.A (<i>Franchise Payments</i>) of the EMA);
"EMA SoS Claims"	has the meaning given to "SoS Claim" in paragraph 1 (<i>Definitions</i>) of schedule 6.A (<i>Franchise Payments</i>) of the Franchise Agreement as effected by the EMA;
"EMA Working Capital Payments"	has the meaning given to the term "Working Capital Payments" in schedule 6.A (<i>Franchise Payments</i>) of the EMA and, for the purposes of this definition and the definition of "Working Capital Repayment" in schedule 6.A (<i>Franchise Payments</i>) of the EMA, "Franchise Payment Component" and any related definitions shall each have the meanings given to those terms in in schedule 6.A (<i>Franchise Payments</i>) of the EMA;
"EMA Working Capital Repayments"	has the meaning given to the term "Working Capital Repayment" in schedule 6.A (<i>Franchise Payments</i>) of the EMA and, for the purposes of this definition and the definition of "Working Capital Repayment" in schedule 6.A (<i>Franchise Payments</i>) of the EMA, "Franchise Payment Component" and any related definitions shall each have the meanings given to those terms in in schedule 6.A (<i>Franchise Payments</i>) of the EMA;
"Emergency Working Capital Payment"	has the meaning given to it in paragraph 12.5 of this Schedule 6.1A;
"Estimated Capital Expenditure"	means the Capital Expenditure estimated by the Authority using available resources as is practicable at the time of the estimation;
"Estimated Costs"	means the Costs reasonably estimated by the Authority using available resources as is practicable at the time of the estimation;
"Estimated Revenue"	means the Revenue reasonably estimated by the Authority using available resources as is practicable at the time of the estimation;
"EWCR"	has the meaning given to "WCR" in schedule 6.A (<i>Franchise Payments</i>) of the EMA;
"Final Working Capital Adjustment" or "FWCA"	means the adjustment determined in accordance with paragraph 14.1 of this Schedule 6.1A (<i>Franchise Payments</i>);

"First Franchise Payment" or "FFP"	has the meaning given to that term in paragraph 1.2 of this Schedule 6.1A;
"First Reporting Period"	means the first Reporting Period during the term of the ERMA;
"Fixed Fee"	means [REDACTED ⁷] (exclusive of Value Added Tax) in respect of each Reporting Period in the relevant period (pro rated as appropriate on a daily basis where, due to termination or expiry, any relevant period includes part of a Reporting Period);
"Fixed Fee and Performance Based Fee" or "FFPBF"	means the Franchise Payment Component calculated in accordance with paragraph 15 (<i>Fixed Fee and Performance Based Fee</i>) of this Schedule 6.1A;
"Floor Cash Position"	means [REDACTED ⁸] cash at hand (excluding the value of amounts on deposit as notified by the Franchise Operator to the Authority on 4 September 2020 or such other value as the Authority may determine in accordance with paragraph 12.8 of this Schedule (<i>Franchise Payments</i>));
"Forecast Closing Cash Position"	means, with respect to a Reporting Period, the Franchisee's forecast working capital position, excluding: (a) the Franchise Payment to be made in the following Reporting Period and (b) the value of Season Ticket Fare suspense account liabilities, as at the last day of that Reporting Period and taking into account the Franchise Operator's latest Management Accounts;
"Franchise Payment Component"	means: (a) each of the components of "£FFP" as described in paragraph 1.2 of this Schedule 6.1A (<i>Franchise Payments</i>); (b) each of the components of "£FP" as described in paragraph 1.3 of this Schedule 6.1A (<i>Franchise Payments</i>); and (c) any component or element, described in the relevant provisions of this Schedule and

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	Schedule 6.1B (<i>Performance Based Fee</i>), as the case may be, which is used in determining or calculating the value of those components described in paragraph (a) above;
"Good and Efficient Operator"	means in the context of all other relevant provisions of this Franchise 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 shall recognise the extraordinary impact of COVID-19, the existence of the EMA and the ERMA and the requirement for operators to act in the national interest in response to COVID-19), which is a party to a franchise agreement on equivalent terms to the Franchise Agreement, with performance targets and standards equivalent to those set out in Schedule 6.1B (<i>Performance Based Fee</i>), 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;
"Periodic Adjustment"	has the meaning given in paragraph 10.2 of this Schedule 6.1A;
"Periodic Budgeted Capex Payment" or "PBCP"	means the Franchise Payment Component calculated in accordance with paragraph 1.3 of this Schedule 6.1A;
"Periodic Franchise Payment" or "PFP"	means the Franchise Payment Component calculated in accordance with paragraph 1.3 of this Schedule 6.1A;
"Periodic Finance Review Meeting"	has the meaning given in paragraph 9.1 of this Schedule 6.1A;
"Quarter"	means: (a) a period of three consecutive Reporting Periods, in each case ending at the end of the third, sixth and ninth Reporting Periods in a Franchise Operator Year; or

	<p>(b) a period of four consecutive Reporting Periods ending at the end of the 13th Reporting Period of a Franchise Operator Year,</p> <p>(c) (and "Quarterly" shall be construed accordingly);</p>
"Quarterly Budget Forecast Review Meeting"	has the meaning given in paragraph 8.1 of this Schedule 6.1A;
"Reporting Period 13"	means 1 March 2020 to 31 March 2020 (inclusive);
"Residual Components"	<p>means the net value of the components of the Franchise Payments, and of all other similar and equivalent payments to be made (including, but not limited to, SCPF and FIAP on a pro-rated per-Reporting Period basis) under Schedule 6 (<i>Franchise Payments</i>) which:</p> <p>(a) relate to any periods prior to Reporting Period 13; and</p> <p>(b) become payable during the relevant Reporting Period.</p> <p>For the purposes of this Schedule 6.1A (<i>Franchise Payments</i>), such net value shall be:</p> <p>(a) if payable by the Authority to the Franchise Operator, a positive number; or</p> <p>(b) if payable by the Franchise Operator to the Authority, a negative number;</p>
"Revenue"	means the gross total revenue of the Franchise Operator received or receivable and properly accrued during the term of the ERMA and relating to the Franchise Operator's performance of the Franchise Agreement as stated in the Franchise Operator's profit and loss account but excluding:
	(a) Franchise Payments (which shall include the value of any Performance Based Fee and/or Fixed Fee (if applicable)); and
	(b) any accounting transaction included in the Management Accounts, Annual Management Accounts, Annual Audited Accounts or Final Accounts but which does not result in the Franchise Operator receiving a cash payment, including notional pensions accounting adjustments and the accounting impact of financial instruments revaluations;

<p>"Revenue Foregone"</p>	<p>means an amount equal to the amount of revenue or other value which was not received or receivable by the Franchise Operator, including:</p> <p>(a) the:</p> <ul style="list-style-type: none"> (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, <p>but which would have been receivable and received or otherwise realised by the Franchise Operator if it had acted as a Good and Efficient Operator; and</p> <p>(b) subject always to paragraph 6 (<i>No Double Recovery</i>) of this Schedule 6.1A, the amount by which the Purchase Price (as defined in the Supplemental Agreement) receivable by the Franchise Operator is lower than it would have been but for the Franchise Operator:</p> <ul style="list-style-type: none"> (i) incurring Disallowable Costs; and/or (ii) otherwise acting other than as Good and Efficient Operator; <p>save where, in respect of both paragraphs (a) and (b) above, such Revenue or other value is not received or receivable as a result of the Franchise Operator acting in accordance with the instructions of the Authority;</p>
<p>"SoS Claim"</p>	<p>means all losses, liabilities, costs, damages and expenses that the Authority does or will incur or suffer (including any such losses, liabilities, costs, damages and expenses that are unliquidated or which are contingent):</p> <p>(a) as a consequence of any breach, negligence or other default of the Franchise Operator under or in connection with the Franchise Agreement and/or any agreement ancillary to this Franchise Agreement, the ERMA and/or the EMA, including the Supplemental Agreement; and/or</p> <p>(b) in respect of any matter for which the Franchise Operator is to indemnify the Authority pursuant to this Franchise Agreement, the ERMA and/or the EMA or any agreement ancillary to this Franchise Agreement, the ERMA and/or the EMA, including the Supplemental Agreement;</p>

"Supporting Materials"	means any materials explaining or supporting the Budget which have been produced by the Franchise Operator;
"Unreimbursed Disallowable Costs"	has the meaning given to it in paragraph 9.16 of this Schedule 6.1A (<i>Franchise Payments</i>);
"Working Capital Payment"	means the Franchise Payment Component calculated in accordance with paragraph 12.3 of this Schedule 6.1A (<i>Franchise Payments</i>);
"Working Capital Repayment"	means the Franchise Payment Component calculated in accordance with paragraph 13.2 of this Schedule 6.1A (<i>Franchise Payments</i>).

1 Franchise Payments

1.1 The parties acknowledge and agree that:

- 1.1.1 the provisions of schedule 6 (*Franchise Payments*) of the Franchise Agreement were suspended during the term of the EMA and shall continue to be suspended during the term of the ERMA, with the exception of paragraphs 17 and 18 which shall continue to apply following the termination of EMA in respect of the Fixed Sum Payment and SRAOr (as defined in paragraph 18.2 of the same);
- 1.1.2 the EMA FWCA shall not be payable at any time;
- 1.1.3 any Residual Components shall be addressed in accordance with paragraphs 1.2 and 1.2 of this Schedule 6.1A;
- 1.1.4 for the purposes of paragraph 1.2 of this Schedule 6.1A and paragraph 11 of Schedule 6.A of the EMA, limb (a) of the PPADC element of the EMA MFPP in paragraph 11.1 of Schedule 6.A of the EMA shall be calculated on the basis of the relevant Audited Accounts Reconciliation and other relevant financial information, provided to the Authority, including in accordance with paragraph 9.4 of Schedule 6.1C in relation to the period from 1 March 2020 to the end of the EMA Term or otherwise, rather than the EMA Final Reviewed Accounts; and
- 1.1.5 the EMA MFPP shall be payable following:
- (i) the receipt by the Authority of the Audited Accounts Reconciliation and other relevant financial information provided to the Authority in accordance with

paragraph 9.4 of Schedule 6.C in relation to the period from 1 March 2020 to the end of the EMA Term; and

- (ii) the determination of the Management Fee and Performance Payment in accordance with Paragraph 11 of Schedule 6.A (*Franchise Payments*) of the EMA.

- 1.2** The Franchise Payment for the First Reporting Period (the "**First Franchise Payment**") shall be an amount equal to:

£FFP =	$FPFP + FPBCP + FWCP + RCP$
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where:

FPFP (First Periodic Franchise Payment)	means an amount equal to: $FPFP = BC - EER$ where:	
	BC	means the Budgeted Costs for the First Reporting Period. BC may only be a positive number; and
	EER	means an amount equal to the EMA Estimated Revenue for the Reporting Period that ends on the day immediately before the ERMA Start Date. EER may only be a positive number.
FPBCP	means an amount equal to the Budgeted Capex for the First Reporting Period. FPBCP may only be a positive number.	
FWCP	means an amount equal to: $FWCP = BCP - FCCP$ (and FWCP may be a positive or negative number) where:	
	BCP	means an amount equal to the Base Cash Position; and
	FCCP	means an amount equal to the Forecast Closing Cash Position for the final Reporting Period of the term of the EMA.
RCP	means an amount equal to the Residual Components for the Reporting Period that ends on the day immediately before the ERMA Start Date. RCP may be a positive or negative number.	

1.3 The Franchise Payment for any Reporting Period in relation to the term of the ERMA other than the First Reporting Period shall be an amount equal to:

£FP =	PFP + PBCP + PADJ + WCP – WCR + AADJ + FFPBF – FWCA + RCP + EMA MFPP
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where:

PFP	means an amount equal to: $PFP_n = BC_n - ER_{n-1}$ Where:	
	PFP_n	means the Periodic Franchise Payment for the current Reporting Period.
	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 the preceding Reporting Period ("n-1") (if any), provided such Reporting Period occurs after the ERMA Start Date. ER_{n-1} may only be a positive number.
	PFP may be a positive or negative number.	
PBCP	means an amount equal to the Budgeted Capex for the current Reporting Period (if any). PBCP may only be a positive number.	
PADJ	means: (a) in relation to the second and third Reporting Periods during the term of the ERMA, an EMA Periodic Adjustment Payment; or (b) in relation to all other Reporting Periods during the term of the ERMA, any Periodic Adjustment, to be made on that Reporting Period's Payment Date. PADJ may be a positive or negative number.	
WCP	means any Working Capital Payment to be made on that Reporting Period's Payment Date. WCP may only be a positive number.	
WCR	means any Working Capital Repayment to be made on that Reporting Period's Payment Date. WCR may only be a positive number.	
AADJ	means any Annual Adjustment to be made on that Reporting Period's Payment Date. AADJ may be a positive or negative number.	
FFPBF	means: (a) for any Payment Date that is a FFPBF Payment Date, the amount calculated in accordance with paragraph 15 (<i>Fixed Fee and Performance Based Fee</i>); or	

	(b) in relation to any other Payment Date, zero. Subject to paragraph 15.2 of this Schedule 6.1A, for the purposes of paragraph (a) above FFPBF may only be a positive number.
FWCA	means the Final Working Capital Adjustment to be made in the Reporting Period immediately following the expiry of the term of the ERMA. FWCA may be a positive or negative number.
RCP	means an amount equal to the Residual Components for the preceding Reporting Period. RCP may be a positive or negative number.
EMA MFPP	means: (a) in relation to the first Payment Date following: (i) the receipt by the Authority of the relevant Audited Accounts Reconciliation and other relevant financial information provided in accordance with paragraph 9.4 of Schedule 6.1C covering the period 1 March 2020 to the end of the EMA Term; and (ii) the determination of the Management Fee and Performance Payment in accordance with Paragraph 11 of Schedule 6.A (<i>Franchise Payments</i>) of the EMA, the Management Fee and Performance Payment, determined in accordance with paragraph 11.1 of Schedule 6.A (<i>Franchise Payments</i>) of the EMA (and, subject to paragraph 11.2 of schedule 6.A of the EMA, EMA MFPP may only be a positive number); or (b) in relation to any other Payment Date, zero.

1.4 The parties agree that:

- 1.4.1** where £FP or £FFP is a positive number, the Authority shall pay that amount to the Franchise Operator on the Payment Date for that Reporting Period (or, in the case of the first Reporting Period following the ERMA Start Date, as soon as reasonably practicable);
- 1.4.2** where £FP or £FFP is a negative number, the Franchise Operator shall pay the corresponding positive amount to the Authority on the Payment Date for that

Reporting Period (or, in the case of the first Reporting Period following the ERMA Start Date, as soon as reasonably practicable); and

- 1.4.3 where £FP or £FFP is zero, neither party shall make a payment to the other party on the Payment Date for that Reporting Period.

2 Payment of Franchise Payments

- 2.1 The Authority shall notify the Franchise Operator, no less than seven days prior to the start of each Reporting Period (or, in the case of the first Reporting Period following the ERMA Start Date, as soon as reasonably practicable), of the amount of the Franchise Payment payable in respect of that Reporting Period.
- 2.2 Each such notification shall set out in reasonable detail how the Franchise Payment has been calculated.
- 2.3 The Payment Date for a Reporting Period shall be the first Weekday of that Reporting Period (or, in the case of the first Reporting Period following the ERMA Start Date, as soon as reasonably practicable).
- 2.4 Each Franchise Payment shall be payable by the Franchise Operator or, as the case may be, the Authority in the amount notified by the Authority in accordance with paragraph 2.1 of this Schedule 6.1A on the Payment Date of the Reporting Period to which it relates (or, in the case of the first Reporting Period following the ERMA Start Date, as soon as reasonably practicable).
- 2.5 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.

3 Interest

If:

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

that party which has failed to pay shall in addition pay interest on such amount at the Interest Rate, calculated on a daily basis, from the due date for payment to the date on which payment is made.

4 Disputes under Schedule 6

If either the Franchise Operator or the Authority disputes the amount of a Franchise Payment, the dispute shall, unless the Franchise Operator and the Authority otherwise agree, be resolved in accordance with the provisions of Clause 45 (*Governing Law 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 6.1A.

5 Not Used

6 No Double Recovery

6.1 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:

6.1.1 no amount shall be categorised as both Capital Expenditure and as a Cost for the purpose of this Schedule 6.1A, 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 and ERMA; and

6.1.2 neither party shall be entitled to recover pursuant to the terms of the ERMA a sum that has already been recovered pursuant to the terms of the EMA and *vice versa*.

6.2 In the event that the Franchise Operator is successful in obtaining any governmental support or support from any local authority or other such body that is offered in relation to the impact of and/or recovery from the impacts of COVID-19, this shall be taken into account in relation to the relevant payment and adjustments in this Schedule 6.1A such that the Franchise Operator does not benefit from double recovery or double counting.

7 Force Majeure and Payments

Following the occurrence of a Force Majeure Event, the payment of Franchise Payments shall continue to be calculated in accordance with this Schedule 6.1A and the payment of such Franchise Payments shall continue unaffected.

8 Revisions to the Budget

8.1 Without limiting the requirement for any other meeting, the parties shall, subject to paragraph 9.14 of this Schedule 6.1A, hold a forecast Budget review meeting at least once in each Quarter (a "**Quarterly Budget Forecast Review Meeting**") at a time and location notified to the Franchise Operator by the Authority following provision of the information referred to in paragraph 8.2 of this Schedule 6.1A. The purpose of the meeting shall be to review and seek to agree:

8.1.1 revisions (if any) to the Budget for the remaining Reporting Periods of the Budget, including inserting such additional information as may be required in relation to the period of any possible Extended Term;

8.1.2 the content of any necessary or desirable corresponding addendum to the Supporting Materials;

8.1.3 Not used;

8.1.4 any new contracts with an Affiliate which the Franchise Operator proposes to enter into or renew, any existing contracts with an Affiliate which the Franchise Operator

proposes to amend or extend and details of any contract procurement process (pursuant to which the Franchise Operator proposes to enter into a contract with the successful bidder) in which the Franchise Operator reasonably expects an Affiliate to participate; and

- 8.1.5** whether any adjustment to the value(s) of Base Cash Position, Ceiling Cash Position and/or Floor Cash Position is necessary.

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

- 8.2** The Franchise Operator shall, prior to the date of each Quarterly Budget Forecast Review Meeting provide to the Authority the relevant information required pursuant to paragraph 9.3 (*Quarterly Financial Information*) of Schedule 6.1C (*Management Information*), together with a draft periodic budget prepared using the cost and revenue categories required by Authority from time to time updated to reflect Actual Costs, Actual Capex and Actual Revenues as reflected in the latest Management Accounts and revised Budgeted Costs and Budgeted Capex and Estimated Revenue (or EMA Estimated Revenue, as applicable) for the period to which such forecast relates, in accordance with the timescales set out therein, and shall provide the Authority with all further information as the Authority may request from time to time for the purposes of the operation of this paragraph 8.2, within such time as the Authority may reasonably specify for that purpose (and this paragraph 8 shall continue to apply such that the number of requests which the Authority may make is not limited).
- 8.3** If the parties fail to agree the matters referred to in paragraphs 8.1.1 to 8.1.5 of this Schedule 6.1A at the relevant Quarterly Budget Forecast Review Meeting, the Authority shall reasonably determine such matters.
- 8.4** 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 Quarterly 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.
- 8.5** Each revision to the Budget and/or addendum to the Supporting Materials shall (unless the parties otherwise agree):
- 8.5.1** 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;
- 8.5.2** 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);

- 8.8.3 contract or arrangement with an Affiliate that was entered into prior to the ERMA Start Date which has a remaining term that is longer than seven Reporting Periods as at the ERMA Start Date and/or which may extend beyond the ERMA Term or Extended Term, provided that the relevant contract is capable of being terminated by the Franchise Operator in accordance with its terms to allow the Franchise Operator to undertake such re-procurement without the Franchise Operator being in breach of the terms of such contract or incurring any liability or being required to make any termination payment to the relevant Affiliate.
- 8.9 For the purpose of this paragraph 8, the Authority shall be entitled to consider any information provided to the Authority by the Franchise Operator and any other sources of information which the Authority considers to be relevant and the Authority shall be entitled to request such information from the Franchise Operator as the Authority requires in connection with the matters referred to in this paragraph 8. 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.
- 8.10 Subject to the Authority's rights set out in paragraph 8.7 of this Schedule 6.1A, 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.

9 Review of Franchise Operator's performance against Budget

Finance Review Meeting

- 9.1 Without limiting the requirement for any other meeting, the parties shall, subject to paragraph 9.14 of this Schedule 6.1A, hold a finance review meeting in every Reporting Period ("**Periodic Finance Review Meeting**") at such time(s) and location(s) notified to the Franchise Operator by the Authority following the provision of the information referred to in paragraph 9.2 of this Schedule 6.1A and:
- 9.1.1 the purpose of the Periodic Finance Review Meeting shall be to review the financial performance of the Franchise Operator. This shall include:
- (i) a review and discussion of variances arising in the preceding Reporting Period between Actual Costs, Actual Capex and Actual Revenue, and Budgeted Costs, Budgeted Capex and Estimated Revenue respectively, Actual Revenues to be received by the Franchise Operator and potential Revenue Foregone, 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 (or, in relation to the second and third Reporting Periods during the term of the ERMA, the EMA Periodic Adjustment Payment);
 - (ii) a review and discussion regarding any Actual Costs with respect to all payments made by the Franchise Operator under contracts or other arrangements with Affiliates (and any payments, costs or liabilities in connection with such contracts or arrangements which are not consistent

with the Franchise Operator acting as a Good and Efficient Operator shall be Disallowable Costs);

- (iii) a review of fees and payments (including bonuses) actually paid by the Franchise Operator to its directors and officers during the preceding Reporting Period as against the Budgeted Costs for such fees and payments as stated in the then current Budget;
- (iv) a review and discussion of the Franchise Operator's management of its working capital and the Franchise Operator's Forecast Closing Cash Position for that Reporting Period in which the Periodic Finance Review Meeting is taking place and any Working Capital Payment or Working Capital Repayment to be applied to the Franchise Payment to be paid in the Reporting Period following the Reporting Period in which the Periodic Finance Review Meeting is taking place;
- (v) actions to be taken in respect of the Franchise Operator's financial performance;
- (vi) identification of any potential Non-Recoverable Costs, Disallowable Costs, Unreimbursed 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, Unreimbursed Disallowable Costs, Revenue Foregone and SoS Claims (and/or in accordance with paragraph 9.13 of this Schedule 6.1A, relevant Initial SoS Claim Amounts, as applicable) which have been identified pursuant to sub-paragraph (vi) above in previous Periodic Finance Review Meetings;

9.1.2 the Franchise Operator shall ensure that the representatives of the Franchise Operator at the meeting shall include the Finance Director of the Franchise Operator or a suitable representative of the Finance Director as may reasonably be approved for this purpose by the Authority; and

9.1.3 the Authority shall ensure that the representatives of the Authority shall include a senior civil servant where the confirmation and valuation of any Disallowable Costs, Unreimbursed Disallowable Costs, Revenue Foregone and/or SoS Claims (and/or in accordance with paragraph 9.13 of this Schedule 6.1A, relevant Initial SoS Claim Amounts, as applicable) are to be considered as part of any Periodic Finance Review Meeting,

and the purpose of the Periodic Finance Review Meeting held in the first Reporting Period of the term of the ERMA (the "**EMA Finance Review Meeting**") shall be to discuss the financial performance of the Franchise Operator during the final Reporting Period during the term of the EMA and for the purposes of the EMA Finance Review Meeting, references in paragraph 9.1.1 to "Actual Costs", "Actual Capex", "Actual Revenue", "Budgeted Costs", "Budgeted Capex", "Estimated Revenue", "Disallowable Costs", "Revenue Foregone" and "SoS Claims" shall be construed to be references to Actual EMA Costs, Actual EMA Capex, Actual EMA Revenue, Budgeted EMA Costs, Budgeted EMA Capex, EMA Estimated Revenue, EMA Disallowable Costs, EMA Revenue Foregone and EMA SoS Claims (respectively).

- 9.2 The Franchise Operator shall, prior to the date of each Periodic Finance Review Meeting, provide to the Authority the relevant information required pursuant to paragraph 9.2 of Schedule 6.1C (*Management Information*) (or, in relation to the EMA Finance Review Meeting, the relevant information required pursuant to paragraph 9.2 of schedule 6.1C (*Management Information*) of the EMA) in relation to the previous Reporting Period together with a statement of the Franchise Operator's Forecast Closing Cash Position applicable to that Reporting Period, in accordance with the timescales set out therein, and shall provide the Authority with all further information as the Authority may request from time to time for the purposes of the operation of paragraph 9.1 of this Schedule 6.1A, within such time as the Authority may reasonably specify for that purpose (and this paragraph 9 shall continue to apply such that the number of requests which the Authority may make is not limited).
- 9.3 The Authority shall be entitled to consider any information provided to the Authority by the Franchise Operator and any other sources of information which the Authority considers to be relevant and the Authority shall be entitled to request such information from the Franchise Operator as the Authority requires for the purposes of the operation of this paragraph 9. The Franchise Operator shall provide the information within such time as the Authority may reasonably specify for the purpose (and this paragraph 9 shall continue to apply such that the number of requests which the Authority may make is not limited).
- 9.4 If, within 10 Weekdays following the relevant Periodic Finance Review Meeting:
- 9.4.1 the parties have failed to agree the matters referred to in paragraph 9.1.1(vii) of this Schedule 6.1A; and
- 9.4.2 such matters either individually or in the aggregate exceed [REDACTED⁹],
- then each party shall respectively procure that such matter or matters (as the case may be) shall be escalated to any senior civil servant within the Department for Transport's Rail Group (excluding the Passenger Services Group) on behalf of the Authority and any statutory director of any Affiliate of the Franchise Operator on behalf of the Franchise Operator. Those representatives shall meet at the earliest convenient time and in any event within 20 Weekdays of the date of the relevant Periodic Finance Review Meeting and negotiate in good faith and attempt to agree the relevant matters.
- 9.5 If:
- 9.5.1 the parties fail to agree the matters referred to in paragraph 9.1.1 of this Schedule 6.1A at the relevant Periodic Finance Review Meeting, in circumstances where paragraph 9.4 of this Schedule 6.1A does not apply;
- 9.5.2 the representatives of the parties fail to agree the matters referred to in paragraph 9.1.1(vii) of this Schedule 6.1A within 10 Weekdays of first meeting to agree such matters in accordance with paragraph 9.4 of this Schedule 6.1A, in circumstances where that paragraph applies; or
- 9.5.3 the Franchise Operator fails to provide the relevant information required pursuant to Schedule 6.1C (*Management Information*) (or, in relation to the EMA Finance Review Meeting, the relevant information required pursuant to paragraph 9.2 of schedule

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

6.C (*Management Information*) of the EMA), in accordance with the timescales set out therein, or otherwise in accordance with this paragraph 9,

the Authority shall (without prejudice to the Authority's other rights) be entitled (but not obliged) to determine the relevant matters in accordance with this paragraph 9 and all other applicable provisions of this Schedule 6.1A but by reference to the relevant information available to the Authority at the time of such determination.

Accrued Disallowable Costs, Accrued Revenue Foregone and SoS Claims

9.6 Without prejudice to paragraphs 9.3 to 9.5 of this Schedule 6.1A, if subsequent to any Periodic Finance Review Meeting, the Authority later identifies any item (applicable to that period to which the relevant Periodic Finance Review Meeting relates) which the Authority considers is or may be a Disallowable Cost or an instance of Revenue Foregone or any SoS Claims (whether following a review of the Franchise Operator's Annual Audited Accounts, Final Accounts or otherwise) the Authority shall within 28 days of identifying such item be entitled to:

9.6.1 notify the Franchise Operator in writing, identifying the item concerned; and

9.6.2 request further information from the Franchise Operator in connection with the item for the purposes of the operation of this paragraph 9.6 and paragraphs 9.7 to 9.9 of this Schedule 6.1A. The Franchise Operator shall provide the information within such time as the Authority may reasonably specify for the purpose.

9.7 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 9.13 of this Schedule 6.1A, relevant Initial SoS Claim Amounts, as applicable) identified by the Authority pursuant to paragraph 9.6 of this Schedule 6.1A within 20 Weekdays of the later of the Authority's notice referred to in paragraph 9.6.1 of this Schedule 6.1A and the date specified by the Authority for the delivery of further information in accordance with paragraph 9.6.2 (the "**Escalation Trigger Date**").

9.8 If:

9.8.1 the parties fail to agree the matters referred to in paragraph 9.7 of this Schedule 6.1A; and

9.8.2 such matters either individually or in the aggregate exceed [REDACTED¹⁰]; then

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

9.9 If:

¹⁰ December 2020 (Date of Redactions Approval) – Where text has been omitted from the document this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

- 9.9.1 the parties fail to agree the matters referred to in paragraph 9.7 in circumstances where paragraph 9.8 does not apply;
- 9.9.2 the representatives of the parties fail to agree the matters referred to in paragraph 9.7 within 10 Weekdays of first meeting to agree such matters in accordance with paragraph 9.8 or the parties fail to meet to attempt to agree the relevant matters, in circumstances where that paragraph applies; or
- 9.9.3 the Franchise Operator fails to provide the relevant information required pursuant to paragraph 9.6.2 in accordance with the specified timescales, then
- the Authority shall reasonably determine the value of any Disallowable Costs and/or Revenue Foregone and/or any SoS Claims (and/or in accordance with paragraph 9.13, relevant Initial SoS Claim Amounts, as applicable).
- 9.10 The value of any Disallowable Costs and/or Revenue Foregone and/or any SoS Claims (and/or in accordance with paragraph 9.13, relevant Initial SoS Claim Amounts as applicable) as agreed or determined whether pursuant to paragraph 9.4, paragraph 9.5, paragraph 9.8, paragraph 9.9 or paragraph 9.13 shall be referred to as "**Accrued Disallowable Costs**" and "**Accrued Revenue Foregone**" and "**Accrued Claims**" (as applicable).
- 9.11 Subject to paragraph 9.12, the value of any Accrued Disallowable Costs and/or Accrued Revenue Foregone and/or Accrued Claims on each occasion accumulated pursuant to paragraph 9.10 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**".
- 9.12 The value of the Aggregated Costs and Revenues Liabilities shall be limited to:
- 9.12.1 in the event that there has been no extension to the term of the ERMA, the sum of:
- (i) the Fixed Fee payable for the Reporting Periods in the ERMA Term (which shall take account of any early expiry or termination of the ERMA) calculated pursuant to paragraph 15.1;
 - (ii) the maximum potential Performance Based Fees for the PBF Assessment Periods in the ERMA Term calculated in accordance with Schedule 6.1B (*Performance Based Fee*); and
 - (iii) any remaining amounts as a debt from the Franchise Operator which the Authority shall be entitled to claim from the Performance Bond on expiry or termination of this Franchise Agreement; or
- 9.12.2 in the event that there has been an extension to the term of the ERMA, the sum of:
- (i) the Fixed Fee payable for the Reporting Periods in that Franchise Operator Year calculated pursuant to paragraph 15.1;
 - (ii) the maximum potential Performance Based Fees for the PBF Assessment Periods in that Franchise Year calculated in accordance with Schedule 6.1B (*Performance Based Fee*); and

- (iii) any remaining amounts as a debt from the Franchise Operator which the Authority shall be entitled to claim from the Performance Bond on expiry or termination of this Franchise Agreement.

9.13 If any SoS Claim is a contingent or unliquidated claim (a "**Contingent SoS Claim**"), the parties shall, pursuant to paragraph 9.4, paragraph 9.7 or paragraph 9.8 (as applicable) seek to agree (or in the absence of agreement, the Authority may for the purposes of paragraph 9.5 and shall for the purposes of paragraph 9.9, 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 9.10. If the value of Contingent SoS Claim once fully liquidated (that is, being agreed or determined through dispute resolution) is:

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

- (i) as an adjustment to the Aggregated Costs and Revenues Liabilities to be applied against the calculation of FFPBF, where Franchise Payments in favour of the Authority remain to be paid after the date on which the Contingent SoS Claim has become fully liquidated; and/or
- (ii) as an adjustment to the Franchise Payment payable after the expiry of the term of the ERMA; and/or
- (iii) as a debt from the Franchise Operator which the Authority shall be entitled to claim from the Performance Bond on expiry or termination of the Franchise Agreement; or

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

- (i) as an adjustment to the Aggregated Costs and Revenues Liabilities to be applied against the calculation of FFPBF, where Franchise Payments remain to be paid after the date on which the Contingent SoS Claim has become fully liquidated; or
- (ii) where no Franchise Payment is payable after the date on which the Contingent SoS Claim becomes fully liquidated as a payment to the Franchise Operator.

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

9.15 Any Quarterly Budget Forecast Review Meeting or Period Finance Review Meeting (or part thereof) may be held remotely with the prior agreement of the parties.

Unreimbursed Disallowable Costs

9.16 If the value of any Disallowable Cost is agreed or determined pursuant to this paragraph 9, the Franchise Operator may (subject to the prior written consent of the Authority) request that the Owning Group pay to the Franchise Operator within 10 Weekdays of receipt of such

request a sum equal to the value as such Disallowable Cost (such sum, once paid to the Franchise Operator in accordance with this paragraph 9.16, being an “Unreimbursed Disallowable Cost”).

- 9.17 Paragraph 9.16 shall not apply in relation to Disallowable Costs specified in paragraph (e) or paragraph (k) of Appendix 1 (*Disallowable Costs*) to this Schedule 6.1A.
- 9.18 Any Unreimbursed Disallowable Costs shall be disregarded for the purposes of:
 - 9.18.1 the Event of Default in clause 21.17 of the Franchise Agreement; and
 - 9.18.2 calculating any Costs for the purposes of any Franchise Payment.

10 Periodic Adjustments

- 10.1 The value of PADJ for the current Reporting Period ("n") (other than the second and third Reporting Periods during the term of the ERMA) shall be equal to the following

PADJ for Reporting Period(n) =	$(ACRP_{n-3} - BCRP_{n-3}) + (ACAP_{n-3} - BCAP_{n-3}) - (ARRP_{n-3} - ERRP_{n-3})$
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Where:

ACRP_{n-3}	means the total Actual Costs in the third preceding Reporting Period ("n-3") as set out in the Management Accounts for that preceding Reporting Period, provided that any Reporting Periods prior to the ERMA Start Date shall be disregarded. ACRP _{n-3} may only be a positive number.
BCRP_{n-3}	means the total Budgeted Costs in respect of the third preceding Reporting Period ("n-3") (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-3)), provided that any Reporting Periods prior to the ERMA Start Date shall be disregarded. BCRP _{n-3} may only be a positive number.
ACAP_{n-3}	means the total Actual Capex for the third preceding Reporting Period ("n-3"), provided that any Reporting Periods prior to the ERMA Start Date shall be disregarded. ACAP _{n-3} may only be a positive number.
BCAP_{n-3}	means the Budgeted Capex in respect of the third preceding Reporting Period ("n-3") (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-3)), provided that any Reporting Periods prior to the ERMA Start Date shall be disregarded. BCAP _{n-3} may only be a positive number.
ARRP_{n-3}	means the total Actual Revenue for the third preceding Reporting Period ("n-3"), provided that any Reporting Periods

	prior to the ERMA Start Date shall be disregarded. ARRP may only be a positive number.
ERRP_{n-3}	means the total Estimated Revenue in respect of the third preceding Reporting Period (n-3), provided that any Reporting Periods prior to the ERMA Start Date shall be disregarded. ERRP may only be a positive number.

- 10.2 The value of PADJ in respect of a Reporting Period (other than the second and third Reporting Periods during the term of the ERMA) shall be made as an adjustment to the second Franchise Payment payable after that calculation of PADJ is determined, provided that no such adjustment shall apply in respect of the first Reporting Period during the term of the ERMA (a "**Periodic Adjustment**"). A Periodic Adjustment shall be calculated on the basis that no interest is due pursuant to paragraph 3.1 of this Schedule 6.1A.
- 10.3 The Authority agrees that, provided the Management Accounts (in a form consistent with the obligations of the Franchise Operator under Schedule 6.1C (*Management Information*)) are received from the Franchise Operator within the timescale specified in paragraph 9.2(a) of Schedule 6.1C (*Management Information*), the Authority shall provide the Franchise Operator with the value of PADJ in sufficient time for the Periodic Adjustment to be included in the relevant Franchise Payment in accordance with paragraph 10.2 of this Schedule 6.1A above.
- 10.4 If the Franchise Operator fails to provide the Management Accounts in accordance with its obligations under Schedule 6.1C (*Management Information*), the Authority shall (without prejudice to the Authority's other rights) be entitled (but not obliged) to determine the amount of any Periodic Adjustment in accordance with this paragraph 10 but by reference to the relevant information available to the Authority at the time of such determination.

11 Annual Adjustments

- 11.1 AADJ shall be equal to the following:

AADJ =	$(TotalAC - TotalAR) + TotalACAP - (TotalPFP + TotalPBCP) - TotalPADJ$
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Where, subject to paragraph 11.5 below:

TotalAC	means the total Actual Costs of the Franchise Operator for the relevant Franchise Operator Year as set out in the Annual Audited Accounts for the relevant Franchise Operator Year. TotalAC may only be a positive number.
TotalAR	means the total Actual Revenue for the relevant Franchise Operator Year as set out in the Annual Audited Accounts for the relevant Franchise Operator Year. TotalAR may only be a positive number.

TotalACAP	means the total Actual Capex for the relevant Franchise Operator Year as set out in the Annual Audited Accounts for the relevant Franchise Operator Year. TotalACAP may only be a positive number.
TotalPFP	means the total net value of the First Franchise Payment and all of the Periodic Franchise Payments paid to the Franchise Operator during the relevant Franchise Operator Year. TotalPFP may be positive or negative.
TotalPBCP	means the total net value of all of the FPBCP and the Periodic Budgeted Capex Payments paid to the Franchise Operator during the relevant Franchise Operator Year. TotalPBCP may only be a positive number.
TotalPADJ	means the total net value of PADJ paid in respect of each Reporting Period during the relevant Franchise Operator Year. TotalPADJ may be positive or negative.

- 11.2 The value of AADJ in respect of the relevant Franchise Operator Year (whether negative or positive) shall be made as an adjustment to the next Franchise Payment payable after the calculation of AADJ is determined (the "**Annual Adjustment**") and the parties acknowledge this may be payable as part of the Franchise Payments following the completion of the term of the ERMA. The Annual Adjustment shall be calculated on the basis that no interest is due pursuant to paragraph 3.1 of this Schedule 6.1A.
- 11.3 If the Franchise Operator fails to provide the information required by paragraphs 9.4(b), 9.4A(c) and 9.4A(m) of Schedule 6.1C (*Management Information*), including Annual Audited Accounts, Final Accounts and the Audited Accounts Reconciliation by the date specified pursuant to that paragraph the Authority shall (without prejudice to the Authority's other rights) be entitled (but not obliged) to determine the amount of any Annual Adjustment in accordance with this paragraph 11 but by reference to the relevant information available to the Authority at the time of such determination, including any information contained in the latest cumulative, year to date Management Accounts or in the Annual Management Accounts.
- 11.4 The parties agree that notwithstanding the provisions of the EMA, no EMA Final Adjustment shall be payable in respect of the term of the EMA and (unless otherwise so requested by the Authority) the Franchise Operator shall not be required to provide the EMA Final Reviewed Accounts.
- 11.5 The Authority may, in the Authority's sole discretion, determine that the relevant information set out in the Final Accounts as well as the Annual Audited Accounts shall be used for the purposes of calculating the components of AADJ, as set out in this paragraph 11.

12 Working Capital Payments

- 12.1 A Working Capital Payment shall become payable to the Franchise Operator as part of a Reporting Period's Franchise Payment where the Forecast Closing Cash Position for the

preceding Reporting Period is less than the Floor Cash Position. The value of the Working Capital Payment shall be calculated in accordance with paragraph 12.3.

- 12.2 The Franchise Operator shall provide the Authority with a statement of the Franchise Operator's Forecast Closing Cash Position prior to each Periodic Finance Review Meeting in accordance with paragraph 9.2.
- 12.3 The Working Capital Payment, if payable in any Reporting Period, shall be equal to the following:

WCP =	BCP – FCCP
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Where:

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

- 12.4 If, during a Reporting Period, the Franchise Operator becomes aware that in its opinion (acting reasonably), prior to the payment of the Franchise Payment in respect of the following Reporting Period, the Franchise Operator'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 Franchise Operator shall immediately:
 - 12.4.1 notify the Authority that a Working Capital Shortfall is likely to occur during that Reporting Period;
 - 12.4.2 provide, in or with that notice, supporting information (including relevant accounts and calculations) evidencing the likely Working Capital Shortfall and the amount of additional working capital that the Franchise Operator considers it will require to ensure that the Working Capital Shortfall is remedied; and
 - 12.4.3 provide such further supporting information as the Authority shall reasonably require.
- 12.5 The parties shall agree or (where the parties fail to agree) the Authority shall reasonably determine the amount required to remedy the Working Capital Shortfall (an "**Emergency Working Capital Payment**") and when such Emergency Working Capital Payments are required to be paid for that purpose.
- 12.6 The Authority shall pay to the Franchise Operator any Emergency Working Capital Payment in accordance with the timescales agreed or determined in accordance with paragraph 12.5 of this Schedule 6.1A.
- 12.7 If the Franchise Operator fails to provide any information required by this paragraph 12, or any information in accordance with its obligations in Schedule 6.1C (*Management Information*) to enable the Authority to calculate the amount of any Working Capital Payment or Emergency Working Capital Payment, the Authority shall (without prejudice to the Authority's other rights) be entitled (but not obliged) to determine the amount of WCP in

accordance with this paragraph 12 but by reference to the relevant information available to the Authority at the time of such determination.

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

13 Working Capital Repayment

- 13.1 A Working Capital Repayment shall become payable by the Franchise Operator as part of a Reporting Period's Franchise Payment where the Franchise Operator's Forecast Closing Cash Position in the preceding Reporting Period is greater than the Ceiling Cash Position. The value of the Working Capital Repayment shall be calculated in accordance with paragraph 13.2 of this Schedule 6.1A.

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

WCR =	FCCP – BCP
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Where:

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

14 Final Working Capital Adjustment

- 14.1 The value of FWCA shall equal:

FWCA =	(TotalWCP – TotalWCR) + FWCP
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Where:

FWCP	means an amount equal to the FWCP that was paid in the First Franchise Payment in accordance with paragraph 1.2 above.
TotalWCP	means the aggregate of all Working Capital Payments, EMA Working Capital Payments, Emergency Working Capital Payments and EMA Emergency Working Capital Payments paid to the Franchise Operator during the term of the ERMA and the EMA (as applicable).
TotalWCR	means the aggregate of all Working Capital Repayments and EMA Working Capital Repayments paid by the Franchise Operator during the term of the ERMA and the EMA (as applicable).

- 14.2 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 ERMA. FWCA may be positive or negative.

14.3 If the Franchise Operator fails to provide any information in accordance with its obligations in Schedule 6.1C (*Management Information*) to enable the Authority to calculate any Working Capital Repayment, EMA Working Capital Repayment or the Final Working Capital Adjustment, the Authority shall (without prejudice to the Authority's other rights) be entitled (but not obliged) to determine the amount of WCR, EWCR or FWCA (as the case may be) in accordance with this paragraph 14 but by reference to the relevant information available to the Authority at the time of such determination.

15 Fixed Fee and Performance Based Fee

15.1 Subject to paragraphs 15.2 to 15.4 (inclusive), the value of FFPBF shall equal:

FFPBF =	(FF+PBF) – ACRL
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Where, subject to paragraph 15.5 below:

FF	means the Fixed Fee.
PBF	<p>means:</p> <ul style="list-style-type: none"> (a) (in relation to the ERMA Term) the sum of all the Performance Based Fees, calculated in accordance with Schedule 6.1B (<i>Performance Based Fee</i>), for all of the PBF Assessment Periods which concluded in the ERMA Term; or (b) (in relation to the Extended Term, if any) the sum of all the Performance Based Fees, calculated in accordance with Schedule 6.1B (<i>Performance Based Fee</i>), for all of the PBF Assessment Periods which concluded in a Franchise Operator Year. <p>PBF may only be a positive number.</p>
ACRL	<p>means, for the purposes of this paragraph 15, the sum of the total value of the Aggregated Costs and Revenues Liabilities in the relevant period:</p> <ul style="list-style-type: none"> (a) calculated on the basis of the Franchise Operator's Annual Audited Accounts Reconciliation or the Final Accounts, at the Authority's sole discretion; and (b) as agreed or reasonably determined (in accordance with paragraphs 9.4 and 9.5 of this Schedule 6.1A) at the Payment Date for FFPBF pursuant to paragraph 15.3 of this Schedule 6.1A. <p>ACRL may only be a positive number.</p> <p>In this definition of ACRL, the "relevant period" means:</p> <ul style="list-style-type: none"> (a) (in relation to the ERMA Term) the ERMA Term; or (b) (in relation to the Extended Term, if any) the Franchise Operator Year.

- 15.2 If the value of FFPBF is a negative amount:
- 15.2.1 for the purposes of paragraph 1.3 of this Schedule 6.1A, FFPBF shall be deemed to equal zero; and
 - 15.2.2 the Authority shall be entitled to claim the value of FFPBF (expressed as a positive value) from the Franchise Operator as an adjustment to the Franchise Payment following determination of the amount of the relevant Franchise Payment.
- 15.3 Subject to paragraph 15.4 of this Schedule 6.1A, the value of FFPBF may be made as an adjustment to the next Franchise Payment (such Franchise Payment being a FFPBF Franchise Payment) payable after:
- 15.3.1 (during the ERMA Term), the value of the Performance Based Fee in relation to all PBF Assessment Periods in the ERMA Term has been finally calculated pursuant to Schedule 6.1B (*Performance Based Fee*); or
 - 15.3.2 (during the Extended Term, if any), the value of the Performance Based Fee in relation to all PBF Assessment Periods in that Franchise Operator Year has been finally calculated pursuant to Schedule 6.1B (*Performance Based Fee*); and
 - 15.3.3 the value of the Aggregate Costs and Revenue Liabilities have been agreed or determined for the purposes of this paragraph 15.

(the Payment Date for each FFPBF Franchise Payment being a FFPBF Payment Date).

FFPBF shall be calculated on the basis that no interest is due pursuant to paragraph 3 of this Schedule 6.1A.

The parties acknowledge that the adjustment referred to in this paragraph 15.3 may occur after the expiry of the term of the ERMA.

- 15.4 Nothing in this paragraph 15 shall limit the rights and remedies of the Authority in respect of any Disallowable Costs, Non-Recoverable Costs, Revenue Foregone and/or SoS Claims not taken into account in the calculation of ACRL. The Authority's rights and remedies in respect of any Disallowable Costs, Non-Recoverable Costs, Revenue Foregone and/or SoS Claims not taken into account in the calculation of ACRL shall include claims pursuant to and in accordance with the Performance Bond.
- 15.5 The Authority may, in the Authority's sole discretion, determine that the relevant information set out in the Final Accounts, as well as the Annual Audited Accounts or Audited Accounts Reconciliation, shall be used for the purposes of calculating the components of FFPBF, as set out in this paragraph 15.

16 Further Authority's rights in relation to accounting matters

- 16.1 Where the Authority reasonably considers that in calculating any matter which has an impact on the calculation of a Franchise Payment Component, any particular item or transaction has not been accounted for on a reasonable basis (including where the accounting treatment looks to the form rather than the substance of the item or transaction) and having regard to all circumstances, including GAAP (as may be amended from time to time), the Authority shall be entitled to require it to be accounted for on such other basis as the Authority may reasonably determine and notify to the Franchise Operator provided that the Authority shall

not be entitled pursuant to this paragraph to alter the accounting policies of the Franchise Operator from those set out in the Supporting Materials.

- 16.2 Where the Annual Audited Accounts or the Final Accounts are subject to adjustment or restatement, the Authority shall have the sole discretion to require the recalculation of any affected Franchise Payment Component for the relevant Franchise Operator Year and to require that the Franchise Operator shall pay to the Authority the amount which is the difference between:

16.2.1 any amount actually paid to the Authority or adjusted in favour of the Authority and the amount that would have been paid or adjusted had the affected Franchise Payment Component been originally calculated on the basis that such adjustment or revision was included in the Annual Audited Accounts or the Final Accounts; and/or

16.2.2 any amount actually paid by the Authority or adjusted in favour of the Franchise Operator and the amount that would have been paid or adjusted had the affected Franchise Payment Component been originally calculated on the basis that such adjustment or revision was included in the Annual Audited Accounts or the Final Accounts.

- 16.3 Any payment due to the Authority shall be paid by the Franchise Operator within thirty (30) days of the Authority notifying the Franchise Operator that the Authority requires a payment to be made pursuant to this paragraph 16.

17 Indexation

- 17.1 The parties agree that the Franchise Payments and any sum shown in any Budget for any given Franchise Operator Year (or other period) shall not be subject to automatic indexation or adjustment to take into account the effect of inflation provided that this paragraph 17 is without prejudice to the adjustment of the Budget in accordance with paragraph 8 (*Revisions to the Budget*) of this Schedule 6.1A and/or the adjustment of the Franchise Payments in accordance with paragraph 10 (*Periodic Adjustments*) and paragraph 11 (*Annual Adjustments*) of this Schedule 6.1A.

18 Further obligations of the Franchise Operator

- 18.1 Except to the extent otherwise agreed by the Authority, the Franchise Operator shall act as a Good and Efficient Operator in all respects in connection with the operation of this Schedule 6.1A and shall not act in a way that is contrary to the principles of the ERMA or the Franchise Agreement by using the existence or cessation of the ERMA to increase the profitability of the Franchise Operator.

- 18.2 The Franchise Operator warrants on a continuing basis and shall, if requested at any time by the Authority, provide written confirmation from a statutory director of the Franchise confirming that the Franchise Operator is not (and, during the term of the ERMA, was not) party to any arrangement of any kind whatsoever (except if the Authority provided prior written consent to such arrangement) under which:

18.2.1 any amounts which the Franchise Operator might otherwise have received from a third party are reduced, waived or otherwise suppressed; and/or

- 18.2.2 any amounts which the Franchise Operator might otherwise be properly obliged to pay or be liable are increased; and/or
- 18.2.3 any amounts required to be paid or accounted for by the Franchise Operator become or are recorded as paid or accounted for during the term of the:
 - (i) ERMA, which might otherwise be paid or accounted for in the periods preceding or following the term of the ERMA; and/or
 - (ii) EMA, which might otherwise be paid or accounted for in the periods preceding or following the term of the EMA; and/or
- 18.2.4 any amounts which the Franchise Operator might otherwise have received from a third party during the term of the:
 - (i) ERMA are recovered or accounted for in the periods preceding or following the term of the ERMA; and/or
 - (ii) EMA are recovered or accounted for in the periods preceding or following the term of the EMA; and/or
- 18.2.5 Revenue and/or EMA Revenue is accounted for in the periods preceding or following the term of the:
 - (i) ERMA which should have been accounted for during the term of the ERMA; and/or
 - (ii) EMA which should have been accounted for during the term of the EMA.
- 18.3 Without limiting any other constraints which operate by virtue of any other part of the Franchise Agreement or otherwise, no application shall be made or other step taken by or on behalf of the Franchise Operator in respect of the winding up or striking off of the Franchise Operator (or any similar or analogous process) and nor shall the Franchise Operator permit or facilitate the same:
 - 18.3.1 until all the adjustments and payments for which this Schedule 6.1A provides have been made and discharged in full; and/or
 - 18.3.2 without the prior written consent of the Authority.
- 18.4 The Authority shall be entitled to notify the Franchise Operator of any future initiatives or proposals that the Authority considers may have the potential to reduce certain Actual Costs below the applicable Budgeted Costs and the Franchise Operator shall, acting reasonably and in good faith, discuss with the Authority all such matters as are relevant to the possible implementation of such initiatives.
- 18.5 The Franchise Operator shall:
 - 18.5.1 upon the Authority's direction maintain an amount equal to the Season Ticket Fare suspense liabilities in a separate bank account as the Authority may nominate from time to time and the Franchise Operator shall secure the proceeds of any such account as chargor for the benefit of the Authority as chargee under a relevant security agreement, as the Authority may direct and to the Authority's satisfaction; and

18.5.2 within 10 Weekdays of the start of each Reporting Period provide to the Authority a written warranty from a Director that the value of the cash held in the account (if applicable) is equal to or more than the value of the Season Ticket Fare suspense liabilities as reported to the Authority in the previous Reporting Period.

19 Not used

20 Lock up Period

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

20.1.1 declare or pay any dividend (equity or preference) or make any other distribution, including surrendering any taxable losses to any of its Affiliates or pay any of its Affiliates in respect of taxable losses that they wish to surrender to the Franchise Operator, without the prior written consent of the Authority (in relation to a Permitted Dividend, such consent not to be unreasonably withheld or delayed and subject to paragraph 20.3);

20.1.2 pay management charges to any of its Affiliates in excess of those specified in the Initial Business Plan without the prior written consent of the Authority; or

20.1.3 make payment under any intra-group borrowings.

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

20.2.1 the Authority considers that all the obligations of the parties to account to each other pursuant to this Schedule 6.1A (*Franchise Payments*) have been fully performed and discharged (such confirmation not to be unreasonably withheld or delayed); and

20.2.2 by virtue of such notice, the Lock-Up Period has expired.

No such notice shall constitute a waiver of any rights which the Authority may have under or in respect of Schedule 6.1A (*Franchise Payments*).

20.3 Subject to the Franchise Operator fully performing and discharging all its obligations under this Schedule 6.1A (*Franchise Payments*) and paragraph 9 (*Financial Information*) of Schedule 6.1C (*Management Information*) in relation to that Franchise Operator Year to the satisfaction of the Authority, the consent of the Authority pursuant to paragraphs 20.1.1 and/or 20.1.2 may be sought annually or, in relation to a Franchise Operator Year of less than 13 Reporting Periods, on the expiry or termination of the relevant Franchise Operator Year. Any such consent shall be subject to the Parent or such other person acceptable to the Authority entering into an agreement (in form and substance acceptable to the Authority) to pay to the Franchise Operator, at the Authority's request, the amount (if any) recoverable by the Authority in respect of:

20.3.1 a fully liquidated Contingent SoS Claim; and/or

20.3.2 in respect of an adjustment to the Performance Based Fee and/or the Fixed Fee in accordance with paragraphs 9.13.1 and 15 (*Fixed Fee and Performance Based Fee*) of Schedule 6.1A (*Franchise Payments*),

provided in each case that such amount to be paid to the Franchise Operator by the Parent or other person acceptable to the Authority shall be reduced by a percentage equivalent to the percentage rate of NTR which applied to the corresponding Permitted Dividend payment made in respect of the Performance Based Fee and/or the Fixed Fee.

20.4 For the purposes of this paragraph 3, "**Permitted Dividend**" means:

20.4.1 in relation to the Franchise Operator Year ending on 31 December 2020:

20.4.1.1 in respect of the period from 1 April 2020 to 01:59 on 20 September 2020 an amount in respect of any Management Fee and Performance Payment paid to the Franchise pursuant to schedule 6.A (*Franchise Payments*) to the Franchise Agreement as such schedule 6.A (*Franchise Payments*) applied during the term of the EMA pursuant to the terms of the EMA; and

20.4.1.2 in respect of the period from the ERMA Start Date to 31 December 2020, an amount in respect of the Fixed Fee and/or a Performance Based Fee (if and to the extent that a Performance Based Fee has been included in a Franchise Payment paid in accordance with Schedule 6.1A (*Franchise Payments*)); and

20.4.2 in relation to any subsequent Franchise Operator Year, an amount in respect of the Fixed Fee and/or a Performance Based Fee (if and to the extent that a Performance Based Fee has been included in a Franchise Payment paid in accordance with Schedule 6.1A (*Franchise Payments*)),

in each case calculated in accordance with the following formula:

$$\text{£PD} = \text{FFPBF} - (\text{FFPBF} \times \text{NTR})$$

where:

£PD means the Permitted Dividend;

FFPBF means for the purposes of this paragraph 20.4 only:

- (a) in relation to the Franchise Operator Year ending on 31 December 2020, an amount equal to the sum of:
 - (i) the aggregate of any Management Fee and Performance Payment paid to the Franchise Operator pursuant to schedule 6.A (*Franchise Payments*) of the Franchise Agreement as such schedule 6.A (*Franchise Payments*) applied during the term of the EMA pursuant to the terms of the EMA; and
 - (ii) in respect of the period from the ERMA Start Date to 31 December 2020, the aggregate amount of the Fixed Fee and the Performance Based Fee (if any) that has been included in any Franchise Payment(s) paid in accordance with Schedule 6.1A (*Franchise Payments*); and
- (b) in relation to any subsequent Franchise Operator Year, the aggregate amount of the Fixed Fee and the Performance Based Fee (if any) that has been included in any Franchise Payment(s) paid in accordance with Schedule 6.1A (*Franchise Payments*)

NTR means the rate of corporation tax (expressed as a percentage), applicable at the time at which the Authority determines the value of the applicable Performance Based Fee (if any) and the Fixed Fee in accordance with Schedule 6.1A (*Franchise Payments*), provided that:

- (a) NTR shall not be adjusted, revalued or otherwise affected by the application of tax losses or any other reliefs to which the Franchise Operator may be entitled; and
- (b) if a Permitted Dividend has been made in accordance with this paragraph 20 and there is a subsequent variation in the rate of corporation tax in the relevant tax year, the Permitted Dividend shall not be recalculated to take account of such variation.

21 The Franchise Operator 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.

Appendix 1 to Schedule 6.1A Disallowable Costs

Any references in this Appendix 1 to Schedule 6.1A to costs, payments, expenses, fees, liabilities or other amounts shall be deemed to refer to Costs and/or Capital Expenditure as the context may require.

- (a) Any costs that were incurred otherwise than in accordance with those expected to be incurred by a Good and Efficient Operator. Variations between Actual Costs and Budgeted Costs and/or Actual Capex and Budgeted Capex (as the case may be) likely to be considered to be inconsistent with those expected of a Good and Efficient Operator include but are not limited to:
 - (i) staff, director or officer costs in excess of the Budget (except where evidenced by the Franchise Operator as appropriate for delivery of the Franchise or of reasonable scale given the requirement for delivery of the Franchise, provided that any costs referred in to in paragraph (b) or paragraph (c) of this Appendix shall not in any circumstance be considered appropriate for the delivery of the Franchise or of a reasonable scale given the requirement for delivery of the Franchise);
 - (ii) costs that do not reflect the contracted position under existing contracts as at the EMA Start Date unless such change has been agreed by the Authority (such agreement not to be unreasonably withheld or delayed);
 - (iii) new contracts entered in to by the Franchise Operator which have not been procured in compliance with the Franchise Operator's usual procurement procedures;
 - (iv) variations to existing contracts which have not been made in accordance with the Franchise Operator's usual procurement procedures; or
 - (v) any Costs or Capital Expenditure where the Franchise Operator has been unable to provide evidence to the satisfaction of the Authority that such costs or expenditure have been properly incurred and are consistent with the Franchisee acting as a Good and Efficient Operator.
- (b) Any bonuses, rewards or discretionary benefits paid to any staff, directors or officers under any schemes which have not previously been approved by the Authority (in the Authority's sole discretion) in writing.
- (c) Any expenses, disbursements or equivalent costs (to which the Franchise Operator's expenses policy would apply) which are incurred other than in compliance with the Franchise Operator's expenses policy.
- (d) Costs incurred or to be incurred by the Franchise Operator:
 - (i) in relation to:
 - A.** developing any Remedial Plan put in place in respect of breaches which occurred on or after the EMA Start Date; or
 - B.** implementing any Remedial Plan put in place in respect of breaches which occurred on or after the EMA Start Date that:
 - I.** a Good and Efficient Operator would not have incurred; or

- (i) Costs of developing and protecting any intellectual property rights which are not owned by the Authority or the Franchise Operator or are so owned, but where the costs are not ancillary to an activity included in the Budget.
- (j) Marketing or advertising costs incurred substantially to the benefit of wider group products or group brand recognition and which are not primarily for the benefit of Franchise Services.
- (k) Fines from government or regulatory bodies.
- (l) Costs of financial hedging, or gains/losses from hedging activity except with prior agreement from the Authority or where such costs or gains/losses arise from the Franchise Operator's participation in an industry recognised hedging scheme or activity which has been agreed by the Authority or which the Authority reasonably considers have been made in good faith on an arm's length basis to any Affiliate in connection with fuel hedging instruments to help manage the exposure of the Franchise Operator to diesel fuel costs.
- (m) The amount by which the Purchase Price payable by the Franchise Operator to the successor operator under the Supplemental Agreement at the end of the Franchise Period is higher than it would have been but for the Franchise Operator:
 - (i) incurring Disallowable Costs; or
 - (ii) otherwise acting other than as Good and Efficient Operator.
- (n) Third party costs in relation to the development and preparation of any Remedial Plan, plans to remedy performance shortfalls including but not limited to improvement, recovery or action plans required by this Agreement, excluding such costs as approved by the Authority, in the Authority's absolute discretion, prior to such costs being incurred by the Franchise Operator.
- (o) The amount of any interest payable by the Franchise Operator to the Authority in accordance with paragraph 3 of this Schedule 6.1A.
- (p) Any costs incurred by the Franchise Operator in pursuing or defending any claim against the Authority in respect of or in connection with the Franchise Agreement or otherwise.
- (q) Any costs incurred in relation to the period prior to the EMA Start Date which a Good and Efficient Operator would 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 ERMA which a Good and Efficient Operator would usually have discharged in the period following the expiry of the term of the ERMA.
- (s) Any costs incurred in relation to the discharge or carrying out of Franchise Plan which are in excess of the amounts a Good and Efficient Operator would ordinarily have expended on discharging the Franchise Plan in accordance with the contractual programme and to minimum specification contractually required.
- (t) Where costs are incurred during the term of the ERMA 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 Franchise Operator Years beginning after 31 March 2020.

After the expiry of the ERMA, the parties shall agree or the Authority shall determine the remaining amounts in such funds with reference to the amounts available to be expended in

the funds and the aggregate amount of expenditure incurred since the ERMA Start Date in relation to obligations related to those funds.

- (u) Not Used.
- (v) Except with the prior agreement of the Authority (not to be unreasonably withheld), any costs, charges, penalties, compensation or similar payments that the Franchise Operator may incur as a result of the termination of any contract or other arrangement.
- (w) Except with the prior agreement of the Authority, losses on disposals of fixed or non-current assets.
- (x) Maintenance costs where the maintenance activity was previously scheduled to be undertaken prior to or after the term of the ERMA 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 ERMA.
- (y) Depreciation or Capital Expenditure to the extent that the capital cost of acquisition of the relevant assets was to be funded by a third party.
- (z) Costs of any audit pursuant to paragraph 9.7(b) or paragraph 9.9 of Schedule 6.1C (*Management Information*).
- (aa) Legal, accountancy and other costs and expenses incurred in connection with the preparation and implementation of the ERMA (and any associated budgets, principles documents and other documents) and the EMA (and its associated heads of terms).
- (bb) Additional costs or expenses incurred by the Franchise Operator in procuring any new Performance Bond where required to do so pursuant to clause 14.3 of the Franchise Agreement.
- (cc) Costs incurred in relation to preparing and negotiating the direct award of a new contract to the Franchise Operator in relation to the Franchise.
- (dd) Compensating the Authority for all reasonable costs incurred by the Authority in carrying out enhanced monitoring of the Franchise Operator's performance of any relevant obligations pursuant to paragraph 8 of Schedule 6.1B.
- (ee) Any costs incurred in connection with or otherwise attributable to discharging its obligations pursuant to Schedule 14 (Preservation of Assets) insofar as they relate to supporting the transfer of the franchise to a Successor Operator at the end of the Franchise Period.
- (ff) Not used
- (gg) Any costs incurred in connection with conducting, or otherwise procuring, any surveys or statement of condition of leased property as may be required at the end of the Franchise Period in accordance with the terms of the relevant Property Lease and/or to otherwise establish the condition of any other asset at the end of the Franchise Period.
- (hh) Unless otherwise agreed by the Authority, any costs incurred in connection with maintenance of the Franchisee's leased property and/or other assets (other than any lifecycle maintenance costs) if and to the extent that the aggregate of such costs exceeds one hundred and fifty per cent (150%) of maintenance costs incurred by the Franchisee in relation to such leased property and/or other assets (other than any lifecycle maintenance costs) in the Franchise Operator Year ending on 31 December 2019.

- (ii) Any lifecycle maintenance costs in respect of any leased property or other assets which the Authority reasonably considers should have been incurred in the period prior to 1 March 2020.
- (jj) Any sums payable by the Franchise Operator to the Lessor (as defined in schedule 2 (*Termination of the Franchise Agreement*) to the ERMA) in respect of any Rolling Stock Dilapidations Liability (as defined in schedule 2 (*Termination of the Franchise Agreement*) to the ERMA).
- (kk) Any legal, accountancy and other costs and expenses incurred in connection with determining or agreeing the Termination Sum, the Interim Net Assets Payment Amount, the Updated Net Assets Amount and/or the Net Assets Reconciliation Amount, as applicable (and any associated models and other documents).
- (ll) Any costs incurred in relation to preparing, determining or agreeing any statements or amounts in connection with schedule 3 (*Early ERMA Termination*) to the ERMA.

**APPENDIX 2 TO SCHEDULE 6.1A
EMA Periodic Adjustment Payment**

The EMA Periodic Adjustment Payment shall be calculated in accordance with the following formula.

EMAPADJ for Reporting Period(n) =	$(AECRP_{n-3} - BECRP_{n-3}) + (AECAP_{n-3} - BECAP_{n-3}) - (AERRP_{n-3} - EERRP_{n-3})$
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Where:

AECRP_{n-3}	means the total Actual EMA Costs in the third preceding Reporting Period (n-3) as set out in the Management Accounts for that preceding Reporting Period. ACRP _{n-3} may only be a positive number.
BECRP_{n-3}	means the total Budgeted EMA Costs in respect of the third preceding Reporting Period (n-3) based on the version of the EMA Budget which applied for the purpose of the calculation of the Franchise Payment for that preceding Reporting Period. BCRP _{n-3} may only be a positive number.
AECAP_{n-3}	means the total Actual EMA Capex for the third preceding Reporting Period (n-3). ACAP _{n-3} may only be a positive number.
BECAP_{n-3}	means the Budgeted EMA Capex in respect of the third preceding Reporting Period (n-3) based on the version of the EMA Budget which applied for the purpose of the calculation of the Franchise Payment for that Reporting Period. BCAP _{n-3} may only be a positive number.
AERRP_{n-3}	means the total Actual EMA Revenue for the third preceding Reporting Period (n-3). ARRP may only be a positive number.
EERRP_{n-3}	means the total Estimated EMA Revenue in respect of the third preceding Reporting Period (n-3). ERRP may only be a positive number.

Appendix 5 to Schedule 1
Schedule 6.1B (*Performance Based Fee*)

Schedule 6.1B
Performance Based Fee

1 Definitions

For the purposes of this Schedule 6.1B only, the following words and expressions shall have the following meanings unless otherwise specified:

"Amendable Financial Target"	means a: <ul style="list-style-type: none"> (a) Target Cost; (b) Target Cost Cap; (c) Target Cost Floor; (d) Target Profit; (e) Target Profit Cap; and/or (f) Target Profit Floor, as the case may be;
"Assumed Schedule of Contributions"	means the schedule of contributions for a Franchise Section which as at the date of agreement or determination of the Target Cost Template or Target Profit Template (as applicable) applies for the relevant PBF Assessment Period;
"Audited Accounts Reconciliation"	has the meaning given to that term in paragraph 9.4(b)(ii) of Schedule 6.C (<i>Management Information</i>);
"Budget Supporting Materials"	means the supporting materials that were provided to the Authority by the Franchise Operator in August and September 2020 in response to the Authority's request for a budget forecast;
"Category A Target Amendment Trigger Event"	means: <ul style="list-style-type: none"> (a) in relation to a Target Cost, Target Cost Cap or Target Cost Floor an event listed in paragraph 1 (<i>Target Cost Target Amendment Trigger Events</i>) of Appendix 6 (<i>Category A Target Amendment Trigger Events</i>) of this Schedule 6.1B; and (b) in relation to a Target Profit, Target Profit Cap or Target Profit Floor an event listed in paragraph 2 (<i>Target Profit Target Amendment Trigger Events</i>) of Appendix 6 (<i>Category A Target Amendment Trigger Events</i>) of this Schedule 6.1B;
"Category B Target Amendment Trigger Event"	has the meaning given to that term in paragraph 6.1(b) of this Schedule 6.1B;

"Category C Target Amendment Trigger Event"	has the meaning given to that term in paragraph 6.1(c) of this Schedule 6.1B;
"CB Components"	means: (a) Network Rail Collaboration; (b) SoS Collaboration; and (c) Other Collaboration;
"CE(NPS)"	means the element of the Customer Experience Fee that is calculated in accordance with the NPS Methodology;
"CE(SC)"	means the element of the Customer Experience Fee that is calculated in accordance with the Scorecard Methodology;
"Collaborative Behaviour Fee" or "CB"	means the element of the Performance Based Fee attributable to the sum of: (a) Network Rail Collaboration; (b) SoS Collaboration; and (c) Other Collaboration;
"Combined Scorecard/NPS Methodology"	means, in relation to the Customer Experience Fee, a combination of the Scorecard Methodology and the NPS Methodology;
"Cost Target Methodology"	means the methodology set out in paragraph 4.3 (<i>Calculation of FIN(CC)</i>) of Appendix 5 (<i>Quantified Target Methodology</i>) of this Schedule 6.1B;
"COVID-19 Guidance and Regulation"	means guidance and/or regulation relating to COVID-19 as from time to time issued by the ORR, Public Health England or any other relevant government department, agencies or public bodies;
"Customer Experience Component"	means the NPS Measures;
"ERMA Evidence Report"	has the meaning given to it in paragraph 2.1 of Appendix 1 (<i>PBF Assessment Period Review</i>) of this Schedule 6.1B (and "ERMA Evidence Reports" shall be construed accordingly);
"Exceptional Event"	means an event, the effect of which, in the opinion of the Authority (acting reasonably), is that: (a) it would no longer be reasonably practicable to collect the data required to assess the Franchise Operator's performance against one or more of the QTM Targets in respect of a PBF Assessment Period; or (b) the degree of challenge involved in meeting any one or more of the QTM Targets is likely

	to be increased or decreased to such a significant extent that it would no longer be appropriate to assess the Franchise Operator's performance against such QTM Targets;
"Final PBF Assessment Period"	means the final PBF Assessment Period to occur during the term of the ERMA, being (subject to paragraph 7 (<i>Effect of Extended Term and amendments to the PBF Assessment Period</i>) of this Schedule 6.1B) the PBF Assessment Period commencing on 19 September 2021 and ending on 31 December 2021;
"Financial Performance Fee" or "FIN"	means the element of the Performance Based Fee, the purpose of which is to measure the Franchise Operator's effectiveness in controlling costs, driving revenue growth (subject to the constraints of the Government's public health requirements) and deterring ticketless travel;
"Financial Targets"	means, as the case may be: <ul style="list-style-type: none"> (a) the Target Cost; and/or; (b) the Target Profit;
"Franchise Performance Meeting"	has the meaning given to that term in paragraph 1.3 of Appendix 1 to this Schedule 6.1B;
"Initial PBF Assessment Period"	means the PBF Assessment Period commencing on the ERMA Start Date and ending at 01:59 on 1 April 2021;
"Maximum Performance Based Fee" or "MPBF"	has the meaning given to that term in paragraph 2.1 of this Schedule 6.1B;
"Network Rail Collaboration" or "NRC"	means the element of the Performance Based Fee that relates to collaboration with Network Rail, other Train Operators, suppliers and industry bodies;
"Notifying Party"	means: <ul style="list-style-type: none"> (a) in relation to a Category A Target Amendment Trigger Event, either the Authority or the Franchise Operator, as the case may be; (b) in relation to a Category B Target Amendment Trigger Event, the Franchise Operator; and (c) in relation to a Category C Target Amendment Trigger Event, the Authority;
"NPS Methodology"	means the methodology set out in paragraph 3.5 (<i>Calculation of CE(NPS)</i>) of Appendix 5 (<i>Quantified Target Methodology</i>) of this Schedule 6.1B;

"NPS Target"	means the target, expressed as a range within which the Franchise Operator's performance is expected to fall, which applies to a NPS Measure during the relevant PBF Assessment Period, as agreed or determined in accordance with paragraph 4.5 of this Schedule 6.1B;
"Other Collaboration" or "OC"	means the element of the Performance Based Fee attributable to collaboration with applicable stakeholders, including those specified in paragraph 6.2 (<i>Two (2): Acceptable</i>) of Appendix 3 (<i>Scorecard Criteria</i>) of this Schedule 6.1B;
"PBF Assessment Period Review"	means a review carried out (or to be carried out) with respect to a PBF Assessment Period in accordance with Appendix 1 (<i>PBF Assessment Period Review</i>) of this Schedule 6.1B;
"PBF Assessment Period Review Checklist"	means, in respect of a PBF Assessment Period Review, a checklist completed (or, as the case may be, to be completed) substantially in the form of that set out in Appendix 2 (<i>PBF Assessment Period Review Checklist</i>) of this Schedule 6.1B;
"PBF Assessment Period Review Meeting"	means, in respect of a PBF Assessment Period Review, a meeting held between the parties to discuss the performance of the Franchise Operator during the relevant PBF Assessment Period;
"PBF Assessment Period Scorecard"	means, in respect of a PBF Assessment Period, a scorecard completed (or, as the case may be, to be completed) by the Authority in accordance with paragraph 6 (<i>PBF Assessment Period Review Scoring</i>) of Appendix 1 (<i>PBF Assessment Period Review</i>) of this Schedule 6.1B;
"PBF Component"	means each of the following components which shall be individually assessed to calculate the corresponding element of the PBF: <ul style="list-style-type: none"> (a) Operational Performance Fee; (b) Customer Experience Fee; (c) Financial Performance Fee; (d) Collaborative Behaviour Fee; and (e) any additional component to be implemented from time to time pursuant to paragraph 4.4(f) of this Schedule 6.1B;
"Primary Delay"	means a delay that is attributed as "Primary Delay" in accordance with the Delay Attribution Principles and Rules;

"Profit Target Methodology"	means the methodology set out in paragraph 4.4 (<i>Calculation of FIN(P)</i>) of Appendix 5 (<i>Quantified Target Methodology</i>) of this Schedule 6.1B;
"QTM Matters"	has the meaning given to it in paragraph 4.5(a) of this Schedule 6.1B;
"QTM PBF Components"	means each of the: <ul style="list-style-type: none"> (a) Operational Performance Fee; (b) Customer Experience Fee; and (c) Financial Performance Fee;
"QTM Targets"	means any: <ul style="list-style-type: none"> (a) OP Targets; (b) NPS Targets; (c) Not used; and/or (d) Financial Targets, as applicable;
"Quarterly Financial Information"	means the financial information provided by the Franchise Operator to the Authority pursuant to paragraph 9.3 (<i>Quarterly Financial Information</i>) of Schedule 6.C (<i>Management Information</i>);
"Reactionary Delay"	means a delay that is attributed as "Reactionary Delay" in accordance with the Delay Attribution Principles and Rules;
"Relevant Threshold Amount"	means: <ul style="list-style-type: none"> (a) in relation to a Target Cost, the applicable non-indexed Threshold Amount multiplied by two; and (b) in relation to a Target Profit, an amount reasonably determined by the Authority prior to the relevant PBF Assessment Period;
"Threshold Amount"	means [REDACTED¹¹] for a full Franchise Operator Year, pro-rated as appropriate;
"Revenue"	has the meaning given to that term in paragraph 1A of Schedule 6.1A (<i>Franchise Payments</i>);
"Scorecard Criterion"	means each criterion set out in Appendix 3 (<i>Scorecard Criteria</i>) of this Schedule 6.1B, in respect of which the Franchise Operator's performance is measured (in whole or in part) in relation to a PBF Assessment Period and for which a score shall be awarded in the

¹¹ December 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.

	PBF Assessment Period Scorecard (and " Scorecard Criteria " means the plural of Scorecard Criterion);
" Scorecard Methodology "	means, in relation to a PBF Component, the methodology set out in Appendix 4 (<i>Scorecard Methodology</i>) of this Schedule 6.1B;
" SoS Collaboration " or " SC "	means the element of the Performance Based Fee attributable to collaboration with the Authority;
" Subsequent CE Methodologies "	means, in relation to the Customer Experience Fee: (a) the Scorecard Methodology only; (b) the Combined Scorecard/NPS Methodology;
" Subsequent FP Methodologies "	means, in relation to the Financial Performance Fee: (a) the Scorecard Methodology as applied in whole or in part; and/or (b) the Cost Target Methodology; and/or (c) the Profit Target Methodology, and " Subsequent FP Methodology " shall be construed accordingly;
" Subsequent PBF Assessment Period "	means each PBF Assessment Period that falls after the end of the Initial PBF Assessment Period;
" Target Amendment Trigger Event "	means a: (a) Category A Target Amendment Trigger Event; (b) Category B Target Amendment Trigger Event; or (c) Category C Target Amendment Trigger Event, as the case may be;
" Target Cost Cap " or " TCC "	means the value in relation to the Target Cost agreed or determined (as applicable) pursuant to paragraph 5.1 (<i>Target Cost</i>) of this Schedule 6.1B;
" Target Cost Floor " or " TCF "	means the value in relation to the Target Cost agreed or determined (as applicable) pursuant to paragraph 5.1 (<i>Target Cost</i>) of this Schedule 6.1B;
" Target Profit Cap " or " TPC "	means the value in relation to the Target Profit agreed or determined (as applicable) pursuant to paragraph 5.2 (<i>Target Profit</i>) of this Schedule 6.1B;
" Target Profit Floor " or " TPF "	means the value in relation to the Target Profit agreed or determined (as applicable) pursuant to paragraph 5.2 (<i>Target Profit</i>) of this Schedule 6.1B;
" W_{CB} "	means twenty-two point five per cent (22.5%), or such alternative percentage as may be agreed or

	determined pursuant to paragraph 4.4(h) of this Schedule 6.1B;
"W _{CC} "	means the weighting applied to the Cost Target Methodology pursuant to and in accordance with paragraph 4.4(d) of this Schedule 6.1B;
"W _{CE} "	means twenty-two point five per cent (22.5%), or such alternative percentage as may be agreed or determined pursuant to paragraph 4.4(h) of this Schedule 6.1B;
"W _{CESC} "	(a) in relation to the Initial PBF Assessment Period means one hundred per cent (100%); and (b) in relation to each Subsequent PBF Assessment Period, has the meaning given to that term in paragraph 3.3(a) of Appendix 5 (<i>Quantified Target Methodology</i>) of this Schedule 6.1B;
"W _{FIN} "	means thirty per cent (30%), or such alternative percentage as may be agreed or determined pursuant to paragraph 4.4(h) of this Schedule 6.1B;
"W _{NPS} "	has the meaning given to that term in paragraph 3.3(c) of Appendix 5 (<i>Quantified Target Methodology</i>) of this Schedule 6.1B;
"W _{OP} "	means twenty-five per cent (25%), or such alternative percentage as may be agreed or determined pursuant to paragraph 4.4(h) of this Schedule 6.1B;
"W _P "	means the weighting applied to the Profit Target Methodology pursuant to and in accordance with paragraph 4.4(d) of this Schedule 6.1B;

2 Maximum Fee

The Performance Based Fee attributable to any given PBF Assessment Period shall not exceed £M*N (the "**Maximum Performance Based Fee**" or "**MPBF**"), where:

M	means [REDACTED ¹²] (exclusive of Value Added Tax); and
N	means the number of Reporting Periods that fall within the relevant PBF Assessment Period.

¹² December 2020 (Date of Redactions Approval) – Where text has been omitted from the document this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

3 Calculation of the Performance Based Fee for the Initial PBF Assessment Period

- 3.1 The Performance Based Fee in relation to the Initial PBF Assessment Period shall be calculated in accordance with this paragraph 3.
- 3.2 The Performance Based Fee for the Initial PBF Assessment Period shall be calculated as the sum of the individual PBF Components calculated and weighted in accordance with the Scorecard Methodology in accordance with the following formula:

£PBF =	OP + CE + FIN + CB
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where:

£PBF	shall have a value between zero and the Maximum Performance Based Fee in relation to the Initial PBF Assessment Period;
OP	means the sum (in pounds sterling) that is zero or a positive number in relation to the Operational Performance Fee calculated in accordance with the Scorecard Methodology;
CE	means the sum (in pounds sterling) that is zero or a positive number in relation to the Customer Experience Fee calculated in accordance with the Scorecard Methodology;
FIN	means the sum (in pounds sterling) that is zero or a positive number in relation to the Financial Performance Fee calculated in accordance with the Scorecard Methodology; and
CB	means the sum (in pounds sterling) that is zero or a positive number in relation to the Collaborative Behaviour Fee calculated in accordance with the Scorecard Methodology.

4 Calculation of the Performance Based Fee for each Subsequent PBF Assessment Period

- 4.1 Subject to the inclusion of any additional PBF Component(s) pursuant to paragraph 4.4(f) below, the Performance Based Fee for each Subsequent PBF Assessment Period shall be calculated as the sum of the individual PBF Components for that period assessed using the Quantified Target Methodology and/or the Scorecard Methodology (as applicable) in accordance with the following formula:

£PBF =	OP + CE + FIN + CB
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where:

£PBF	shall have a value between zero and the Maximum Performance Based Fee in relation to the relevant PBF Assessment Period;
OP	means the sum in pounds sterling calculated in relation to the Operational Performance Fee in accordance with the Scorecard Methodology or the Quantified Target Methodology (as applicable during that PBF Assessment Period);

CE	means the sum in pounds sterling calculated in relation to the Customer Experience Fee in accordance with the Scorecard Methodology or the Quantified Target Methodology (as applicable during that PBF Assessment Period);
FIN	means the sum in pounds sterling calculated in relation to the Financial Performance Fee in accordance with the Scorecard Methodology or the Quantified Target Methodology (as applicable during that PBF Assessment Period); and;
CB	means the sum in pounds sterling calculated in relation to the Collaborative Behaviour Fee in accordance with the Scorecard Methodology.

4.2 In relation to each Subsequent PBF Assessment Period:

- (a) two months prior to the relevant PBF Assessment Period, the Authority may notify the Franchise Operator whether:
- (i) the Scorecard Methodology shall apply in relation to all of the PBF Components; or
 - (ii) the Authority is minded to apply the Quantified Target Methodology to one or more of the QTM PBF Components during that PBF Assessment Period,
- and set out the information that the Authority requires the Franchise Operator to provide (and the date by when the Authority requires the Franchise Operator to provide such information) to enable the parties to agree (or the Authority to determine, as the case may be) the applicable matters set out in paragraph 4.4 below (a "**Subsequent PBF Assessment Period Notification**");
- (b) after the Authority issues a Subsequent PBF Assessment Period Notification to the Franchise Operator, the parties shall seek to agree the applicable matters set out in paragraph 4.4 below, each acting reasonably and in a timely manner. If, by the date falling ten (10) Weekdays prior to the commencement of the relevant PBF Assessment Period, the parties have not agreed the matters set out in paragraph 4.4 below, the Authority may:
- (i) reasonably determine such matters and notify the Franchise Operator accordingly prior to the commencement of the relevant PBF Assessment Period; or
 - (ii) in the Authority's sole discretion, notify the Franchise Operator that the Scorecard Methodology will continue to apply to any or all of the QTM PBF Components; and
- (c) the Collaborative Behaviour Fee shall be assessed in accordance with the Scorecard Methodology.

4.3 If:

- (a) the Authority does not issue a Subsequent PBF Assessment Period Notification to the Franchise Operator pursuant to and in accordance with paragraph 4.2(a) above

(and paragraph 7.5 below, if applicable), the Scorecard Methodology shall apply to each of the PBF Components during the relevant Subsequent PBF Assessment Period; and

- (b) the Authority issues a Subsequent PBF Assessment Period Notification to the Franchise Operator which proposes that the Quantified Target Methodology shall apply to some (but not all) of the QTM PBF Components, the Scorecard Methodology shall continue to apply to each of the QTM PBF Components in relation to which the Authority has not proposed to apply the Quantified Target Methodology.

4.4 Not later than ten (10) Weekdays before the commencement of a Subsequent PBF Assessment Period in relation to which the Authority has issued a Subsequent PBF Assessment Period Notification to the Franchise Operator pursuant to and in accordance with paragraph 4.2(a) above, the parties shall seek to agree (each acting reasonably and in a timely manner) as applicable:

- (a) whether the Quantified Target Methodology shall be applied to any or all of the QTM PBF Components;
- (b) in accordance with the provisions set out in paragraph 4.5 below, the OP Targets, Breach Performance Levels and Default Performance Levels in respect of Cancellations, and TOC Minutes Delay and Short Formations NPS Targets, and/or Improvement Plan Levels (as applicable) that shall apply during the relevant PBF Assessment Period;
- (c) which, if any, of the:
 - (i) Subsequent CE Methodologies shall apply to the Customer Experience Fee during the relevant PBF Assessment Period; and
 - (ii) Subsequent FP Methodologies shall apply to the Financial Performance Fee during the relevant PBF Assessment Period;
- (d) if more than one Subsequent FP Methodology applies to the Financial Performance Fee pursuant to paragraph 4.4(c)(ii) above, the weighting to be applied to each Subsequent FP Methodology, provided that the sum of such weightings shall equal one hundred per cent (100%);
- (e) any amendments to the Scorecard Criteria, which such amendments may amend, insert or remove requirements but shall not materially:
 - (i) change the overall purpose of the relevant Scorecard Criterion; and/or
 - (ii) improve or impede the ability of the Franchise Operator (acting as a Good and Efficient Operator) to achieve any particular score in accordance with the Scorecard Criteria;
- (f) whether any additional PBF Components shall apply for the purposes of calculating the Performance Based Fee for that PBF Assessment Period, provided that the aggregate weighting to be applied to such additional PBF Component(s) ("**W_{ADD}**") shall not exceed fifteen per cent (15%), the aggregate weighting to be applied to the PBF Components shall equal one hundred per cent (100%) and the calculation of any additional PBF Component (or PBF Components) shall provide the Franchise

Operator with an opportunity to earn an amount of Performance Based Fee in respect of such additional component (or such additional components in aggregate) in the relevant PBF Assessment Period of up to $W_{ADD} * MPBF$;

- (g) any changes to the weightings W_{NR} , W_{SOS} and/or W_{OTH} , provided that the sum of such weightings shall equal one hundred per cent (100%); and
- (h) any changes to the weightings W_{OP} , W_{CE} , W_{FIN} and/or W_{CB} , provided that such weightings shall not fall below the minimum value or exceed the maximum value specified in the table below.

PBF Component	Weighting	Minimum Weighting	Maximum Weighting
Operational Performance Fee	W_{OP}	17.5%	32.5%
Customer Experience Fee	W_{CE}	15%	30%
Financial Performance Fee	W_{FIN}	25%	40%
Collaborative Behaviour Fee	W_{CB}	15%	30%

4.5 If the Quantified Target Methodology applies to any of the QTM PBF Components during the relevant PBF Assessment Period:

- (a) the parties shall seek to agree:
 - (i) the OP Targets that shall apply with respect to each Operational Performance Component and the Breach Performance Levels and the Default Performance Levels that shall apply with respect to Cancellations, TOC Minutes Delay and Short Formations, during each Reporting Period which falls during the relevant PBF Assessment Period; and/or
 - (ii) the NPS Targets that shall apply with respect to each Customer Experience Component and the Improvement Plan Levels that shall apply for each NRPS Measure during the relevant PBF Assessment Period,

(the "**QTM Matters**") as applicable (each acting reasonably and in a timely manner, and by no later than the date falling ten (10) Weekdays before the commencement of the relevant PBF Assessment Period);
- (b) each OP Target, and/or NPS Target (as applicable) shall be expressed as a range within which the Franchise Operator's performance is expected to fall and shall be expressed substantively in the format set out in Appendix 7 to this Schedule 6.1B (*Pro Forma Target Tables*);
- (c) each Breach Performance Level and Default Performance Level shall be expressed as a number beneath which the Franchise Operator's performance is not expected

to fall and shall be expressed substantively in the format set out in Appendix 7 to this Schedule 6.1B (*Pro Forma Target Tables*);

- (d) if the parties have agreed any of the QTM Matters in accordance with paragraph 4.5(a) above, prior to the date falling ten (10) Weekdays before the commencement of the relevant PBF Assessment Period, then such agreed QTM Matters shall apply during the relevant PBF Assessment Period;
- (e) if the parties have not agreed any of the QTM Matters in accordance with paragraph 4.5(a) above prior to the date falling ten (10) Weekdays before the commencement of the relevant PBF Assessment Period, then the Authority shall:
 - (i) either:
 - (A) reasonably determine the relevant QTM Matters (if such QTM Matters have not been agreed by the parties pursuant to paragraph 4.5(c) above) that shall apply during the relevant PBF Assessment Period; and/or
 - (B) in the Authority's sole discretion, notify the Franchise Operator that the Scorecard Methodology will continue to apply to any or all of the QTM PBF Components; and
 - (ii) notify the Franchise Operator of such decision not later than the commencement of the relevant PBF Assessment Period, in which case (unless the Authority has notified the Franchise Operator that the Scorecard Methodology will continue to apply to the QTM PBF Components pursuant to sub-paragraph (i)(B) above) the QTM Matters determined by the Authority in accordance with this paragraph 4.5(e) shall apply during the relevant PBF Assessment Period;
- (f) the range for each OP Target and NPS Target (in each case, as applicable), agreed or determined in accordance with this paragraph 4.5 shall comprise a range or value (as applicable) that:
 - (i) a competent Train Operator, acting efficiently, can reasonably be expected to achieve in the circumstances that are prevailing for the relevant PBF Assessment Period (and in relation to each OP Target, having regard to normal seasonal variability of operating performance); and
 - (ii) a high-performing Train Operator could have a realistic prospect of exceeding and would therefore attain the maximum possible amount of Performance Based Fee attributable to the relevant QTM PBF Component during the relevant PBF Assessment Period; and
- (g) the value of each:
 - (i) Breach Performance Level agreed or determined in accordance with this paragraph 4.5 shall be set at a level that a competent Train Operator, acting efficiently, can reasonably be expected not to fall below (and in relation to each OP Target, having regard to normal seasonal variability of operating performance); and

- (ii) Default Performance Level agreed or determined in accordance with this paragraph 4.5 shall be set at a level that affords a reasonable opportunity for a competent Train Operator, having performed worse than the Breach Performance Level, to implement any necessary remedial actions to avoid performance deteriorating to that Default Performance Level (in relation to each OP Target, having regard to normal seasonal variability of operating performance).

5 Financial Targets

5.1 Target Cost

- (a) If the Authority notifies the Franchise Operator that the Authority is minded to apply the Cost Target Methodology in relation to the Financial Performance Fee pursuant to paragraph 4.2(a) of this Schedule 6.1B, no later than five (5) Weekdays following receipt of the relevant Subsequent PBF Assessment Period Notification the Franchise Operator shall deliver to the Authority a spreadsheet setting out the Franchise Operator's proposed Target Cost, with lines of forecast expenditure for each Reporting Period of the relevant PBF Assessment Period, in at least the level of disaggregation of the most disaggregated of:
 - (i) Not used;
 - (ii) Not used;
 - (iii) any set of Management Accounts for any period of the EMA or the ERMA; or
 - (iv) any previous Audited Accounts Reconciliation,
 (the "**Target Cost Template**"). The Target Cost Template shall allocate forecast expenditure consistently with the most disaggregated of the items listed in paragraphs (i) to (iv) above with no netting off between lines. Unless otherwise directed by the Authority the Target Cost Template shall assume that employer pension contributions payable to each Franchise Section are at the rate(s) and/or amount(s) set out in the Assumed Schedule of Contributions for that Franchise Section for the relevant period.
- (b) Within five (5) Weekdays of delivering the Target Cost Template to the Authority, the Franchise Operator shall deliver to the Authority a Target Cost Record of Assumptions which shall include the Franchise Operator's proposed Target Cost Cap and Target Cost Floor based on benchmarking evidence gathered by the Franchise Operator consistent with the principles set out in paragraphs (d)(ii) and (e)(ii) below.
- (c) The parties shall seek to agree (each acting reasonably, in a timely manner and through sufficiently senior representatives) the Target Cost, Target Cost Cap and Target Cost Floor for the relevant PBF Assessment Period.
- (d) The Target Cost Cap shall be set at a value:
 - (i) lower than the value of the Target Cost; and
 - (ii) that the parties agree (or, if the parties are unable to agree such value by the date falling ten (10) Weekdays prior to the start of the relevant PBF

Assessment Period, the Authority may reasonably determine) that a highly efficient Train Operator would have a realistic prospect of achieving.

- (e) The Target Cost Floor shall be set at a value:
 - (i) greater than the value of the Target Cost; and
 - (ii) that the parties agree (or, if the parties are unable to agree such value by the date falling ten (10) Weekdays prior to the start of the relevant PBF Assessment Period, the Authority may reasonably determine) that a broadly competent Train Operator would be likely to achieve or exceed.
- (f) Within five (5) Weekdays of the Target Cost Cap and the Target Cost Floor being agreed or determined in accordance with this paragraph 5, the Franchise Operator shall apply the Target Cost Cap and the Target Cost Floor to the Target Cost Template which shall then be placed under such escrow arrangements as the Authority considers appropriate for the purpose.

5.2 Target Profit

- (a) If the Authority notifies the Franchise Operator that the Authority is minded to apply the Profit Target Methodology in relation to the Financial Performance Fee pursuant to paragraph 4.2(a) of this Schedule 6.1B, no later than five (5) Weekdays following receipt of the relevant Subsequent PBF Assessment Period Notification the Franchise Operator shall deliver to the Authority a spreadsheet setting out the Franchise Operator's proposed Target Profit, with lines of forecast revenue and expenditure for each Reporting Period of the relevant PBF Assessment Period, in at least the level of disaggregation of the most disaggregated of:
 - (i) Not used;
 - (ii) Not used;
 - (iii) any set of Management Accounts for any period of the EMA or ERMA; or
 - (iv) any previous Audited Accounts Reconciliation,(the "**Target Profit Template**"). The Target Profit Template shall allocate forecast revenue and expenditure consistently with the most disaggregated of the items listed in paragraphs (i) to (iv) above with no netting off between lines. Unless otherwise directed by the Authority the Target Profit Template shall assume that employer pension contributions payable to each Franchise Section are at the rate(s) and/or amount(s) set out in the Assumed Schedule of Contributions for that Franchise Section for the relevant period.
- (b) Within five (5) Weekdays of delivering the Target Profit Template to the Authority, the Franchise Operator shall deliver to the Authority a Target Profit Record of Assumptions which shall include the Franchise Operator's proposed Target Profit Cap and Target Profit Floor based on benchmarking evidence gathered by the Franchise Operator consistent with the principles set out in paragraphs 5.2(d)(ii) and 5.2(e)(ii) below.

- (c) The parties shall seek to agree (each acting reasonably, in a timely manner and through sufficiently senior representatives) the Target Profit, Target Profit Cap and Target Profit Floor for the relevant PBF Assessment Period.
- (d) The Target Profit Cap shall be set at a value:
 - (i) greater than the value of the Target Profit; and
 - (ii) that the parties agree (or, if the parties are unable to agree such value by the date falling ten (10) Weekdays prior to the start of the relevant PBF Assessment Period, the Authority may reasonably determine) that a highly efficient Train Operator maximising its financial return would have a realistic prospect of achieving.
- (e) The Target Profit Floor shall be set at a value:
 - (i) lower than the value of the Target Profit; and
 - (ii) that the parties agree (or, if the parties are unable to agree such value by the date falling ten (10) Weekdays prior to the start of the relevant PBF Assessment Period, the Authority may reasonably determine) that a broadly competent Train Operator would be likely to improve upon.
- (f) Within five (5) Weekdays of the Target Profit Cap and the Target Profit Floor being agreed or determined in accordance with this paragraph 5, the Franchise Operator shall apply the Target Profit Cap and the Target Profit Floor to the Target Profit Template which shall then be placed under such escrow arrangements as the Authority considers appropriate for the purpose.

5.3 Continued application of Scorecard Methodology

If the parties have not agreed (or, if applicable, the Authority has not determined) any or all of the Target Cost, Target Cost Cap, Target Cost Floor, Target Profit, Target Profit Cap and/or Target Profit Floor in accordance with paragraph 5.1 (*Target Cost*) or 5.2 (*Target Profit*), as applicable, then the Authority may notify the Franchise Operator that the Scorecard Methodology shall continue to apply unaltered in relation to the Financial Performance Fee.

6 Target Amendments

- 6.1 The Authority may amend any Amendable Financial Target (in each case a "**Performance Fee Target Amendment**") during the relevant PBF Assessment Period following the occurrence of:
- (a) a Category A Target Amendment Trigger Event which one party has notified to the other;
 - (b) an event that:
 - (i) is outside the control of the Franchise Operator and its Affiliates;
 - (ii) the Franchise Operator has notified to the Authority; and
 - (iii) the Authority has agreed (acting reasonably) on the basis of evidence provided to the Authority by the Franchise Operator has caused the applicable Amendable Financial Target to require amendment to ensure that

the Franchise Operator is no more and no less likely to achieve the Amendable Financial Target than if such event had not occurred,

(a "**Category B Target Amendment Trigger Event**"); or

(c) an event that:

(i) was caused by the Authority; or

(ii) is outside the control of the Franchise Operator and its Affiliates; and

(iii) in either case:

(A) the Authority has notified to the Franchise Operator; and

(B) in the opinion of the Authority, acting reasonably, has caused the applicable Amendable Financial Target to require amendment to ensure that the Franchise Operator is no more and no less likely to achieve the Amendable Financial Target than if such event had not occurred,

(a "**Category C Target Amendment Trigger Event**"),

which either the parties have agreed or the Authority has reasonably determined pursuant to paragraphs 6.4 to 6.6 below has caused one or more of the Amendable Financial Targets to require amendment by a net financial value (an "**Amendment Amount**") that is equal to or greater than the Relevant Threshold Amount.

6.2 The Notifying Party may notify the other party of the occurrence of a Target Amendment Trigger Event (and, if the Notifying Party is the Franchise Operator, shall provide sufficient evidence to enable the Authority to calculate the impact of the Target Amendment Trigger Event on the Amendable Financial Target(s)) at any time between the date falling twenty (20) Weekdays prior to the commencement of a PBF Assessment Period and the date falling twenty (20) Weekdays following the end of a PBF Assessment Period, provided that the Notifying Party shall notify the other party no later than ten (10) Weekdays following the day on which:

(a) the Target Amendment Trigger Event occurs; or

(b) the Franchise Operator ought reasonably to have become aware of the occurrence of such Target Amendment Trigger Event.

6.3 Within ten (10) Weekdays of the Authority receiving a notice pursuant to paragraph 6.2 above, the Authority shall issue a provisional notice to the Franchise Operator confirming whether in the opinion of the Authority (acting reasonably) a Target Amendment Trigger Event has occurred.

6.4 Within twenty (20) Weekdays of receipt of:

(a) a notice from the Authority pursuant to paragraph 6.2 above; or

(b) a provisional notice from the Authority pursuant to paragraph 6.3 above,

the parties shall seek to agree (each acting reasonably and in a timely manner) whether a Target Amendment Trigger Event has occurred and the value of the relevant Performance Fee Target Amendment, if any. If the Franchise Operator does not respond to the relevant

notice within five (5) Weekdays of receipt, then the Franchise Operator shall be deemed to have accepted the conclusions set out in the relevant notice and any Performance Fee Target Amendment proposed by the Authority shall apply in accordance with paragraph 6.7 below.

6.5 If the parties have agreed whether a Target Amendment Trigger Event has occurred and the value of the associated Performance Fee Target Amendment, if any, within twenty (20) Weekdays, then the Performance Fee Target Amendment (if any) agreed between the parties shall apply in accordance with paragraph 6.7 below.

6.6 If the parties have not agreed whether a Target Amendment Trigger Event has occurred and/or the value of the associated Performance Fee Target Amendment, if any, within twenty (20) Weekdays of receipt by the Franchise Operator of the provisional notice pursuant to paragraph 6.3 above, then the Authority:

(a) shall reasonably determine whether a Target Amendment Trigger Event has occurred and the value of the associated Performance Fee Target Amendment, if any; and

(b) shall promptly notify the Franchise Operator of such decision, in which case the Performance Fee Target Amendment, if any, determined by the Authority in accordance with this paragraph 6.6 shall apply in accordance with paragraph 6.7 below.

6.7 A Performance Fee Target Amendment shall apply retrospectively from the date on which the Target Amendment Trigger Event occurred and shall continue to apply until the end of the relevant PBF Assessment Period.

6.8 A Target Amendment Trigger Event may trigger a Performance Fee Target Amendment in relation to two PBF Assessment Periods, if:

(a) the aggregate Amendment Amount across both relevant PBF Assessment Periods is greater than the Relevant Threshold Amount; and

(b) the Target for the later of the two PBF Assessment Periods has already been agreed or determined on the date on which the Target Amendment Trigger Event occurred,

in which case the Amendable Financial Target for each relevant PBF Assessment Period shall be amended accordingly.

6.9 Within five (5) Weekdays of:

(a) the parties agreeing (or the Franchise Operator being deemed to have agreed) a Performance Fee Target Amendment pursuant to paragraph 6.4 above; or

(b) the Authority notifying the Franchise Operator of a Performance Fee Target Amendment pursuant to paragraph 6.6 above,

the Franchise Operator shall apply the Performance Fee Target Amendment to the Target Cost Template or Target Profit Template (as applicable) then placed under such escrow arrangements as the Authority considers appropriate for the purpose in accordance with paragraph 10.1(d) of Schedule 6.C (*Management Information*) and submit such amended Target Cost Template and/or Target Profit Template to the Authority along with any applicable information in relation to the impact of such amendment(s) on the Financial Targets and an

updated version of the Target Cost Record of Assumptions or the Target Profit Record of Assumptions (as applicable).

6.10 Within ten (10) Weekdays of receipt of the amended Target Cost Template and/or Target Profit Template (as applicable) pursuant to paragraph 6.9 above, the Authority shall either:

- (a) agree the amended Financial Targets; or
- (b) reasonably determine any necessary amendments to the Target Cost Template and/or Target Profit Template (as appropriate) and associated Financial Targets to ensure the proper application of the Performance Fee Target Amendment,

and within five (5) Weekdays of such agreement or determination the updated Target Cost Template and/or Target Profit Template (as appropriate) shall be placed under such escrow arrangements as the Authority considers appropriate for the purpose in accordance with paragraph 10.1(d) of Schedule 6.C (*Management Information*).

6.11 Nothing in this paragraph 6 shall automatically result in an amendment to any then-current Budget, Annual Business Plan or Quarterly Budget.

7 Effect of Extended Term and amendments to the PBF Assessment Period

7.1 If the Authority elects to extend the term of the ERMA pursuant to clause 3.3 of the ERMA, the Authority shall promptly notify the Franchise Operator whether:

- (a) the duration of the originally scheduled Final PBF Assessment Period shall be extended; or
- (b) an additional one or more PBF Assessment Periods shall apply. Where only one additional PBF Assessment Period applies, it shall be deemed to be the Final PBF Assessment Period. Where more than one additional PBF Assessment Periods apply, the last of the additional PBF Assessment Periods shall be deemed to be the Final PBF Assessment Period.

7.2 Following an amendment to the duration of a PBF Assessment Period for any reason, the parties shall seek to agree (each acting reasonably, in a timely manner and through sufficiently senior representatives):

- (a) any necessary amendments to the applicable Amendable Financial Targets in respect of the relevant PBF Assessment Period; and
- (b) the OP Targets, Breach Performance Levels and Default Performance Levels (as applicable) for the relevant PBF Assessment Period in respect of each of the additional Reporting Periods,

taking into consideration the amendment to the duration of the relevant PBF Assessment Period. If the parties have agreed any amendment(s) to the applicable Amendable Financial Targets and/or the applicable OP Targets, Breach Performance Levels and/or Default Performance Levels within twenty (20) Weekdays of the amendment to the duration of the relevant PBF Assessment Period, then such agreed matters shall apply in accordance with paragraph 7.4 below.

7.3 If the parties have not agreed any necessary amendments to the applicable Amendable Financial Targets and/or the applicable OP Targets, Breach Performance Levels and/or

Default Performance Levels for the relevant PBF Assessment Period within twenty (20) Weekdays of the amendment to the duration of the relevant PBF Assessment Period, then the Authority:

- (a) may reasonably determine any necessary amendments to the applicable Amendable Financial Targets for the relevant PBF Assessment Period;
- (b) may reasonably determine the OP Targets, Breach Performance Levels and Default Performance Levels (as applicable) for the relevant PBF Assessment Period; and
- (c) shall promptly notify the Franchise Operator of such decision, in which case the amendment(s) to the applicable Amendable Financial Targets (if any) and the OP Targets, Breach Performance Levels and Default Performance Levels (as applicable) determined by the Authority in accordance with this paragraph 7.3 shall apply in accordance with paragraph 7.4 below.

7.4 Any amendment(s) to the applicable Amendable Financial Targets (if any) and any new OP Targets, Breach Performance Levels and Default Performance Levels (as applicable) shall apply retrospectively from the date on which the amendment to the duration of a PBF Assessment Period occurred and shall continue to apply until the end of the relevant PBF Assessment Period.

7.5 If the Authority:

- (a) elects to extend the term of the ERMA pursuant to clause 3.3 of the ERMA; and
- (b) intends to notify the Franchise Operator that an additional PBF Assessment Period shall apply pursuant to paragraph 7.1(b) above,

the Authority may (notwithstanding the requirement to issue a Subsequent PBF Assessment Period Notification two months prior to the relevant PBF Assessment Period pursuant to paragraph 4.2(a) above) issue a Subsequent PBF Assessment Period Notification no later than the Weekday following the date of the notice issued to the Franchise Operator pursuant to paragraph 7.1(b) above, in which case the provisions of paragraph 4 (Calculation of the Performance Based Fee for each Subsequent PBF Assessment Period) shall apply.

8 **Exceptional Events**

Following the occurrence of an Exceptional Event, the Authority may, acting reasonably:

- (a) if the Quantified Target Methodology applies to any QTM PBF Component pursuant to and in accordance with paragraph 4 (*Calculation of the Performance Based Fee for each Subsequent PBF Assessment Period*) of this Schedule 6.1B, notify the Franchise Operator that from the date of such notification (or such alternative date as may be specified in the notification) the Scorecard Methodology shall apply in lieu of the Quantified Target Methodology in relation to any or all of the QTM PBF Components during the relevant PBF Assessment Period;
- (b) suspend any applicable Amendable Financial Target, NPS Target and/or OP Target, and apply the Scorecard Methodology in a manner which, as far as is reasonably practicable, aligns with any suspended target which has already been set for that PBF Assessment Period; and/or

- (c) for the relevant PBF Assessment Period, calculate the Performance Based Fee attributable to each QTM PBF Component on a *pro-rata* basis according to the duration of the period for which each of the Quantified Target Methodology and the Scorecard Methodology applied to such QTM PBF Component.

Appendix 1 to Schedule 6.1B
PBF Assessment Period Review

1 Purpose of the PBF Assessment Period Review

- 1.1 The purpose of a PBF Assessment Period Review is for the Authority to undertake a review of the Franchise Operator's performance in relation to the Franchise Services over the course of the relevant PBF Assessment Period.
- 1.2 The Authority shall carry out a PBF Assessment Period Review with respect to each PBF Assessment Period.
- 1.3 The parties shall meet at least once in every Reporting Period (or such other interval as the Authority may notify to the Franchise Operator in writing) at a time and location notified to the Franchise Operator by the Authority (a "**Franchise Performance Meeting**"). At each periodic Franchise Performance Meeting, the parties shall discuss and review:
- (a) without prejudice to the Authority's right to determine each score that the Franchise Operator will achieve in accordance with Appendix 3 (*Scorecard Criteria*), the Franchise Operator's progress against the Scorecard Criteria and any other assessment criteria implemented pursuant to this Schedule 6.1B; and
 - (b) the evidence to be included within an ERMA Evidence Report for the Reporting Period to which that Franchise Operator Performance Meeting relates and/or for any other Reporting Period.
- 1.4 Each PBF Assessment Period Review shall be carried out in accordance with the process set out in this Appendix 1 to Schedule 6.1B.

2 ERMA Evidence Report

- 2.1 In advance of each Franchise Performance Meeting, the Authority shall provide the Franchise Operator with a report detailing the information and evidence that the Authority considers to be relevant to the PBF Assessment Period Review and the assessment of the Franchise Operator's performance against the Scorecard Criteria (each, an "**ERMA Evidence Report**"). Each ERMA Evidence Report shall contain only new information and evidence and shall not repeat the information and evidence that was included in a previous ERMA Evidence Report, except if that information and evidence has changed.
- 2.2 The Franchise Operator shall, following receipt of an ERMA Evidence Report, notify the Authority of any information or evidence, in addition to that set out in the ERMA Evidence Report, which the Franchise Operator considers to be relevant to the PBF Assessment Period Review and the assessment of the Franchise Operator's performance against the Scorecard Criteria.
- 2.3 The Authority shall, following receipt of a notice pursuant to paragraph 2.2 of this Appendix 1 to Schedule 6.1B, provide written confirmation to the Franchise Operator of whether the Authority considers such information or evidence to be relevant to the PBF Assessment Period Review and, where the Authority considers such information or evidence to be relevant, the Authority shall either amend the relevant ERMA Evidence Report to include such information or evidence or include the information or evidence in the next, or any subsequent, ERMA Evidence Report.

- 2.4 The parties acknowledge and agree that the ERMA Evidence Report is not intended to be the final record of all information or evidence in respect of the Reporting Period to which the Franchise Performance Meeting relates and the parties shall be entitled to agree, at or in advance of any subsequent Franchise Performance Meeting, that additional evidence relating to such Reporting Period may be added to that, or any subsequent, ERMA Evidence Report.

3 Notice of PBF Assessment Period Review Meeting

- 3.1 The Authority shall notify the Franchise Operator of the date, time and location for the relevant PBF Assessment Period Review Meeting (or, where the Authority considers that more than one PBF Assessment Period Review Meeting is necessary, each PBF Assessment Period Review Meeting) by no later than the end of the relevant PBF Assessment Period, provided always that any PBF Assessment Period Review Meeting shall take place no earlier than the last day in the relevant PBF Assessment Period and no later than sixty (60) days after the end of the relevant PBF Assessment Period.
- 3.2 Nothing in this Schedule 6.1B shall prevent the parties from discussing any matter relevant to a PBF Assessment Period Review outside of any PBF Assessment Period Review Meeting.

4 PBF Assessment Period Review Checklist

- 4.1 Not less than thirty (30) days prior to the end of the relevant PBF Assessment Period, the Authority, acting reasonably, shall notify the Franchise Operator in writing of any additional evidence or information that the Franchise Operator is required to submit at the same time as the completed PBF Assessment Period Review Checklist.
- 4.2 Not less than fifteen (15) days prior to the end of each PBF Assessment Period, the Franchise Operator shall notify the Authority in writing of any evidence or information in addition to that set out in the PBF Assessment Period Review Checklist, each ERMA Evidence Report or the information notified to the Franchise Operator by the Authority in accordance with paragraph 4.1 of this Appendix 1 to Schedule 6.1B, which the Franchise Operator considers to be relevant for the PBF Assessment Period Review. The Authority shall, within ten (10) days of receiving such notice, provide written confirmation to the Franchise Operator of whether the Authority considers such matters to be relevant to the PBF Assessment Period Review.
- 4.3 As soon as reasonably practicable after the end of each PBF Assessment Period, and in any event no later than ten (10) days after the end of the PBF Assessment Period, the Franchise Operator shall deliver to the Authority a duly completed copy of the PBF Assessment Period Review Checklist in respect of that PBF Assessment Period.
- 4.4 The PBF Assessment Period Review Checklist delivered by the Franchise Operator pursuant to paragraph 4.3 of this Appendix 1 to Schedule 6.1B shall include written commentary from the Franchise Operator in respect of the PBF Assessment Period covering:
- (a) each of the matters listed in the PBF Assessment Period Review Checklist;
 - (b) the evidence and information included in the ERMA Evidence Reports;

- (c) any other matter notified by the Authority to the Franchise Operator pursuant to paragraph 4.1 of this Appendix 1 to Schedule 6.1B; and
- (d) any other matter which the Authority has confirmed as relevant for the PBF Assessment Period Review in accordance with paragraph 4.2 of this Appendix 1 to Schedule 6.1B.

4.5 The Authority shall provide the Franchise Operator with:

- (a) a written commentary on the completed PBF Assessment Period Review Checklist and the evidence and information included in the ERMA Evidence Reports (including any commentary provided by the Franchise Operator under paragraph 4.4 of this Appendix 1 to Schedule 6.1B); and
- (b) any evidence or information additional to that:
 - (i) contained in the ERMA Evidence Reports; or
 - (ii) contained in or submitted by the Franchise Operator at the same time as the PBF Assessment Period Review Checklist (in accordance with paragraph 4.1 of this Appendix 1 to Schedule 6.1B),

which the Authority has used or intends to use to assess the Franchise Operator's performance,

in each case, no later than ten (10) days prior to the relevant PBF Assessment Period Review Meeting.

5 PBF Assessment Period Review Meeting

5.1 The PBF Assessment Period Review Meeting shall take place at the date, time and location notified by the Authority to the Franchise Operator in accordance with paragraph 3.1 of this Appendix 1 to Schedule 6.1B and shall be attended by representatives of each of the Authority and the Franchise Operator.

5.2 The Franchise Operator shall ensure that the representatives of the Franchise Operator at the PBF Assessment Period Review Meeting include such:

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

as the Authority may reasonably require.

5.3 At the PBF Assessment Period Review Meeting, the parties shall discuss the Franchise Operator's performance by reference to the PBF Assessment Period Review Checklist and each ERMA Evidence Report, together with any supporting commentary, documents or evidence submitted by the Franchise Operator to the Authority pursuant to paragraphs 4.3 and 4.4 of this Appendix 1 to Schedule 6.1B and any commentary and/or information provided by the Authority to the Franchise Operator in accordance with paragraph 4.5 of this Appendix 1 to Schedule 6.1B.

6 PBF Assessment Period Review Scoring

- 6.1 The Authority may take such steps as the Authority considers (acting reasonably) to be necessary or appropriate to take into consideration any representations or evidence provided by Network Rail and/or any other relevant third party to the extent relevant to the Scorecard Criteria, including:
- (a) procuring views or evidence from Network Rail and/or other relevant stakeholders;
 - (b) directing the Franchise Operator to procure such views or evidence, which shall be submitted with the Franchise Operator's own information and evidence pursuant to paragraph 2 (*ERMA Evidence Report*) of this Appendix 1 to Schedule 6.1B; and/or
 - (c) subject to any requirements in relation to confidentiality, sharing extracts (on an anonymised or redacted basis, if required) of evidence supplied by the Franchise Operator with Network Rail and/or other relevant stakeholders.
- 6.2 The Authority shall provide to the Franchise Operator, no later than seventy (70) days after the end of the relevant PBF Assessment Period, a duly completed PBF Assessment Period Scorecard setting out the Franchise Operator's performance in each of the Scorecard Criteria and any other assessment criteria implemented pursuant to this Schedule 6.1B for the PBF Assessment Period.
- 6.3 The Franchise Operator shall be scored three (3), two (2) or one (1) in relation to each Scorecard Criterion and, in relation to any other assessment criteria implemented pursuant to this Schedule 6.1B, shall be assessed or scored (as applicable) in accordance with such assessment criteria.
- 6.4 Scores in the PBF Assessment Period Scorecard shall be awarded by the Authority having regard to the matters set out in the PBF Assessment Period Scorecard. One single, integer, overall score shall be awarded in relation to each Scorecard Criterion based on the Authority's assessment of the Franchise Operator's performance in respect of that Scorecard Criterion and taking into account:
- (a) each ERMA Evidence Report;
 - (b) the PBF Assessment Period Review Checklist provided to the Authority by the Franchise Operator in accordance with paragraphs 4.3 and 4.4 of this Appendix 1 to Schedule 6.1B;
 - (c) any commentary provided to the Franchise Operator by the Authority in accordance with paragraph 4.5 of this Appendix 1 to Schedule 6.1B;
 - (d) any discussions between the Franchise Operator and the Authority at the PBF Assessment Period Review Meeting(s); and
 - (e) any representations or evidence provided by Network Rail and/or any other relevant third party pursuant to paragraph 6.1 of this Appendix 1 to Schedule 6.1B.
- 6.5 The PBF Assessment Period Review shall be complete once the Authority has sent a duly completed PBF Assessment Period Scorecard to the Franchise Operator in accordance with paragraph 6.2 of this Appendix 1 to Schedule 6.1B.
- 6.6 If the Franchise Operator:

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

in relation to any of the Scorecard Criteria during a PBF Assessment Period, then the Authority may require a Remedial Plan and the provisions of paragraph 7 of this Schedule 6.1B shall apply' shall apply.

7 REMEDIAL PLANS

7.1 Remedies for Contraventions of the Franchise Agreement

If:

- (a) the Authority is satisfied that the Franchise Operator is contravening or is likely to contravene any term of the Franchise Agreement; and/or
- (b) the:
 - (i) Authority is satisfied that the Franchise Operator is operating at a level that would, or would likely, be scored "1"; or
 - (ii) Franchise Operator has received a score of "1",
 in relation to any of the Scorecard Criteria for a particular PBF Assessment Period, in accordance with the PBF Assessment Period Review process set out in Schedule 6.1B (Performance Based Fee); and/or
- (c) the Franchisee has received a score of "1" in relation to any EMA Scorecard Criterion in accordance with the EMA Review process set out in appendix 1 (EMA Review) of Schedule 6.B (Performance Payment) of the Franchise Agreement as amended by the EMA,

the Authority may serve a notice on the Franchise Operator requiring it to:

- (d) propose such steps as the Franchise Operator considers appropriate for the purpose of securing or facilitating compliance with the term in question; and/or
- (e) address and overcome the shortfalls or failures that have led to the Franchise Operator receiving, or being likely to receive, a score of "1" with respect to the relevant Scorecard Criterion or EMA Scorecard Criterion (as applicable),

as applicable, (each a "**Remedial Plan Notice**")."

7.2 Remedial Plan Notices

Each Remedial Plan Notice shall specify the following:

- (a) the:
 - (i) term or terms of the Franchise Agreement that the Authority is satisfied that the Franchise Operator is contravening or is likely to contravene (each a "**Relevant Term**"); and/or

- (ii) specific Scorecard Criterion under the PBF Assessment Period Scorecard that the Authority is satisfied that the Franchise Operator is likely to score, or has scored, "1" in; and/or
- (iii) specific EMA Scorecard Criterion under the EMA Review Scorecard in respect of which the Franchisee has scored "1",

as applicable; and

- (b) the time period ("**Remedial Plan Period**") within which the Authority requires the Franchise Operator to provide an appropriate plan for the purpose of facilitating or securing compliance with such Relevant Term and/or addressing and overcoming the shortfalls or failures that have led to the Franchise Operator receiving, or being likely to receive, a score of "1" with respect to the relevant Scorecard Criterion or EMA Scorecard Criterion, as applicable (a "**Remedial Plan**")."

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

7.4 Each Remedial Plan shall set out:

- (a) the:
 - (i) Relevant Term which has caused such Remedial Plan to be required; and/or
 - (ii) the Scorecard Criterion in respect of which the Franchise Operator has received, or is likely to receive, a score of "1"; and/or
 - (iii) the EMA Scorecard Criterion in respect of which the Franchise Operator has received a score of "1",

as applicable;

- (b) an explanation of the reasons for:
 - (i) the contravention or likely contravention of the Relevant Term; and/or
 - (ii) the Franchisee receiving, or being likely to receive, a score of "1" with respect to the relevant Scorecard Criterion, and/or
 - (iii) the Franchisee receiving a score of "1" with respect to the relevant EMA Scorecard Criterion,

as applicable;

- (c) the steps proposed for the purposes of:
 - (i) securing or facilitating compliance with the Relevant Term; and/or
 - (ii) 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 Scorecard Criterion and/or EMA Criterion (as applicable),
 - (iii) as applicable; and
- (d) the time period within which the Franchisee proposes to implement those steps.

- 7.5 If the Authority is satisfied that the matters within such Remedial Plan referred to in paragraphs 7.3(c) and 7.3(d) are appropriate (with or without further modification as the parties may agree) the Authority may require the Franchise Operator to enter into a supplemental agreement (the "**Remedial Agreement**") with the Authority to implement those matters.
- 7.6 It is a term of this Agreement that the Franchise Operator (at its own cost) complies with each Remedial Agreement in accordance with its terms.
- 7.7 Without prejudice to the operation of clause 5.4 of the Franchise Agreement, the following provisions shall apply in relation to Force Majeure Events affecting the Franchise Operator's performance of their obligations pursuant to a Remedial Agreement:
- (a) the Franchise Operator shall give written notice to the Authority promptly after the Franchise Operator becomes aware (and in any event within twenty-four (24) hours after becoming aware) of the occurrence or likely occurrence of a Force Majeure Event which will or is likely to affect the Franchise Operator's ability to comply with a Remedial Agreement within the period specified therein;
 - (b) each notice submitted in accordance with paragraph (a) shall state the extent or likely extent of the relevant Force Majeure Event and in the case of a Force Majeure Event which has not occurred at such time, the reasons why the Franchise Operator considers it likely to occur;
 - (c) the Franchise Operator shall use, and shall continue to use, all reasonable endeavours to avoid or reduce the effect or likely effect of any Force Majeure Event on its ability to comply with any Remedial Agreement; and
 - (d) subject to the Franchise Operator having complied with its obligations under paragraphs (a) to (c) (inclusive) the Franchise Operator shall be entitled to a reasonable extension of the remedial period applicable to a Remedial Agreement in order to take account of the effect of a Force Majeure Event which has occurred on the Franchisee's ability to comply with that Remedial Agreement.

8 ENHANCED MONITORING BY THE AUTHORITY

8.1 Enhanced Monitoring by the Authority

- (i) Following the occurrence of a contravention of the Franchise Agreement; and/or
- (ii) where the Authority is satisfied that the Franchise Operator is operating at a level that would, or would likely, be scored "1" or the Franchise Operator has received a score of "1" in relation to any of the Scorecard Criteria for a particular PBF Assessment Period, in accordance with the PBF Assessment Period Review process set out in Schedule 6.1B (*Performance Based Fee*), and/or
- (iii) where the Franchise Operator has received a score of "1" in relation to any of the EMA Scorecard Criteria in accordance with the EMA Review process set out in appendix 1 (*EMA Review*) of Schedule 6.B (*Performance Payment*) of the Franchise Agreement as amended by the EMA,

the Authority may at the Authority's option (but shall not be obliged to) commence or increase the level and/or frequency of monitoring (whether by inspection, audit or otherwise) of the Franchise Operator's performance of any relevant obligations until such time as the Franchise Operator demonstrates, to the Authority's reasonable satisfaction, that it is capable of performing and will perform such obligations as required by the Franchise Agreement.

- 8.2 The Franchise Operator shall co-operate fully with the Authority in relation to the monitoring referred to in paragraph 8.1.
- 8.3 The results of such monitoring will be reviewed at each Franchise Performance Meeting held pursuant to paragraph 1.3 of Appendix 1 to this Schedule 6.1B.
- 8.4 The Franchise Operator shall compensate the Authority for all reasonable costs incurred by the Authority in carrying out such monitoring. Any such compensation shall be a Disallowable Cost pursuant to Appendix 1 (*Disallowable Costs*) to Schedule 6.1A (*Franchise Payments*).

**Appendix 2 to Schedule 6.1B
PBF Assessment Period Review Checklist**

1 Operational Performance

A report on the Franchise Operator's operational performance, including:

- (a) an explanation of the level of performance achieved during the PBF Assessment Period and the underlying drivers of that performance, including evidence of the impacts of any significant actions the Franchise Operator has undertaken during the PBF Assessment Period to improve performance or to reduce the impacts of incidents;
- (b) in respect of significant or repeated failures to deliver the Enforcement Timetable, an explanation of the underlying causes of those failures setting out (if relevant) any act, omission or failure of a third party which has impacted performance and the extent of that impact;
- (c) a summary of the Franchise Operator's approaches to service recovery, Depot and Train Fleet management and train crew management during the PBF Assessment Period, including any significant actions take to improve those approaches, supported by evidence of their effectiveness; and
- (d) evidence of how the ratio of Reactionary Delay to Primary Delay, and incidences of delay attributable to Depot, Train Fleet and train crew related causes, compare with historic trends.

2 Customer Experience

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

- (a) tables, charts and other data (as appropriate) showing, for the PBF Assessment Period:
 - (i) delivery of Station and train cleans against the planned programme;
 - (ii) level of adherence to staffing rosters;
 - (iii) a summary of the availability of key assets such as Station and train toilets and ticket vending machines, and the length of time taken to remedy any faults; and
 - (iv) a summary of how the Franchise Operator has provided consistently accurate, timely and relevant information to customers at stations, on rolling stock used to deliver the Passenger Services and online;
- (b) an explanation of the level of performance achieved during the PBF Assessment Period in respect of each of the above and the underlying drivers of that performance, including evidence of the impacts of any significant actions the Franchise Operator has undertaken during the PBF Assessment Period to improve performance;
- (c) a summary of customer feedback obtained during the PBF Assessment Period, including insights gathered through complaints, surveys where relevant (including

Wavelength and National Rail Passenger Survey, if available), social media and any other relevant sources;

- (d) a summary of how the Franchise Operator has used these customer insights to identify and address customer needs; and
- (e) the results of any research or assessments undertaken by Transport Focus, the ORR or any other independent bodies which demonstrate the Franchise Operator's compliance with any of the Scorecard Criteria.

3 **Financial Performance**

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

- (a) the actions which the Franchise Operator has taken to drive the recovery of revenue and demand, and the effect those actions have had on revenue and demand;
- (b) the actions the Franchise Operator has taken to reduce costs and improve efficiency, and the effect those actions have had on costs;
- (c) the approach the Franchise Operator has taken to balancing the short, medium and long term financial interest of the franchise (both within and beyond the Franchise Term); and
- (d) appropriate revenue protection being applied to reduce ticketless travel or travel with invalid tickets to the greatest extent reasonably practicable with the intention of maximising revenue while also treating passengers fairly and reasonably (and/or otherwise evidence that the Franchise Operator has followed government guidance prevailing at the time regarding revenue collection).

4 **Collaborative Behaviour**

4.1 **Collaboration with Network Rail, other Train Operators, suppliers and industry bodies**

A report detailing the Franchise Operator's collaboration with Network Rail, other Train Operators, suppliers and industry bodies, including evidence of:

- (a) the actions taken by the Franchise Operator to comply with the obligations in part 1 (Co-operation) of Schedule 13.A (ERMA Specific Obligations) of the Franchise Agreement insofar as they relate to collaboration with those persons;
- (b) the actions taken by the Franchise Operator to collaborate with those parties in each of the areas identified in paragraph 4.2(b) of Appendix 3 (*Scorecard Criteria*) to Schedule 6.1B;
- (c) how those collaborative actions have demonstrably resulted in improved passenger outcomes and/or whole-industry financial efficiency or can reasonably be expected to result in such improvements (either during the Franchise Term or in the long term);
- (d) how the Franchise Operator has monitored the quality of its collaboration with those parties, any shortcomings identified and the remedial actions taken.

4.2 SoS Collaboration

A report detailing the Franchise Operator's collaboration with the Authority, including evidence of:

- (a) the actions taken by the Franchise Operator to support the development, design and (where appropriate) implementation of initiatives to improve the long term financial performance of the Franchise, outcomes for passengers and/or other public policy objectives;
- (b) the actions taken by the Franchise Operator to share data with the Authority, and to facilitate the sharing of data held by third parties on the Franchise Operator's behalf, pursuant to paragraphs 12 (*Further Information*) and 13 (*Information from Third Parties Parties*) of Schedule 6.1C (*Management Information*);
- (c) the Franchise Operator having complied with the reporting requirements set out in the Franchise Agreement, and provided supporting commentary, analysis and (when requested) additional information to help the Authority to assess and understand the drivers of the performance of the delivery of the Franchise Services;
- (d) how the Franchise Operator has managed its requests for guidance, consents, directions, derogations and other decisions so as to ensure they are accompanied by sufficient high-quality supporting evidence and allow sufficient time for due consideration by the Authority;
- (e) the Franchise Operator's approach to collaborating with the Authority in respect of business planning, budget setting and (where applicable) seeking to agree the matters described in paragraph 4.4 of Schedule 6.1B, the Target Cost, the Target Profit and/or any Performance Fee Target Amendment, and in particular how its approach has enabled the Authority to agree such matters without the need for substantial amendment; and
- (f) how the Franchise Operator has monitored the quality of its collaboration with the Authority, any shortcomings identified and the remedial actions taken.

4.3 Other Collaboration

A report detailing the Franchise Operator's collaboration with stakeholders specified in paragraph 6.2(a) of Appendix 3 (*Scorecard Criteria*) to Schedule 6.1B, including evidence of:

- (a) the collaborative actions the Franchise Operator has taken in each of the areas in paragraph 6.2(b) of Appendix 3 (*Scorecard Criteria*) to Schedule 6.1B, how those collaborative actions have directly improved outcomes for passengers and/or other stakeholders, and whether (and, if so, how) those actions have helped to leverage in third party funding for improvements to the railway infrastructure or to the Passenger Services;
- (b) how the Franchise Operator has collaborated with persons with disabilities and their representative bodies in particular, and how this collaboration has directly improved outcomes for such passengers;

- (c) the processes the Franchise Operator has put in place to monitor stakeholders' satisfaction with the quality of their collaboration and engagement, the results of that monitoring, any shortcomings identified and the actions taken to remedy them.

**Appendix 3 to Schedule 6.1B
Scorecard Criteria**

1 Operational Performance

1.1 One (1): Below acceptable standard

The Franchise Operator has failed in any material respect to demonstrate that it has met the standard required to score a 'two (2)'.

1.2 Two (2): Acceptable

(a) The Franchise Operator has generally delivered the Passenger Services in accordance with the applicable Enforcement Timetable, such that where there have been significant or repeated failures to deliver the applicable Enforcement Timetable:

- (i) these have typically been due to external factors and/or incidents beyond the reasonable control of the Franchise Operator;
- (ii) the Franchise Operator has taken reasonable steps to recover the Passenger Services as quickly as possible so as to minimise passenger inconvenience and delay, regardless of whether or not the root cause was within the Franchise Operator's reasonable control; and
- (iii) the Franchise Operator has undertaken reviews of the root cause(s) of such failure(s) to deliver the applicable Enforcement Timetable and the effectiveness of the Franchise Operator's actions to deal with the incident and recover the Passenger Services.

(b) The Franchise Operator has in place and has implemented appropriate Depot and Train Fleet management plans that have been generally effective in minimising the number of instances of insufficient rolling stock vehicles being available to resource the applicable Enforcement Timetable.

(c) The Franchise Operator has in place and has implemented appropriate plans for train crew management (including to mitigate risks relating to COVID-19), recruitment, training, succession and contingency management that have generally been effective in minimising the number of instances of insufficient train crew being available to resource the applicable Enforcement Timetable.

1.3 Three (3): Good

(a) The Franchise Operator has fully met the criteria for a "two (2)" and in addition:

- (i) there have been very few, if any, significant or repeated failures to deliver the applicable Enforcement Timetable that have been due to factors and/or incidents within the reasonable control of the Franchise Operator;
- (ii) the Franchise Operator's approach to service recovery has been particularly robust and, as a result, the ratio of Reactionary Delay to Primary Delay in respect of the Passenger Services has been low by historical standards (taking account of all Primary Delay, whether attributed to the Franchise Operator or not);

- (iii) the reviews referred to in paragraph 1.2(a)(iii) of this Appendix 3 to Schedule 6.1B have been particularly thorough and, as a result of those reviews, the Franchise Operator has identified and implemented significant actions that have minimised (or will minimise) the likelihood and the impacts on passengers of similar incidents occurring in future; or
- (iv) the Franchise Operator's Depot, Train Fleet and train crew management has been particularly robust and, as a result, the number of instances of insufficient rolling stock or train crew being available to deliver the Enforcement Timetable have been low by historical standards.

2 Customer Experience

2.1 One (1): Below acceptable standard

The Franchise Operator has failed in any material respect to demonstrate that it has met the standard required to score a "two (2)".

2.2 Two (2): Acceptable

- (a) The Franchise Operator has taken a proactive approach to managing customer experience for all customers, with appropriate plans and processes in place that have been generally effective in:
 - (i) providing information on rolling stock used to deliver the Passenger Services (where appropriate), online and at stations at which the Passenger Services call that is accurate, timely and easy for customers to understand, taking account of the needs of different customers and which covers (but is not limited to):
 - (A) the timetable being operated;
 - (B) planned and unplanned disruption;
 - (C) fares and ticketing;
 - (D) passenger rights (including compensation and redress);
 - (E) the availability of station and train facilities; and
 - (F) (when appropriate) COVID-19 Guidance and Regulation;
 - (ii) ensuring that all customer contact surfaces are cleaned regularly and keeping Stations and rolling stock used to deliver the Passenger Services free from litter, dirt and other unhygienic substances;
 - (iii) ensuring that all Stations, rolling stock used to deliver the Passenger Services and online services have been staffed as required to provide a visible, helpful and proactive customer-facing service; and
 - (iv) maintaining all Station and train facilities so that they are fully functional, available for use and presented in good condition, with any non-availability of facilities for repair or maintenance being kept to the minimum necessary.

- (b) The Franchise Operator has regularly and at an appropriate frequency monitored compliance with those plans and processes and has taken prompt remedial action when they have been found not to be working.
- (c) The Franchise Operator has used some survey results and other relevant data and information to review customer needs and the extent to which they are being met (including, but not limited to, Wavelength and National Rail Passenger Survey data, where available). Where needs are not being met, the Franchise Operator has (where consistent with the requirement to act as a Good and Efficient Operator, or where the Authority has otherwise consented) taken action to address them, and these actions have demonstrably resulted in meaningful improvements in outcomes for customers (or, in the opinion of the Authority (acting reasonably), will result in such improvements, either during the Franchise Term or in the long term).

2.3 Three (3): Good

The Franchise Operator has fully met the criteria for a "two (2)" and in addition:

- (a) the Franchise Operator's plans and processes described in paragraph 2.2(a) of this Appendix 3 to Schedule 6.1B have been particularly robust, such that there have been very few, if any, repeated or systemic failures to:
 - (i) provide timely, accurate and relevant information in the manner described in paragraph 2.2(a)(i) of this Appendix 3 to Schedule 6.1B;
 - (ii) undertake cleaning activities and maintain high levels of cleanliness at Stations and on rolling stock used to deliver the Passenger Services;
 - (iii) staff Stations, rolling stock used to deliver the Passenger Services and online services to provide a proactive customer-facing service; and
 - (iv) maintain Station and train facilities so that they are fully functional and well-presented,that have been due to factors and/or incidents within the reasonable control of the Franchise Operator.
- (b) The Franchise Operator's plans and processes for managing customer experience have been particularly thorough and, as a result, any *potential* issues have consistently been identified and resolved in a swift and effective manner. Any *actual* issues have also been few in number and low in impact, and the Franchise Operator has taken prompt and effective remedial action when they have occurred.
- (c) The Franchise Operator has regularly used a range of different survey results and other relevant data and information (when possible) to review customer needs and the extent to which they are being met (including Wavelength and National Rail Passenger Survey data, where available), and the prompt actions taken to address those needs have demonstrably resulted in substantial improvements in outcomes for customers.

3 Financial Performance

3.1 One (1): Below acceptable standard

The Franchise Operator has failed in any material respect to demonstrate that it has met the standard required to score a "two (2)".

3.2 Two (2): Acceptable

(a) The Franchise Operator has consistently acted as a Good and Efficient Operator and has been effective in optimising the financial prospects of its business over the short, medium and long term by:

- (i) driving the recovery of passenger demand and revenue; and
- (ii) robustly controlling the Franchise Operator's costs.

(b) In driving the recovery of passenger demand and revenue, the Franchise Operator has taken effective action (in each case within the limits arising from COVID-19 Guidance and Regulation to:

- (i) promote rail as a safe mode of transport and to raise public awareness of the steps taken by the Franchise Operator and the wider rail industry to minimise public health risks;
- (ii) monitor and deter ticketless travel; and
- (iii) implement such further actions as may have been directed by the Authority with a view to promoting demand and revenue growth.

(c) In robustly controlling the Franchise Operator's costs, the Franchise Operator has:

- (i) put in place internal processes which are comparable to (or better than) those adopted by the Franchise Operator prior to the EMA Start Date and which have been effective in managing the Franchise Operator's expenditure across all areas of the business, so as to improve efficiency and guard against unnecessary or excessive spend; and
- (ii) implemented such further actions as may have been directed by the Authority with a view to controlling costs,

while also continuing to incur such expenditure as is reasonably necessary to meet the Franchise Operator's obligations under this Agreement and to protect the long-term financial interests of the franchise (both during the Franchise Term and in the longer term).

(d) If and to the extent that there are any specific instances where the Franchise Operator has not fully complied with the requirements described above, such instances have been few in number and limited in impact, and the Franchise Operator has taken prompt and effective remedial action following any such instances.

3.3 Three (3): Good

The Franchise Operator has fully met the criteria for a "two (2)" and in addition on its own initiative, has developed and implemented (subject to the Authority's consent where required

pursuant to the Franchise Agreement) significant initiatives, the effect of which has been (or, in the Authority's opinion (acting reasonably), will be):

- (a) to substantially accelerate the recovery of passenger demand and revenue (while avoiding material increases in costs, either during the Franchise Term or thereafter); and/or
- (b) to substantially reduce the costs of operating the franchise and/or improve its cost efficiency (while avoiding material adverse impacts on passenger outcomes or revenues).

4 Collaborative behaviours (collaboration with Network Rail, other Train Operators, suppliers and industry bodies)

4.1 One (1): Below acceptable standard

The Franchise Operator has failed in any material respect to demonstrate that it has met the standard required to score a "two (2)".

4.2 Two (2): Acceptable

- (a) The Franchise Operator has complied with the obligations set out part 1 (*Co-operation*) of Schedule 13.A (*ERMA Specific Obligations*) of the Franchise Agreement insofar as they relate to collaboration with Network Rail, other Train Operators, suppliers and industry bodies;
- (b) In complying with those obligations, the Franchise Operator has demonstrated good collaborative behaviours in working with Network Rail, other Train Operators, suppliers and relevant industry bodies (as applicable) in **each** of the following areas:
 - (i) improving operational performance, which shall include (in particular) reducing Reactionary Delay, improving service recovery and investigating and addressing the root causes of sub-threshold delay;
 - (ii) improving the efficiency and effectiveness of the timetable development process, with the result that timetables better meet the needs of passengers while also being operationally robust and delivering high levels of performance;
 - (iii) optimising the planning of access and possessions, so as to achieve an appropriate balance between protecting journey opportunities for passengers and minimising the cost of carrying out necessary works;
 - (iv) identifying and implementing opportunities to deliver whole-industry cost efficiencies, including by sharing resources, establishing joint teams and/or eliminating duplication of activities across multiple organisations at Stations, control centres and elsewhere;
 - (v) delivering major projects (including infrastructure upgrades, introduction of new or cascaded rolling stock fleets) efficiently, successfully and in a way that minimises any adverse passenger impacts; and
 - (vi) openly and proactively sharing data with Network Rail, in accordance with paragraph 9 (*Sharing Data with Network Rail*) of part 1 (*Co-operation*) of Schedule 13.A (*ERMA Specific Obligations*) of the Franchise Agreement, as

necessary to maximise the effectiveness of collaboration in each of the areas listed above.

- (c) The Franchise Operator's collaborative actions in **some** of the areas listed in paragraph 4.2(b) of this Appendix 3 to Schedule 6.1B have demonstrably resulted in meaningful improvements in passenger outcomes and/or meaningful whole-industry financial efficiencies (or, in the opinion of the Authority (acting reasonably), will result in such improvements, either during the Franchise Term or in the long term).
- (d) If and to the extent that there are any specific instances where the Franchise Operator has not demonstrated good collaborative behaviours, these have been few in number and of minor impact and the Franchise Operator has taken prompt and effective remedial action where the Franchise Operator has become aware (or should reasonably have become aware) of any such instances.

4.3 **Three (3): Good**

The Franchise Operator has fully met the criteria for a "two (2)" and in addition:

- (a) the Franchise Operator's collaborative actions in **most** or **all** of the areas listed in paragraph 4.2(b) of this Appendix 3 to Schedule 6.1B have demonstrably resulted in meaningful improvements in passenger outcomes and/or meaningful whole-industry financial efficiencies (or, in the opinion of the Authority (acting reasonably), will result in such improvements, either during the Franchise Term or in the long term); or
- (b) the Franchise Operator's collaborative actions in **some** of the areas listed in paragraph 4.2(b) of this Appendix 3 to Schedule 6.1B have demonstrably resulted in **very substantial** improvements in passenger outcomes and/or **very substantial** whole-industry financial efficiencies (or, in the reasonable opinion of the Authority, will result in such improvements, either during the Franchise Term or in the long term).

5 **Collaborative behaviours (collaboration with the Authority)**

5.1 **One (1): Below acceptable standard**

The Franchise Operator has failed in any material respect to demonstrate that it has met the standard required to score a "two (2)".

5.2 **Two (2): Acceptable**

- (a) The Franchise Operator has co-operated with the Authority in the development, design and (where applicable) implementation of initiatives to improve the long-term financial performance of the Franchise, outcomes for passengers and/or other public policy objectives (including Future Initiatives and Franchise Operator Initiatives pursuant to and in accordance with part 1 (*Co-operation*) of Schedule 13.A (*ERMA Specific Obligations*)] of the Franchise Agreement) that relate to co-operation with the Authority and prospective Fares, ticketing and ticket retailing reform pursuant to and in accordance with Schedule 5, part 5 (*Fares, Ticketing and Retail Reform*)).
- (b) The Franchise Operator has shared data fully and openly with the Authority, and has taken reasonable steps to facilitate the sharing of data held by third parties on the

Franchise Operator's behalf, in accordance with paragraphs 12 (*Further Information*) and 13 (*Information from Third Parties*) of Schedule 6.1C (*Management Information*);

- (c) The Franchise Operator has provided periodic reporting packs on time and to a good standard, including all data required by the Franchise Agreement with commentary and analysis to allow the Authority to assess the performance of the Franchise Services and to understand the underlying drivers. Appropriate representatives of the Franchise Operator have attended each Franchise Performance Meeting. The Franchise Operator has responded to requests for additional information positively and within agreed timescales.
- (d) Requests for the Authority to provide guidance, consents, directions, derogations and other decisions have been made in sufficient time to allow for due consideration by the Authority. Such requests having been supported by appropriate supporting evidence and analysis to enable the Authority to make an informed decision. Unnecessary or spurious requests have been avoided.
- (e) The Franchise Operator has worked constructively with the Authority to agree appropriate business plans, budgets and (where applicable) the matters described in paragraph 4.4 of Schedule 6.1B, the Target Cost, the Target Profit and/or any Performance Fee Target Amendment, in each case in a timely manner. In particular, the Franchise Operator's proposals in respect of these matters have been provided in accordance with required timescales, underpinned by sound assumptions and good supporting evidence, enabling the Authority to accept them without the need for substantial amendment.
- (f) If and to the extent that there are any specific instances where the Franchise Operator has not demonstrated good collaborative behaviours, these have been few in number and of minor impact and the Franchise Operator has taken prompt and effective remedial action where the Franchise Operator has become aware (or should reasonably have become aware) of any such instances.

5.3 Three (3): Good

The Franchise Operator has fully met the criteria for a "two (2)" and in addition:

- (a) both proactively and in response to any specific requests by the Authority, the Franchise Operator has developed and presented to the Authority a variety of high-quality, credible reform initiatives to materially strengthen the long-term financial sustainability of the franchise, improve passenger outcomes and support other public policy objectives;
- (b) such proposals have been accompanied by credible delivery plans and clear, robust analysis of the financial and practical consequences, associated risks and other implications; and
- (c) when such proposals have been consistent with what a Good and Efficient Operator would do, or have otherwise been approved by the Authority, the Franchise Operator has implemented those proposals in accordance with their terms (or, where applicable, the Franchise Operator's actions during the PBF Assessment Period have given the Authority good confidence that the Franchise Operator will do so).

6 Collaborative behaviours (collaboration with other stakeholders)

6.1 One (1): Below acceptable standard

The Franchise Operator has failed in any material respect to demonstrate that it has met the standard required to score a "two (2)".

6.2 Two (2): Acceptable

(a) The Franchise Operator has demonstrated good collaborative behaviours in working with stakeholders, including:

- (i) passengers (including, and in particular, passengers with disabilities) and their representative bodies;
- (ii) devolved administrations (where applicable);
- (iii) local authorities;
- (iv) community rail partnerships;
- (v) local enterprise partnerships and other representatives of the business community; and
- (vi) other transport operators,

but excluding the Authority, Network Rail and other industry parties as identified in paragraph 4 (*Collaborative behaviours (Collaboration with Network Rail, other Train Operators, suppliers and industry bodies)*) of this Appendix 3 to Schedule 6.1B.

(b) In particular, the Franchise Operator has:

- (i) sought feedback from such stakeholders about the Franchise Services;
- (ii) consulted with such stakeholders and involved them in significant decisions that affect them, such that they have had a meaningful opportunity to influence those decisions;
- (iii) provided feedback to those stakeholders on significant decisions that affect them and the reasons for those decisions;
- (iv) routinely and actively involved passengers with disabilities and their representatives in designing and developing the facilities and Passenger Services provided by the Franchise Operator, and in other decisions that may have a particular impact on passengers with disabilities; and
- (v) provided support to prospective third party promoters and funders of improvements to the railway when requested to do so by the Authority or the third party concerned.

(c) The Franchise Operator's collaborative actions in the areas identified in this paragraph 6.2 have resulted in **some** improvements in outcomes for passengers and other stakeholders served by the Franchise Operator, including in particular for passengers with disabilities (or, in the opinion of the Authority (acting reasonably),

will result in such improvements, either during the Franchise Term or in the long term).

6.3 Three (3): Good

The Franchise Operator has fully met the criteria for a "two (2)" and in addition:

- (a) the Franchise Operator has in place and has implemented effective processes to monitor stakeholder satisfaction with the quality of the Franchise Operator's collaboration and engagement with them, and the results of this monitoring show consistently excellent levels of stakeholder satisfaction during the PBF Assessment Period; and
- (b) regular, open collaboration, proactively initiated by the Franchise Operator, has demonstrably resulted in (or, in the opinion of the Authority (acting reasonably) will, either during the Franchise Term or in the longer term, result in):
 - (i) **substantial** improvements in outcomes for passengers and/or other stakeholders (including in particular passengers with disabilities); and/or
 - (ii) third party investment or other funding contributions to **significantly** improve the Passenger Services and/or the railway infrastructure.

**Appendix 4 to Schedule 6.1B
Scorecard Methodology**

1 Application of the Scorecard Criteria and calculation of Performance Based Fee

Each PBF Component to be calculated in accordance with the Scorecard Methodology shall be assessed with respect to the Franchise Operator's PBF Assessment Period Review score for the relevant PBF Assessment Period by reference to the Scorecard Criteria, then the score shall be used to calculate the value of the Performance Based Fee attributable to that PBF Component, as applicable, as set out below:

PBF Component	PBF Assessment Period Scorecard score for relevant Scorecard Criterion	PBF £
Operational Performance Fee	Three (3)	£ MPBF * W_{OP}
	Two (2)	£ MPBF * W_{OP} * Seventy-five per cent (75%)
	One (1)	Zero pound (£0)
Customer Experience Fee	Three (3)	£ MPBF * W_{CE} * W_{CESC}
	Two (2)	£ MPBF * W_{CE} * W_{CESC} * Seventy-five per cent (75%)
	One (1)	Zero pound (£0)
Financial Performance Fee	Three (3)	£ MPBF * W_{FIN} * W_{FINSC}
	Two (2)	£ MPBF * W_{FIN} * W_{FINSC} * Fifty per cent (50%)
	One (1)	Zero pound (£0)
Network Rail Collaboration	Three (3)	£ MPBF * W_{CB} * W_{NR}

	Two (2)	£ MPBF * W _{CB} * W _{NR} * Seventy-five per cent (75%)
	One (1)	Zero pound (£0)
SoS Collaboration	Three (3)	£ MPBF * W _{CB} * W _{SOS} *
	Two (2)	£ MPBF * W _{CB} * W _{SOS} * Seventy-five per cent (75%)
	One (1)	Zero pound (£0)
Other Collaboration	Three (3)	£ MPBF * W _{CB} * W _{OTH}
	Two (2)	£ MPBF * W _{CB} * W _{OTH} * Seventy-five per cent (75%)
	Three (1)	Zero pound (£0)

where:

"W_{FINSC}"	<p>means:</p> <ul style="list-style-type: none"> (a) if the Financial Performance Fee for that PBF Assessment Period is to be assessed solely in accordance with the Scorecard Methodology, the weighting to be applied to the Scorecard Methodology for that PBF Assessment Period, being one hundred per cent (100%); and (b) if the Financial Performance Fee is to be assessed in accordance with one or more of the Subsequent FP Methodologies for that PBF Assessment Period, the weighting to be applied to the Scorecard Methodology with respect to the Financial Performance Fee for that PBF Assessment Period, being the value agreed or determined in accordance with paragraph 4.4(d) of Schedule 6.1B,
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	provided that no calculation using the Scorecard Methodology shall be required in relation to the Financial Performance Fee if the value of W_{FINSC} is zero;
" W_{NR} "	means the weighting to be applied to Network Rail Collaboration when calculating the amount of the Collaborative Behaviour Fee for that PBF Assessment Period, being forty per cent (40%) or such alternative as may be agreed or determined pursuant to paragraph 4.4(g) of Schedule 6.1B;
" W_{SOS} "	means the weighting to be applied to SoS Collaboration when calculating the amount of the Collaborative Behaviour Fee for that PBF Assessment Period, being forty per cent (40%) or such alternative as may be agreed or determined pursuant to paragraph 4.4(g) of Schedule 6.1B;
" W_{OTH} "	means the weighting to be applied to Other Collaboration when calculating the amount of the Collaborative Behaviour Fee for that PBF Assessment Period, being twenty per cent (20%) or such alternative as may be agreed or determined pursuant to paragraph 4.4(g) of Schedule 6.1B.

**Appendix 5 to Schedule 6.1B
Quantified Target Methodology**

1 Application of the Quantified Target Methodology

- 1.1 The Performance Based Fee in relation to each Subsequent PBF Assessment Period shall be either:
- (a) the sum of the amounts corresponding to each of the PBF Components calculated in accordance with paragraph 1 (*Application of the Scorecard Criteria and calculation of Performance Based Fee*) of Appendix 4 (*Scorecard Methodology*) to Schedule 6.1B; or
 - (b) the sum of:
 - (i) the amounts corresponding to each of the QTM PBF Components (if any) which, pursuant to paragraph 4.2(a) of this Schedule 6.1B, are to be calculated in accordance with paragraph 1 (*Application of the Scorecard Criteria and calculation of Performance Based Fee*) of Appendix 4 (*Scorecard Methodology*) to Schedule 6.1B; and
 - (ii) the amounts corresponding to each of the QTM PBF Components (if any) which, pursuant to paragraph 4.2(a) of this Schedule 6.1B, are to be calculated in accordance with this Appendix 5 to Schedule 6.1B; and
 - (iii) the amount of the Collaborative Behaviour Fee calculated in accordance with paragraph 1 (*Application of the Scorecard Criteria and calculation of Performance Based Fee*) of Appendix 4 (*Scorecard Methodology*) to this Schedule 6.1B.
- 1.2 If it has been agreed or determined pursuant to paragraph 4.2(a) of Schedule 6.1B that the Operational Performance Fee shall be calculated by reference to the Quantified Target Methodology, paragraph 2 (*Operational Performance*) of this Appendix 5 to Schedule shall apply in respect of the value of the Performance Based Fee attributable to the Operational Performance Fee.
- 1.3 If it has been agreed or determined pursuant to paragraph 4.2(a) of Schedule 6.1B that the Customer Experience Fee shall be calculated by reference to the Quantified Target Methodology, paragraph 2.3 (*Customer Experience*) of this Appendix 5 to Schedule shall apply in respect of the value of the Performance Based Fee attributable to the Customer Experience Fee.
- 1.4 If it has been agreed or determined pursuant to paragraph 4.2(a) of Schedule 6.1B that the Financial Performance Fee shall be calculated by reference to the Quantified Target Methodology, paragraph 4 (*Financial Performance*) of this Appendix 5 to Schedule 6.1B shall apply in respect of the value of the Performance Based Fee attributable to the Financial Performance Fee.

2 Operational Performance

2.1 The OP Targets agreed or determined in accordance with paragraph 4.5 of Schedule 6.1B shall apply to each Reporting Period during the relevant PBF Assessment Period.

2.2 For each Reporting Period within the relevant PBF Assessment Period, the Authority shall calculate a financial sum in respect of each Operational Performance Component in accordance with the applicable formula set out below based whether:

- (a) the Franchise Operator's Actual All Cancellations Performance Level, Actual T-3 Performance Level and Actual T-15 Performance Level; and
- (b) the Franchise Operator's actual performance in relation Cancellations, and TOC Minutes Delay and Short Formations as determined in accordance with Schedule 6.1E (*Operational Performance*):

are worse than, within or better than the expected range, in each case specified as the OP Target for the applicable Operational Performance Component in the relevant Reporting Period:

Operational Performance Component	Worse than the expected range	Within the expected range	Better than the expected range
Cancellations	Zero (£0)	Twenty-two point five per cent (22.5%) * MPBF * W _{OP/N}	Thirty per cent (30%) * MPBF * W _{OP/N}
TOC Minutes Delay	Zero (£0)	Fifteen per cent (15%) * MPBF * W _{OP/N}	Twenty per cent (20%) * MPBF * W _{OP/N}
Short Formations	Zero (£0)	Seven point five per cent (7.5%) * MPBF * W _{OP/N}	Ten per cent (10%) * MPBF * W _{OP/N}
T-3	Zero (£0)	Seven point five per cent (7.5%) * MPBF * W _{OP/N}	Ten per cent (10%) * MPBF * W _{OP/N}
T-15	Zero (£0)	Seven point five per cent (7.5%) * MPBF * W _{OP/N}	Ten per cent (10%) * MPBF * W _{OP/N}
All Cancellations	Zero (£0)	Fifteen per cent (15%) * MPBF * W _{OP/N}	Twenty per cent (20%) * MPBF * W _{OP/N}

where:

N	means the number of Reporting Periods that fall within the relevant PBF Assessment Period.
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2.3 The value of OP for the purposes of the formula set out in paragraph 4.1 of Schedule 6.1B shall be calculated as the sum of each of the calculations performed pursuant to paragraph 2.2 of this Appendix 5 to Schedule 6.1B in respect of each OP Component in each Reporting Period during the relevant PBF Assessment Period.

3 Customer Experience

3.1 For each relevant PBF Assessment Period, the Authority shall calculate the element of the Performance Based Fee attributable to the Customer Experience Fee in accordance with the formula set out below.

$\pounds CE =$	$CE(SC) + CE(NPS)$
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3.2 If the weighting of CE(NPS) is zero in accordance with paragraph 3.3 of this Appendix 5 to Schedule 6.1B then the value attributable to each such component shall be zero and such component shall be removed from the formula set out in paragraph 3.1 of this Appendix 5 to Schedule 6.1B for the purpose of calculating the value of the Performance Based Fee attributable to the Customer Experience Fee.

3.3 If the Customer Experience Fee for the relevant PBF Assessment Period is to be assessed in accordance with one or more of the Subsequent CE Methodologies, the weighting to be applied to:

- (a) the Scorecard Methodology ("**W_{CESC}**"); and/or
- (b) **Not used;**
- (c) the NPS Methodology ("**W_{NPS}**"),

shall be the weighting specified in this paragraph 3.3.

Methodology to be applied	W_{CESC}	W_{NPS}
Scorecard Methodology only	One hundred per cent (100%)	Zero per cent (0%)
Combined Scorecard/NPS Methodology	Sixty-five per cent (65%)	Thirty-five per cent (35%)

3.4 If:

- (a) W_{NPS} is not zero in accordance with paragraph 3.3 above, the value attributable to CE(NPS) shall be calculated in accordance with paragraph 3.5 (*Calculation of CE(NPS)*) below;
- (b) **Not used;**

- (c) W_{CESC} is not zero, the value of CE(SC) shall be calculated in accordance with the Scorecard Methodology as it relates to the Customer Experience Fee.

3.5 Calculation of CE(NPS)

- (a) The NPS Targets agreed or determined in accordance with paragraph 4.5 of Schedule 6.1B shall apply during the relevant PBF Assessment Period.
- (b) If:
 - (i) no findings of the National Rail Passenger Survey are published during the relevant PBF Assessment Period; or
 - (ii) in the opinion of the Authority (acting reasonably) the findings of the National Rail Passenger Survey are not sufficiently robust to support the calculation of CE(NPS),

the Customer Experience Fee for the relevant PBF Assessment Period shall be assessed using the Scorecard Methodology, the weightings specified in paragraph 3.3 above in relation to such methodology shall apply, and the Authority may reasonably determine such amendments to the Scorecard Methodology as may be reasonably appropriate in consequence of the unavailability or unsuitability of the National Rail Passenger Survey findings.

- (c) For each relevant PBF Assessment Period, the Authority shall calculate the Franchise Operator's performance against each of the NPS Targets in accordance with the applicable formula set out below based on whether the Franchise Operator's applicable Overall Performance Score in respect of the applicable NPS Target is:
 - (i) worse than the expected range;
 - (ii) within the expected range; or
 - (iii) better than the expected range,

in each case specified as the NPS Target for the applicable NPS Measure:

NPS Measure	Worse than the expected range	Within the expected range	Better than the expected range
Stations	Zero pound (£0)	Twenty-five per cent (25%) * MPBF * W_{CE} * W_{NPS}	One-third (1/3) * MPBF * W_{CE} * W_{NPS}
Trains	Zero pound (£0)	Twenty-five per cent (25%) * MPBF * W_{CE} * W_{NPS}	One-third (1/3) * MPBF * W_{CE} * W_{NPS}
Customer Service	Zero pound (£0)	Twenty-five per cent (25%) * MPBF * W_{CE} * W_{NPS}	One-third (1/3) * MPBF * W_{CE} * W_{NPS}

- (d) For each relevant PBF Assessment Period, the Authority shall calculate the value of the Performance Based Fee attributable to CE(NPS) in accordance with the formula set out below.

$\pounds\text{CE(NPS)} =$	$S + T + C$
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where:

S	means the value attributable to the Stations NPS Measure calculated in accordance with paragraph 3.5(c) above;
T	means the value attributable to the Trains NPS Measure calculated in accordance with paragraph 3.5(c) above;
C	means the value attributable to the Customer Service NPS Measure calculated in accordance with paragraph 3.5(c) above; and

3.6 Not used

4 Financial Performance

- 4.1 For each relevant PBF Assessment Period the Authority shall calculate the value of the Performance Based Fee attributable to the Financial Performance Fee in accordance with the formula set out below.

$\pounds\text{FIN} =$	$\text{FIN(CC)} + \text{FIN(P)} + \text{FIN(SC)}$
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- 4.2 If the weighting of any of FIN(CC), FIN(P) and/or FIN(SC) is zero in accordance with paragraph 4.4(d) of Schedule , then the value attributable to each such component shall be zero and such component shall be removed from the formula set out in paragraph 4.1 above for the purpose of calculating the value of the Performance Based Fee attributable to the Financial Performance Fee.

4.3 Calculation of FIN(CC)

- (a) Subject to paragraph 6 (*Target Amendments*), the Target Cost agreed or determined in accordance with paragraph 5.1 (*Target Cost*) shall apply to the relevant PBF Assessment Period.
- (b) The Franchise Operator shall provide to the Authority all financial information required for the purposes of making each of the calculations required pursuant to this paragraph 4.3 in accordance with paragraph 9.1 (*Accounting Records*) to paragraph 9.4 (*Annual Financial Information*) of Schedule 6.C (*Management Information*).
- (c) Within twenty eight (28) days of receipt of all financial information required for the purposes of making the relevant calculations, the Authority shall calculate the value of the Performance Based Fee attributable to FIN(CC) in accordance with the applicable formula set out below based on whether the Outturn Cost is:

- (i) greater than the Target Cost Floor;
- (ii) greater than the Target Cost but less than or equal to the Target Cost Floor;
- (iii) less than or equal to the Target Cost but greater than the Target Cost Cap;
or
- (iv) less than or equal to the Target Cost Cap.

Outturn Cost	$\text{£FIN}(\text{CC})$
Greater than TCF	Zero (£0)
Greater than Target Cost, less than or equal to TCF	$[(\text{TCF} - \text{OTC})/(\text{TCF} - \text{TC})] * W_{\text{FIN}} * W_{\text{CC}} * \text{MPBF} * \text{Fifty per cent (50\%)}$
Less than or equal to Target Cost, greater than TCC	$[W_{\text{FIN}} * W_{\text{CC}} * \text{MPBF}] - \{[(\text{OTC} - \text{TCC})/(\text{TC} - \text{TCC})] * W_{\text{FIN}} * W_{\text{CC}} * \text{MPBF} * \text{Fifty per cent (50\%)}\}$
Less than or equal to TCC	$W_{\text{FIN}} * W_{\text{CC}} * \text{MPBF}$

4.4 Calculation of FIN(P)

- (a) Subject to paragraph 6 (*Target Amendments*) of Schedule 6.1B, the Target Profit agreed or determined in accordance with paragraph 5.2 (*Target Profit*) shall apply to the relevant PBF Assessment Period.
- (b) The Franchise Operator shall provide to the Authority all financial information required for the purposes of making each of the calculations required pursuant to this paragraph 4.4 in accordance with paragraph 9.1 (*Accounting Records*) to paragraph 9.4 (*Annual Financial Information*) of Schedule 6.C (*Management Information*).
- (c) Within twenty eight (28) days of receipt of all financial information required for the purposes of making the relevant calculations, the Authority shall calculate the value of the Performance Based Fee attributable to FIN(P) in accordance with the applicable formula set out below based on whether the Outturn Profit is:
 - (i) greater than the Target Profit Cap;
 - (ii) greater than the Target Profit but less than or equal to the Target Profit Cap;
 - (iii) less than or equal to the Target Profit but greater than the Target Profit Floor;
or
 - (iv) less than or equal to the Target Profit Floor:

Outturn Profit	£FIN(P)
Greater than TPC	$W_{\text{FIN}} * W_{\text{P}} * \text{MPBF}$

Greater than Target Profit, less than or equal to TPC	$[W_{FIN} * W_P * MPBF] - \{[(TPC - OTP)/(TPC - TP)] * W_{FIN} * W_P * MPBF * \text{Fifty per cent (50\%)}\}$
Less than or equal to Target Profit, greater than TPF	$[(OTP - TPF)/(TP - TPF)] * W_{FIN} * W_P * MPBF * \text{Fifty per cent (50\%)}$
Less than or equal to TPF	Zero (£0)

4.5 **Not used**

4.6 **Calculation of FIN(SC)**

- (a) FIN(SC) shall be calculated using the Scorecard Methodology as it applies to the Financial Performance Fee.

Appendix 6 to Schedule 6.1B
Category A Target Amendment Trigger Events

1 Target Cost Target Amendment Trigger Events

- 1.1 Any variation in the rate of employer pension contributions (or, to the extent applicable, the amount of any lump sum employer deficit contributions) payable to a Franchise Section from the rate (or amount) set out in the Assumed Schedule of Contributions applicable to that Franchise Section which is not already provided for in the Target Cost Template provided that, to the extent the Franchise Operator's consent or permission was required for that variation, the Franchise Operator has complied with its obligations pursuant to clause 13 (*Pensions*), including the obligations to:
- (a) obtain the Authority's prior written consent in respect of any such variation; and
 - (b) act in a Reasonable Commercial Manner.
- 1.2 For reasons related to COVID-19 or otherwise in the national interest, the Authority or Network Rail requires the Franchise Operator to operate the Passenger Services to a specification that is materially reduced compared to the specification that was assumed when the Target Cost was established.
- 1.3 Either:
- (a) the Authority designates the occurrence of Industrial Action as a Category A Target Amendment Trigger Event pursuant to paragraph 5.3 of part 2 (*Industrial Relations and Dispute Handling*) of Schedule 13.A (*ERMA Specific Obligations*); or
 - (b) the occurrence of Industrial Action in the circumstances set out in paragraph 5.4 of part 2 (*Industrial Relations and Dispute Handling*) of Schedule 13.A (*ERMA Specific Obligations*).
- 1.4 A variation which either results in the Franchise Operator incurring additional expenditure or would reasonably result in the Franchise Operator incurring lower expenditure than if the variation had not been implemented.
- 1.5 **Not used.**
- 1.6 A Charge Variation.
- 1.7 A Change of Law.
- 1.8 A change to the Passenger Service Requirement and the Additional Service Commitment previously in force pursuant to the issue of an amended or new Train Service Requirement in accordance with clause 11 (*PSR/ASC Changes*) of the Franchise Agreement.
- 1.9 The Franchise Operator being required to take any action pursuant to clauses 12.3(a) and 12.3(b) (*Access Agreements*) and 12.4(a) and 12.4(b) (*Property Leases*) of the Franchise Agreement.
- 1.10 **Not used.**
- 1.11 The exercise by the Authority of the Authority's rights pursuant to paragraph 15.1(c) (*Environmental Information Data Collection Plan*) of Schedule 6.1C (*Management Information*).

- 1.12 The circumstances set out in clause 12.6A of the Franchise Agreement as amended by the ERMA occur.
- 1.13 **Not used.**
- 1.14 **Not used.**
- 1.15 The delay of an item of expenditure or a group of items of similar expenditure where the timing of expenditure is materially different from that included in the Target Cost.
- 1.16 The Authority issuing any other guidance or instruction which could reasonably be expected to have a material impact on the Franchise Operator's ability to achieve, exceed or fail to achieve the relevant Target Cost.

2 Target Profit Target Amendment Trigger Events

- 2.1 Any variation in the rate of employer pension contributions (or, to the extent applicable, the amount of any lump sum employer deficit contributions) payable to a Franchise Section from the rate (or amount) set out in the Assumed Schedule of Contributions applicable to that Franchise Section which is not already provided for in the Target Profit Template provided that, to the extent the Franchise Operator's consent or permission was required for that variation, the Franchise Operator has complied with its obligations pursuant to clause 13 (*Pensions*), including the obligations to:
- (a) obtain the Authority's prior written consent in respect of any such variation; and
 - (b) act in a Reasonable Commercial Manner.
- 2.2 For reasons related to COVID-19 or otherwise in the national interest, the Authority or Network Rail requires the Franchise Operator to operate the Passenger Services to a specification that is materially reduced compared to the specification that was assumed when the Target Profit was established.
- 2.3 Either:
- (a) the Authority designates the occurrence of Industrial Action as a Category A Target Amendment Trigger Event pursuant to paragraph 5.3 of part 2 (*Industrial Relations and Dispute Handling*) of Schedule 13.A (*ERMA Specific Obligations*); or
 - (b) the occurrence of Industrial Action in the circumstances set out in paragraph 5.4 of part 2 (*Industrial Relations and Dispute Handling*) of Schedule 13.A (*ERMA Specific Obligations*).
- 2.4 A Variation which:
- (a) results in the Franchise Operator incurring additional expenditure;
 - (b) would reasonably result in the Franchise Operator incurring lower expenditure;
 - (c) results in the Franchise Operator earning less revenue; or
 - (d) would reasonably result in the Franchise Operator earning greater revenue, than if the Variation had not been implemented.
- 2.5 **Not used.**

- 2.6 A Charge Variation.
- 2.7 A Change of Law.
- 2.8 A change to the Passenger Service Requirement and the Additional Service Commitment previously in force pursuant to the issue of an amended or new Train Service Requirement in accordance with clause 11 (*PSR/ASC Changes*) of the Franchise Agreement.
- 2.9 The Franchise Operator being required to take any action pursuant to clauses 12.3(a) and (b) (*Access Agreements*) and 12.4 (a) and (b) (*Property Leases*) of the Franchise Agreement.
- 2.10 The Authority effects an amendment to a Discount Fare Scheme, introduces a new Discount Fare Scheme or ceases to approve a Discount Fare Scheme for the purposes of section 28 of the Act.
- 2.11 The Authority approves an amendment or proposed amendment to an Inter-Operator Scheme, as referred to in clause 9.7 if Franchise Operator makes a saving as a consequence of such amendment or proposed amendment.
- 2.12 **Not used.**
- 2.13 The Authority exercises the Authority's power pursuant to clause 9 in the Franchise Agreement to alter the obligations of and restrictions on the Franchise Operator under Schedule 5 (*Fares and Smart Ticketing*).
- 2.14 The Franchise Operator is obliged to charge Value Added Tax on a Fare or there is an increase or decrease in the rate of Value Added Tax which it must charge on such Fare, in either case due to a change in the Value Added Tax treatment.
- 2.15 The exercise by the Authority of the Authority's rights pursuant to paragraph 15.1(c) (*Environmental Information Data Collection Plan*) of Schedule 6.1C (*Management Information*).
- 2.16 The circumstances set out in clause 12.6A of the Franchise Agreement as amended by the ERMA occur.
- 2.17 **Not used.**
- 2.18 **Not used.**
- 2.19 The delay of an item of expenditure or a group of items of similar expenditure where the timing of expenditure is materially different from that included in the Target Profit.
- 2.20 The Authority issuing any other guidance or instruction which could reasonably be expected to have a material impact on the Franchise Operator's ability to achieve, exceed or fail to achieve the relevant Target Profit.

**Appendix 7 to Schedule 6.1B
Pro Forma Target Tables**

1 **Table 1:** Required when the Operational Performance Fee is assessed using the Quantified Target Methodology. Each item marked with ✓ is to be agreed or reasonably determined in respect of each Reporting Period within the relevant PBF Assessment Period pursuant to paragraph 4.5 of Schedule 6.1B.

Indicator	Default Performance Level	Breach Performance Level	Range within which the Franchise Operator's performance is expected to fall	
			From	To
Cancellations	✓	✓	✓	✓
TOC Minutes Delay	✓	✓	✓	✓
Short Formations	✓	✓	✓	✓
T-3	n/a		✓	✓
T-15			✓	✓
All Cancellations			✓	✓

2 **Table 2:** Required when the Customer Experience Fee is assessed (wholly or in part) using the NPS Methodology. Each ✓ indicates a single figure to be agreed or reasonably determined for the whole PBF Assessment Period.

Indicator	NPS Improvement Plan Level	Range within which the Franchise Operator's performance is expected to fall	
		From	To
NPS Trains	✓	✓	✓
NPS Stations	✓	✓	✓
NPS Customer Service	✓	✓	✓

3 **Not used**

Appendix 6 to Schedule 1
Schedule 6.1C (*Management Information*)

Schedule 6.1C Management Information

1 Corporate Information

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

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

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

2 Information about Assets used in the Franchise

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

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

asset life on bringing such asset into use and the remaining asset life of such asset as at the date of any request from the Authority for this information.

3 Identification of Key Personnel and Provision of Organisation Chart

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

- (a) a managing director whose role will include the overall management of the operation of the Franchise Services;
- (b) a train service delivery director, whose role will include responsibility for ensuring compliance by the Franchise Operator with Schedule 6.1E (*Operational Performance*);
- (c) a safety director, whose role will include responsibility for ensuring that the Franchise Operator complies with its legal obligations in relation to the Franchise Services including the Safety Certificate; and
- (d) a finance director, whose role will include responsibility in relation to the Budget, the annual audited accounts (as required to be provided under clause 15.2) and the Final Accounts and the provision of other financial data to Authority.

3.2 The Franchise Operator shall nominate a board level director of the Franchise Operator (or at the Authority's sole discretion, a director of a Parent or an Affiliate) within seven (7) days of the date of this Agreement. Such director's responsibilities include overseeing, at a strategic level, the Franchise Operator's interface with the Authority in relation to Sections 119 to 121 (inclusive) of the Act and co-ordinating relevant activities and delivery of counter terrorist security on behalf of the Franchise Operator in connection with the Franchise Operator's compliance with relevant instructions issued by the Authority under Section 119 of the Act from time to time. Such director shall be identified by job title in the organisation chart referred to in paragraph 3.3 and shall be deemed part of the Key Personnel.

3.3 On or before the Start Date, the Franchise Operator shall provide to the Authority the schedule of Key Personnel and the organisation chart detailing the responsibilities and reporting lines of each of the Key Personnel and shall update the schedule and organisation chart (and provide copies to the Authority promptly thereafter), as and when any changes occur.

4 Operational Performance Information

The Franchise Operator shall provide to the Authority the information specified in Appendix 2 (*Operational Performance Information*) to this Schedule 6.1C at the times specified therein.

5 Maintenance of Records

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

- (a) operation and maintenance of Franchise Assets;
- (b) operation of the Franchise Services; and

(c) financial performance of the Franchise,

in each case, in exercising that degree of care, skill, diligence, prudence, efficiency, foresight and timeliness which would reasonably be expected from a prudent and leading Train Operator and in order to fulfil the requirements of the Franchise Agreement, including in relation to maintenance of the Franchise as a going concern in accordance with clause 25.1.

5.2 Unless otherwise agreed by the Authority, all records, books and materials required to be maintained by the Franchise Operator in accordance with this Schedule 6.1C shall be held in a form that is capable of audit for a period of not less than six (6) years following the Expiry Date or the date of any earlier termination of this Agreement.

5.3 NOT USED.

5.4 NOT USED.

6 Right to Inspect

6.1 The Franchise Operator shall, if requested by the Authority, allow the Authority and the Authority's representatives and advisers:

(a) to inspect and copy any records referred to in this Schedule 6.1C, Schedule 6.1A (*Franchise Payments*) or Schedule 6.1B (*Performance Based Fee*) and the Authority may verify any such records; and/or

(b) to inspect and copy at any reasonable time any books, records and any other material kept by or on behalf of the Franchise Operator and/or its auditors and any assets (including the Franchise Assets) used by the Franchise Operator in connection with the Franchise Services.

6.2 The Franchise Operator shall make available to the Authority, the Authority's representatives and advisers the information referred to in paragraph 6.1 and grant or procure the grant of such access (including to or from third parties) as the Authority, the Authority's representatives and advisers shall reasonably require in connection therewith. The obligation of the Franchise Operator under this paragraph 6.2 shall include an obligation on the Franchise Operator to grant or procure the grant of such access to premises (including third party premises) where the information referred to in paragraph 6.1 is kept by or on behalf of the Franchise Operator.

6.3 The Authority, the Authority's representatives and advisers shall be permitted to take photographs, film or make a video recording, or make any other kind of record of any such inspection.

6.4 If any inspection reveals that information previously supplied to the Authority was, in the reasonable opinion of the Authority, inaccurate in any material respect or if such inspection reveals any other contravention of the Franchise Operator's obligations under the Franchise Agreement which the Authority considers to be material, the costs of any such inspection shall be borne by the Franchise Operator and which, for the avoidance of doubt, shall be Disallowable Costs pursuant to Appendix 1 (*Disallowable Costs*) to Schedule 6.1A.

7 Information to the Passengers' Council and Local Authorities

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

8 Periodic Update Reports

8.1 The Franchise Operator shall prepare and submit to the Authority a periodic report in each Reporting Period which shall:

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

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

9 Financial Information

9.1 Accounting Records

The Franchise Operator shall prepare and at all times during the Franchise Term maintain true, up to date and complete accounting records as are required to be kept under section 386 of the Companies Act 2006. Such records shall be prepared on a consistent basis for each Reporting Period of the Franchise Operator Year. In particular, the Franchise Operator shall ensure that such accounting records are produced and maintained in a form which distinguishes between transactions which reasonably and properly relate, on the accruals basis, to:

- (a) the period prior to 1 March 2020;
- (b) the period from 1 March 2020 to the EMA Start Date;
- (c) the term of the EMA;
- (d) the term of the ERMA; and
- (e) the period after the term of the ERMA (if any).

9.2 Reporting Period Financial Information

- (a) The Franchise Operator shall deliver to the Authority, within ten (10) Weekdays of the end of each Reporting Period:
 - (i) Management Accounts for such Reporting Period, setting out a cash flow statement, profit and loss account and balance sheet for that Reporting Period and cumulatively for the Franchise Operator Year to date ensuring that:
 - (A) the profit and loss account shall adopt the format and structure as expressly agreed otherwise by the Authority from time to time for this purpose;
 - (B) in particular, Costs and Revenues shall be allocated consistently to the level of disaggregation required the Authority from time to time and there shall be no netting off between those disaggregated areas; and
 - (C) the cashflow statement shall clearly state the gross amount of Capital Expenditure incurred by the Franchise Operator (separately identifying and excluding any amounts funded by third parties) for that Reporting Period and cumulatively for the Franchise Operator Year to date;
 - (ii) written confirmation that the Management Accounts, to the best of the knowledge, information and belief of the board of directors of the Franchise Operator, contain a true and accurate reflection of the current revenues, costs, assets and liabilities of the Franchise Operator (including contingent assets or liabilities and known business risks and opportunities) and, to the extent that they do not, identify in a written report relevant issues in reasonable detail and provide such further information that the Authority shall reasonably require in relation; and
 - (iii) written confirmation from a statutory director of the Franchise Operator that the Franchise Operator has complied with the lock-up restrictions applicable in paragraph 21 of Schedule 6.1A (*Franchise Payments*).
- (b) The Management Accounts shall also set out:
 - (i) sufficient information to enable the Authority to calculate with reasonable accuracy the Forecast Closing Cash Position as at the end of the following three (3) Reporting Periods;
 - (ii) the Franchise Operator's forecast of:

- (A) the Franchise Operator's daily Cash Balance for the period of thirteen (13) weeks following the Reporting Period to which the Management Accounts relate;
 - (B) the amount of Working Capital Payment (if any) that the Franchise Operator forecasts that it will require pursuant to paragraph 9 (*Review of Franchise Operator's performance against Budget*) of Schedule 6.1A in respect of the three (3) Reporting Periods following the Reporting Period to which the Management Accounts relate, which forecasts shall provide an explanation in relation to any material differences between the actual and forecast payments to and from Affiliates as referred to in paragraph 9.2(b)(iv)(C) below; and
 - (C) payments to and from Affiliates of the Franchise Operator, disaggregated between each individual Affiliate entity, in respect of the three (3) Reporting Periods following the Reporting Period to which the Management Accounts relate;
- (iii) a detailed statement of the Franchise Operator's actual payments to and from Affiliates of the Franchise Operator and the net balance of such payments, disaggregated between each individual Affiliate entity in respect of the Reporting Period to which the Management Accounts relate, setting out the details of the specific company or legal entity the transactions were with and the nature of the goods or services exchanged in respect of the Reporting Period to which the Management Accounts relate, which shall provide separate identification of:
- (A) the Affiliate to or from whom each such payment was made; and
 - (B) a description of the nature of the services rendered in relation to each such payment;
- (iv)
- (A) a comparison of the Franchise Operator's financial performance during such period against the forecast provided by the Franchise Operator in the then current Annual Business Plan and Quarterly Forecast;
 - (B) a comparison on a line by line basis of Actual Costs, Actual Capex and Actual Revenue of the Franchise Operator compared to the Budgeted Costs, Budgeted Capex and Estimated Revenue for that Reporting Period; and
 - (C) a detailed statement and a detailed and comprehensive written explanation of any material differences between the actual payments to and from Affiliates of the Franchise Operator and the forecast of such payments as referred to in paragraph 9.2(b)(ii) above as set out in the Management Accounts in relation to the preceding Reporting Period;
- (v) a comparison of the Franchise Operator's cumulative financial performance during the Franchise Operator Year in which such period occurs against the

then current Annual Business Plan and Quarterly Forecast and in particular of cumulative Actual Costs, Actual Capex and Actual Revenue of the Franchise Operator compared to cumulative forecasts of the same in the then current Annual Business Plan and Quarterly Forecast;

- (vi) a detailed statement and a detailed and comprehensive written explanation of any material differences between such Management Accounts and the forecasts referred to in paragraph 9.2(b)(ii) above as set out in the Management Accounts in relation to the preceding Reporting Period and a detailed and comprehensive explanation of the variances between Actual Costs and Budgeted Costs, Actual Capex and Budgeted Capex, and Actual Revenues and Estimated Revenue and a description of (1) the steps which have been taken by the Franchise Operator to address and mitigate any Costs in excess of Budgeted Costs and/or Capex variances to Budgeted Capex and/or Estimated Revenue shortfall and/or (2) which could otherwise be taken for that purpose;
- (vii) where:
 - (A) the level of financial performance reported in the Management Accounts is, in the reasonable opinion of the Authority, materially worse than forecast by the Franchise Operator in its then current Annual Business Plan or Quarterly Forecast (whichever is more recent);
 - (B) the Franchise Operator's Outturn Cost and/or Outturn Profit (as applicable) in relation to the preceding PBF Assessment Period was worse than the applicable Target Cost or Target Profit pursuant to Schedule 6.1B (*Performance Based Fee*); or
 - (C) the Authority considers (acting reasonably) that it is likely that the Franchise Operator's Outturn Cost and/or Outturn Profit (as applicable) in relation to the current PBF Assessment Period or the preceding PBF Assessment Period (if the Outturn Cost and/or Outturn Profit has not yet been calculated)),

the Authority may require the Franchise Operator to prepare and submit to the Authority, as soon as reasonably practicable, a financial action plan to ensure that the level of financial performance forecast in its current Annual Business Plan for the remainder of the currency of that Annual Business Plan is achieved and the Franchise Operator shall use all reasonable endeavours to implement such financial action plan; and

- (viii) **NOT USED;**
- (ix) a detailed statement and a detailed and comprehensive written explanation of any material differences between such payments to and from Affiliates and the forecast referred to in paragraph 9.2(b)(ii)(C);
- (x) sufficient information to enable the Authority to calculate the Performance Based Fee, including (where applicable) a clear and detailed comparison of the:

- (A) cumulative Actual Costs less any cumulative Disallowable Costs in relation to the PBF Assessment Period to date, as compared with the cumulative forecast Costs set out in the Target Cost Template as placed under such escrow arrangements as the Authority considers appropriate for the purpose; and
 - (B) cumulative Actual Costs less any cumulative Disallowable Costs and cumulative Actual Revenue plus cumulative Revenue Foregone in relation to the PBF Assessment Period to date, as compared with the cumulative forecast Costs and Revenues set out in the Target Profit Template as placed under such escrow arrangements as the Authority considers appropriate for the purpose,

and any other information which the Authority may request (acting reasonably).
- (c) Within five (5) Weekdays after receipt of the Management Accounts for each Reporting Period in accordance with paragraphs (a) and (b) above, the Authority shall notify the Franchise Operator of any further information, explanation or analysis which the Authority requires in relation to the Management Accounts (including information in relation to the calculation of the Franchise Payment under the provisions of Schedule 6.1A (*Franchise Payments*)) and the Franchise Operator shall promptly provide such further information or analysis.

9.3 Quarterly Financial Information

- (a) Within twenty (20) weekdays after the end of the 3rd, 6th, and 9th Reporting Periods in each Franchise Operator Year, the Franchise Operator shall deliver to the Authority the following information (a “**Quarterly Forecast**”):
 - (i) a comprehensive updated version of the profit and loss forecast, cash flow forecast and forecast balance sheet provided as part of either the current Annual Business Plan in accordance with clause 15.3 and paragraph 10.1 (*Annual Business Plans*) of this Schedule 6.1C or the then-current Quarterly Forecast (whichever is more recent) together with a detailed and comprehensive written explanation as to any changes in such forecast from the previous forecast provided pursuant to the provisions of this Schedule 6.1C, for each of the following thirteen (13) Reporting Periods or for each of the Reporting Periods to 31 March 2022, whichever is greater;
 - (ii)
 - (A) a copy of each new contract with an Affiliate which the Franchise Operator proposes to enter into or renew in the next 6 months;
 - (B) a copy of each existing contract with an Affiliate which the Franchise Operator proposes to amend in the next 6 months; and
 - (C) details of any potential contract procurement process (pursuant to which the Franchise Operator proposes to enter into a contract with the successful bidder) in which the Franchise Operator reasonably expects an Affiliate to participate in the next 6 months,

in each case following the end of the relevant Quarter; and

- (iii) a statement from a statutory director of the Franchise Operator confirming that the profit and loss forecast delivered pursuant to paragraph 9.3(a)(i) has been prepared in accordance with the requirements of the Franchise Agreement.
- (b) Where any Reporting Period falls partly within one (1) Franchise Operator Year and partly within another, the results for each section of such Reporting Period falling either side of such Franchise Operator Year end shall be prepared on an accruals basis for each such section of such Reporting Period.
- (c) The Franchise Operator shall, promptly and in any event within twenty-five (25) Weekdays of a request from the Authority (acting reasonably), deliver to the Authority an updated forecast in relation to the information required to be delivered pursuant to paragraphs 9.3(a) and 9.3(b) in the same level of detail as is required pursuant to paragraphs 9.3(a) and 9.3(b).
- (d) If:
 - (i) the Authority has issued a notice to the Franchise Operator pursuant to paragraph 4.2(a) of Schedule 6.1B (*Performance Based Fee*) in relation to a PBF Assessment Period commencing on any date other than 1 April in any Franchise Operator Year; and
 - (ii) the Franchise Operator has not delivered a Quarterly Forecast to the Authority in accordance with this paragraph 9.3 for the most recent quarter,
 the Authority may reasonably determine the contents of the Quarterly Forecast for the purposes of setting the Target Cost and/or the Target Profit (as applicable).

9.4 Annual Financial Information

- (a) Within fifteen (15) Weekdays of the end of each Franchise Operator Year, the Franchise Operator shall deliver to the Authority:
 - (i) its Annual Management Accounts for that Franchise Operator Year, divided between Reporting Periods:
 - (A) prior to 1 March 2020;
 - (B) during the period from 1 March 2020 to the EMA Start Date;
 - (C) during the term of the EMA;
 - (D) during the term of the ERMA; and
 - (E) following the term of the ERMA (if any).

For all Reporting Periods, line items should be disaggregated between sections in relation to Actual Costs, Actual Revenues, Actual Capex, Disallowable Costs, Revenue Foregone, Accrued Disallowable Costs, Accrued Revenue Foregone, accrued SoS Claims, Non-Recoverable Costs and Unreimbursed Disallowable Costs; and

- (ii) a supplementary explanation setting out details of any Non- Recoverable Costs and Disallowable Costs that have not been reimbursed for that Franchise Operator Year.
- (b) Within four (4) Reporting Periods after the end of each Franchise Operator Year, the Franchise Operator shall deliver to the Authority the following information:
- (i) certified true copies of its annual report and annual audited accounts (as required to be provided under clause 15.2) for that Franchise Operator Year, together with copies of all related directors' and auditors' reports. Additionally, the auditors shall certify that the accounting for and reporting of any annual related bonuses paid to the directors and managers is reasonably consistent with GAAP;
 - (ii) a detailed and comprehensive reconciliation between the annual audited accounts (as required to be provided under clause 15.2) and the Management Accounts for each of the Reporting Periods within the most recently concluded PBF Assessment Period and, where relevant, for each Reporting Period of any previous PBF Assessment Period (the "**Audited Accounts Reconciliation**"). The Audited Accounts Reconciliation shall:
 - (A) include a detailed reconciliation, disaggregating Actual Costs, Actual Revenues, Actual Capex, Disallowable Costs, Revenue Foregone, Accrued Disallowable Costs, Accrued Revenue Foregone, accrued SoS Claims, Non-Recoverable Costs and Unreimbursed Disallowable Costs in the annual audited accounts (as required to be provided under clause 15.2) to: (1) each of the periodic Management Accounts within each of the Reporting Periods within the most recently concluded PBF Assessment Period and, where relevant, for each Reporting Period of any previous PBF Assessment Period and (2) the Annual Management Accounts in relation to that each of the Reporting Periods within the most recently concluded PBF Assessment Period and, where relevant, for each Reporting Period of any previous PBF Assessment Period, all in a format to be from time to time reasonably specified by the Authority. This reconciliation shall:
 - (I) disaggregate the Actual Costs, Actual Capex and Actual Revenues in the annual audited accounts (as required to be provided under clause 15.2) so as to report against (and show in a format consistent with that used in) the Budget and, where relevant, the Target Cost Template and/or the Target Profit Template (placed under such escrow arrangements as the Authority considers appropriate for the purpose) in relation to any PBF Assessment Periods within each of the Reporting Periods within the most recently concluded PBF Assessment Period and, where relevant, for each Reporting Period of any previous PBF Assessment Period; and
 - (II) facilitate the identification of Actual Costs, Actual Capex and Actual Revenues as reported in the annual audited accounts (as required to be provided under clause 15.2);

- (B) include a statement of the Franchise Operator's balance sheet included within the annual audited accounts (as required to be provided under clause 15.2) in relation to the previous each of the Reporting Periods within the most recently concluded PBF Assessment Period and, where relevant, for each Reporting Period of any previous PBF Assessment Period (the "**Opening Balance Sheet**"), disaggregated between balances payable to or receivable from the Authority and the aggregate amount of all other balances (such aggregated other balances being the "**Opening Operational Balances**");
 - (C) include a statement of the Franchise Operator's audited balance sheet included within the annual audited accounts (as required to be provided under clause 15.2) as at the end of the each of the Reporting Periods within the most recently concluded PBF Assessment Period and, where relevant, for each Reporting Period of any previous PBF Assessment Period (the "**Closing Balance Sheet**"), disaggregated between balances payable to or receivable from the Authority and the aggregate amount of all other balances (such aggregated other balances being the "**Closing Operational Balances**");
 - (D) include a statement identifying and explaining the differences between the Opening Operational Balances and the Closing Operational Balances (such differences comprising the "**Operational Delta**") in sufficient detail to allow the Authority to obtain a full understanding of the reasons for the Operational Delta;
 - (E) clearly identify and distinguish between transactions within the Operational Delta which reasonably and properly relate, on the accruals basis to each of the Reporting Periods within the most recently concluded PBF Assessment Period and, where relevant, for each Reporting Period of any previous PBF Assessment Period , any other Reporting Periods during the term of the EMA or the ERMA, and any Reporting Periods prior to 1 March 2020, sufficient to allow identification of transactions and accounting adjustments which do not relate to the term of the EMA or the ERMA;
 - (F) identify the total Actual Costs and total Actual Revenue that are included within the Operational Delta;
 - (G) identify any and all Accrued Disallowable Costs or Accrued Revenue Foregone which are in the Opening Balance Sheet or Closing Balance Sheet, and any Accrued Revenue Foregone which is not included in the Closing Balance Sheet but which existed at 19 September 2020;
- (iii) a statement from the Franchise Operator's auditors (in a format to be reasonably specified by the Authority from time to time, on the basis of providing the Authority with reasonable assurance) that the Audited Accounts Reconciliation has been undertaken accurately;
 - (iv) Not used

- (v) a statement from the Franchise Operator's auditors confirming that GAAP has been applied in a fair and consistent manner;
- (vi) Not used;
- (vii) Not used; and
- (viii) sufficient information for the Authority to calculate the Final Adjustments, the Final Working Capital Adjustment and the Performance Based Fee.

9.4A Additional Financial Information

- (a) By no later than the end of the first Reporting Period following the date of the ERMA, the Franchise Operator shall deliver to the Authority:
 - (i) a draft of the Franchise Operator's balance sheet as at 1 March 2020, prepared in accordance with GAAP, on the accruals basis and on the basis of all knowledge and information available to the Franchise Operator at the time of preparation, such balance sheet being disaggregated between balances payable to or receivable from the Authority (such balances in aggregate being the "**Restated P2012 SoS Balances**") and all other balances (such other balances in aggregate being the "**Restated P2012 Operational Balances**"), both provided in a level of detail to be specified from time to time by the Authority (the "**Restated P2012 Balance Sheet**"); and
 - (ii) a reconciliation to the Restated P2012 Balance Sheet within the annual audited accounts (as required to be provided under clause 15.2) provided by the Franchise Operator for the Franchise Operator Year ending on the date that is closest to 1 March 2020.
- (b) Within 10 Weekdays following the date on which the Restated P2012 Balance Sheet is agreed or determined by the Authority in accordance with paragraphs 9.4A(i) or 9.4A(j) (as applicable) below, the Franchise Operator shall deliver to the Authority:
 - (i) a draft of the Franchise Operator's balance sheet as at 20 September 2020 prepared in accordance with GAAP, on the accruals basis and on the basis of all knowledge and information available to the Franchise Operator at the time of preparation, such balance sheet being disaggregated between balances payable to or receivable from the Authority (such balances in aggregate being the "**Restated P2106 SoS Balances**") and all other balances (such other balances in aggregate being the "**Restated P2106 Operational Balances**") both provided in a level of detail to be specified from time to time by the Authority (the "**Restated P2106 Balance Sheet**"); and
 - (ii) a reconciliation between the Restated P2012 SoS Balances and the Restated P2106 SoS Balances, and between the Restated P2012 Operational Balances and the Restated P2106 Operational Balances.
- (c) As soon as practicable and in any event by no later than two (2) months following the term of the ERMA, the Franchise Operator shall deliver to the Authority:
 - (i) a draft of the Franchise Operator's balance sheet as at the date of the end of the ERMA Term, prepared in accordance with GAAP, on the accruals basis

and on the basis of all knowledge and information available to the Franchise Operator at the time of preparation, such balance sheet being disaggregated between balances payable to or receivable from the Authority (such balances in aggregate being the “**Final ERMA SoS Balances**”) and all other balances (such other balances in aggregate being the “**Final ERMA Operational Balances**”) both provided in a level of detail to be specified from time to time by the Authority (the “**Final ERMA Balance Sheet**”); and

- (ii) a reconciliation between the Restated P2012 SoS Balances and the Final ERMA SoS Balances, and between the Restated P2012 Operational Balances and the Final Operational Balances,

with such Final ERMA Balance Sheet being a Closing Balance Sheet as at the date of the end of the ERMA Term and, where such date is also the date of expiry of the Franchise Term shall include and be reconciled to a net asset statement setting out a true and fair view of the aggregate amount of each asset and liability of the Franchise Operator under or in connection with the Franchise Agreement and produced in accordance with the terms of any supplemental agreement entered into by the Franchise Operator and the applicable transferee pursuant to clause 35.2.

- (d) The Franchise Operator shall ensure that each of the schedule of Restated P2012 Operational Balances, schedule of Restated P2106 Operational Balances and schedule of Final ERMA Operational Balances in each Balance Sheet (as defined below) shall clearly identify the assets and liabilities to the account of the Franchise Operator (being balance sheet items of the Franchise Operator), properly prepared on an accruals basis for, and disaggregated between, all relevant items including:
 - (i) reserves, equity or any other balance sheet items in relation to any Performance Based Fee, Fixed Fee or Management Fee and Performance Payment (as such term is defined in schedule 6.1A(*Franchise Payments*) of the EMA);
 - (ii) **NOT USED**;
 - (iii) fixed assets designated as Primary Franchise Assets; and
 - (iv) fixed assets that have been funded by the Authority in accordance with the terms of the ERMA.
- (e) The Franchise Operator shall ensure that each of the schedule of Restated P2012 SoS Balances, schedule of Restated P2106 SoS Balances and schedule of Final ERMA SoS Balances in each Balance Sheet (as defined below) shall clearly identify the assets and liabilities to the account of the Franchise Operator (being balance sheet items of the Franchise Operator), properly prepared on the accruals basis for, and disaggregated between, all relevant items including but not being limited to:
 - (i) any Accrued Disallowable Costs, Accrued Revenue Foregone and accrued SoS Claims;
 - (ii) the Working Capital Payment or Working Capital Repayment (if any) pursuant to Schedule 6.1A (*Franchise Payments*);
 - (iii) accruals in relation to any Franchise Payment;

- (iv) deferred or accrued Franchise Payments relating to the period prior to 1 March 2020;
 - (v) deferred or accrued Franchise Payments relating to the period from 1 March 2020 onwards; and
 - (vi) accruals or provisions for claims between the Franchise Operator and the Authority relating to No Net Loss No Net Gain.
- (f) The Franchise Operator shall ensure that each of Restated P2012 Balance Sheet, Restated P2106 Balance Sheet and Final ERMA Balance Sheet shall clearly identify:
- (i) where provisions or accruals have been created for the period following 1 March 2020, a clear evidence base for how these provisions or accruals have been valued by the Franchise Operator; and
 - (ii) where provisions or accruals exist as at the date of any Balance Sheet and such provisions or accruals relate to the period prior to 1 March 2020:
 - (A) a summary of these items;
 - (B) where such items are included with the relevant Balance Sheet(s); and
 - (C) the Franchise Operator's proposed approach to winding down these items over the term of the ERMA.
- (g) Each of the Restated P2012 Balance Sheet, the Restated P2106 Balance Sheet and the Final ERMA Balance Sheet (together, the "**Balance Sheets**") shall be accompanied by a statement from a director of the Franchise Operator confirming that such Balance Sheet gives a true and fair view of the assets, liabilities, equity and reserves of the Franchise Operator as at the relevant dates in accordance with GAAP consistently applied and on the basis of all knowledge and information available to the Franchise Operator on the date of provision to the Authority in each case.
- (h) The Franchise Operator shall promptly supply, or procure prompt supply of, all supporting information on an open book basis the Authority may reasonably require in relation to each delivery of any Balance Sheet. If requested by the Authority to do so, the Franchise Operator shall procure a statement from the Franchise Operator's auditor confirming that GAAP has been applied in a fair and consistent manner in any such Balance Sheet, including any version of such Balance Sheet after any amendments have been made. As requested by the Authority, the Franchise Operator shall promptly provide updated versions of any such Balance Sheet to reflect amendments prior to final agreement or determination in accordance with paragraphs 9.4A(i) or 9.4A(j) (as applicable) below.
- (i) After receipt of each Balance Sheet by the Authority in accordance with this paragraph 9.4A, the Franchise Operator and the Authority shall seek to promptly agree any amendments required to the Balance Sheets in order to give a true and fair view of the assets, liabilities, equity and reserves of the Franchise Operator as at the relevant dates in accordance with GAAP consistently applied and on the basis of all knowledge and information available to the Franchise Operator and the Authority at the time of consideration. The Franchise Operator and the Authority

recognise and agree that this will require the most recent revaluation of assets and liabilities of the Franchise Operator as at the dates of each Balance Sheet, and that such revaluation shall be included in place of any earlier valuation provided in the balance sheets included in any Management Accounts, Annual Management Accounts or annual audited accounts (as required to be provided under clause 15.2).

- (j) Subject to paragraph 9.4A(k) below, in the event that the Franchise Operator and the Authority cannot agree final versions of any Balance Sheets which, in the Authority's opinion (acting reasonably), give a true and fair view on the basis of the evidence available to the Authority, the Authority may reasonably determine any values within any such Balance Sheets.
- (k) The Authority shall not be entitled to reasonably determine any Final ERMA Balance Sheet values in accordance with paragraph 9.4A(j) above until the later of:
 - (i) seven (7) Reporting Periods following the termination of the EMA; or
 - (ii) the date upon which the annual audited accounts (as required to be provided under clause 15.2) and Annual Accounts Reconciliation for the Franchise Operator Year in which the ERMA ends are due to be provided.

Where the value of any assets or liabilities within the Final ERMA Balance Sheet have previously been determined by such firm of accountants as may be selected by agreement between the Authority and the Franchise Operator within four (4) weeks of the preparation of the net asset statement under paragraph 9.4A(c) above, or in the absence of such agreement, selected by the Authority the Authority shall only be entitled to reasonably determine a different value in the case of manifest error being discovered in the valuation previously determined by such firm of accountants.

- (l) The Franchise Operator shall unwind the Final ERMA Balance Sheet promptly following the date on which the Final ERMA Balance Sheet is agreed or determined by the Authority, acting as a Good and Efficient Operator.
- (m) The Franchise Operator shall, if requested to do so by the Authority and in the Authority's sole discretion, within two (2) Reporting Periods following the final Reporting Period of the ERMA Term or the Extended Term (as applicable) deliver to the Authority:
 - (i) certified true copies of its Final Accounts for the ERMA Stub Reporting Periods in aggregate, together with copies of all related directors' and auditors' reports;
 - (ii) a detailed and comprehensive reconciliation between the Final Accounts and the Management Accounts for the ERMA Stub Reporting Periods (the "**Final Audited Accounts Reconciliation**"). The Final Audited Accounts Reconciliation shall:
 - (A) include a detailed reconciliation, disaggregating Actual Costs, Actual Revenues, Actual Capex, Disallowable Costs, Revenue Foregone, Accrued Disallowable Costs, Accrued Revenue Foregone, accrued SoS Claims, Non-Recoverable Costs and Unreimbursed Disallowable Costs in the Final Accounts to: (1) each of the periodic Management

Accounts within the ERMA Stub Reporting Periods and (2) the Annual Management Accounts in relation to each of the Reporting Periods within the most recently concluded PBF Assessment Period and, where relevant, for each Reporting Period of any previous PBF Assessment Period, all in a format to be from time to time reasonably specified by the Authority. This reconciliation shall:

- (I) disaggregate the Actual Costs, Actual Capex and Actual Revenues in the Final Accounts so as to report against (and show in a format consistent with that used in) the Budget and, where relevant, the Target Cost Template and/or the Target Profit Template (placed under such escrow arrangements as the Authority considers appropriate for the purpose) in relation to the ERMA Stub Reporting Periods; and
 - (II) facilitate the identification of Actual Costs, Actual Capex and Actual Revenues as reported in the Final Accounts;
- (B) include a statement of the Franchise Operator's balance sheet included within the Final Accounts in relation to the ERMA Stub Reporting Periods (the "**Final Opening Balance Sheet**"), disaggregated between balances payable to or receivable from the Authority and the aggregate amount of all other balances (such aggregated other balances being the "**Final Opening Operational Balances**");
 - (C) include a statement of the Franchise Operator's audited balance sheet included within the Final Accounts as at the expiry of the ERMA Term or the Extended Term (as applicable) (the "**Final Closing Balance Sheet**"), disaggregated between balances payable to or receivable from the Authority and the aggregate amount of all other balances (such aggregated other balances being the "**Final Closing Operational Balances**");
 - (A) include a statement identifying and explaining the differences between the Final Opening Operational Balances and the Final Closing Operational Balances (such differences comprising the "**Final Operational Delta**") in sufficient detail to allow the Authority to obtain a full understanding of the reasons for the Final Operational Delta;
 - (B) clearly identify and distinguish between transactions within the Final Operational Delta which reasonably and properly relate, on the accruals basis to each of the ERMA Stub Reporting Periods, any other Reporting Periods during the term of the ERMA or the ERMA, and any Reporting Periods prior to 1 March 2020, sufficient to allow identification of transactions and accounting adjustments which do not relate to the term of the ERMA or the ERMA;
 - (C) identify the total Actual Costs and total Actual Revenue that are included within the Final Operational Delta;

- (D) identify any and all Accrued Disallowable Costs or Accrued Revenue Foregone which are in the Final Opening Balance Sheet or Final Closing Balance Sheet, and any Accrued Revenue Foregone which is not included in the Final Closing Balance Sheet but which existed at the expiry of the ERMA Term or the Extended Term (as applicable);
 - (iii) a statement from the Franchise Operator's auditors (in a format to be reasonably specified by the Authority from time to time, on the basis of providing the Authority with reasonable assurance) that the Final Audited Accounts Reconciliation has been undertaken accurately; and
 - (iv) a statement from the Franchise Operator's auditors confirming that GAAP has been applied in a fair and consistent manner.
- (n) Notwithstanding the foregoing, the Franchise Operator shall at all times continue to collect and review evidence regarding the true and fair valuation of any assets or liabilities in any Balance Sheet and shall notify the Authority promptly if such evidence indicates that the Balance Sheets previously submitted no longer give a true and fair view of any such assets or liabilities. The Authority is entitled to take this information into consideration in the exercise of any further rights or obligations in this paragraph 9.4A.

9.5 Accounting Standards and Practices

- (a) Each set of Management Accounts and Annual Management Accounts shall:
 - (i) be in the format as the Authority may reasonably specify from time to time;
 - (ii) be prepared:
 - (A) in accordance with the Franchise Operator's obligations in clause 15.2; and
 - (B) consistently in accordance with the Franchise Operator's normal accounting policies, details of which shall be supplied on request to the Authority; and
 - (iii) not include 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 contained in the last Quarterly Forecast provided pursuant to paragraph 9.3 (*Quarterly Financial Information*) without the prior approval of the Authority.
- (b) The annual audited accounts (as required to be provided under clause 15.2) and Final Accounts shall:
 - (i) be prepared and audited in accordance with GAAP, consistently applied and in accordance with the Companies Act 2006; and
 - (ii) give a true and fair view of:
 - (A) the state of affairs, profits and financial condition of the Franchise Operator for the period covered by such accounts; and

- (B) the amount of its total revenue (being all revenue whatsoever from any source obtained from any commercial or non-commercial activity or undertaking of the Franchise Operator, such revenue to be disaggregated by reference to revenue derived by the Franchise Operator from:
 - (I) the sale of tickets;
 - (II) income received from Network Rail pursuant to Schedule 4 and Schedule 8 to the Track Access Agreement;
 - (III) car park revenue; and
 - (IV) other income;
- (C) **NOT USED.**

9.5A Changes to Accounting Policies

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

9.6 Parent and Affiliate Accounts and Affiliate Trading

- (a) The Franchise Operator shall, upon the request of the Authority, promptly deliver to, or procure delivery to, the Authority:
 - (i) certified true copies of the annual reports and audited accounts of each Parent and any Affiliate, together with copies of all related directors' and auditors' reports. If any of the Parents or any Affiliate is domiciled outside England and Wales, the equivalent documents in the jurisdiction of residence of the relevant Parent or Affiliate (as applicable) shall be delivered to the Authority;
 - (ii) certified true copies of and/or details of (as instructed by the Authority) any contracts or non-contractual arrangements with any Affiliate, including those which give rise to payments from an Affiliate to the Franchise Operator or payments from the Franchise Operator to an Affiliate (including payments or charges in relation to management services);
 - (iii) procurement policies in relation to contracts and non-contractual arrangements with Affiliates, including policies in relation to Affiliates procuring services from third parties on behalf of the Franchise Operator; and
 - (iv) evidence that all services provided by Affiliates (including management services) have been procured competitively and on an arm's length basis, have a sound business case, comply with of the Franchise Agreement and are in all ways appropriate.
- (b) The Franchise Operator shall procure that any new contract entered into between the Franchise Operator and any of its Affiliates is capable of being terminated in accordance with its terms after a period of seven (7) Reporting Periods and that the

Franchise Operator shall not incur any penalty or be required to make any termination payment to the relevant Affiliate if the Franchise Operator elects to exercise any such termination right.

9.7 Authority Audit of Calculations provided pursuant to paragraphs 9.2, 9.3 9.4 and 9.4A

- (a) Without prejudice to any other rights of the Authority under the Franchise Agreement, the Authority and his representatives shall be permitted to inspect at any time the books, records and any other material kept by or on behalf of the Franchise Operator in order to check or audit any item contained in or relating to the Management Accounts, the annual audited accounts (as required to be provided under clause 15.2), the Audited Accounts Reconciliation, the Final Accounts and any information held or provided in connection with the Franchise Operator's obligations under Schedule 6.1A (*Franchise Payments*).
- (b) The Franchise Operator shall make available to the Authority and his representatives such information and grant such access or procure the grant of such access (including to or from third parties) as they shall reasonably require in connection with any audit to be carried out pursuant to paragraph 9.7(a). If any audit carried out pursuant to paragraph 9.7(a) reveals, in the reasonable opinion of the Authority, any material inaccuracy in the Management Accounts, then:
- (i) the Authority may:
- (A) reasonably determine any item contained in or relating to the Management Accounts; or
- (B) require any item contained in or relating to the Management Accounts to be adjusted in a manner which is fair and reasonable and, so far as reasonably determinable, on the basis on which such particular item contained in or relating to the Management Accounts should have been accounted for by the Franchise Operator as reasonably determined by the Authority,
- in either case to the extent that the Authority considers appropriate in the circumstances for the purpose of making any such reasonable determination; and
- (ii) the Franchise Operator shall pay all reasonable costs of any such audit as a monitoring cost pursuant to clause 15.10(a). The Franchise Operator shall not in any circumstances be entitled to claim back any such costs from the Authority whether pursuant to Schedule 6.1A (*Franchise Payments*) or otherwise.
- (c) Without prejudice to paragraph 9 (*Review of Franchise Operator's performance against Budget*), 10 (*Periodic Adjustments*), 11 (*Annual Adjustments*) or 17 (*Indexation*) of Schedule 6.1A (*Franchise Payments*), if any audit carried out pursuant to paragraph 9.7(a) reveals, in the reasonable opinion of the Authority, any material inaccuracy in the annual audited accounts (as required to be provided under clause 15.2), the Final Accounts and/or the contents or form of the Audited Accounts Reconciliation then the Authority shall have the right to reasonably determine the Opening Operational Balance, the Closing Operational Balance and/or any

Franchise Payment Components for the purposes of correcting the effect of such material inaccuracy.

- (d) Following the expiry of the ERMA Term or the Extended Term (as applicable), the Franchise Operator will commission an exercise to review the Final 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:
 - (i) if required by the Authority, use an external auditor;
 - (ii) if required by the Authority, allow full access by their officials and/or representatives on an "open book" basis;
 - (iii) if required by the Authority, allow full access by the National Audit Office or other equivalent body on an "open book" basis.

9.8 Adjustment and Restatement of the annual audited accounts or Final Accounts

The Franchise Operator shall promptly notify the Authority as soon as it becomes aware of any requirement to adjust or restate the annual audited accounts (as required to be provided under clause 15.2) or the Final Accounts and shall deliver to the Authority any such adjusted or restated annual audited accounts or Final Accounts, as soon as such accounts are available.

9.9 Access to financial information

The Authority, the Authority's representatives and/or advisors shall be permitted to inspect at any time the books, records and other material kept by or on behalf of the Franchise Operator in order to check or audit any item contained in or relating to the financial information provided pursuant to paragraph 8 (*Periodic Update Reports*), this paragraph 9 of this Schedule 6.1C and paragraph 4 (*Franchise Plan*) of Schedule 3 (*Early Termination*) to the ERMA, and to request further information or review of this information, including:

- (a) the use of an external auditor;
- (b) provision of full access to this information by the Authority's officials, representatives and/or advisors on an "open book" basis; and
- (c) provision of full access to this information by the National Audit Office or other equivalent body on an "open book" basis.

10 Business Plans

10.1 Annual Business Plans

- (a) By no later than the day falling 40 Weekdays prior to the start of the first Reporting Period in each Franchise Operator Year, the Franchise Operator shall deliver to the Authority the Franchise Operator's Annual Business Plan for the forthcoming Franchise Operator Year. The Annual Business Plan shall be a detailed and comprehensive description of the Franchise Operator's planned activities for such Franchise Operator Year and the manner in which the Franchise Operator will meet its obligations under the Franchise Agreement in respect of that Franchise Operator Year and include:

- (i) a revised profit and loss forecast (prepared in accordance with the accounting standards and practices set out in paragraph 9.4(n) (*Accounting Standards and Practices*) and GAAP), which shall include a forecast of Costs, Revenue, Capital Expenditure and any forecast Disallowable Costs, Non-recoverable Costs and Revenue Foregone, in the same format and structure as expressly agreed by the Authority from time to time for this purpose, and using the allocation of Costs and Revenues to individual lines, a revised cash flow forecast which clearly states the gross amount of Capital Expenditure forecast to be incurred by the Franchise Operator (separately identifying any amounts funded by third parties) and a revised forecast balance sheet for each of the thirteen (13) Reporting Periods in each Franchise Operator Year during the Franchise Term;
- (ii) a statement from a statutory director of the Franchise Operator confirming that the profit and loss forecast delivered pursuant to paragraph 10.1(a)(i) has been prepared in accordance with the requirements of the Franchise Agreement;
- (iii)
 - (A) a forecast of the Franchise Operator's Forecast Closing Cash Position for the last day of each of the following thirteen (13) Reporting Periods; and
 - (B) a statement demonstrating how the Franchise Operator intends to ensure that at the end of each of the following thirteen (13) Reporting Periods it will have an available Forecast Closing Cash Position which is not less than the Floor Cash Position;
- (iv) an annual improvement plan providing:
 - (A) details of any new technologies, processes, developments and/or proposals which could improve the provision of the Franchise Services, reduce the cost of providing the Franchise Services or enable the Franchise Services to be provided more efficiently;
 - (B) an analysis of the impact of any technologies, processes, developments and/or proposals that are proposed in relation to the Franchise Services, including analyses of the costs of and timescale for effecting such changes and the impact on the provision of the Franchise Services;
 - (C) details of those technologies, processes, developments and/or proposals which the Franchise Operator proposes to implement during that Franchise Operator Year; and
 - (D) an analysis of the technologies, processes, developments and/or proposals which the Franchise Operator implemented in the previous Franchise Operator Year, including details of any cost reductions and/or efficiency gains arising from the same and a reconciliation to the annual improvement plan for the previous Franchise Operator Year;

- (v) a statement from each of, a statutory director of the Franchise Operator and, a statutory director of the Parent confirming that the Annual Business Plan has been provided to, considered and endorsed by the board of directors of each Parent and that the board of directors of each Parent is not aware of any other plan which may alter, vary of impact on the Annual Business Plan and shall at any time during the following twelve (12) months notify the Authority should any of them become aware of any such plan; and
 - (vi) information in relation to arrangements with Affiliates, including:
 - (A) a forecast of payments to or from any Affiliate;
 - (B) a forecast of fees, remuneration, pension contributions or any other payment to or in respect of any director or officer of the Franchise Operator; and
 - (C) evidence that all such payments are on arms' length commercial terms in the ordinary course of business and are otherwise compliant with the terms of the Franchise Agreement.
- (b) If:
- (i) the Authority has issued a notice to the Franchise Operator pursuant to paragraph 4.2(a) of Schedule 6.1B (*Performance Based Fee*) in relation to a PBF Assessment Period commencing on 1 April in any Franchise Operator Year; and
 - (ii) the Franchise Operator has not delivered the Annual Business Plan to the Authority in accordance with paragraph 10.1(a),
- the Authority may reasonably determine the contents of the Annual Business Plan for the purposes of setting the Target Cost and/or the Target Profit (as applicable and in each case as defined in Schedule 6.1B (*Performance Based Fee*)).
- (c) If the Authority has not issued a notice to the Franchise Operator pursuant to paragraph 4.2(a) of Schedule 6.1B (*Performance Based Fee*) in relation to a PBF Assessment Period commencing on 1 April of any Franchise Operator Year, the Franchise Operator may elect to deliver to the Authority an updated Annual Business Plan within twenty (20) Weekdays of the start of that Franchise Operator Year.
 - (d) If the Parties have agreed or the Authority has reasonably determined the value of the Target Cost and/or the Target Profit pursuant to paragraphs 5.1 and 5.2 of Schedule 6.1B (*Performance Based Fee*), the Franchise Operator shall:
 - (i) update the Annual Business Plan to reflect the Target Cost as agreed or determined (as applicable) pursuant to paragraph 5.1 of Schedule 6.1B (*Performance Based Fee*);
 - (ii) update the Target Cost Template, the Target Cost Record of Assumptions, the Target Profit Template and/or the Target Profit Record of Assumptions (in each case, as applicable) to reflect the:
 - (A) Target Cost, Target Cost Cap and Target Cost Floor; and/or
 - (B) Target Profit, Target Profit Cap and Target Profit Floor,

(as applicable) as agreed or determined pursuant to paragraphs 5.1 and 5.2 of Schedule 6.1B (*Performance Based Fee*); and

- (iii) deliver the updated Annual Business Plan, Target Cost Template, Target Cost Record of Assumptions, Target Profit Template and/or Target Profit Record of Assumptions (as applicable) to the Authority by no later than 1 April 2021,

and the Target Cost Spreadsheet, Target Cost Record of Assumptions, Target Profit Template and/or Target Profit Record of Assumptions (as applicable) shall be placed under such escrow arrangements as the Authority considers appropriate for the purpose once the Authority is satisfied that such documents accurately reflect the:

- (i) Target Cost, Target Cost Cap and Target Cost Floor; and/or
- (ii) Target Profit, Target Profit Cap and Target Profit Floor,

(as applicable) as agreed or determined pursuant to paragraphs 5.1 and 5.2 of Schedule 6.1B (*Performance Based Fee*).

- (e) If at any time during a Franchise Operator Year the Franchise Operator produces any other annual business plan or periodic plan which is delivered to its Parents, it shall at the same time as delivering such plan to its Parents notify the Authority of all such plans. The Authority shall be entitled to copies of such further plans as the Authority shall reasonably determine.

10.2 Business action plan

- (a) The Authority may at any time require the Franchise Operator to produce a business action plan in respect of any aspect of the Annual Business Plan. Such business action plan may include steps relating to:
 - (i) timetable and service pattern development;
 - (ii) Station facility improvement;
 - (iii) performance management improvement;
 - (iv) customer service improvement; and
 - (v) improvements in the quality of service delivery or the efficiency of delivery of the Franchise Services.
- (b) The Franchise Operator shall comply with any guidance issued by the Authority about how and with whom any consultation on the content of a business action plan is to take place.
- (c) Any proposal in a business action plan shall only be implemented if and to the extent that the Authority decides it is appropriate to do so and subject to any conditions which the Authority may impose.

11 Safety Information

11.1 Safety

- (a) The Franchise Operator shall co-operate with any request from any relevant competent authority for provision of information and/or preparation and submission

of reports detailing or identifying compliance with safety obligations set out in the Safety Regulations including any breaches of the Safety Regulations.

- (b) The Franchise Operator shall notify the Authority as soon as practicable of the receipt and contents of any formal notification relating to safety or any improvement or prohibition notice received from the ORR. Immediately upon receipt of such notification or notice, the Franchise Operator shall provide the Authority with a copy of such notification or notice.
- (c) The Franchise Operator shall participate in industry groups and committees addressing the domestic and European safety agenda of the Railway Group.

12 Further Information

12.1 The Franchise Operator shall:

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

12.2 The information referred to in paragraph 12.1 shall include:

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

12.3 The Authority may require the Franchise Operator to provide:

- (a) the information required to be provided under this Schedule 6.1C more frequently than set out in this Schedule 6.1C;
- (b) the information required to be provided under this Schedule 6.1C, or, in the Authority's sole discretion, more detailed financial information, at any time in connection with the re-letting of the Franchise;
- (c) such unaudited accounts under such accounting policies as may be prescribed by the Authority, acting reasonably, from time to time;
- (d) research or survey datasets which relate to or are connected with the Franchise Operator's performance of the Franchise Agreement;

- (e) any data or information which supports operational and business functions; and
- (f) information about any agreement, contract or arrangement to which the Franchise Operator is a party and which relate to or are connected with the Franchise Operator's performance of the Franchise Agreement.

12.4 Request for Data

- (a) If the Authority requires any further information, data, records or documents during the Franchise Term which the Franchise Operator is not otherwise required to provide pursuant to this Franchise Agreement (the "**Relevant Data**"), the Authority may issue a request to the Franchise Operator specifying:
 - (i) the Relevant Data the Franchise Operator is to provide to the Authority;
 - (ii) any requirements in relation to timeliness, format and method of delivery of such Relevant Data; and
 - (iii) where such Relevant Data is required to be provided on an ongoing basis, may include the frequency with which such Relevant Data shall be required to be delivered,(each a "**Request for Data**").
- (b) The Franchise Operator acknowledges and agrees that any Relevant Data provided by the Franchise Operator pursuant to a Request for Data may be shared with other persons who are acting on the Authority's behalf or such other persons as the Authority may notify, in each case, in accordance with Schedule 17 (*Confidentiality, Freedom of Information and Data Protection*).
- (c) Within fourteen (14) days of the date of issuance of a Request for Data by the Authority or such other timeframe as may be specified in the relevant Request for Data, the Franchise Operator shall:
 - (i) provide to the Authority all Relevant Data specified in the Request for Data as it is reasonably able to provide or procure within such period; and
 - (ii) if the Franchise Operator has not provided all the Relevant Data specified in the Request for Data, it shall provide the Authority with:
 - (A) details of any further action that would be required to enable it to provide such Relevant Data, including the rationale for requiring such further action together with relevant supporting evidence;
 - (B) the Franchise Operator's proposed timescales for taking such action in timely manner and the rationale for arriving at such timeframe; and
 - (C) where applicable, an estimate (including a breakdown of the individual cost components) of any additional costs the Franchise Operator expects to incur (acting reasonably) in order to provide such Relevant Data together with relevant supporting evidence.
- (d) The Authority may, following review of the Franchise Operator's response pursuant to paragraph 12.4(c)(ii), require the Franchise Operator to take such further action as the Authority may specify (acting reasonably), including providing part or all of the

Relevant Data which remains outstanding or taking any steps to mitigate the amount of any costs that the Franchise Operator may incur in order to comply with the Request for Data.

- 12.5** The Franchise Operator shall provide an audit of data sources and information that are used by the Franchise Operator's business, as requested by the Authority (acting reasonably) from time to time. The Authority may also request information and guidance from the Franchise Operator about its data sources, including the purpose for collecting such data, any risks associated with handling or sharing such data, and any third party contracts or agreements used to collect and process the data.
- 12.6** Nothing in paragraphs 12 or 13 shall require the Franchise Operator to provide any Relevant Data or any other data, information, records or documents which would, or is reasonably likely to:
- (a) require it to incur additional costs, over and above those a Good and Efficient Operator would incur, unless the Authority otherwise directs or gives consent or such additional costs were contemplated when the Authority agreed or reasonably determined the Franchise Operator's most recent Annual Business Plan and cost budget in accordance with the terms of Schedule 6.1A, and Schedule 6.1C; or
 - (b) put it in breach of any applicable law or regulation.
- 12.7** If the Franchise Operator reasonably considers that any provision of paragraphs 12 and 13 requires, or is likely to require, it do anything inconsistent with acting as a Good and Efficient Operator, it shall notify and consult with the Authority as soon as reasonably practicable following becoming aware of the same and proceed in accordance with any guidance or directions that the Authority may reasonably provide or direct.

13 Information from Third Parties

- 13.1** The Franchise Operator shall, if the Authority so requests, through a Request for Data or otherwise, use all reasonable endeavours to ensure that the Authority has direct access to any information, data or records relating to the Franchise Operator which is or are maintained by third parties and to which the Authority is entitled to have access, or of which the Authority is entitled to receive a copy under the Franchise Agreement.
- 13.2** The Franchise Operator shall, if the Authority so requests, procure the provision by RSP to the Authority of such information, data and records as the Franchise Operator is entitled to receive under the Ticketing and Settlement Agreement, in such form as the Authority may specify from time to time.
- 13.3** The obligations of the Franchise Operator under this Schedule 6.1C to provide information to the Authority shall not apply if the Authority notifies the Franchise Operator that he has received the relevant information directly from any other person (including Network Rail or RSP). The Franchise Operator shall, if the Authority so requests, confirm or validate any such information which is received from any such other person.
- 13.4** The Franchise Operator shall promptly advise the Authority of any changes that are to be made to the databases, systems or processes which are owned, operated or otherwise used by the Franchise Operator which may have an impact on the Franchise Operator's ability to meet its data sharing obligations pursuant to the Franchise Operator Agreement or any

Request for Data issued by the Authority or will, in the reasonable opinion of the Franchise Operator, materially affect the continuity of any the supply of information or data that the Franchise Operator is required to provide to the Authority pursuant to this Schedule 6.1C. Any such advice shall include an assessment of the materiality of the relevant change.

13.5 To the extent that collection or supply of any data, information, records or documents is managed by a third party on the Franchise Operator's behalf:

- (a) the Franchise Operator shall use all reasonable endeavours to ensure that all relevant third party service providers permit the sharing with the Authority of all data, information, records or documents which such third party service provider shall be required to provide or may provide on request to the Franchise Operator; or
- (b) where the Franchise Operator is unable to procure access pursuant to paragraph 13.5(a), it shall use all reasonable endeavours to agree a variation or amendment to any contract or other arrangement in place between the Franchise Operator and the relevant third party as may be required to comply with paragraph 13.5(a).

13.6 During the Franchise Term, the Franchise Operator shall:

- (a) not enter into any new contracts or other arrangements which may materially adversely affect the Franchise Operator's ability to comply with paragraphs 12 and 13 of this Schedule 6.1C, without the prior written consent of the Authority; and
- (b) to the extent it is entering into any material amendments to any existing contracts or arrangements with third parties, use all reasonable endeavours to ensure that the contract or arrangement (as amended) does not materially adversely affect the Franchise Operator's ability to comply with its requirements pursuant to paragraphs 12 and 13.

14 Compatibility of Information

14.1 All financial, operational or other information, and any data and records required to be provided to the Authority under the Franchise Agreement shall be provided, if so requested by the Authority, in a form compatible with the Authority's electronic data and records systems on the Start Date, as notified to the Franchise Operator by the Authority from time to time.

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

15 Environmental Information

15.1A Data Sharing

- (a) The Franchise Operator shall share all available environmental data with the Authority and RSSB as requested from time to time by the Authority and/or RSSB, each acting reasonably, including in relation to:
 - (i) air pollution emissions referenced in the Clean Air Strategy 2019 (including nitrogen oxides and particulate matter);

- (ii) emissions of Greenhouse Gases (as defined in the Kyoto Protocol to the United Nations Framework Convention on Climate Change); and
 - (iii) energy usage.
- (b) The Authority and/or (with the prior approval of the Authority) RSSB, each acting reasonably, may instruct the Franchise Operator to collect and share with the Authority and/or RSSB (as applicable) such additional environmental data as the Authority and/or RSSB (as applicable) may require from time to time.

15.1 Environmental Information Data Collection Plan

- (a) The Franchise Operator shall use all reasonable endeavours to provide as soon as reasonably practicable and by no later than 1 January 2021, a report to the Authority setting out:
- (i) which measures included in the data specified in paragraph 1 Appendix 1 (*Environmental Information*) to this Schedule 6.1C (*Management Information*) as the same may be amended from time to time by the Authority (acting reasonably) ("**Dataset**") the Franchise Operator is unable to provide, despite using reasonable endeavours to do so ("**Excluded Data**");
 - (ii) for each item of Excluded Data, the technical, operational or commercial reason why the Franchise Operator is unable to provide the Excluded Data; and
 - (iii) a plan ("**Environmental Data Collection Plan**") detailing, in relation to each item of Excluded Data, the actions which the Franchise Operator would need to take in order to be able to provide such Excluded Data, the Franchise Operator's best estimate of the cost of taking such action and the date by which, if such actions were taken, the Franchise Operator would be able to begin providing such Excluded Data to the Authority.
- (b) The Dataset, excluding any measures which the Authority agrees, acting reasonably, that the Franchise Operator is, despite using reasonable endeavours, unable to provide, shall be referred to as the "**Initial Dataset**".
- (c) The Authority may require:
- (i) the Franchise Operator to implement the Environmental Data Collection Plan in whole or in part; and/or
 - (ii) the Franchise Operator to take such other actions as, in the reasonable opinion of the Authority, would enable the Franchise Operator to provide any item of Excluded Data,
- following which the relevant item of Excluded Data will form part of the Initial Dataset.
- (d) Where the Franchise Operator is:
- (i) undertaking works, whether at a Station or Depot or in respect of rolling stock;
 - (ii) procuring rolling stock; or

- (iii) taking any other action which could enable the Franchise Operator to provide any items of Excluded Data in a cost effective manner,

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

- (e) With effect from no later than 10 January 2021, the Franchise Operator shall measure and collect the data specified in the Initial Dataset and shall use reasonable endeavours to measure and collect any such data earlier than 10 January 2021 to the extent possible in the reasonable opinion of the Franchise Operator.
- (f) The Franchise Operator may, in its discretion, measure and collect additional data, provided that the minimum required under the Initial Dataset is adhered to and the Franchise Operator will co-operate with the Authority to seek to identify improvements in the efficiency and/or cost effectiveness of the collection of the data in the Dataset.
- (g) The Franchise Operator shall ensure that the form of measurement of the Initial Dataset enables it to report a consolidated periodic or annual usage figure to the Authority as specified for each measure in paragraph 1 of Appendix 1 (*Environmental Information*) to this Schedule 6.1C.
- (h) In addition to paragraph (g) above, the Franchise Operator shall deliver the information required to be delivered pursuant to and in accordance with paragraph 1 (*Environmental Impact Monitoring Dataset*) of Appendix 1 (*Environmental Information*) to this Schedule 6.1C through the RSSB's online "Environmental Reporting Tool".

15.2 Environmental Impact Monitoring Report and Environmental Impact Monitoring Audit

- (a) The Franchise Operator shall submit to the Authority a report setting out the result of the data collection of the Initial Dataset required by this paragraph 15 (and to the extent agreed pursuant to paragraph 16.1, in accordance with any applicable granularity and regularity specified in the Environmental Impact Targets) (the "**Environmental Impact Monitoring Report**") at such time during the Franchise Operator Year 1 January 2021 to 31 December 2021 to be agreed between the Franchise Operator and the Authority, or reasonably determined by the Authority.
- (b) The Franchise Operator shall procure a suitably qualified independent body (such independent body to be appointed only with the prior written approval of the Authority) to undertake an independent written audit of the data provided in the Environmental Impact Monitoring Report and the collection methodology of the Initial Dataset (the "**Environmental Impact Monitoring Audit**"). The first Environmental Impact Monitoring Audit shall take place at such time during the Franchise Operator Year 1 January 2021 to 31 December 2021 to be agreed between the Franchise Operator and Authority or reasonably determined by Authority, and thereafter on an annual basis. The Franchise Operator and Authority shall agree which audit

requirements set out in paragraph 15.2 (d) below, as amended, and such additional audit requirements, shall apply to the initial Environmental Impact Monitoring Audit.

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

Operator Year's data collection, make such amendments to such methodology as recommended in the Environmental Impact Monitoring Audit so as to address those concerns.

15.3 Air Quality Monitoring and Improvement

- (a) The Franchise Operator shall for the purposes of air quality monitoring at Stations under its control:
 - (i) provide to the Authority all existing data in relation to air quality and measures that the Franchise Operator is implementing to improve air quality at Stations under its control;
 - (ii) provide to the Authority, RSSB, or any person whom the Authority might reasonably specify, access to any sites, power supplies and telemetry under its control as requested by the Authority or RSSB from time to time, including for the purpose of installing air quality monitors; and
 - (iii) assist the Authority, RSSB or any person whom the Authority might reasonably specify in the placement, replacement and dispatch of diffusion tubes.
- (b) The Franchise Operator shall for the purposes of air quality monitoring on rolling stock vehicles:
 - (i) provide to the Authority, RSSB or any person whom the Authority might reasonably specify during the Franchise Term, free-of-charge access to rolling stock vehicles whilst in or out of service;
 - (ii) consent for equipment to be installed on rolling stock vehicles for the purposes of air quality monitoring;
 - (iii) provide available on-train air quality data as the Authority may require from time to time; and
 - (iv) consider cost-effective opportunities to improve air quality on rolling stock vehicles through operational or maintenance changes and, where reasonable and with the agreement or direction of the Authority, make changes to rolling stock vehicles to improve on-board air quality.
- (c) The Franchise Operator shall for the purposes of monitoring and reducing emissions from traction:
 - (i) through an RSSB-led industry working group, support the development and delivery of a policy in relation to the maximum time for which a train's engine may be kept idling while stationary;
 - (ii) use all reasonable endeavours to work with the fleet owner to develop an emissions reduction pathway for all diesel rolling stock vehicles;
 - (iii) consider cost-effective opportunities to reduce emissions through operational or maintenance changes and, where reasonable and with the agreement or direction of the Authority, make changes to rolling stock vehicles to reduce their air pollution impact;

- (iv) provide to the Authority, RSSB or any person whom the Authority might reasonably specify free-of-charge access to rolling stock vehicles and infrastructure for emissions testing as requested by the Authority from time to time; and
 - (v) provide to the Authority such information and/or data in relation to exhaust emissions from rolling stock vehicles comprised within the Train Fleet as the Authority may reasonably require from time to time for the purposes of data collection and analysing the consequent impact of such emissions on air quality in Depots and Stations and along the Routes on which such rolling stock vehicles are deployed.
- (d) The Franchise Operator shall for the purposes of supporting wider industry approaches to emissions reduction:
- (i) consider the impact of any rolling stock vehicle, operational or infrastructure changes on emissions; and
 - (ii) provide to the Authority and RSSB a named contact as a point of enquiry in relation to air quality.

16 Environmental Impact Targets

16.1 Environmental Impact Targets set by the Authority

The Franchise Operator, the Authority and RSSB shall use all reasonable endeavours to agree, by 31 March 2021, the baseline and targets for improving the environmental performance of the Franchise (the "**Environmental Impact Targets**"), (and to the extent any Environmental Impact Targets are not agreed by the Franchise Operator, the Authority and RSSB, such Environmental Impact Targets shall be reasonably determined by the Authority) on:

- (a) Traction carbon emissions;
- (b) Non-traction energy use;
- (c) Waste; and
- (d) Mains water

and the Franchise Operator shall meet such Environmental Impact Targets during the Franchise Period in accordance with the Franchise Agreement.

16.2 Performance against the Environmental Impact Targets

- (a) For each Franchise Operator Year after 31 March 2021 the Authority shall determine the Franchise Operator's performance against each Environmental Impact Target on an annual basis (within two (2) Reporting Periods of receipt of the Environmental Impact Monitoring Report) by comparing:
 - (i) **for traction carbon emissions:** the Franchise Operator's performance set out in the Environmental Impact Monitoring Report (as updated following the Environmental Impact Monitoring Audit) against the relevant Environmental Impact Target for the relevant Franchise Operator Year;

- (ii) **for non-traction energy use:** the Franchise Operator's performance as set out in the Environmental Impact Monitoring Report (as updated following the Environmental Impact Monitoring Audit) against the relevant Environmental Impact Targets;
 - (iii) **for waste:** the Franchise Operator's performance as set out in the Environmental Impact Monitoring Report (as updated following the Environmental Impact Monitoring Audit) against the relevant Environmental Impact Targets;
 - (iv) **for mains water:** for the Franchise Operator Year, following the agreement or determination of the Environmental Impact Targets in accordance with clause 16.1 above, the number of automatic water meters installed against the total number of water meters. These details shall be reported by the Franchise Operator within three (3) months of the end of the relevant Franchise Operator Year. For subsequent Franchise Operator Years, the Franchise Operator's performance as set out in the Environmental Impact Monitoring Report (as updated following the Environmental Impact Monitoring Audit) against the relevant Environmental Impact Targets.
- (b) For the purposes of undertaking the comparison pursuant to paragraph 16.2(a), the results referred to in paragraphs 16.2(a)(i) to (iii) (as the case may be) shall be rounded up to one (1) decimal place with the midpoint (that is, 4.45) rounded upwards (that is, 4.5).
 - (c) As soon as reasonably practicable following the agreement or determination of the Environment Impact Targets in accordance with paragraph 16.1 above, and in any event within six (6) months of such date the Franchise Operator shall produce and provide to the Authority for approval an implementation plan for the duration of the Franchise Period which is capable of achieving each of the Environmental Impact Targets each Franchise Operator Year (as such implementation plan may be revised in accordance with paragraph 16.3 (*Remedial Actions*) below (the "**Environmental Impact Targets Plan**")).
 - (d) Following the Authority's approval, the Franchise Operator shall use all reasonable endeavours to implement the Environmental Impact Targets Plan (including any such plan which is revised in accordance with paragraph 16.2(e)) in order to achieve the Environmental Impact Targets.
 - (e) **NOT USED.**

16.3 Remedial Actions

- (a) In the event that an Environmental Impact Target is not met in any Franchise Operator Year, the Franchise Operator shall as soon as reasonably practicable produce and provide to the Authority a revised Environmental Impact Targets Plan which, in the reasonable opinion of the Authority, is capable of achieving the Environmental Impact Targets.
- (b) The Franchise Operator shall use all reasonable endeavours to implement the revised Environmental Impact Targets Plan, which shall be the Environmental Impact Targets Plan for the purposes of the Franchise Agreement.

16.4 Publication

- (a) The Franchise Operator shall publish (in such format as the Authority may reasonably require) details of its performance against the Environmental Impact Targets (the "**Performance Information**") in widely accessible forms, including, as a minimum, publishing them on its website and in each Customer Report.
- (b) The Franchise Operator:
 - (i) agrees that the Authority shall be permitted to publish the Performance Information from time to time in such format and through such media as the Authority may elect; and
 - (ii) shall co-operate with any programme or other initiative mandated or undertaken by the Authority to publish the Performance Information.

**Appendix 1 to Schedule 6.1C
Environmental Information**

1 Environmental Impact Monitoring Dataset

Subject	Unit	Granularity	Regularity
TRACTION	EC4T (kWh)	Breakdown per distinct fleet - metered	Four (4) week period
	EC4T (kWh)	Breakdown per distinct fleet - unmetered	Four (4) week period
	Gas-oil (litres)	Breakdown per distinct fleet	Four (4) week period
NONTRACTION	Electricity (kWh)	Total	Four (4) week period or monthly
	Gas (kWh)	Total	Four (4) week period or monthly
	Gas-oil (litres)	Total	Four (4) week period or monthly
CARBON	Scope 1 emissions (tonnes)	Total	Annual
	Scope 2 emissions (tonnes)	Total	Annual
	Embodied carbon in new infrastructure projects over the amount set out in paragraph 10.3 (b) (<i>Sustainable Construction</i>) of Schedule 13.1 (<i>Rail Industry Initiatives</i>)	Total	Per project
WATER	Mains Water consumption (m ³)	Total	Annual
	Water recycling initiatives	Narrative	Annual
WASTE	Waste generated (tonnes)	Total	Annual
	Waste recycled (tonnes)	Total	Annual
	Waste subject to other recovery (tonnes)	Total	Annual
	Waste to landfill (tonnes)	Total	Annual
	Hazardous waste	Total	Annual

Subject	Unit	Granularity	Regularity
ENVIRONMENTAL MANAGEMENT SYSTEM (EMS)	Enforcement/information Notices	Total	Annual
	Environmental fines or prosecutions	Total	Annual
	Environmental incidents reported through the EMS	Total	Annual
	Environmental training records % personnel briefed/trained	Total	Annual

Appendix 2 to Schedule 6.1C Operational Performance Information

1 Information about the operational performance of the Franchise Operator

- 1.1** The Franchise Operator shall at all times during the Franchise Term maintain records in relation to its operational performance under the Franchise Agreement, covering the areas and the information described in this Appendix 2. Such information shall include details as to whether or not any curtailment, diversion, delay or failure to attain any connection is attributable, in the Franchise Operator's opinion, to either a Force Majeure Event or the implementation of a Service Recovery Plan.
- 1.2** The Franchise Operator shall, subject to paragraph 1.3, provide to the Authority 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 Authority, the Franchise Operator shall, within such reasonable period as the Authority may specify, make such information available for review by the Authority by reference to:
- (a) such level of disaggregation (including by Route or Service Group) as is reasonably specified by the Authority; and
 - (b) any particular day, week or other longer period as is reasonably specified by the Authority.
- 1.4** The following key shall apply to the table in Appendix 2:
- A =** Information to be provided on or before any Passenger Change Date;
 - B =** Information to be provided for every Reporting Period within ten (10) Weekdays of the last day of each Reporting Period; and
 - C =** Information to be provided annually within ten (10) Weekdays of the last day of each Franchise Operator Year.
- 1.5** For the purposes of this Schedule 6.1C, the following words and expressions shall have the following meanings:
- | | |
|--|--|
| Actual Train Mileage | means the actual train mileage operated during each Reporting Period by each train used in the provision of the Passenger Services (excluding any actual train mileage operated as a result of positioning or other movements of rolling stock vehicles outside the Timetable) |
| Number of Primary Minutes Delay attributable to any other Train Operator | means the number of minutes of delay to the Passenger Services that are: <ul style="list-style-type: none"> (a) attributed as a "Primary Delay" in accordance with the Delay Attribution Principles and Rules; and |

	(b) attributable to any other Train Operator;
Number of Primary Minutes Delay attributable to Network Rail	means the number of minutes of delay to the Passenger Services that are: (a) attributed as a "Primary Delay" in accordance with the Delay Attribution Principles and Rules; and (b) attributable to Network Rail;
Number of Primary Minutes Delay attributable to the Franchise Operator	means the number of minutes of delay to the Passenger Services that are: (a) attributed as a "Primary Delay" in accordance with the Delay Attribution Principles and Rules; and (b) attributable to the Franchise Operator;
Number of Primary Minutes Delay on other Operators attributable to the Franchise Operator	means the number of minutes of delay to passenger services operated by any other Train Operator or services operated by freight operators that are attributed: (a) as "Primary Delay" in accordance with the Delay Attribution Principles and Rules; and (b) to the Franchise Operator pursuant to the Track Access Agreement, disregarding any minutes of delay that are imputed to other Train Operators' passenger services that were cancelled.
Number of Reactionary Minutes Delay attributable to any other Train Operator	means the number of minutes of delay to the Passenger Services that are: (a) attributed as a "Reactionary Delay" in accordance with the Delay Attribution Principles and Rules; and (b) attributable to any other Train Operator;
Number of Reactionary Minutes Delay attributable to Network Rail	means the number of minutes of delay to the Passenger Services that are: (a) attributed as a "Reactionary Delay" in accordance with the Delay Attribution Principles and Rules; and (b) attributable to Network Rail;
Number of Reactionary Minutes Delay attributable to the Franchise Operator	means the number of minutes of delay to the Passenger Services that are: (a) attributed as a "Reactionary Delay" in accordance with the Delay Attribution Principles and Rules; and (b) attributable to the Franchise Operator;
Number of Reactionary Minutes Delay on other Operators attributable to the Franchise Operator	means the number of minutes of delay to passenger services operated by any other Train Operator or services operated by freight operators that are attributed: (a) as "Reactionary Delay" in accordance with the Delay Attribution Principles and Rules; and

(b) to the Franchise Operator pursuant to the Track Access Agreement,

disregarding any minutes of delay that are imputed to other Train Operators' passenger services that were cancelled;

On Time means the percentage of recorded stops called at within 59 seconds of the planned time relating to the Franchise as produced and/or published by Network Rail; and

Planned Train Mileage means the aggregate train mileage planned during each Reporting Period by each train used in the provision of Passenger Services (excluding, any train mileage planned as a result of positioning or other movements of rolling stock vehicles outside the Timetable).

1.6 This Appendix 2 shall be interpreted in accordance with any guidance issued by the Authority from time to time for that purpose.

Table 1 - Operational Performance Information		
Information to be provided	Information (format)	When information to be provided
Number of Passenger Services		
Number of Passenger Services in the Timetable	[number]	B
Number of Passenger Services in the Enforcement Timetable	[number]	B
Number of Cancellations and Partial Cancellations		
Number of Passenger Services in the Enforcement Timetable which were the subject of a Cancellation	[number]	B
Number of Passenger Services in the Enforcement Timetable which were the subject of a Partial Cancellation	[number]	B
Number of Passenger Services in the Enforcement Timetable which were the subject of a Cancellation attributable to the Franchise Operator's implementation of a Service Recovery Plan	[number]	B
Number of Passenger Services in the Enforcement Timetable which were the subject of a Partial Cancellation attributable to the Franchise Operator's implementation of a Service Recovery Plan	[number]	B

Table 1 - Operational Performance Information		
Information to be provided	Information (format)	When information to be provided
Number of Passenger Services in the Enforcement Timetable which were the subject of a Network Rail Cancellation	[number]	B
Number of Passenger Services in the Enforcement Timetable which were the subject of a Network Rail Partial Cancellation	[number]	B
Number of Passenger Services in the Enforcement Timetable which were the subject of a Disputed Cancellation	[number]	B
Number of Passenger Services in the Enforcement Timetable which were the subject of a Disputed Partial Cancellation	[number]	B
Number of Disputed Cancellations and Disputed Partial Cancellations for the twelve (12) preceding Reporting Periods for which the attribution remains in dispute between Network Rail and the Franchise Operator	[number]	B
Number of Disputed Cancellations and Disputed Partial Cancellations from the twelve (12) preceding Reporting Periods for which disputed attribution has been resolved or determined since the Franchise Operator's previous report including whether each relevant Disputed Cancellation and/or Disputed Partial Cancellation was attributed to Network Rail or to the Franchise Operator	[number]	B
Where there is a difference between the Timetable and the Applicable Timetable on any day the following: (a) the fact of such difference; and (b) the number of: (i) Passenger Services affected; and (ii) Cancellations or Partial Cancellations which would have arisen if the Timetable on that day had been the same as the Applicable Timetable	[number]	B

Table 1 - Operational Performance Information		
Information to be provided	Information (format)	When information to be provided
Where there is a difference between the Applicable Timetable and the Enforcement Timetable 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 Applicable Timetable had been the same as the Enforcement Timetable	[number]	B
Number of Passenger Services in the Enforcement Timetable 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 Timetable which were the subject of a partial cancellation and which satisfied the conditions of the term Partial Cancellation, except that such partial cancellations occurred for reasons attributable to the occurrence of a Force Majeure Event	[number]	B
Number of Short Formations		
Simple Short Formations		
All day and Peak		
Number of all day and Peak Passenger Services that have less than the required Passenger Carrying Capacity specified in the Train Plan	[number]	B
Number of all day and Peak Passenger Services that have less than the required Passenger Carrying Capacity specified in the Train Plan attributable to the Franchise Operator's implementation of a Service Recovery Plan	[number]	B

Table 1 - Operational Performance Information		
Information to be provided	Information (format)	When information to be provided
Number of all day and Peak Passenger Services that have less than the required Passenger Carrying Capacity specified in the Train Plan attributable to the occurrence of a Force Majeure Event	[number]	B
Number of all day and Peak Passenger Services scheduled (excluding Cancellations or Partial Cancellations) All day Short Formations for weekends will be recorded for reporting purposes only.	[number]	B
Number of Short Formations		
Graduated Short Formations		
All day and Peak		
Number of all day and Peak Passenger Services that have less than the required Passenger Carrying Capacity specified in the Train Plan	[number]	B
Number of all day and Peak Passenger Services that have less than the required Passenger Carrying Capacity specified in the Train Plan attributable to the Franchise Operator's implementation of a Service Recovery Plan	[number]	B
Number of all day and Peak Passenger Services that have less than the required Passenger Carrying Capacity specified in the Train Plan attributable to the occurrence of a Force Majeure Event	[number]	B
Number of all day and Peak Passenger Services scheduled (excluding Cancellations or Partial Cancellations) All day Short Formations for weekends will be recorded for reporting purposes only	[number]	B
Minutes Delay		
Number of Minutes Delay attributable to the Franchise Operator	[number]	B
Number of Primary Minutes Delay attributable to the Franchise Operator	[number]	B

Table 1 - Operational Performance Information		
Information to be provided	Information (format)	When information to be provided
Number of Reactionary Minutes Delay attributable to the Franchise Operator	[number]	B
Number of Minutes Delay attributable to Network Rail	[number]	B
Number of Primary Minutes Delay attributable to Network Rail	[number]	B
Number of Reactionary Minutes Delay attributable to Network Rail	[number]	B
Number of Minutes Delay attributable to any other Train Operator	[number]	B
Number of Primary Minutes Delay attributable to any other Train Operator	[number]	B
Number of Reactionary Minutes Delay attributable to any other Train Operator	[number]	B
Number of Primary Minutes Delay on other Operators attributable to the Franchise Operator	[number]	B
Number of Reactionary Minutes Delay on other Operators attributable to the Franchise Operator	[number]	B
Number of Minutes Delay for such Reporting Period for which the attribution is in dispute between Network Rail and the Franchise Operator	[number]	B
Number of Minutes Delay for the twelve (12) preceding Reporting Periods for which the attribution remains in dispute between Network Rail and the Franchise Operator	[number]	B
Number of Minutes Delay from the twelve (12) preceding Reporting Periods for which disputed attribution has been resolved or determined since the Franchise Operator's previous report and the number of such Minutes Delay attributed to each of the Franchise Operator and Network Rail as a result of such resolution or determination	[number]	B

Table 1 - Operational Performance Information		
Information to be provided	Information (format)	When information to be provided
Number of Minutes Delay attributed to the occurrence of a Force Majeure Event	[number]	B
T-3, T-15, On Time and All Cancellations		
T-3 percentage published by Network Rail, rounded to two (2) decimal places	[number]	B
T-15 percentage published by Network Rail, rounded to two (2) decimal places	[number]	B
On Time percentage published by Network Rail, rounded to two (2) decimal places	[number]	B
All Cancellations percentage published by Network Rail rounded to two (2) decimal places	[number]	B
Train Mileage		
Planned Train Mileage	[mileage]	A
Actual Train Mileage	[mileage]	B

**Appendix 7 to Schedule 1
Schedule 6.1D (*National Passenger Surveys*)**

Schedule 6.1D National Passenger Surveys

1 Definitions

1.1 For the purposes of this Schedule 6.1D (*National Passenger Surveys*) only, the following words and expressions shall have the following meanings unless otherwise set out in Clause 1.1 (*Definitions*):

"NPS Improvement Plan"	has the meaning given to it in paragraph 5.3 of this paragraph Schedule 6.1D (<i>National Passenger Surveys</i>)
"NPS Improvement Proposal"	has the meaning given to it in paragraph 5.1 of this paragraph Schedule 6.1D (<i>National Passenger Surveys</i>)
"NPS Measure"	means each of the factors more particularly described in the Passenger Survey Methodology and grouped as "Stations (S)", "Trains (T)" and "Customer Service (C)"
"Passengers' Council"	means the passengers' council established under section 19 of the Railways Act 2005 (as amended by The Passengers' Council (Non-Railway Functions) Order 2010). The Passengers' Council shall be generally known as " Transport Focus "
"Passenger Survey Methodology"	means the passenger survey methodology set out at Appendix 1 (Passenger Survey Methodology) to this Schedule 6.1D (<i>National Passenger Surveys</i>) as amended from time to time

2 Conduct of National Passenger Surveys

2.1 The Franchise Operator agrees with the Authority that:

- (a) the Passengers' Council may measure the level of passenger satisfaction with the Franchise Services through National Passenger Surveys;
- (b) the Passengers' Council shall determine how, when (normally twice per annum) and where National Passenger Surveys are to be carried out;
- (c) the Franchise Operator shall grant access on trains or at stations (or as otherwise reasonably required by the Authority and/or the Passengers' Council) to the Passengers' Council (or its representatives and agents) to carry out National Passenger Surveys and such access shall include access to passengers and other persons who use the Franchise Services;

- (d) the Franchise Operator shall co-operate with the Passengers' Council (in such manner as the Passengers' Council may reasonably request or as the Authority may reasonably direct) in order to enable the Passengers' Council to carry out National Passenger Surveys; and
- (e) the Passengers' Council and/or the Authority may, from time to time, publish the results of each National Passenger Survey.

2.2 The Authority shall ensure or shall procure that:

- (a) the findings of any National Passenger Survey are made available by the Passengers' Council to the Franchise Operator within a reasonable period of time after the completion of each such survey; and
- (b) if any such survey includes a comparison between its findings and the findings of any equivalent earlier survey, such comparison forms a reasonable basis for monitoring the trends of passenger satisfaction over time.

2.3 The Franchise Operator shall, as soon as reasonably practicable after such information is made available to the Franchise Operator in accordance with paragraph 2.2, publicise its performance against the NPS Improvement Plan Levels displaying such information at all of the Stations and on its website.

2.4 It is agreed by the Franchise Operator that the Passengers' Council shall use the methodology set out in the Passenger Survey Methodology for conducting any National Passenger Surveys.

2.5 If:

- (a) at any time the methodology adopted in conducting any National Passenger Survey is, in the opinion of the Authority (acting reasonably), materially inconsistent with the Passenger Survey Methodology; and
- (b) the Authority reasonably determines that in consequence a revision to the any of the NPS Targets and/or any of the NPS Improvement Plan Levels is required in order to hold constant the risk of the Franchise Operator failing to satisfy the applicable NPS Target(s) and/or NPS Improvement Plan Levels (as applicable),

then the Authority shall make such revisions to such NPS Target(s) and/or NPS Improvement Plan Levels (as applicable) as the Authority reasonably considers appropriate to hold constant such risk.

2.6 If the Passengers' Council ceases to undertake National Passenger Surveys then the relevant National Passenger Survey for the purposes of this Schedule 6.1D and Schedule 6.1B (Performance Based Fee) shall be such other passenger survey as the Authority may, after consultation with the Franchise Operator, reasonably determine to be appropriate in the circumstances (the "**Alternative NPS**"). The provisions of this Schedule 6.1D and Schedule 6.1B (Performance Based Fee) shall apply in respect of any Alternative NPS and for these purposes the Passengers' Council shall be replaced with such other entity that is responsible for conducting such Alternative NPS.

2.7 Subject to the request of the Authority, after the relevant results of a National Passenger Survey have been made available to the Franchise Operator pursuant to paragraph 2.2 of this Schedule 6.1D (*National Passenger Surveys*), representatives of the Franchise

Operator shall attend a meeting with the Authority or its representatives for the specific purpose of enabling those results to be reviewed with the Franchise Operator. Unless otherwise agreed by the Authority, such meeting shall be separate from and in addition to the quarterly review meetings referred to in Clause 15.8. The following provisions shall apply to such meeting:

- (a) Unless otherwise required by the Authority, the meeting shall take place within 6 weeks after the date on which the relevant results have been published by the Passengers' Council. The Authority will give to the Franchise Operator not less than seven days' prior notice of the date of the meeting.
- (b) The persons attending the meeting on behalf of the Franchise Operator shall be of appropriate seniority and responsibility as the Authority may reasonably require and shall include the customer satisfaction representative referred to in paragraph Clause 2.8 below together with such other directors and/or senior managers of the Franchise Operator, Franchisee and any Parent as the Authority may reasonably require in the circumstances.
- (c) The Authority may invite such third parties (including representatives of any relevant Rail Passengers' Committee or Local Authority) as it reasonably considers appropriate to attend the meeting.
- (d) The Franchise Operator shall ensure that its representatives are in a position at the meeting to discuss all aspects of the relevant results, the Franchise Operator's assessment of them.
- (e) Following the meeting, the Authority shall have the right to require such further meetings as it reasonably considers necessary in relation to the review of the National Passenger Survey results and the steps to be taken under this Schedule 6.1D (*National Passenger Surveys*) and Schedule 6.1B (*Performance Based Fee*) in response to those results, and the provisions of this Clause 2.5 shall apply equally to all such further meetings.

2.8 The Franchise Operator shall from time to time designate an individual to be its customer satisfaction representative for the purposes of paragraph 2.5 above. Unless otherwise agreed by the Authority, such person shall be a registered director of the Franchise Operator with overall responsibility at board level within the Franchise Operator for customer service and satisfaction. The Authority reserves the right to approve such representative (such approval not to be unreasonably withheld).

3 NPS Targets and NPS Improvement Plan Levels

3.1 It is agreed by the Authority and the Franchise Operator that, subject to paragraph 2.6, the results of the National Passenger Survey(s) published by the Passengers' Council in any PBF Assessment Period should be used to determine the Franchise Operator's performance against the NPS Targets and the NPS Improvement Plan Levels for that PBF Assessment Period. If in any PBF Assessment Period the Passengers' Council has published:

- (a) only one (1) National Passenger Survey in that PBF Assessment Period then the performance of the Franchise Operator against the NPS Targets and the NPS Improvement Plan Levels shall be measured against the results of such National Passenger Survey; or

- (b) more than one (1) National Passenger Survey in that PBF Assessment Period then the performance of the Franchise Operator against the NPS Targets and the NPS Improvement Plan Levels shall be measured against the average of the results of all of the National Passenger Surveys published by the Passengers' Council in that PBF Assessment Period.

4 Performance Review

4.1 For each PBF Assessment Period the Authority shall determine the Franchise Operator's performance against each NPS Target and NPS Improvement Plan Level by comparing:

- (a) if only one (1) National Passenger Survey has been published by Passengers' Council in that PBF Assessment Period, the results of such National Passenger Survey against the NPS Targets and NPS Improvement Plan Levels applicable in respect of that PBF Assessment Period; or
- (b) if more than one (1) National Passenger Survey has been published by Passengers' Council in that PBF Assessment Period, the average of the results of all of the National Passenger Surveys published by the Passengers' Council in that PBF Assessment Period against the NPS Targets and NPS Improvement Plan Levels applicable in respect of that PBF Assessment Period.

4.2 For the purposes of undertaking the comparisons pursuant to paragraph 4.1, the results referred to in paragraph 4.1(a) or paragraph 4.1(b) (as the case may be) shall be rounded up to one (1) decimal place with the midpoint (that is, 4.45) rounded upwards (that is, 4.5).

4.3 If, following the Authority's determination pursuant to either of paragraphs 4.1(a) or 4.1(b) (as the case may be), the results show that the level of customer satisfaction in respect of any NPS Measure is below the NPS Improvement Plan Level for such measure then the Authority shall be entitled to request from the Franchise Operator a plan in order to secure an improvement in the level of customer satisfaction for the relevant NPS Measure as measured by a National Passenger Survey so that such level is equal to or better than the related NPS Improvement Plan Level.

4.4 Following the Authority's determination pursuant to either of paragraphs 4.1(a) or 4.1(b) (as the case may be), the provisions set out in paragraph 3.5 (Calculation of CE(NPS)) of Appendix 5 (Quantified Target Methodology) of Schedule 6.1B (Performance Based Fee) shall apply.

5 NPS Improvement Proposals

5.1 Within thirty (30) Weekdays of the Authority's request (or such longer period as may be agreed by the Authority) pursuant to paragraph 4.3, the Franchise Operator shall, at its own cost, prepare and deliver to the Authority its proposal (the "**NPS Improvement Proposal**") for achieving an improvement in the level of customer satisfaction for the relevant NPS Measure as measured by a National Passenger Survey so that such level is not lower than the NPS Improvement Plan Level, which shall:

- (a) contain specific tangible action points and indicate in the case of each action point:
 - (i) how that action will contribute to meeting the relevant NPS Measure;
 - (ii) where the action is to be implemented;

- (iii) the proposed timescales for implementing such action and, where any action is expressed to be ongoing, proposed review dates
 - (iv) how the Franchise Operator proposes to measure the performance of the action; and
- (b) the additional expenditure associated with each action.

5.2 The Authority shall be entitled to:

- (a) request further information from the Franchise Operator with respect to its NPS Improvement Proposal, and the Franchise Operator shall submit such further information to the Authority within the timescales as reasonably requested by the Authority; and/or
- (b) propose amendments to the NPS Improvement Proposal and the Parties shall agree or, in absence of agreement, the Authority shall reasonably determine the amendments to the NPS Improvement Proposal, in which case paragraph 5.3 shall apply; or
- (c) accept the NPS Improvement Proposal, in which case paragraph 5.3 shall apply; or
- (d) not accept the NPS Improvement Proposal, in which case the Franchise Operator shall not be obliged to undertake any further action with respect to its NPS Improvement Proposal.

5.3 The NPS Improvement Proposal as agreed, determined or accepted by the Authority, (as the case may be) in accordance with paragraph 5.2 shall be referred to as the "**NPS Improvement Plan**". The Franchise Operator shall implement the NPS Improvement Plan in accordance with its terms."

Appendix 1 to Schedule 6.1D

Passenger Survey Methodology

1 Introduction

1.1 The Chiltern Franchise Agreement will make provision for NPS Measures, derived from National Passenger Survey results, to be used to measure the Franchise Operator's performance against the NPS Targets and NPS Improvement Plan Levels for passenger satisfaction on three aspects of service set out below.

1.2 Different types of NPS indicator have been identified and grouped to form three specific NPS Measures:

- (a) Stations (S);
- (b) Trains (T); and
- (c) Customer Services (C).

3 NPS indicators included in the NPS Measures

3.1 The NPS questions within each NPS Measure grouping are as follows:

Stations (S)	S1 Station – Station cleanliness
	S2 Station – Overall satisfaction with the Station
	S3 Station – Ticket buying facilities
Trains (T)	T1 Train – Train cleanliness outside
	T2 Train – Train cleanliness inside
	T3 Train – On-train toilets
	T4 Train – Space for luggage
	T5 Train – Comfort of seats
	T6 Train – Upkeep & repair of train
Customer services (C)	C1 Customer Services – Information during the journey
	C2 Customer Services – The attitude and helpfulness of the station staff
	C3 Customer Services – Attitude & helpfulness of train staff (West Mids. building block)
	C4 Customer Services – Information at the station about train times/platforms

	C5 Customer Services – Overall satisfaction with the journey
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4 Calculation of the NPS Measure scores

- 4.1 NPS Measure scores are calculated for each applicable PBF Assessment Period, based on the number of National Passenger Surveys published in each period. Typically, there shall be one National Passenger Survey wave for each PBF Assessment Period in Spring and Autumn. Scores for each question shall be added together, prior to rounding, and the overall total shall then be divided by the number of questions for the NPS Measure, to calculate the final score for the NPS Measure.
- 4.2 If more than one National Passenger Survey is published in any PBF Assessment Period, scores for each question for each National Passenger Survey wave shall be added together, then divided by the number of applicable National Passenger Surveys, to create an average score for each question. The average scores for each question within the NPS Measure shall then be summed and the overall total shall be divided by the number of questions within the NPS Measure to calculate the final score for the NPS Measure.
- 4.3 Final scores shall be rounded to one decimal place with the midpoint (that is, 74.45) rounded upwards (that is, 74.5). This shall then be compared to the NPS Improvement Plan Level and the NPS Target for the NPS Measure to establish whether the NPS Improvement Plan Level and the NPS Target have been met, exceeded or missed.

**Appendix 8 to Schedule 1
Appendix 15 to Schedule 13 (*D&I Strategy*)**

Appendix 15 to Schedule 13 (Franchise Plan)

Diversity and Inclusion Strategy Framework

The Department requires a train operator who will develop and implement a tailored Diversity and Inclusion Strategy, the goal of which is to deliver a more diverse workforce, reflective of the communities that it serves, by increasing representation of under-represented groups at all levels and grades.

Requirement from the Franchise Operator

The train operator shall prepare and submit a Diversity & Inclusion Strategy in accordance with the guidance and templates contained in this framework. However, it should be noted that this is not a comprehensive framework and should only be used as a guide.

The train operator shall submit a strategic Diversity & Inclusion action plan including the steps that they will take to ensure a more diverse workforce. The train operator shall also set out the methods they propose to monitor and report on the implementation of the policy and its effectiveness.

Strategic Diversity and Inclusion Action Plan

The Diversity & Inclusion Strategy shall include the following:

- Plans to implement a range of recruitment and retention policies and procedures to ensure they recruit and retain a diverse group of candidates.
- A set of recruitment targets which is 50% female with BAME composition reflective of the local area.
- Plans to address gaps in representation in all job types and levels to meet recruitment targets on gender and BAME.
- A list of specific KPIs to measure progress/success of implementing diversity action plan.
- Plans for achieving, maintaining and progressing within a specific diversity accreditation scheme.
- Plans to collect, monitor and report diversity data of its workforce.

Plans to implement recruitment and retention policies and procedures

This is an example below of what a general diversity plan might look like.

Goal	Objective	Current position/ baseline	Actions	Accountability	By when	Measure of success
Increase workforce diversity	Recruit from a diverse group of candidates	Some advertisement in different publications	Work with local employment agencies and JCP	HR	Q4	Workforce is increasingly reflective Internal targets
Retain a diverse workforce	Create an inclusive culture that encourages	Employee engagement survey	Inclusive leadership training for managers	HR	Q3	All leaders to have D&I training

	collaboration and increases retention					Engagement results should increase
Monitoring diversity data	Monitor diversity data to implement a range of recruitment policies	Data is collected on gender and age but there is no action Data is not collected on other protected characteristics	Collect diversity data on all groups Monitor data every 6 months	HR	Q2	Recruitment policies are reviewed and updated

The Strategy should also cover most of the protected characteristics, as well as looking at caring responsibilities, social mobility and issues affecting parents returning to work. Below are some examples of what this could look like depending at what point of the journey the train operator is at.

Goal	Objective	Actions	Measure of success
BAME	Improve representation of people from a BAME background in leadership and across the business. Seek to undertake and publish ethnicity pay gap report and activities.	Programme of mentoring and activities	Increase in BAME representation in leadership/ across organisation 10% employees from BAME Reduction in pay gap
Disability	Develop appropriate environment for people.	Train managers to deliver reasonable adjustment	Increase number of disabled employees Disability Confident Leader
Gender	Improve gender diversity across workforce and in leadership positions.	Set targets Programme of activities	25% of employees to be women Reduction in gender pay gap
LGBT+	Be an inclusive employer of LGBT+ employees	Provide specific LGBT+ awareness/ confidence training for managers	Stonewall Inclusive Employers
Carers	Support carers in the workplace	Review family-friendly policies to support carers Increase awareness amongst managers of carers' needs	Level 1 Carer Confident Benchmark Carer Positive award
Faith and belief	Be an employer where people of different faiths and beliefs feel equally valued and respected	Provide series of briefings for employees	Inclusive Employer status

		Faith spaces for employees	
Age	Transfer skills between generations	Develop inter-generational mentoring between older and younger employees	Recognised as an employer for all ages
Social mobility	Make sure everyone can succeed and make the most of their talents, whatever the circumstances	Promote work with ex-offenders and lone parents Collect data on social mobility	The Social Mobility Employer Index

KPIs Example

The plan should be supported by an appropriate set of key performance indicators to measure progress. For example, this could include:

- Number of positive action initiatives in employment.
- Number of adverts in targeted publications to reach BAME and women.
- Membership of networks and forums.

Schedule 2 Expiry

1 Definitions

- 1.1** "Estimated Expiry Sum" means the Secretary of State's estimate of the amount payable by the Franchise Operator as the Expiry Sum as notified to the Franchise Operator in accordance with paragraph 3.2.
- 1.2** "Expiry Sum" means the amount notified to the Franchise Operator by the Secretary of State in accordance with paragraph 3.5.
- 1.3** "Expiry Sum Acceptance Letter" means the letter substantially in the form set out in Appendix 2.
- 1.4** "Forecast Net Assets Amount" means, as set out in the Restated P2012 Balance Sheet, the aggregate amount of the Franchise Operator's assets after deducting its liabilities and excluding any: onerous contract provisions; balances relating to the Railway Pension Scheme other than those that relate to pension contributions; and liabilities in relation to any Guaranteed Parent Facility and, where relevant, any Approved Bank Facility.
- 1.5** "Non-COVID Trajectory Model" has the meaning given to it in Appendix 1.
- 1.6** "Original Franchise Term" has the meaning given to it in Appendix 1.

2 Default termination

The Parties acknowledge and agree that the provisions of this Schedule 2 shall not apply in circumstances where, following service of a notice by the Secretary of State pursuant to Clause 22.2 (*Termination*), the Franchise Agreement terminates earlier than the end of the Franchise Term and in those circumstances the consequences of termination shall be determined by reference to the applicable terms of the Franchise Agreement.

3 Calculation of the Expiry Sum

- 3.1** The Parties acknowledge and agree that the Estimated Expiry Sum and the Expiry Sum shall be determined using the Non-COVID Trajectory Model developed in accordance with Appendix 1 (*Expiry Sum Principles*).
- 3.2** ¹³As soon as reasonably practicable following the date of the amendment letter between the Secretary of State and the Franchisee dated 15 October 2020, the Secretary of State shall notify the Franchisee of the Secretary of State's estimate of the amount payable as the Termination Sum determined using the Non-COVID Trajectory Model (the "Estimated Termination Sum").
- 3.3** If and to the extent that the Franchise Operator reasonably considers the Estimated Expiry Sum does not reasonably reflect the amount which should have been determined using the Non-COVID Trajectory Model, it shall no later than the expiry of fourteen (14) Weekdays following the date of receipt of the notice referred to in paragraph 3.2, make written

¹³ 15 October 2020 (Date of Contract Change) Contract variation agreed by the Secretary of State and Franchisee.

representations to the Secretary of State setting out any issues which it considers should be taken into consideration together with details of its reasoning and any supporting evidence.

- 3.4** The Secretary of State will take account of any representations made by the Franchise Operator pursuant to paragraph 3.3 above. This shall not oblige the Secretary of State to adjust the Estimated Expiry Sum or the Non-COVID Trajectory Model on account of any such representations.
- 3.5** The Secretary of State shall, by no later than the expiry of fourteen (14) Weekdays from the date of receipt of any representations referred to in paragraph 3.3 (or where no representations are made by the Franchise Operator, no later than fourteen (14) Weekdays following the last day on which the Franchise Operator could have submitted written representations), notify the Franchise Operator of the value of the Expiry Sum.
- 3.6** By no later than the expiry of seven (7) Weekdays following the date of receipt of the notice referred to in paragraph 3.5, in respect of the Expiry Sum notified to it by the Secretary of State pursuant to paragraph 3.5, the Franchise Operator shall either:
- 3.6.1** confirm its acceptance of the Expiry Sum by issuing a signed Expiry Sum Acceptance Letter to the Secretary of State; or
- 3.6.2** inform the Secretary of State in writing that it does not accept the Expiry Sum.
- 3.7** If the Franchise Operator fails to comply with paragraph 3.6 by the date which is seven (7) Weekdays following the date of receipt of the notice referred to in paragraph 3.5, the Franchise Operator shall be deemed to have rejected the Expiry Sum.
- 3.8** If the Franchise Operator has accepted the Expiry Sum in accordance with paragraph 3.6.1, the Franchise Operator shall pay the Expiry Sum to the Secretary of State no later than the last day of the Franchise Period in accordance with such payment instructions as the Secretary of State may notify to the Franchise Operator in writing.

4 Miscellaneous

- 4.1** Any notice, notification or other communication under or in connection with the matters specified in this Schedule 2 shall be served in accordance with Clause 40 (*Notices*) of the Franchise Agreement.
- 4.2** In the event of conflict between the terms of this Schedule 2 and the other terms of the Franchise Agreement, subject to Clause 2.1.2 of the ERMA, the terms of this Schedule 2 shall prevail.
- 4.3** Notwithstanding any other provisions of Schedule 2, the Parties acknowledge and agree:
- 4.3.1** neither Party shall be entitled to recover more than once in respect of the same amount; and
- 4.3.2** where the same amounts are taken account of more than once as part of any calculation in accordance with this Schedule 2 and/or the terms of the Franchise Agreement which would result in a Party being obliged to account for the same amount more than once, the Parties shall agree suitable adjustments to prevent any double recovery or where, the Parties are unable to agree such adjustments within a reasonable time, the

Secretary of State may determine those adjustments in the Secretary of State's sole discretion.

Appendix 1 to Schedule 2

Expiry Sum Principles

1 Definitions and Interpretation

1.1 Definitions

1.1.1 “Forecast Net Losses” means:

- (i) if the aggregate amount of all profits or losses (before tax) projected to be incurred by the Franchise Operator as determined using the Non-COVID Trajectory Model for the period from 1 March 2020 to expiry of the Original Franchise Term shows a cumulative net loss, the value of that net loss as discounted at an annual equivalent rate of three point five per cent (3.5%) from the date of such profits or losses being incurred to the last day of the ERMA Term; or
- (ii) if the aggregate amount of all profits or losses (before tax) projected to be incurred by the Franchise Operator in accordance with the Non-COVID Trajectory Model for the period from 1 March 2020 to expiry of the Original Franchise Term shows a cumulative net profit, 0 (zero).

1.1.2 “Non-COVID Trajectory” means the Franchise Operator’s forecast financial performance during the Original Franchise Term assuming COVID-19 has not occurred;

1.1.3 “Non-COVID Trajectory Model” means a model in respect of the Non-COVID Trajectory, built by the Secretary of State and the Secretary of State’s advisers, on the basis of industry standard frameworks (including the Passenger Demand Forecasting Handbook and DfT Transport Analysis Guidance) and which takes account of, the Franchise Operator’s Annual Business Plans and the Franchise Operator’s actual performance from the date of the Original Franchise Agreement to 1 February 2020, which, on the basis of certain fair, reasonable and objective assumptions (including as detailed in paragraph 3 below), forecasts Forecast Net Losses and, where applicable, the projected date on which the Franchise Operator would have defaulted the obligations in paragraph 2.1 of Schedule 10 (*Financial Covenants*) to the Franchise Agreement, assuming no increase in the Guaranteed Parent Facility or the Approved Bank Facility compared with the value of each as at 1 March 2020 and assuming that the Secretary of State would not have issued any derogation pursuant to paragraph 2.5 of Schedule 10 (*Financial Covenants*) to the Franchise Agreement;

1.1.4 “Original Franchise Agreement” means the Franchise Agreement in the form existing immediately prior to 1 March 2020;

1.1.5 “Original Franchise Term” means the term of Franchise Agreement under the Original Franchise Agreement, assuming that (for the purposes of this definition) the Secretary of State has not exercised the option to extend the term in accordance with its terms, such that the Original Franchise Term will expire at 2.00 a.m. on 31 December 2021;

1.2 Construction

- 1.2.1 In this Appendix 1, “reasonable” refers only to public law standards of reasonableness and any challenge to a decision of the Secretary of State by reference to such term may only be determined in accordance with principles of English public law.
- 1.2.2 If and insofar as there is found to exist any implied obligation of reasonableness in respect of the implementation of the terms of this Appendix 1, this must be construed only in accordance with that term in English public law.

2 Expiry Sum

- 2.1 The Secretary of State shall determine the Expiry Sum as being equal to the Non-COVID Trajectory Model forecast of Forecast Net Losses provided that this amount shall not exceed the aggregate of the Forecast Net Assets Amount and the total value of the Guaranteed Parent Facility.

3 Modelling Assumptions

- 3.1 The Secretary of State shall generate a projection for the Franchise Operator’s financial performance (including revenue, cost and balance sheet forecasts) on a Non-COVID Trajectory during the Original Franchise Term based on a set of reasonable assumptions for quantifying relevant exogenous and endogenous factors, including in relation to:
- 3.1.1 projected exogenous and endogenous revenues of the Franchise Operator during the Original Franchise Term from farebox and non-farebox revenue sources (as applicable);
- 3.1.2 projected costs incurred by the Franchise Operator during the Original Franchise Term, including, amongst others, operating costs, capex and potential savings;
- 3.1.3 a reasonable estimate of the aggregate Franchise Payments during the Original Franchise Term including in relation to any claims between the Franchise Operator and the Secretary of State and where known, between the Franchise Operator and third parties, taking into account the likelihood of success of such claims; and
- 3.1.4 the scope for value creation and increased savings through implementation of new strategic initiatives which were not contemplated as part of the Franchise Operator’s bid submission.

Appendix 2 to Schedule 2

Expiry Sum Acceptance Letter

Secretary of State for Transport
Department for Transport Department
Great Minster House
33 Horseferry Road
London
SW1P 4DR

[By Email]

[●] 2020

Dear Secretary of State

Expiry Sum Emergency Recovery Measures Agreement

1. We refer to the Emergency Recovery Measures Agreement entered into between us (as "**Franchise Operator**") and the Secretary of State for Transport (the "**Secretary of State**") dated [●] 2020 (the "**ERMA**").
2. We further refer to your notice dated [●] issued in accordance with paragraph [3.5] of Schedule 2 (*Expiry*) to the ERMA notifying us that the Expiry Sum is [●] pounds (£[●]).
3. Unless otherwise stated, defined terms used in this letter shall have the meaning given to them in the ERMA.
4. The Franchise Operator acknowledges and agrees that:
 - a. the Expiry Sum has been calculated on the basis of a fair and reasonable principles as further detailed in Schedule 2 (*Expiry*) to the ERMA; and
 - b. it shall pay the Expiry Sum in accordance with the terms of the ERMA.
5. The Franchise Operator hereby warrants to the Secretary of State that the information provided by it to the Secretary of State during the period between the date of the ERMA and the date of this letter is true, accurate and not misleading as at the date of this letter.
6. The Franchise Operator acknowledges that the decisions by the Secretary of State in relation to the calculation, and mechanics for payment, of the Expiry Sum, including the policy and procedure adopted by the Secretary of State to reach and implement these decisions (together, the "**Decisions**") are reasonable.
7. The Franchise Operator covenants that it will not, and will procure that none of its Related Parties will, make, maintain, support, assist or encourage any Claim of any kind against the Secretary of State or any other party in connection with or arising out of the Decisions.

Yours sincerely

[FRANCHISE OPERATOR]

Schedule 3 Early ERMA Termination

The provisions of this Schedule 3 shall only apply if the Secretary of State exercises the Secretary of State's right to terminate this ERMA pursuant to Clause 3.2 of this ERMA.

1 Survival

1.1 The following provisions and any other provisions of this ERMA and/or the Franchise Agreement as amended by the terms of this ERMA (as applicable) reasonably required for the purpose of giving full effect to such provisions or for any other purpose shall survive the termination of this ERMA pursuant to Clause 3.2 and shall continue in full force and effect in accordance with their terms unless and until the Secretary of State instructs otherwise, and the continued operation of such provisions following the termination of this ERMA pursuant to Clause 3.2 shall not constitute a Variation for the purpose of any of the limbs of the definition of "Net Loss" or "Net Gain" for the purposes of the Franchise Agreement:

- 1.1.1 Clause 12.2 and 12.6;
- 1.1.2 Clause 13 (Early ERMA Termination);
- 1.1.3 clauses 6.13 and 12.6A of the Franchise Agreement set out in Schedule 1 (Amendments to the Franchise Agreement) to this ERMA;
- 1.1.4 paragraphs 6A to 6K of Schedule 13 (Franchise Plan) to the Franchise Agreement set out in Schedule 1 (Amendments to the Franchise Agreement) to this ERMA;
- 1.1.5 Part 5 (Smart Ticketing) of Schedule 5 (Fares) to the Franchise Agreement set out in Schedule 1 (Amendments to the Franchise Agreement) to this ERMA;
- 1.1.6 paragraphs 1 (Development, Design and Implementation of Future Initiatives] to 5 (Integrated Control Centres Initiative) of part 1 (Co-Operation) of Schedule 13.A (ERMA Specific Obligations) to the Franchise Agreement as effected pursuant to Schedule 1 (Amendments to the Franchise Agreement) to this ERMA except to the extent such provisions contain obligations on the Franchise Operator to implement any initiatives, schemes or other projects pursuant to such terms, and in all circumstances paragraphs 5A (Operational Performance) to 13 (TD Academy) of part 1 (Co-Operation) of Schedule 13.A (ERMA Specific Obligations) to the Franchise Agreement as effected pursuant to Schedule 1 (Amendments to the Franchise Agreement) to this ERMA;
- 1.1.7 paragraphs 1 (Digital Signalling) (with the exception of paragraphs 1.2(c) and 1.2(d)) and 2 (Wavelength) of part 3 (Miscellaneous) of Schedule 13.A (ERMA Specific Obligations) to the Franchise Agreement as effected pursuant to Schedule 1 (Amendments to the Franchise Agreement) to this ERMA;
- 1.1.8 Schedule 6.1E (Operational Performance) to the Franchise Agreement as set out in Schedule 1 (Amendments to the Franchise Agreement) to this ERMA to the extent the Secretary of State has instructed that such Schedule shall apply prior to the Early ERMA Termination Date and to the extent necessary to evaluate the Franchise Operator's operational performance during the term of the ERMA, provided that nothing in this paragraph 1.1.8 shall prevent the provisions of Schedule 15 (Targets

and Performance Reviews) to the Franchise Agreement that prevailed immediately prior to the EMA Start Date (save as amended pursuant to any variation agreed between the Parties during the period from the EMA Start Date until the Early ERMA Termination Date other than the variation constituted by the EMA or this ERMA) from applying from the Early ERMA Termination Date, subject to paragraph 2 (Performance benchmarks) below;

- 1.1.9 Schedule 6.1D (National Passenger Surveys) to the Franchise Agreement set out in Schedule 1 (Amendments to the Franchise Agreement), to the extent the Secretary of State has instructed that such Schedule shall apply prior to the Early ERMA Termination Date and to the extent necessary to evaluate the Franchise Operator's performance during the term of the ERMA, provided that nothing in this paragraph 1.1.9 shall prevent the provisions of Schedule 15 (Targets and Performance Reviews) to the Franchise Agreement that prevailed immediately prior to the EMA Start Date (save as amended pursuant to any variation agreed between the Parties during the period from the EMA Start Date until the Early ERMA Termination Date other than the variation constituted by the EMA or this ERMA) from applying from the Early ERMA Termination Date, subject to paragraph 2 (Performance Benchmarks) below;
- 1.1.10 paragraph 7 (Remedial Plans) of Schedule 6.1B (Performance Based Fee) to the Franchise Agreement set out in Schedule 1 (Amendments to the Franchise Agreement) to this ERMA;
- 1.1.11 clauses 5.4(e), 21.7A and 21.17 to the Franchise Agreement set out in Schedule 1 (Amendments to the Franchise Agreement) to this ERMA;
- 1.1.12 paragraphs 9.9 (Access to financial information), 15.1A (Data Sharing) and 15.3 (Air Quality Monitoring and Improvement) of Schedule 6.1C (Management Information) to the Franchise Agreement as effected pursuant to Schedule 1 (Amendments to the Franchise Agreement) to this ERMA;
- 1.1.13 without prejudice to the provisions of sub-paragraph 1.1.12 above, Schedule 6.1C (Management Information) to the Franchise Agreement as effected pursuant to Schedule 1 (Amendments to the Franchise Agreement) to this ERMA to the extent such provisions relate to the Franchise Operator's reporting of information in relation to the period covering the term of the ERMA, and the amendments to clause 36.2 to the Franchise Agreement set out in Schedule 1 (Amendments to the Franchise Agreement);
- 1.1.14 the amendments to clauses 13.8 and 13.9 to the Franchise Agreement set out in Schedule 1 (Amendments to the Franchise Agreement) to this ERMA; and
- 1.1.15 this Schedule 3.

2 Performance benchmarks

- 2.1 From the Early ERMA Termination Date, unless otherwise instructed by the Secretary of State under paragraph 2.2, the provisions of clause 8.4 of the Franchise Agreement and Schedule 15 (Targets and Performance Reviews) to the Franchise Agreement that prevailed immediately prior to the EMA Start Date (save as amended pursuant to any variation agreed

between the Parties during the period from the EMA Start Date until the Early ERMA Termination Date other than the variation constituted by the EMA or this ERMA) shall apply.

- 2.2** If instructed by the Secretary of State, Schedule 6.1D (National Passenger Surveys) and 6.1E (Operational Performance) to the Franchise Agreement set out in Schedule 1 (Amendments to the Franchise Agreement) shall continue in full force and effect in accordance with their terms (and the provisions of clause 8.4 of the Franchise Agreement and Schedule 15 (Targets and Performance Reviews) to the Franchise Agreement shall not apply) subject to such adjustments as the Secretary of State (acting reasonably) may determine.
- 2.3** For the avoidance of doubt, the continued operation of such Schedules under paragraph 2.2 shall not constitute a Variation for the purpose of any of the limbs of the definition of "Net Loss" or "Net Gain" for the purposes of the Franchise Agreement.

3 Fixed Fee and Performance Based Fee

- 3.1** The Secretary of State shall pay to the Franchise Operator the amount of the Fixed Fee in relation to each Reporting Period that falls between the ERMA Start Date and the Early ERMA Termination Date, calculated in accordance with Schedule 6.1A (Franchise Payments) of the terms of the Franchise Agreement that prevailed during the term of the ERMA.
- 3.2** The Franchise Operator shall not be entitled to payment of any Performance Based Fee in relation to each Reporting Period that falls between the ERMA Start Date and the Early ERMA Termination Date.

4 Franchise Plan

- 4.1** In this paragraph 4, the following words and expressions have the following meanings:
- 4.1.1** "Actual Expenditure Amount" or "AEA" means, in relation to the Relevant Commitment, the total Costs and Capital Expenditure that were funded by the Secretary of State and which relate to costs that the Franchise Operator incurred in delivering the Relevant Commitment during the EMA-ERMA Period. For the purpose of this definition, the actual costs incurred shall be determined subject to paragraph 4.2.
- 4.1.2** "EMA-ERMA Period" means the period on and from 1 March 2020 to the Early ERMA Termination Date (inclusive).
- 4.1.3** "Relevant Commitment" means the Franchise Operator's obligation under paragraph 10 of Schedule 13 (Franchise Plan) to the Franchise Agreement to incur a specified amount of expenditure (the Agreed Investment Sum) for projects that are to achieve one or more of the outputs that are stated in that paragraph (or otherwise approved by the Secretary of State);
- 4.1.4** "Forecast Expenditure Amount" or "FEA" means [REDACTED¹⁴].

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

- 4.2** For the purposes of this paragraph 4 (and the definition of any expression used in this paragraph 4):
- 4.2.1** any costs incurred by the Franchise Operator in relation to delivering the Relevant Commitment which were Disallowable Costs or Unreimbursed Disallowable Costs shall be disregarded;
- 4.2.2** any costs incurred by the Franchise Operator in relation to delivering the Relevant Commitment:
- (i) in respect of the period prior to 1 March 2020, which were incurred otherwise than in accordance with its obligations under the Franchise Agreement (as in effect at the time the relevant costs were incurred);
 - (ii) in respect of the period on and from 1 March 2020 to the ERMA Start Date, which were incurred otherwise than in accordance with acting as a Good and Efficient Operator (as defined under the EMA);
 - (iii) in respect of the period on and from the ERMA Start Date until the Early ERMA Termination Date, which were incurred otherwise than in accordance with acting as a Good and Efficient Operator, and
 - (iv) on and from the Early ERMA Termination Date, which were incurred otherwise than in accordance with its obligations under the Franchise Agreement (as in effect at the time the relevant costs were incurred),
- shall be disregarded,
- 4.2.3** the Franchise Operator shall use all reasonable endeavours to cooperate with the Secretary of State to agree the matters described in this paragraph 4 and shall respond to any requests for information, calculations or comments as the Secretary of State may reasonably make in connection with such matters;
- 4.2.4** where the Parties are required to “use all reasonable endeavours to agree” a particular matter, they shall use all reasonable endeavours to agree that matter, provided that, if Parties fail to reach an agreement within the specified time period (or in the absence of a specified time period, a period of time which the Secretary of State considers reasonable), the Secretary of State shall have the right to reasonably determine the matter.
- 4.3** Neither Party shall have the right to receive nor the obligation to pay (or otherwise compensate) the other Party in respect of the same amount more than once.
- 4.4** No later than 28 February 2021 (or such later date as the Secretary of State may notify the Franchise Operator), the Franchise Operator shall deliver to the Secretary of State any information that the Secretary of State may reasonably request in connection with the Relevant Commitment.
- 4.5** The Secretary of State may exercise its rights under paragraph 9.9 of Schedule 6.1C (Management Information) of the Franchise Agreement to audit or otherwise investigate any of the matters described in paragraph 4.4.
- 4.6** The Parties shall use all reasonable endeavours to agree the Actual Expenditure Amount, having due regard to information available to them, including the statements provided by the

Franchise Operator pursuant to paragraph 4.4, and where applicable, the findings of any audit(s) conducted pursuant to paragraph 9.9 of Schedule 6.1C (Management information) to the Franchise Agreement.

- 4.7** The Parties acknowledge and agree that where the Actual Expenditure Amount is:
- 4.7.1** less than the Forecast Expenditure Amount, the Secretary of State shall be liable in respect of the difference to the Franchise Operator and the Secretary of State may discharge such liability (in the Secretary of State's sole discretion) by way of:
- (i) an adjustment to the Franchise Payments in the Franchise Operator's favour;
 - (ii) set-off against any amounts owed by the Franchise Operator to the Secretary of State; and/or
 - (iii) implementing an equivalent reduction in the value of the expenditure commitment in the Relevant Commitment (provided that the resulting value of the expenditure commitment shall not be lower than the amount the Franchise Operator has already spent, or cannot reasonably avoid spending, in respect of that expenditure commitment).
- 4.7.2** greater than the Forecast Expenditure Amount, the Franchise Operator shall be liable for the difference to the Secretary of State and shall, on the direction of the Secretary of State:
- (i) pay the relevant amount to the Secretary of State on the next Payment Date falling no fewer than seven days after receipt of a written notice from the Secretary of State;
 - (ii) apply such amounts towards such other additional scheme or schemes as the Secretary of State may nominate in the Secretary of State's sole discretion; or
 - (iii) apply such amounts in such manner as the Secretary of State may direct, in the Secretary of State's sole discretion.
- 4.8** If the Parties agree or the Secretary of State reasonably determines that the result of applying the calculation set out in paragraph 4.7 gives rise to an outcome which is inconsistent with the principles set out in paragraph 4.3 above, the Parties shall use all reasonable endeavours to agree an alternative approach to the calculation.

5 Adjustments

- 5.1** From the Early ERMA Termination Date, unless otherwise instructed by the Secretary of State, the provisions of the Annual Benefit Share mechanism in Part 4 of Schedule 6 (Franchise Payments) to the Franchise Agreement that prevailed immediately before the Parties entered into the EMA shall apply with such adjustments as the Parties, acting reasonably and in good faith, shall agree.
- 5.2** In the event the Parties are unable to agree on the approach to the adjustments required by the date that is twenty (20) Weekdays after the Early ERMA Termination Date (or such other date as the Parties may agree), the Secretary of State shall have the right to reasonably determine the matter.

- 5.3** The factors to be considered in agreeing (or determining) the adjustments shall be only:
- 5.3.1** the fact that the Early ERMA Termination Date does not fall at the start of a Franchise Operator Year; and
 - 5.3.2** the adjustments that are reasonably necessary to disregard the term of the EMA and the term of the ERMA from the Annual Benefit Share mechanism.
- 5.4** The Secretary of State may, at the Secretary of State's sole discretion, direct any further adjustments to any of the calculations or components set out in Schedule 6 (*Franchise Payments*) as is reasonably necessary to disregard the term of the EMA and the term of the ERMA from any such calculations or components.