

Dated 8 June 2009

- (1) The Secretary of State for Transport
- (2) Southern Railway Limited

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**SOUTH CENTRAL Franchise Agreement**  
incorporating by reference the National Rail Franchise Terms

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Third Edition

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**THIS AGREEMENT** is dated 8 June 2009

**BETWEEN**

- (1) **THE SECRETARY OF STATE FOR TRANSPORT**, whose principal address is at 76 Marsham Street, London SW1P 4DR (the **Secretary of State**); and
- (2) **SOUTHERN RAILWAY LIMITED**, whose registered office is at 3rd Floor, 41-51 Grey Street, Newcastle upon Tyne NE1 6EE (the **Franchisee**).

**WHEREAS**

- (A) The Secretary of State wishes to appoint a franchisee to provide railway passenger services within the Franchise and expects his franchisee, on the terms of this Agreement, actively to seek, in all reasonable business ways, greatly improved performance over the Franchise Term from its employees, its Train Fleet and other assets, and from Network Rail and its other suppliers, so as to deliver to the passenger the best railway passenger service that can be obtained from the resources that are available to it.
- (B) The Franchisee wishes to be appointed as the Secretary of State's franchisee for the Franchise and intends, on the terms of this Agreement, actively to seek, in all reasonable business ways, greatly improved performance over the Franchise Term from its employees, its Train Fleet and other assets, and from Network Rail and its other suppliers, so as to deliver to the passenger the best railway passenger service that can be obtained from the resources that are available to it.
- (C) This Agreement has been entered into pursuant to and incorporates by reference the Terms. This Agreement specifies the matters which the Terms require to be addressed in a franchise agreement and which are to be agreed between the parties or prescribed by the Secretary of State, together with any other provisions that the parties have agreed should amend or supplement the Terms.
- (D) The following provisions of this Agreement are intended to reflect and give effect to the matters referred to in Recitals (A) to (C) inclusive.

## 1. INTERPRETATION AND DEFINITIONS

1.1 In this Agreement:

**Conditions Precedent Agreement** means the agreement between the Secretary of State and the Franchisee of even date herewith specifying certain conditions to be satisfied prior to issue of a Certificate of Commencement.

**Terms** means the National Rail Franchise Terms (Fourth Edition) attached to this Agreement.

1.2 The Terms are hereby incorporated by reference in this Agreement.

1.3 This Agreement, the Conditions Precedent Agreement and the Terms together constitute a single agreement, which is a “franchise agreement” for the purposes of the Act.

1.4 This Agreement shall be interpreted in accordance with the Terms, for which purpose terms defined therein shall have the same meanings where used in this Agreement, unless this Agreement expressly provides to the contrary.

1.5 If there is any conflict between the terms of this Agreement and the Terms, the terms of this Agreement shall prevail.

## 2. COMMENCEMENT

2.1 The provisions of the Terms listed in clauses 2.1(a) to 2.1(n) (inclusive) together with such provisions of this Agreement as may be required to give effect to the same, shall take effect and be binding upon each of the Secretary of State and the Franchisee immediately upon signature of this Agreement:

- (a) paragraph 5.3 of Schedule 1.4 (Passenger Facing Obligations);
- (b) paragraph 2 of Schedule 2.2 (Security of Access Agreements, Rolling Stock Leases, Station and Depot Leases);
- (c) paragraph 2 of Schedule 2.3 (Third Party Delivery of Passenger Services and Other Franchisees);
- (d) Schedule 3 (Priced Options);

- (e) Schedule 5.1 (Purpose, Structure and Construction);
- (f) Schedule 5.3 (Allocation of Fares to Fares Baskets);
- (g) Schedule 5.7 (Changes to Fares and Fares Regulation);
- (h) Schedule 9 (Changes);
- (i) Schedule 10 (Remedies, Termination and Expiry);
- (j) paragraphs 1 to 3 (inclusive) of Schedule 11 (Agreement Management Provisions);
- (k) paragraph 4 of Schedule 12 (Financial Obligations and Covenants);
- (l) paragraphs 1, 2, 5, 6, 7 and 8 of Schedule 13 (Information and Industry Initiatives);
- (m) Schedule 14.3 (Key Contracts);
- (n) Schedule 17 (Confidentiality);and
- (o) Schedule 19 (Other Provisions).

2.2 The other provisions of this Agreement and of the Terms shall take effect and become binding upon the parties on the Start Date, as stated in the Certificate of Commencement issued pursuant to the Conditions Precedent Agreement.

### **3. TERM**

This Agreement shall terminate on the Expiry Date or on the date of any earlier termination pursuant to clause 2.2(a) of the Conditions Precedent Agreement or pursuant to Schedule 10 (Remedies, Termination and Expiry) of the Terms.

### **4. GENERAL OBLIGATIONS**

4.1 The Franchisee shall perform its obligations under this Agreement in accordance with its terms and with that degree of skill, diligence, prudence and foresight which would be exercised by a skilled and experienced Train Operator of the Franchise.

- 4.2 Any obligation on the part of the Franchisee to use all reasonable endeavours shall extend to consequent obligations adequately to plan and resource its activities, and to implement those plans and resources, with all due efficiency and economy.
- 4.3 The Franchisee shall co-operate with the Secretary of State and act reasonably and in good faith in and about the performance of its obligations and the exercise of its rights pursuant to this Agreement.
- 4.4 The Secretary of State shall act reasonably and in good faith in and about the performance of his obligations and the exercise of his rights pursuant to this Agreement.
- 4.5 The Franchisee and the Secretary of State shall agree a conformed copy of the Terms, incorporating those changes to the Terms set out in this Agreement, by no later than one month after the date of this Agreement or such later date as the Secretary of State and the Franchisee may agree. In the case of any dispute or inconsistency between such conformed copy and this Agreement, this Agreement shall prevail.

## **5. SPECIFIC OBLIGATIONS**

The following provisions shall apply for the purpose of implementing the Terms.

### **Clause 3 (Definitions)**

- 5.1 The following words and expressions contained in clause 3.1 of the Terms shall be interpreted in accordance with the following:
- (a) the prescribed month for the purpose of the definition of Bond Year is March;
  - (b) the prescribed stations for the purpose of the definition of Commuter Fare are:
    - (i) London Stations; and
    - (ii) Suburban Stations;
  - (c) the Commuter Fares Document in the agreed terms is attached to this Agreement marked CFD;

- (d) the schemes for the purpose of the definition of Discount Fare Scheme are:
  - (i) ATOC Disabled Persons Railcard Scheme dated 23 July 1995 between the participants named therein;
  - (ii) ATOC Young Persons Railcard Scheme dated 23 July 1995 between the participants named therein; and
  - (iii) ATOC Senior Railcard Scheme dated 23 July 1995 between the participants named therein;
- (e) the prescribed period for the purpose of the definition of Evening Peak is the period between 1600 and 1859 (inclusive) during a Weekday or such other continuous three hour period between 1200 and 2359 (inclusive) as the Secretary of State may specify from time to time;
- (f) [Not Used];
- (g) the Financial Model in the agreed terms is attached to this Agreement marked "FM";
- (h) for the purposes of the definition of Franchise:
  - (i) the prescribed date is 3 November 2008; and
  - (ii) the prescribed places are London Bridge, London Victoria, London Charing Cross, Brighton, Hove, Horsham, Southampton, Gatwick Airport, Uckfield, East Grinstead, Tonbridge, Redhill, East and West Croydon, Sutton, Ashford amongst others and as may be varied from time to time in accordance with the Franchise Agreement;
- (i) the date for the purposes of the definition of Franchise Letting Process Agreement is 27 June 2008;
- (j) each Franchisee Year shall, subject to the terms of that definition, begin on 1 April and end on 31 March;
- (k) the Initial Business Plan in the agreed terms is attached to this Agreement marked IBP;



- (l) the time and date for the purpose of the definition of Initial Expiry Date is 0159 on 19th July 2014;
- (m) the schemes for the purpose of the definition of Inter-Operator Scheme are:
  - (i) ATOC Staff Travel Scheme dated 23 July 1995 between the participants named therein;
  - (ii) Ticketing and Settlement Agreement;
  - (iii) ATOC LRT Scheme dated 23 July 1995 between the participants named therein;
  - (iv) Travelcard Agreement dated 15 October 1995 between London Regional Transport and the parties named therein;
  - (v) Through Ticketing (Non-Travelcard) Agreement dated 15 October 1995 between London Regional Transport and the parties named therein; and
  - (vi) National Rail Enquiry Scheme dated 11 June 1996 between the participants named therein;
  - “(viii) the PAYG Scheme date 16 October 2009 between the participants listed therein”.**
- (n)<sup>1</sup> the prescribed stations for the purpose of the definition of Managed Station are London Victoria, London Bridge, London Charing Cross;**
- (o) the prescribed amount for the purpose of the definition of Minor Works’ Budget is £300,000 for each Franchisee Year;
- (p) the prescribed period for the purpose of the definition of Morning Peak is the period between 0700 and 0959 (inclusive) during a Weekday or such other continuous morning three hour period as the Secretary of State may specify from time to time;

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<sup>1</sup> Date of Change 30/01/2012

- (q) the Operational Models in the agreed terms are attached to this Agreement marked OM;
- (r) Parent means:
  - (i) in the context of Schedule 10.3 (Events of Default and Termination) of the Terms any of:
    - (a) Govia Limited registered in England under number 3278419 and whose registered office is at 3rd Floor, 41-51 Grey Street, Newcastle upon Tyne NE1 6EE (“**Govia**”);
    - (b) Go-Ahead Group Plc registered in England under number 02100855 and whose registered address is at 3rd Floor, 41-51 Grey Street, Newcastle upon Tyne NE1 6EE; or
    - (c) Keolis S.A. (registered in France under number 552 111 809) whose registered address is at 9 rue Caumartin, 75009, Paris France;
    - (d) Keolis (UK) Limited registered in England under number 03292357 and whose registered address is at Northumberland House, 303-306 High Holborn London WC1V 7JZ; and
  - (ii) in all other contexts Govia;
- (s) the Passenger’s Charter in the agreed terms is attached to this Agreement marked PC;
- (t) the Power of Attorney in the agreed terms is attached to this Agreement marked POA;
- (u) the Protected Fares Document in the agreed terms is attached to this Agreement marked PFD;

- (v) for the purpose of the definition of Qualifying Change, the prevailing discount rate is 3.5 per cent. per annum (in real terms) at the date of this Agreement;
- (w) the Record of Assumptions in the agreed terms is attached to this Agreement marked ROA;
- (x) the Reporting Accountants are the Department for Transport;
- (y) the date for the purpose of paragraph (a) of the definition of Review Date is 3 August 2009;
- (z) the agreed assumptions for the purpose of the definition of Secretary of State Risk Assumptions are set out in Appendix 1 (Secretary of State Risk Assumptions);
- (aa) the Service Level Commitments in the agreed terms are attached to this Agreement each respectively marked SLC1, SLC2A1, SLC2A2, SLC2B, SLC3A and SLC3B;
- (aa) the Service Quality Audit Programme in the agreed terms is attached to this Agreement marked SQAP;
- (ab) the Service Quality Management System in the agreed terms is attached to this Agreement marked SQMS;
- (ac) the Service Quality Standards in the agreed terms are attached to this Agreement marked SQS;
- (ad) the time and date for the purpose of paragraph (a) of the definition of Start Date is 0200 on 20 September 2009;
- (ae) the agreed amounts of "TR" for the purpose of the definition of Target Revenue are set out in Appendix 2 (Target Revenue (expressed in real terms));
- (af) for the purposes of the formula set out in the definition of Threshold Amount:
  - (i) the prescribed threshold amount for any Franchisee Year, referred to by the acronym "FAT" is 0.1% of the amounts specified in column 2 of the following table:

FRANCHISEE YEAR	TURNOVER (£) <sup>2</sup>
Year 1	
Year 2	
Year 3	
Year 4	
Year 5	
Year 6	
Year 6 (up to Initial Expiry Date)	
Year 7	
Year 7 (up to first Expiry Date which is 25 July 2015)	
Year 8	
Year 9	

- (ii) the prescribed month for the purpose of the definition of “CRPI” is January and
- (iii) the prescribed base month and year for the purpose of the definition of “ORPI” are January 2009;
- (ag) the Train Plan in the agreed terms is attached to this Agreement marked TP;
- (ah) the Seasonally Adjusted Target Revenue Table in the agreed terms is attached to this Agreement marked SATRT; and

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<sup>2</sup> Where text has been omitted from the document this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

- (ai) the prescribed date for the purpose of paragraph (b) of the definition of Pre Force Majeure Event Period and the definition of Year 0 is 1 April 2009.

## Changes to the Terms

5.2 The Terms shall be amended by:

- (a) [Not Used];
- (b) [Not Used];
- (c) the insertion in clause 3.1 thereof of the following definitions:

***(i)<sup>3 4</sup> “Accepted” or “Acceptance” shall have the meaning given to such term in the Electrostar Lot 10A MSA, the Electrostar Lot 10B MSA or the HLOS MSA (as the case may be)”***

***“Acceptance Milestone Payment”<sup>5</sup>***

***“Accrued Liabilities”<sup>6</sup>***

***means the liabilities of the Franchisee under the HLOS Phase 2 MSA, the HLOS Phase 2 Operating Lease, the HLOS Phase 2 Spares Supply Agreement and each HLOS Phase 2 MSA Associated Document (as applicable) in respect of:***

- (a) any breaches or defaults of the Franchisee's obligations under the HLOS Phase 2 MSA, the HLOS Phase 2 Operating Lease, the HLOS***

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<sup>3</sup> Date of Change 20/09/2009

<sup>4</sup> Date of change 26/01/2012

<sup>5</sup> **Where text has been omitted from the document this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.**

<sup>6</sup> Date of new insertion 30/07/2013

**Phase 2 Spares Supply Agreement and each HLOS Phase 2 MSA Associated Document that occurred prior to the Novation Date;**

**(b) any misrepresentation on the part of the Franchisee under the HLOS Phase 2 MSA, the HLOS Phase 2 Operating Lease, the HLOS Phase 2 Spares Supply Agreement and each HLOS Phase 2 MSA Associated Document;**

**(c) any liability under any indemnity or to repay any money incurred under the HLOS Phase 2 MSA, the HLOS Phase 2 Operating Lease, the HLOS Phase 2 Spares Supply Agreement and each HLOS Phase 2 MSA Associated Document prior to the Novation Date; and**

**(d) any amounts that have become due and payable from the Franchisee to the Manufacturer or have been invoiced by the Manufacturer prior to the Novation Date under the HLOS Phase 2 MSA, the HLOS Phase 2 Operating Lease, the HLOS Phase 2 Spares Supply Agreement and**

**each HLOS Phase 2 MSA  
Associated Document;**

**(ii)<sup>7</sup>**

**(iii)<sup>8</sup>**

**(iv)<sup>9</sup>**

**(v)<sup>10</sup>**

(vi) **"Agreed Capacity Requirements"** means the passenger carrying capacity requirements agreed by the Secretary of State and the Franchisee and set out in Appendix 16 of the Franchise Agreement (Capacity Metrics and Timings);

**"Agreed Stabling and  
Maintenance One-Off  
Costs<sup>11</sup>"**

**has the meaning given to it in paragraph  
28.2 of Part 1 of Appendix 11 (List Of  
Committed Obligations And Related  
Provisions);**

**"Amended HLOS MSA<sup>12</sup>"**

**means the HLOS MSA, as amended,  
supplemented and varied by the HLOS  
Option Notice, the HLOS Option Variation  
Order and from time to time;**

**"Amended HLOS Phase 2  
Core Order Units Delivery**

**means the Original HLOS Phase 2 Core  
Order Units Delivery Schedule as**

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<sup>7</sup> Where text has been omitted from the document this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

<sup>8</sup> Where text has been omitted from the document this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

<sup>9</sup> Where text has been omitted from the document this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

<sup>10</sup> Where text has been omitted from the document this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

<sup>11</sup> Date of new insertion 20/12/2012

<sup>12</sup> Date of new insertion 20/12/2012

**Schedule**<sup>13</sup>

**amended from time to time in accordance with clause 34.11.6 of the HLOS Phase 2 MSA to take account of the effect of any Permitted Delay (as that term is defined in the HLOS Phase 2 MSA) other than any Permitted Delay which is directly attributable to an act, error or omission on the part of the Franchisee.**

**“Assumed Obligations”**<sup>14</sup>

**means all of the obligations and liabilities of the Franchisee under the HLOS Phase 2 MSA, the HLOS Phase 2 Operating Lease, the HLOS Phase 2 Spares Supply Agreement and each HLOS Phase 2 MSA Associated Document (as applicable) other than:**

**(a) the Accrued Liabilities; and**

**(b) any obligation which has been fully performed and discharged on or before the Novation Date;**

**“Basic Implementation Agreement”**<sup>15</sup>

**means Network Rail’s template basic implementation agreement for works as required by and in accordance with the ORR’s “Investment Framework Consolidated Policy & Guidelines” of October 2010 as amended and updated from time to time;**

**“Cascaded Rolling Stock”**<sup>16</sup>

**has the meaning given to it in paragraph 29.1(a) of Part 1 of Appendix 11 (List of**

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<sup>13</sup> Date of new insertion 30/07/2013

<sup>14</sup> Date of new insertion 30/07/2013

<sup>15</sup> Date of new insertion 20/12/2012

<sup>16</sup> Date of new insertion 20/12/2012



***Committed Obligations and Related Provisions);***

***“Certificate of Verification Milestone Payment”<sup>17</sup>*** ***has the meaning given to such term in paragraph 18.7 of Appendix 13 (South Central Specific Provisions) of the Franchise Agreement;***

***“Contract Price”<sup>18</sup>*** ***has the meaning given to such term under the HLOS MSA;***

***(vii) “Disputed Responsibilities” shall have the meaning given to the term in paragraph 16.4(c)(i) of Appendix 13 (South Central Specific Provisions) of the Franchise Agreement;***

***(viii)<sup>19</sup>***

**(ix) “Electrostar Franchisee Liquidated Damages” means:**

(a) in respect of a unit comprised in the Electrostar Lot 10A Units that portion of the Delay LDs payable by the Manufacturer which is set out as being payable to the Franchisee in any Delay LD Notice issued to the Manufacturer by the Franchisee and/or the Financier for payment pursuant to clause 34.16.5 of the Electrostar Lot 10A MSA and, for the purposes of this definition, the expressions “**Delay LDs**”, “**Delay LD Notice**”, “**Financier**” and “**Manufacturer**” will all be defined so as to have the meanings attributed to them in the Electrostar Lot 10A MSA; and

(b) in respect of a unit comprised in the Electrostar Lot 10B Units that portion of the Delay LDs payable by the Manufacturer which is set out as being payable to the Franchisee in any Delay LD Notice issued to the Manufacturer by the Franchisee and/or the Financier for payment pursuant to clause 34.16.5 of the Electrostar Lot 10B MSA and, for the purposes of this definition, the expressions “**Delay LDs**”, “**Delay LD Notice**”, “**Financier**” and “**Manufacturer**”

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<sup>17</sup> Date of new insertion 26/01/2012

<sup>18</sup> Date of new insertion 26/01/2012

<sup>19</sup> **Where text has been omitted from the document this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.**

will all be defined so as to have the meanings attributed to them in the Electrostar Lot 10B MSA;

(x) **“Electrostar Lot 10A MSA”** means the manufacture and supply agreement dated 8 March 2002 and entered between the Manufacturer, Porterbrook Leasing Company Limited and New Southern Railway Limited as amended from time to time including by the Electrostar Supplemental Agreement No.4 dated 2 May 2007;

(xi) <sup>20</sup>

(xii) **“Electrostar Lot 10A Sub Lease”** means the sub lease entered into between New Southern Railway Limited and the FCC Franchisee in respect of the Electrostar Lot 10A Units being the document in agreed terms marked **“377A Sub Lease”**;

(xiii) <sup>21</sup>***“Electrostar Lot 10B FCC Lease” means the lease to be entered into between the Franchisee and the FCC Franchisee pursuant to paragraph 15.2(a) of Appendix 13 (South Central Specific Provisions) of the Franchise Agreement;***

(xiv)<sup>22</sup>

(xv) **“Electrostar Lot 10B MSA”** means the manufacture and supply agreement dated 5 March 2008 and entered between the Manufacturer and New Southern Railway Limited as amended from time to time;

(xvi) <sup>23</sup>

(xvii) <sup>24</sup>

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<sup>20</sup> Where text has been omitted from the document this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

<sup>21</sup> Date of Change 20/09/2009

<sup>22</sup> Where text has been omitted from the document this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

<sup>23</sup> Where text has been omitted from the document this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

<sup>24</sup> Where text has been omitted from the document this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

**(xviii)**<sup>25</sup>

**(xix)**<sup>26</sup>

**(xx)**<sup>27</sup>

**(xxi)**<sup>28</sup>

**(xxii)** “**Electrostar Lot 10A Units**” means the 12 dual voltage electric multiple units as more particularly described in the Electrostar Lot 10A MSA as amended from time to time including by the Electrostar Supplemental Agreement No.4 dated 2 May 2007;

**(xxiii)** “**Electrostar Lot 10B Units**” means the 11 dual voltage electric multiple units as more particularly described in the Electrostar Lot 10B MSA;

**“Existing Franchise Agreement”**<sup>2930</sup> **means the Franchise Agreement in force prior to its amendment pursuant to the HLOS Phase 2 Deed of Amendment;**

**(xxiv)** “**FCC Franchisee**” means the franchisee under the franchise agreement dated 12 December 2005 (as amended from time to time) and made between the Secretary of State and First Capital Connect Limited (Company Number 5281077) and where there are references to the successor operator to the FCC Franchisee that reference shall include any successor operator directly or indirectly of all or any part of the franchise services operated by the FCC Franchisee;

**(xxv)**<sup>31</sup> “**Financier**” **is as defined in the Electrostar Lot 10B MSA;**

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<sup>25</sup> Where text has been omitted from the document this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

<sup>26</sup> Where text has been omitted from the document this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

<sup>27</sup> Where text has been omitted from the document this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

<sup>28</sup> Where text has been omitted from the document this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

<sup>29</sup> Date of new insertion 26/01/2012

<sup>30</sup> Date of change 30/07/2013

**“Final Instalment Payment”<sup>32</sup>**

**means any instalment of the HLOS Phase 2 Subsequent Payment that is due under the HLOS Phase 2 MSA upon Acceptance or Final Acceptance (as defined in the HLOS Phase 2 MSA) or the HLOS Phase 2 Spares Supply Agreement, provided that at the time such instalment is due the aggregate amount of the HLOS Phase 2 Subsequent Payments paid by the Franchisee and not yet reimbursed in full pursuant to paragraph 35.2(a)(i), (ii) or (iii) of Appendix 13 (South Central Specific Provisions) is greater than or equal to £<sup>33</sup>;**

**“GRIP Level 5”<sup>34</sup>**

**means the standard for ‘stage 5’ under Network Rail’s Governance for Railway Infrastructure Projects;**

**(xxvi)<sup>35</sup> “GSM-R Radio Equipment” means a digital radio system based on the GSM-R radio communication standard adapted for use on the European railways and which as a minimum meets all the mandatory requirements for an operational radio within the Control, Command and Signalling TSI (including Notified National Technical Rules) and which is to be used as a train radio (either fixed or transportable) within the meaning set out in the Railway Group Standard GE/RT 8080 Train Radio Systems for Voice and Related Messaging Communications issue 1, December 2003 (as amended from time to time);**

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<sup>31</sup> Date of Change 20/09/2009

<sup>32</sup> Date of new insertion 30/07/2013

<sup>33</sup> **Where text has been omitted from the document this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.**

<sup>34</sup> Date of new insertion 20/12/2012

<sup>35</sup> Date of Change 29/07/2010

**(xxvii) “Greater London Stations”** means each of the stations within the City of London, City of Westminster, Royal Borough of Kensington and Chelsea, Royal Borough of Kingston upon Thames, and the following London boroughs:

(1) Barking and Dagenham, (2) Barnet, (3) Bexley, (4) Brent, (5) Bromley, (6) Camden, (7) Croydon, (8) Ealing, (9) Enfield, (10) Greenwich, (11) Hackney, (12) Hammersmith & Fulham, (13) Haringey, (14) Harrow, (15) Havering, (16) Hillingdon, (17) Hounslow, (18) Islington, (19) Lambeth, (20) Lewisham, (21) Merton, (22) Newham, (23) Redbridge, (24) Richmond, (25) Southwark, (26) Sutton, (27) Tower Hamlets, (28) Waltham Forest and (29) Wandsworth;

**(xxviii) “GSM-R”** means the radio communication system known as the Global Standard for Mobile Communications- Railway;

**(xxix) “Hand Back Schedule”** means the document set out in Annex 2 of Appendix 13 (South Central Specific Provisions) of the Franchise Agreement which specifies the dates for the redelivery of each of the Hand Back Units;

**(xxx) “Hand Back Units”** means each of the Electrostar Lot 10A Units, the Electrostar Lot 10B Units and the 3 x 4 car dual voltage Class 377 units leased by the Franchisee to the FCC Franchisee under the terms of the Operating Hire Agreement;

***“HLOS Deed of Amendment”***<sup>36</sup>

***means the Deed of Amendment dated 23 December 2011 entitled “Deed of Amendment relating to the Southern Franchise Agreement – HLOS” made between the Secretary of State and the Franchisee;***

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<sup>36</sup> Date of new insertion 26/01/2012

**“HLOS Financier”<sup>37</sup>**

**has the meaning given to such term in paragraph 21.1 of Appendix 13 (South Central Specific Provisions) of the Franchise Agreement;**

**"HLOS Financing"<sup>38</sup>**

**the entry on 20 December 2012 of the Financier Novation Agreement (as defined in the Amended HLOS MSA) between the Manufacturer, the Franchisee and Porterbrook to transfer the rights and obligations of the financier under the Amended HLOS MSA, the entry on 20 December 2012 of the HLOS Operating Lease in respect of the HLOS Units, the entry on 20 December 2012 of the HLOS Option Operating Lease in respect of the HLOS Option Units and related arrangements;**

**“ HLOS Franchise Payment Adjustment”<sup>39</sup>**

**means, the amount of any adjustment to a Franchise Payment determined in accordance with paragraphs 18.2, 18.3A, 20.3 and 23 of Appendix 13 (South Central Specific Provisions);**

**“HLOS Initial Payment”<sup>40</sup>**

**means an amount equal to £<sup>41</sup> being the initial payment to be made by the Franchisee to the Manufacturer in relation to the HLOS Units under the HLOS MSA;**

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<sup>37</sup> Date of new insertion 26/01/2012

<sup>38</sup> Date of new insertion 20/12/2012

<sup>39</sup> Date of new insertion 26/01/2012

<sup>40</sup> Date of new insertion 26/01/2012

<sup>41</sup> **Where text has been omitted from the document this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.**

***“HLOS Liquidated Damages”<sup>42</sup>***

***means in respect of a vehicle comprised in the HLOS Units the Delay LDs payable by the Manufacturer to the Franchisee under the HLOS MSA in circumstances where any HLOS Unit fails to reach Acceptance on or before its Contractual Acceptance Date except that where the Franchisee is no longer the Financier under the HLOS MSA “HLOS Liquidated Damages” shall mean that portion of the Delay LDs payable to Southern by the Manufacturer under the HLOS MSA. For the purposes of this definition “Delay LDs”; “Acceptance”; “Contractual Acceptance Date”; “Financier” and “Southern” shall all be defined so as to have the meanings attributed to them in the HLOS MSA;***

***“HLOS MSA”<sup>43</sup>***

***means the manufacture and supply agreement entered into on or about the date of the HLOS Deed of Amendment between the Franchisee and the Manufacturer;***

***“HLOS Operating Lease”<sup>44</sup>***

***has the meaning given to such term in paragraph 21.1(b) of Appendix 13 (South Central Specific Provisions) of the Franchise Agreement;***

***“HLOS Option”<sup>45</sup>***

***means the option to make a subsequent order for up to 40 vehicles pursuant to clause 6.3.1 of the HLOS MSA;***

***“HLOS Option and***

***means the Deed of Amendment dated 20***

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<sup>42</sup> Date of new insertion 26/01/2012

<sup>43</sup> Date of new insertion 26/01/2012

<sup>44</sup> Date of new insertion 26/01/2012

<sup>45</sup> Date of new insertion 20/12/2012

**Financing Deed of Amendment"<sup>46</sup>**

**December 2012 entitled "Deed of Amendment relating to the Southern Franchise Agreement facilitating the exercise of the HLOS Option for 40 Additional Vehicles and the financing of the Amended HLOS MSA" made between the Secretary of State and the Franchisee;**

**"HLOS Option Franchise Payment Adjustment"<sup>47</sup>**

**means the amount of any adjustment to a Franchise Payment determined in accordance with paragraphs 28.1, 29 and 31 of Appendix 13 (South Central Specific Provisions);**

**"HLOS Option Franchisee Incremental Costs"<sup>48</sup>**

**means those incremental costs reasonably and properly incurred by the Franchisee in exercising the HLOS Option and carrying out all related activities as contemplated by the HLOS Option and Financing Deed of Amendment and the HLOS Option Letter (being only those costs which would not be incurred but for the exercise of the HLOS Option and the provision of a solution in respect of the Cascaded Rolling Stock), which shall include, without limitation:**

**(a) any rental, maintenance reserve or other costs incurred by the Franchisee in relation to the leasing of the HLOS Option Units and the HLOS Option Spares and Special Tools;**

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<sup>46</sup> Date of new insertion 20/12/2012

<sup>47</sup> Date of new insertion 20/12/2012

<sup>48</sup> Date of new insertion 20/12/2012



- (b) maintenance of the HLOS Option Units and related equipment;**
  - (c) insurance of the HLOS Option Units and related equipment;**
  - (d) spares and special tools;**
  - (e) stabling;**
  - (f) damage to the HLOS Option Units;**
  - (g) the cost of any variations approved by the Secretary of State;**
  - (h) the costs of implementation and operation of any rolling stock cascade solution developed pursuant to paragraph 29 of Part 1 of Appendix 11 (List of Committed Obligations and Related Provisions); and**
  - (i) operating the HLOS Option Units;**
- but for the avoidance of doubt HLOS Option Franchisee Incremental Costs shall not include any Option One-Off Costs or Stabling and Maintenance One-Off Costs (for which separate provision is made in paragraph 31 of Appendix 13 (South Central Specific Provisions));**

**"HLOS Option Letter"<sup>49</sup>**

**means the letter dated 14 November 2012 and made between the Parties, in which it was agreed that the Parties would work towards the exercise by the Franchisee of the HLOS Option, under which it would exercise the HLOS Option to make an additional order for all 8**

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<sup>49</sup> Date of new insertion 20/12/2012

<b>"HLOS Option Liquidated Damages"<sup>50</sup></b>	<b>HLOS Option Units;</b>  <b>means in respect of an HLOS Option Unit the portion of the Delay LDs payable by the Manufacturer to the Financier under the Amended HLOS MSA in circumstances where any HLOS Option Unit fails to reach Acceptance on or before its Contractual Acceptance Date that is passed on to the Franchisee under the HLOS Option Operating Lease. For the purposes of this definition "Delay LDs"; "Financier"; "Acceptance"; and "Contractual Acceptance Date" shall all be defined so as to have the meanings attributed to them in the Amended HLOS MSA;</b>
<b>"HLOS Option Notice"<sup>51</sup></b>	<b>means an option notice issued on 20 December 2012 by the Franchisee pursuant to clause 6.3.1 of the HLOS MSA for the order of the HLOS Option Units that is counter-signed by the Manufacturer and Porterbrook;</b>
<b>"HLOS Option Operating Lease"<sup>52</sup></b>	<b>means an operating lease with respect to the HLOS Option Units to be entered into between the Franchisee and the HLOS Financier (the Parties recognising the possibility that the HLOS Option Operating Lease will be the same agreement as the HLOS Operating Lease);</b>
<b>"HLOS Option Recalibrated"</b>	<b>has the meaning given to it in paragraph 32.2 of Appendix 13 (South Central</b>

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<sup>50</sup> Date of new insertion 20/12/2012

<sup>51</sup> Date of new insertion 20/12/2012

<sup>52</sup> Date of new insertion 20/12/2012

<b>Benchmark Tables</b> <sup>53</sup>	<b>Specific Provisions);</b>
<b>"HLOS Option Spares and Special Tools"</b> <sup>54</sup>	<b>means the spares and special tools to be procured in relation to the HLOS Option Units after the date of entry of the HLOS Option and Financing Deed of Amendment under the Amended HLOS MSA and leased to the Franchisee under the HLOS Option Operating Lease;</b>
<b>"HLOS Option Stabling and Maintenance Feasibility Study"</b> <sup>55</sup>	<b>has the meaning given to it in paragraph 27 of Part 1 of Appendix 11 (List of Committed Obligations and Related Provisions);</b>
<b>"HLOS Option Stabling and Maintenance Feasibility Study Milestone Payment"</b> <sup>56</sup>	<b>has the meaning given to it in paragraph 27.1 of Appendix 13 (South Central Specific Provisions);</b>
<b>"HLOS Option Stabling and Maintenance Review and Proposal"</b> <sup>57</sup>	<b>has the meaning given to it in paragraph 28.7 of Part 1 of Appendix 11 (List of Committed Obligations and Related Provisions);</b>
<b>"HLOS Option Stabling and Maintenance Review and Proposal Milestone Payment"</b> <sup>58</sup>	<b>has the meaning given to it in paragraph 27.2 of Appendix 13 (South Central Specific Provisions);</b>
<b>"HLOS Option Units"</b> <sup>59</sup>	<b>means 8 x 5 car class 377/7 units to be procured by the Franchisee pursuant to clause 6.3.1 of the HLOS MSA;</b>

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<sup>53</sup> Date of new insertion 20/12/2012

<sup>54</sup> Date of new insertion 20/12/2012

<sup>55</sup> Date of new insertion 20/12/2012

<sup>56</sup> Date of new insertion 20/12/2012

<sup>57</sup> Date of new insertion 20/12/2012

<sup>58</sup> Date of new insertion 20/12/2012

<sup>59</sup> Date of new insertion 20/12/2012

<b>"HLOS Option Units Delivery Schedule"<sup>60</sup></b>	<b>means the table in Annex 5 to Appendix 13 (South Central Specific Provisions) of the Franchise Agreement which sets out the contractual acceptance dates in relation to each HLOS Option Unit;</b>
<b>"HLOS Option Variation Order"<sup>61</sup></b>	<b>means the variation order entered into on 20 December 2012 by the Franchisee, the Manufacturer and Porterbrook to give effect to the amendments to the HLOS MSA resulting from the exercise of the HLOS Option;</b>
<b>"HLOS Phase 2 Contract Price"<sup>62</sup></b>	<b>has the meaning given to the term "Contract Price" in the HLOS Phase 2 MSA;</b>
<b>"HLOS Phase 2 Core Order Units"<sup>63</sup></b>	<b>means 29 x 4 car units to be procured by the Franchisee pursuant to the HLOS Phase 2 MSA;</b>
<b>"HLOS Phase 2 Deed of Amendment"<sup>64</sup></b>	<b>means the Deed of Amendment dated 30 July 2013 entitled 'Deed of Amendment relating to the Southern Franchise Agreement dated 8 June 2009 (as subsequently amended) for the procurement of 116 vehicles' made between the Secretary of State and the Franchisee;</b>
<b>"HLOS Phase 2 Financier"<sup>65</sup></b>	<b>has the meaning given to such term in</b>

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<sup>60</sup> Date of new insertion 20/12/2012

<sup>61</sup> Date of new insertion 20/12/2012

<sup>62</sup> Date of new insertion 30/07/2013

<sup>63</sup> Date of new insertion 30/07/2013

<sup>64</sup> Date of new insertion 30/07/2013

<sup>65</sup> Date of new insertion 30/07/2013

*paragraph 37.1 of Appendix 13 (South Central Specific Provisions);*

**“HLOS Phase 2 Financing Procurement Process”<sup>66</sup>**

*has the meaning given to such term in paragraph 37.1 of Appendix 13 (South Central Specific Provisions);*

**“HLOS Phase 2 Franchise Payment Adjustment”<sup>67</sup>**

*means, the amount of any adjustment to a Franchise Payment determined in accordance with paragraphs, 33.5, 34.4, 35.1, 35.2, 35.3, 39.1 or 39.3 of Appendix 13 (South Central Specific Provisions);*

**“HLOS Phase 2 Implementation and Acceptance Plan”<sup>68</sup>**

*has the meaning given to such term in paragraph 30 of Part 1 of Appendix 11 (List of Committed Obligations and Related Provisions);*

**“HLOS Phase 2 Initial Payment”<sup>69</sup>**

*means an amount equal to £<sup>70</sup> being the initial payment to be made by the Franchisee to the Manufacturer under the HLOS Phase 2 MSA in relation to the HLOS Phase 2 Core Order Units and the HLOS Phase 2 Spares and Special Tools;*

**“HLOS Phase 2 Liquidated Damages”<sup>71</sup>**

*means in respect of a vehicle comprised in the HLOS Phase 2 Units the Delay LDs payable by the Manufacturer to the Franchisee under the HLOS Phase 2*

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<sup>66</sup> Date of new insertion 30/07/2013

<sup>67</sup> Date of new insertion 30/07/2013

<sup>68</sup> Date of new insertion 30/07/2013

<sup>69</sup> Date of new insertion 30/07/2013

<sup>70</sup> **Where text has been omitted from the document this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.**

<sup>71</sup> Date of new insertion 30/07/2013

**MSA in circumstances where any HLOS Phase 2 Unit fails to reach Acceptance on or before its Contractual Acceptance Date except that where the Franchisee is no longer the Financier under the HLOS Phase 2 MSA "HLOS Phase 2 Liquidated Damages" shall mean that portion of the Delay LDs payable to Southern by the Manufacturer under the HLOS Phase 2 MSA. For the purposes of this definition "Delay LDs"; "Acceptance"; "Contractual Acceptance Date"; "Financier" and "Southern" shall each have the meaning given to such term in the HLOS Phase 2 MSA;**

**"HLOS Phase 2 MSA"<sup>72</sup>**

**means the manufacture and supply agreement entered into on or about the date of the HLOS Phase 2 Deed of Amendment between the Franchisee and the Manufacturer;**

**"HLOS Phase 2 MSA Associated Documents"<sup>73</sup>**

**means:**

**(a) any escrow agreement entered into pursuant to clause 27 of the HLOS Phase 2 MSA which relates to the HLOS Phase 2 MSA;**

**(b) each guarantee in the form set out in Schedule 3 of the HLOS Phase 2 MSA granted**

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<sup>72</sup> Date of new insertion 30/07/2013

<sup>73</sup> Date of new insertion 30/07/2013

*by Bombardier Inc. in favour of the Franchisee (in its capacity as operator under the HLOS Phase 2 MSA and, if and for so long as the Franchisee is financier, as financier under the HLOS MSA) and any confirmation thereof by Bombardier Inc. from time to time; and*

*(c) any Certificate (as defined in the HLOS Phase 2 MSA) issued from time to time pursuant to the terms of the HLOS Phase 2 MSA;*

***“HLOS Phase 2 One Off Costs Activities”<sup>74</sup>*** *has the meaning given to such term in paragraph 39.1 of Appendix 13 (South Central Specific Provisions);*

***“HLOS Phase 2 Operating Lease”<sup>75</sup>*** *has the meaning given to such term in paragraph 37.1(b) of Appendix 13 (South Central Specific Provisions);*

***“HLOS Phase 2 Option Units”<sup>76</sup>*** *means 35 x 4 car units that may be procured in sets of 5 x 4 car units by the Franchisee exercising the option in the HLOS Phase 2 MSA;*

***“HLOS Phase 2 Purchased Equipment”<sup>77</sup>*** *means the HLOS Phase 2 Units and the*

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<sup>74</sup> Date of new insertion 30/07/2013

<sup>75</sup> Date of new insertion 30/07/2013

<sup>76</sup> Date of new insertion 30/07/2013

	<b><i>HLOS Phase 2 Spares and Special Tools;</i></b>
<b><i>“HLOS Phase 2 Spares and Special Tools”<sup>78</sup></i></b>	<b><i>means the spares and special tools to be purchased by the Franchisee pursuant to the HLOS Phase 2 MSA or the HLOS Phase 2 Spares Supply Agreement;</i></b>
<b><i>“HLOS Phase 2 Spares Supply Agreement”<sup>79</sup></i></b>	<b><i>means the spares supply agreement entered into on or about the date of the HLOS Phase 2 Deed of Amendment between the Franchisee and the Manufacturer;</i></b>
<b><i>“HLOS Phase 2 Subsequent Payment”<sup>80</sup></i></b>	<b><i>means any payment, other than the HLOS Phase 2 Initial Payment, to be made by the Franchisee to the Manufacturer under either the HLOS Phase 2 MSA in relation to the HLOS Phase 2 Contract Price or the HLOS Phase 2 Spares Supply Agreement;</i></b>
<b><i>“HLOS Phase 2 Units”<sup>81</sup></i></b>	<b><i>means the HLOS Phase 2 Core Order Units and the HLOS Phase 2 Option Units;</i></b>
<b><i>“HLOS Procurement Process”<sup>82</sup></i></b>	<b><i>has the meaning given to such term in paragraph 21.1 of Appendix 13 (South Central Specific Provisions) of the Franchise Agreement;</i></b>
<b><i>“HLOS Procurement Process Evaluation</i></b>	<b><i>has the meaning given to such term in paragraph 18.5 of Appendix 13 (South</i></b>

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<sup>77</sup> Date of new insertion 30/07/2013

<sup>78</sup> Date of new insertion 30/07/2013

<sup>79</sup> Date of new insertion 30/07/2013

<sup>80</sup> Date of new insertion 30/07/2013

<sup>81</sup> Date of new insertion 30/07/2013

<sup>82</sup> Date of new insertion 26/01/2012



<b>Milestone Payment</b> <sup>83</sup>	<b>Central Specific Provisions) of the Franchise Agreement;</b>
<b>“HLOS Procurement Process Strategy Milestone Payment”</b> <sup>84</sup>	<b>has the meaning given to such term in paragraph 18.4 of Appendix 13 (South Central Specific Provisions) of the Franchise Agreement;</b>
<b>“HLOS Purchased Equipment”</b> <sup>85</sup>	<b>means the HLOS Units and the HLOS Spares and Special Tools;</b>
<b>“HLOS Spares Supply Agreement”</b> <sup>86</sup>	<b>means the spares supply agreement entered into on or about the date of the HLOS Deed of Amendment between the Franchisee and the Manufacturer;</b>
<b>“HLOS Spares and Special Tools”</b> <sup>87</sup>	<b>means the spares and special tools to be purchased by the Franchisee pursuant to the HLOS MSA as more particularly described in Schedule 16 of the HLOS MSA;</b>
<b>“HLOS Stabling Deed of Amendment”</b> <sup>88</sup>	<b>means the deed of amendment dated [ ] 2012 entitled “Deed of Amendment relating to the Southern Franchise Agreement – HLOS Stabling” made between the Secretary of State and the Franchisee;</b>
<b>“HLOS Stabling Facilities”</b> <sup>89</sup>	<b>has the meaning given to such term in paragraph 26 of Part 1 of Appendix 11 (List of Committed Obligations) to the Franchise Agreement as inserted by the</b>

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<sup>83</sup> Date of new insertion 26/01/2012

<sup>84</sup> Date of new insertion 26/01/2012

<sup>85</sup> Date of new insertion 26/01/2012

<sup>86</sup> Date of new insertion 26/01/2012

<sup>87</sup> Date of new insertion 26/01/2012

<sup>88</sup> Date of insertion 30/11/2012

<sup>89</sup> Date of insertion 30/11/2012

<b>“HLOS Stabling Operational Introduction Milestone Payment”<sup>90</sup></b>	<b>HLOS Stabling Deed of Amendment; has the meaning given to such term in paragraph 25.3 of Appendix 13 (South Central Specific Provisions) of the Franchise Agreement as inserted by the HLOS Stabling Deed of Amendment;</b>
<b>“HLOS Stabling Placing Orders Milestone Payment”<sup>91</sup></b>	<b>has the meaning given to such term in paragraph 25.1 of Appendix 13 (South Central Specific Provisions) of the Franchise Agreement as inserted by the HLOS Stabling Deed of Amendment;</b>
<b>“HLOS Stabling Practical Completion Milestone Payment”<sup>92</sup></b>	<b>has the meaning given to such term in paragraph 25.2 of Appendix 13 (South Central Specific Provisions) of the Franchise Agreement as inserted by the HLOS Stabling Deed of Amendment;</b>
<b>“HLOS Stabling Wash-Up Milestone Payment”<sup>93</sup></b>	<b>has the meaning given to such term in paragraph 25.5 of Appendix 13 (South Central Specific Provisions) of the Franchise Agreement as inserted by the HLOS Stabling Deed of Amendment;</b>
<b>“HLOS Subsequent Payment”<sup>94</sup></b>	<b>means any payment, other than the HLOS Initial Payment, to be made by the Franchisee to the Manufacturer under the HLOS MSA in relation to the Contract Price (as such term is defined in the HLOS MSA);</b>

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<sup>90</sup> Date of insertion 30/11/2012

<sup>91</sup> Date of insertion 30/11/2012

<sup>92</sup> Date of insertion 30/11/2012

<sup>93</sup> Date of insertion 30/11/2012

<sup>94</sup> Date of new insertion 26/01/2012

**“HLOS Units”<sup>95</sup>**

**means the 26 x 5 car class 377/6 units to be procured by the Franchisee under the HLOS MSA;**

**“HLOS Units Delivery Schedule”<sup>96</sup>**

**has the meaning given to such term in paragraph 17.4 of Appendix 13 (South Central Specific Provisions) of the Franchise Agreement;**

**(xxxix)** **“ITSO Certified Smartmedia”** means the contactless smartcards, devices or other media designed to hold fare and travel information with the monetary or other value encoded which meet the requirements of paragraph 2 of Schedule 1.3 of the Terms and have been fully certified by ITSO;

**(xxxii)<sup>97</sup> “Lot 10B Sub Lease”** has the meaning given to such term in paragraph 16.2(g)(i)(5) of Appendix 13 (South Central Specific Provisions) of the Franchise Agreement;

**(xxxiii)<sup>98</sup>**

**(xxxiv) “Manufacturer”** means Bombardier Transportation UK Limited whose registered number is 02235994 and whose registered address is at Litchurch Lane Derby DE24 8AD;

**“Novation Date”<sup>99</sup>**

**means the date and time at which the deed of novation which the Franchisee is directed to enter into by the Secretary of State in accordance with paragraph 33.3(b) of Appendix 13 (South Central Specific Provisions) is to have full force**

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<sup>95</sup> Date of new insertion 26/01/2012

<sup>96</sup> Date of new insertion 26/01/2012

<sup>97</sup> Date of Change 20/09/2009

<sup>98</sup> **Where text has been omitted from the document this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.**

<sup>99</sup> Date of new insertion 30/07/2013

**and effect;**

**(xxxv)<sup>100</sup>**

**(xxxvi) “Operating Hire Agreement”** means the agreement to be entered into between the Franchisee and the FCC Franchisee pursuant to paragraph 2.1 of Appendix 13 (South Central Specific Provisions) of the Franchise Agreement and which is substantially in the same form as the document in agreed terms marked 377OHA;

**“Option One-Off Costs”<sup>101</sup>** *has the meaning given to it in paragraph 31.1 of Appendix 13 (South Central Specific Provisions);*

**“Option One-Off Costs Activities”<sup>102</sup>** *has the meaning given to it in paragraph 31.1 of Appendix 13 (South Central Specific Provisions);*

**“Original HLOS Phase 2 Core Order Units Delivery Schedule”<sup>103</sup>** *means the contractual acceptance dates in relation to each HLOS Phase 2 Core Order Unit set out in the table in Annex 7 to Appendix 13 (South Central Specific Provisions);*

**“Original Order”<sup>104</sup>** *means the order for the HLOS Units pursuant to clause 6.1 of the HLOS MSA;*

**“Porterbrook”<sup>105</sup>** *means Porterbrook Leasing Company Limited whose registered number is 02912662 and whose registered address*

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**100** [Where text has been omitted from the document this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.](#)

**101** Date of new insertion 20/12/2012

**102** Date of new insertion 20/12/2012

**103** Date of new insertion 30/07/2013

**104** Date of new insertion 20/12/2012

**105** Date of new insertion 20/12/2012

**is at Ivatt House, 7 The Point, Pinnacle  
Way, Pride Park, Derby DE24 8ZS;**

**(xxxvii)<sup>106</sup> “Previous Franchise Operator” means New Southern Railway Limited  
whose registered number is 03010919 and whose registered address is  
at 3rd Floor, 41-51 Grey Street, Newcastle Upon Tyne NE1 6EE; and**

**(xxxviii) “Principal Change Date” has the meaning given to that term in Part D  
of the Network Code;**

**“Qualified Provisional Acceptance”<sup>107</sup> has the meaning given to such term in the  
HLOS Phase 2 MSA; and**

**(xxxix) <sup>108</sup>**

**(xl) <sup>109</sup>**

**(xli) <sup>110</sup>**

**(xlii) “SLC1” means the first Service Level Commitment in agreed terms applicable  
from the Start Date until the Subsidiary Change Date occurring in May 2010;**

**(xliii) “SLC2A1” means the first part of the second Service Level Commitment in  
agreed terms applicable from the Subsidiary Change Date occurring in May 2010  
until the Passenger Change Date occurring in December 2010;**

**(xliv) “SLC2A2” means the second part of the second Service Level Commitment in  
agreed terms applicable from the Passenger Change Date occurring in December  
2010 until the Passenger Change Date occurring in December 2011;**

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<sup>106</sup> Date of Change 20/09/2009

<sup>107</sup> Date of new insertion 30/07/2013

<sup>108</sup> Where text has been omitted from the document this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

<sup>109</sup> Where text has been omitted from the document this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

<sup>110</sup> Where text has been omitted from the document this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

(xiv) "SLC2B" means the third Service Level Commitment in agreed terms applicable from the Passenger Change Date occurring in December 2011 until 14 October 2012;

(xlv) "SLC3A" means the fourth Service Level Commitment in agreed terms applicable from 14 October 2012 until the Passenger Change Date occurring in December 2013;

(xlvii) "SLC3B" means the fifth Service Level Commitment in agreed terms applicable from the Passenger Change Date occurring in December 2013 until the end of the Franchise Term;

***"Spares Supply Milestone Payment"<sup>111</sup> has the meaning given to such term in paragraph 18.6 of Appendix 13 (South Central Specific Provisions) of the Franchise Agreement;***

(xlviii)<sup>112</sup>

***"Stabling and Maintenance One-Off Costs"<sup>113</sup> has the meaning given to it in paragraph 31.2 of Appendix 13 (South Central Specific Provisions);***

***"Stabling and Maintenance One-Off Costs Activities"<sup>114</sup> has the meaning given to it in paragraph 31.2 of Appendix 13 (South Central Specific Provisions);***

***"Stabling and Maintenance One-Off Costs Wash-Up Payment"<sup>115</sup> has the meaning given to it in paragraph 31.2(d) of Appendix 13 (South Central Specific Provisions);***

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<sup>111</sup> Date of insertion 26/01/2012

<sup>112</sup> **Where text has been omitted from the document this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.**

<sup>113</sup> Date of new insertion 20/12/2012

<sup>114</sup> Date of new insertion 20/12/2012

<sup>115</sup> Date of new insertion 20/12/2012

(xlix) “Station Change” has the meaning given to the term:

- (a) “Railtrack Change Proposal” in paragraph 3.4 of Condition C3 of the Franchise Station Access Conditions (where the applicable station is not a Managed Station); or
- (b) “Development Change Proposal” in Condition 12.4 of Part 3 of the Independent Station Access Conditions (where the applicable station is a Managed Station);

(xlix) “Subsidiary Change Date” has the meaning given to that term in Part D of the Network Code;

- (i) “TfL” means Transport for London the body corporate created pursuant to Section 154 of the Greater London Authority Act 1999;
- (ii) “Thameslink Programme” means the scheme promoted by Network Rail formerly known as ‘Thameslink 2000’, as described in its 2005 Transport and Works Act 1992 application, to enhance the network and relevant stations to allow the operation of 12-car trains and up to 24 trains per hour between Midland Mainline/Great Northern and London Bridge/Elephant & Castle, or such other capacity scheme derived from that specification as is agreed by the Secretary of State, Network Rail and all relevant stakeholders;

(iii)<sup>116</sup>

**“TSGN Franchisee”<sup>117</sup>** *means such person as is appointed by the Secretary of State to provide railway passenger services on all or any of the*

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<sup>116</sup> Where text has been omitted from the document this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

<sup>117</sup> Date of new insertion 30/07/2013

**Thameslink, Southern and Great Northern routes and nominated as the 'TSGN Franchisee' by the Secretary of State on or after 1 June 2014 by notice in writing to the Franchisee.**

**(iv)<sup>118</sup>**

(d) the amendment to the following definitions in clause 3.1 thereof:

(i) the definition of Continuation Review Date shall be amended as follows:

delete the number “18” within that definition and replace with the number “23”;

(ii) paragraph (e) of the definition of Change shall be amended by the addition of the following words at the beginning:

“subject to clause 5.3(A) of the Franchise Agreement”;

**(iii)<sup>119 120</sup> the addition of new paragraphs (v), (w), (x), (y), (z) and (aa) to the definition of Change as follows and the renumbering of old paragraph (v) to new paragraph (ab):**

**(aa)<sup>121</sup> the circumstances set out in paragraph 28.2 of Appendix 13 (South Central Specific Provisions) of the Franchise Agreement; or**

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**118** Where text has been omitted from the document this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

**119** Date of Change 20/09/2009

**120** Date of change 20/12/2012

**121** Date of new insertion 20/12/2012



**“(v) the circumstances set out in paragraph 10.6(c) of Appendix 13 (South Central Specific Provisions) of the Franchise Agreement; or**

**(w)<sup>122</sup> the circumstances set out in paragraph 19.4 or 19.6 of Appendix 13 (South Central Specific Provisions) to the Franchise Agreement; or**

**(x) the circumstances set out in paragraph 5.3 of Appendix 13 (South Central Specific Provisions) of the Franchise Agreement; or**

**(y) <sup>123</sup>**

**(z) <sup>124</sup>**

**(iv)<sup>125 126</sup> “Expiry Date” means 01:59 on 26 July 2015 or, if later, the time and date to which the Franchise Agreement is continued in accordance with paragraph 1.4 of Schedule 18 (Franchise Continuation Criteria);”.**

**(v) the definition “Franchise Station Access Conditions” shall be amended to read “has the meaning attributed to the term Station Access Conditions in the relevant Access Agreement to which it relates”; *and*<sup>127</sup>;**

**(vi)<sup>128</sup> the definition of “Actual Operating Costs” shall be amended as follows:**

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<sup>122</sup> Date of Change 26/01/2012

<sup>123</sup> Where text has been omitted from the document this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

<sup>124</sup> Where text has been omitted from the document this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

<sup>125</sup> Date of Change 26/01/2012

<sup>126</sup> Date of change 30/07/2013

<sup>127</sup> Date of change 26/01/2012

<sup>128</sup> Date of Change 20/09/2009

***the addition of a new (E) in paragraph (a) of that definition as follows:***

***“(E) any Electrostar Lot 10B Reimbursement, Electrostar Lot 10A/Lot10B Costs, any Specified Costs and any Electrostar Lot 10B Procurement Costs; and”;***

***(vii)<sup>129</sup> the definition of “Modified Revenue” shall be amended as follows:***

***the addition of the following words in brackets after the words “Secretary of State” in paragraph (a)(i)(A) of that definition:***

***“(excluding any Electrostar Lot 10B Receipts)”;***and

***<sup>130</sup>viii) paragraph (m) of the definition of Change shall be amended by the deletion of the words “clause 5.1(l)” and their replacement with clause “5.1(m)”.***

***(e)*** the following provisions being added:

***(i)*** a new paragraph 4A shall be inserted into Schedule 11 after paragraph 4.6 as follows:

#### **4A TfL Performance Meeting**

***(i)<sup>131</sup> In addition to the Franchise Performance Meeting, the Secretary of State, TfL and the Franchisee shall hold an operational review meeting at least once in every three Reporting Period, relating to:***

***(a)*** the Passenger Services operated by the Franchisee to and from the Greater London Stations;  
and

***(b)*** the operation of the Greater London Stations,

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<sup>129</sup> Date of Change 20/09/2009

<sup>130</sup> Date of new insertion 26/01/2012

<sup>131</sup> Date of Change 09/12/2011

at a time and location notified to TfL and the Franchisee by the Secretary of State (“**TfL Performance Meeting**”).

- (ii) No later than the third business day prior to each TfL Performance Meeting, the Franchisee shall provide to the Secretary of State and TfL a report which includes the following information:
- (a) the Franchisee’s performance with respect to:
    - (i) service delivery performance by the Franchisee by reference to the Benchmarks; and
    - (ii) service quality performance against Schedule 7.2 (Service Quality Management) and the Customer Satisfaction Benchmark (as defined in paragraph 4.7 of Appendix 13 (South Central Specific Provisions));
  - (b) information relating to passenger demand and revenue;
  - (c) information on the Franchisee’s progress on the delivery of Committed Obligations;
  - (d) information on any plans by Network Rail in respect of Restriction of Use as notified to the Franchisee by Network Rail; and
  - (e) information on crime levels,
- but only to the extent that such information relates to (1) the Passenger Services operated by the Franchisee to and from the Greater London Stations or (2) the operation of the Greater London Stations. The Franchisee shall ensure that such reports are in

accordance with any guidance the Secretary of State may issue to the Franchisee from time to time.

(iii) The Franchisee's obligations under paragraph 4.5 are repeated in relation to the TfL Performance Meeting."

(f) the following provisions being amended:

(i) paragraph 1.2 of Schedule 1.1 (Service Development) shall be deleted and be replaced as follows:

"The Service Level Commitments as at the date of the Franchise Agreement are in the agreed terms each marked SLC1, SLC2A1, SLC2A2, SLC2B, SLC3A and SLC3B respectively. For the purposes of this Schedule 1.1 each Service Level Commitment shall be applicable and remain in force for the period specified in each of the definitions of SLC1, SLC2A1, SLC2A2, SLC2B, SLC3A and SLC3B unless and until amended or replaced pursuant to this Schedule 1.1.";

(ii)<sup>132</sup> **"2.3(a) In preparing any Train Plan the Franchisee shall do so:**

(i) **by reference to the timetable that it envisages operating in order to comply with the Service Level Commitment; and**

(ii) **in compliance with the Agreed Capacity Requirements.**

(iii) **Not Used**<sup>133</sup>

(iv) the formula in paragraph 2.2 of Schedule 5.5 (Regulation of Individual Fares) shall be amended by the deletion of the number "5" and its replacement with the number "2" so that the formula reads as follows:

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<sup>132</sup> Date of Change 26/01/2012

<sup>133</sup> Date of Change 26/01/2012

$$\frac{PII = (100 \times RPI) + k + 2}{100}$$

- (v) paragraphs 2.3 and 2.4 of Schedule 7.1 (Performance Benchmarks) shall be amended by the deletion of the phrases (1) "with less than the passenger carrying capacity specified for each such Passenger Service in the Train Plan" and (2) "with less passenger carrying capacity than the passenger carrying capacity specified for each such Passenger Service in the Train Plan" wherever such phrases appear and their replacement with the following:

"with less than the number of vehicles specified for each such Passenger Service in the Train Plan";

- (vi) **Not Used**<sup>134</sup>

- (vii) paragraph 2.5 of Schedule 7.1 (Performance Benchmarks) shall be amended by the deletion of the phrase "in excess of the passenger carrying capacity specified for that Passenger Service in the Train Plan" and its replacement as follows:

"in excess of the number of vehicles specified for that Passenger Service in the Train Plan";

- (viii) **135**

- (ix) paragraph 6.4(c) of Schedule 8.1 (Franchise Payments) shall be amended by the addition of the following words after the words "(Changes in Numbers and Total Cost of Employees)":

"and without prejudice to the Franchisee's obligations under paragraphs 9.1(a) and 11.2, 11.5, 11.6, 11.8 and

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<sup>134</sup> Date of Change 26/01/2012

<sup>135</sup> Where text has been omitted from the document this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

11.13 of Appendix 11 (Committed Obligations) of the Franchise Agreement”;

(x) the form of Supplemental Agreement set out in Appendix 2 to Schedule 15.4 shall be amended as follows:

(A) the addition of the following provisions as new paragraph 7 of the Schedule to the Supplemental Agreement:

“7.

- (a) each of the gates to be installed as part of the TfL Gating Scheme (as such term is defined in paragraph 4 of Appendix 1 (Secretary of State Risk Assumptions) of the Franchise Agreement) and as described in the agreement dated 28 January 2009 between the Secretary of State, Rail for London Limited and the franchisee under the Previous Franchise Agreement;
- (b) the single site spares storage facility located at Selhurst Depot; and
- (c) any Spares and Special Tools (as such terms are defined in the Electrostar Lot 10A Sub Lease) acquired by the FCC Franchisee pursuant to the Electrostar Lot 10A Sub Lease and in respect of which title vests in the Franchisee,

shall be valued at nil save in each case to the extent that the Franchisee is able to demonstrate to the reasonable satisfaction

of the Secretary of State that it has incurred capital expenditure (for which it has not subsequently been reimbursed) on the acquisition of any such assets or the installation or enhancement of any such assets (as the case may be) (“Franchisee Funded Enhancements”), in which case the Franchisee Funded Enhancements shall be valued on a basis consistent with the principles set out in this Schedule.”; and

(B) the renumbering of the old paragraph 7 in the Schedule to the Supplemental Agreement as new paragraph 8.

**(xi)<sup>136 137</sup> paragraph 1.1 of Schedule 8.1 (Franchise Payments) shall be amended as follows:**

**(A) the deletion of the word “and” after each of the definitions of the components “SCA” and “ESLDs”;**

**(B) the deletion of “.” after the definition of the component of COPA and its replacement with “;”;**

**(C) the addition of the following after the component of ESLDs in the formula:**

**“+ELotC + ELotS + ELotSPC + ELotPC + ELotMF”;**

**and**

**(D) the addition of the following definitions for the components “ELotC”, “ELotS”,**

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<sup>136</sup> Date of Change 20/09/2009

<sup>137</sup> Re-inserted 14/06/2013

***“ELotSPC”, “ELotPC” and “ELotMF”  
after the definition of “ESLDs”:***

***“ELotC means any Electrostar Lot 10A/Lot 10B Cost to be paid on that Reporting Period’s Payment Date pursuant to paragraph 15.1(b) of Appendix 13 (South Central Specific Provisions) of the Franchise Agreement;***

***ELotS means any Electrostar Lot 10B Subsequent Payment plus any amount in respect of interest forgone to be paid on that Reporting Period’s Payment Date pursuant to paragraph 15.1(a)(ii) of Appendix 13 (South Central Specific Provisions) of the Franchise Agreement”;***

***ELotSPC means any Specified Costs (plus the applicable Mark Up Percentage) to be paid on that Reporting Period’s Payment Date pursuant to paragraph 15.1(e) of Appendix 13 (South Central Specific Provisions) of the Franchise Agreement;***

***ELotPC means any Electrostar Lot 10B Procurement Costs (plus the applicable Mark Up Percentage) to be paid on that Reporting Period’s Payment Date pursuant to paragraph 16.2(h) of Appendix 13 (South Central Specific Provisions) of the Franchise Agreement; and***

***ELotMF means any Electrostar Lot 10B Management Fee to be paid on that Reporting Period’s Payment Date pursuant to paragraph 15.1(d) of Appendix 13 (South Central Specific Provisions) of the Franchise Agreement.”***



**(xii)<sup>138 139</sup> paragraph 2.1 of Schedule 10.2 (Termination and Expiry) of the Terms shall be amended as follows:**

**(A) the deletion of the word “and” in paragraph 2.1(b) and the “.” in paragraph 2.1(c) shall be deleted and replaced with “.”;**

**(B) a new paragraph (d) shall be added as follows:**

**“(d) any obligation to pay the amounts due and payable by the Secretary of State to the Franchisee pursuant to paragraphs 15.1 or 16.2(h) of Appendix 13 (South Central Specific Provisions) of the Franchise Agreement.**

**(xiii)<sup>140 141</sup> paragraph 1.1 of Schedule 8.1 (Franchise Payments) shall be amended as follows:**

**(A) the component “[-] HLOS FPA + HLOS MP” shall be added to the formula after the component “+ E Lot MF”;**

**(B) the following words shall be added after the factor explaining “E Lot MF”:**

**(i) “HLOS FPA” means the aggregate of all HLOS Franchise Payment Adjustments to be made on that Reporting Period’s Payment Date. It is acknowledged that the HLOS Franchise Payment Adjustments potentially include both amounts payable to the Secretary of State by the Franchisee and amounts payable to the Franchisee by the Secretary of State. Accordingly there shall be a calculation to determine the net aggregate payment which may be a payment to the Secretary of State (and shall be input into the formula as a**

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<sup>138</sup> Date of Change 20/09/2009

<sup>139</sup> Re-inserted 14/06/2013

<sup>140</sup> Date of Change 20/09/2009

<sup>141</sup> Date of change 26/01/2012

*negative number) or to the Franchisee (and shall be input into the formula as a positive number.)” and*

**(ii)** <sup>142</sup>

**(C)** *the punctuation of the list shall be corrected such that each paragraph ends with a semi-colon and the word “and” appears at the end of the penultimate paragraph after its semi-colon;*

**(D)** *paragraph 1.3(a) shall be amended by deleting the words “and SCA” and replacing them with “HLOSFPA and SCA”.*

**(xiv)**<sup>143 144</sup> *paragraph 3 of Schedule 12 (Financial Obligations and Covenants) of the Terms shall be amended by the insertion of a new paragraph 3.4 as follows:*

**3.4** *The Franchisee shall not be in contravention of the provisions of paragraph 2 and paragraph 3 shall not apply nor shall the Secretary of State be entitled to exercise his rights under clause 3.3 of the funding deed dated 8 June 2009 and entered into between the Parent, the Franchisee and the Secretary of State if in respect of any Reporting Period during the Franchise Period:*

**(a)** *the ratio of the Franchisee’s Modified Revenue to its Actual Operating Costs during the preceding 13 Reporting Periods (or, if prior to the end of the thirteenth such Reporting Period, during all preceding Reporting Periods) is less than 1.05:1 or 1:07;*

**(b)** *the ratio of the Franchisee’s Forecast Modified Revenue to its Forecast Operating Costs for the next 13 Reporting Periods (or, where there are less than 13 Reporting Periods remaining in the Franchise Period, for all such remaining Reporting Periods) is less than 1.05:1 or 1:07;*

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<sup>142</sup> [Where text has been omitted from the document this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.](#)

<sup>143</sup> Date of Change 20/09/2009

<sup>144</sup> Date of Change 26/01/2012

***in each case, solely as a result of the Franchisee being required under the HLOS MSA to make any HLOS Subsequent Payment. For the purposes of determining whether the provisions of this paragraph 3.4 are applicable in any Reporting Period the Franchisee shall together with the financial information required pursuant to paragraphs 3.3, 3.4 and 3.9 of Schedule 13 (Information and Industry Initiatives) provide to the Secretary of State two versions (with and without any HLOS Subsequent Payments that have been made under the HLOS MSA in that Reporting Period) of the statement of calculation demonstrating compliance against each of the financial covenants in paragraph 2;” and***

***3.5 paragraphs 1.1 to 1.3 of Schedule 18 (Franchise Continuation Criteria) shall be deleted and replaced with “Not Used”***

***(xv)<sup>145 146</sup> (paragraph 1.1 of Schedule 8.1 (Franchise Payments) shall be amended as follows:***

***(A) the component “- ORIFPA” shall be added to the formula after the component “HLOSMP”;***

***(B) the following words shall be added after the factor explaining “HLOSMP”:***

***“ORIFPA” means any Olympic Revenue Incentive Franchise Payment Adjustment to be paid on that Reporting Period’s Payment Date; and***

***(C) the punctuation of the list shall be corrected such that each paragraph ends with a semi-colon and the word “and” appears at the end of the penultimate paragraph after its semi-colon.”***

***(xvi)<sup>147</sup> Paragraph 1 (Franchise Payments) of Schedule 8.1 (Franchise Payments) shall be amended as follows:***

***(A) the component “+ HLOSSTMP – HLOSWUP” shall be added to the formula after the component “+ HLOSMP”;***

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<sup>145</sup> Date of new insertion 22/06/2012

<sup>146</sup> Date of change 14/06/2013

<sup>147</sup> Date of insertion 30/11/2012

**(B) the following words shall be added after the factor explaining “HLOSMP”;**

**(i) “HLOSSTMP” means the HLOS Stabling Placing Orders Milestone Payment (if any), the HLOS Stabling Practical Completion Milestone Payment (if any) and/or or the HLOS Stabling Operational Introduction Milestone Payment (if any) to be made on that Reporting Period’s Payment Date and/or;**

**(ii) “HLOSWUP” means the HLOS Stabling Wash-Up Milestone Payment (if any) to be made on that Reporting Period’s Payment Date.**

**(C) the punctuation of the list shall be corrected such that each paragraph ends with a semi-colon and the word “and” appears at the end of the penultimate paragraph after the semi-colon**

**(xvii)<sup>148</sup> paragraph 1 (Franchise Payments) of Schedule 8.1 (Franchise Payments) shall be amended as follows:**

**(A) the component “[-] HLOSOFPA + HLOSOMP” shall be added to the formula after the component “- HLOSWUP”;**

**(B) the following words shall be added after the factor explaining “HLOSWUP”:**

**(i) “HLOSOFPA” means the aggregate of all HLOS Option Franchise Payment Adjustments to be made on that Reporting Period's Payment Date. It is acknowledged that the HLOS Option Franchise Payment Adjustments potentially include both amounts payable to the Secretary of State by the Franchisee and amounts payable to the Franchisee by the Secretary of State. Accordingly there shall be a calculation to determine the net aggregate payment which may be a payment to the Secretary of State (and shall be input into the formula as a negative number) or to the Franchisee (and shall be input into the formula as a positive number);” and**

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<sup>148</sup> Date of new insertion 20/12/2012

**(ii) ""HLOSOMP" means the sums of the HLOS Option Stabling and Maintenance Feasibility Study Milestone Payment (if any) and the HLOS Option Stabling and Maintenance Review and Proposal Milestone Payment (if any) to be made to the Franchisee on that Reporting Period's Payment Date.";**

**(C) the punctuation of the list shall be corrected such that each paragraph ends with a semi-colon and the word "and" appears at the end of the penultimate paragraph after its semi-colon; and**

**(D) paragraph 1.3(a) shall be amended by deleting the words "and SCA" and replacing them with ", HLOSOFPA and SCA"."**

**(xviii)<sup>149</sup> paragraph 3 of Schedule 12 (Financial Obligations and Covenants) of the Terms shall be amended by the insertion of a new paragraph 3.5 as follows:**

**"3.5 The Franchisee shall not be in contravention of the provisions of paragraph 2, paragraph 3 shall not apply, and the Secretary of State shall not be entitled to exercise his rights under clause 3.3 of the funding deed dated 8 June 2009 and entered into between the Parent, the Franchisee and the Secretary of State, if in respect of any Reporting Period during the Franchise Period:**

**(a) the ratio of the Franchisee's Modified Revenue to its Actual Operating Costs during the preceding 13 Reporting Periods (or, if prior to the end of the thirteenth such Reporting Period, during all preceding Reporting Periods) is less than 1.05:1 or 1:07; or**

**(b) the ratio of the Franchisee's Forecast Modified Revenue to its Forecast Operating Costs for the next 13 Reporting Periods (or, where there are less than 13 Reporting Periods remaining in the Franchise Period, for all such remaining Reporting Periods) is less than 1.05:1 or 1:07,**

**in each case, solely as a result of the Franchisee being required to make any payments to any lessor in respect of any lease of the**

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<sup>149</sup> Date of new insertion 20/12/2012

***HLOS Option Units. For the purposes of determining whether the provisions of this paragraph 3.5 are applicable in any Reporting Period the Franchisee shall together with the financial information required pursuant to paragraphs 3.3, 3.4 and 3.9 of Schedule 13 (Information and Industry Initiatives) provide to the Secretary of State two versions (with and without any further payments, as described above, that have been made under any lease of the HLOS Option Units in that Reporting Period) of the statement of calculation demonstrating compliance against each of the financial covenants in paragraph 2."***

***(xix)<sup>150</sup> Paragraph 1 of Schedule 8.1 (Franchise Payments) shall be amended as follows:***

- (A) the component "+ HLOS2FPA" shall be added to the formula at paragraph 1.1(a) after the component "+ HLOSOMP";***
- (B) the following words shall be added to paragraph 1.1(a) after the factor explaining "HLOSOMP":***

***"HLOS2FPA" means the aggregate of all HLOS Phase 2 Franchise Payment Adjustments to be made on that Reporting Period's Payment Date (provided that any payment due under paragraph 33.5, 35.1, 35.2(a)(iii) or 35.2(b) of Appendix 13 (South Central Specific Provisions) shall be paid on the date which it is due under such paragraph and shall not be delayed until the next Payment Date). It is acknowledged that the HLOS Phase 2 Franchise Payment Adjustments potentially include both amounts payable to the Secretary of State by the Franchisee and amounts payable to the Franchisee by the Secretary of State. Accordingly there shall be a calculation to determine the net aggregate payment which may be a payment to the Secretary of State (and shall be input into the formula as a negative number) or to the Franchisee (and shall be input into the formula as a positive number.)";***

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<sup>150</sup> Date of new insertion 30/07/2013

- (C) *the punctuation of the list shall be corrected such that each paragraph ends with a semi-colon and the words "and" appears at the end of the penultimate paragraph after the semi-colon; and*
- (D) *paragraph 1.3(a) shall be amended by deleting the words "and SCA" and replacing them with ", HLOS2FPA and SCA";*
- (xx)<sup>151</sup> *paragraph 3 of Schedule 12 (Financial Obligations and Covenants) of the Terms shall be amended by the insertion of a new paragraph 3.6 as follows:*

*"3.6 The Franchisee shall not be in contravention of the provisions of paragraph 2, paragraph 3 shall not apply and the Secretary of State shall not be entitled to exercise his rights under clause 3.3 of the funding deed dated 8 June 2009 and entered into between the Parent, the Franchisee and the Secretary of State if in respect of any Reporting Period during the Franchise Period:*

- (a) *the ratio of the Franchisee's Modified Revenue to its Actual Operating Costs during the preceding 13 Reporting Periods (or, if prior to the end of the thirteenth such Reporting Period, during all preceding Reporting Periods) is less than 1.05:1 or 1.07:1; or*
- (b) *the ratio of the Franchisee's Forecast Modified Revenue to its Forecast Operating Costs for the next 13 Reporting Periods (or, where there are less than 13 Reporting Periods remaining in the Franchise Period, for all such remaining Reporting Periods) is less than 1.05:1 or 1.07:1,*

*in each case, solely as a result of (i) the Franchisee being required under the HLOS Phase 2 MSA to make any HLOS Phase 2 Initial Payment or any HLOS Phase 2 Subsequent*

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<sup>151</sup> Date of new insertion 30/07/2013

***Payment; and/or (ii) any payments that have been made, or are due to be made, from the Franchisee under the HLOS Phase 2 Operating Lease or to the Franchisee under any sub-lease of the HLOS Phase 2 Units. For the purposes of determining whether the provisions of this paragraph 3.6 are applicable in any Reporting Period the Franchisee shall together with the financial information required pursuant to paragraphs 3.3, 3.4 and 3.9 of Schedule 13 (Information and Industry Initiatives) provide to the Secretary of State two versions (with and without both (a) any HLOS Phase 2 Initial Payment or any HLOS Phase 2 Subsequent Payments that have been made, or are due to be made, under the HLOS Phase 2 MSA and (b) any payments that have been made, or are due to be made, under the HLOS Phase 2 Operating Lease and any sub-lease of the HLOS Phase 2 Units) of the statement of calculation demonstrating compliance against each of the financial covenants in paragraph 2.”***

#### **Schedule 1.1 (Service Development)**

5.3A The Secretary of State and the Franchisee agree that the Service Level Commitments for the purposes of the Franchise Agreement are SLC1, SLC2A1, SLC2A2, SLC2B, SCL3A and SLC3B (each a “Specified SLC”). The replacements of:

- (i) SLC1 by SLC2A1; or
- (ii) SLC2A1 by SLC2A2; or
- (iii) SLC2A2 by SLC2B; or
- (iv) SLC2B by SLC3A; or
- (v) SLC3A by SLC3B,

at the time and for the period specified in the definition of a “**Specified SLC**” shall not constitute a Change for the purposes of paragraph (e) of the definition of Change unless from the relevant date from which a Specified SLC is to apply the Secretary of State issues a Service Level Commitment which is different from such Specified SLC (“**Alternative SLC**”) in respect of



some or all of the period during which such Specified SLC is intended to be applicable and in force as specified in the definition of that Specified SLC, in which case there shall be a Change and such Change shall only apply in respect of the differences between the Alternative SLC and such Specified SLC (rather than, in the latter case, the Service Level Commitment previously in force).

5.3 For the purpose of paragraph 3.1 of Schedule 1.1 (Service Development) of the Terms, Tables 1 and 2 are set out in Appendix 3 (The Train Fleet).

### **Schedule 1.5 (Information about Passengers)**

5.4 <sup>152</sup>

5.4A <sup>153</sup>

5.4B By no later than 31 December 2010 the Franchisee shall establish a knowledge centre to manage and store loading data and convert such data into tangible usable information (“**Knowledge Centre**”). The Knowledge Centre shall as a minimum contain the following categories of information:

- (i) passenger load determination demand data broken down on a train by train basis;
- (ii) ticket transaction demand and origin destination analysis;
- (iii) trends and changes in demand patterns;
- (iv) the level of passenger services planned and the actual passenger services delivered;
- (v) systematic monitoring of the impact of service change; and
- (vi) storage of the impact of major events to assist the Franchisee in the planning and forecasting of similar events in the future.

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<sup>152</sup> Where text has been omitted from the document this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

<sup>153</sup> Where text has been omitted from the document this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

5.4C The Franchisee shall with effect from the Start Date work with Bombardier Transportation Limited, Delta Rail and other relevant Train Operators to identify a technical solution to the current lack of functionality of the passenger load determination equipment on the Class 171 vehicles comprised in the Train Fleet as soon as reasonably practicable and shall ensure that such equipment is fully functional within 3 months of such solution being identified.

#### **Schedule 1.6 (Franchise Services)**

5.5 The prescribed percentages for the purposes of paragraphs 5(d)(i) and (ii) of Schedule 1.6 (Franchise Services) of the Terms are, respectively:

- (a) 1 per cent.; and
- (b) 1 per cent.

5.6 The relevant Depots for the purpose of paragraph 5(e) of Schedule 1.6 of the Terms are as follows:

- (a) Selhurst Traincare Depot; and
- (b) Stewarts Lane Depot.

5.7 The relevant property for the purpose of paragraph 5(n) of Schedule 1.6 of the Terms is as follows:

None.

5.8 The prescribed 'Original Amounts' for the purposes of paragraph 5(q) of Schedule 1.6 of the Terms are:

- (a) £25,000 per annum per item; and
- (b) £250,000 per annum in aggregate.

#### **Schedule 2.1 (Asset Vesting and Transfer)**

5.9 The provisions of Part 1 of Schedule 2.1 (Asset Vesting and Transfer) of the Terms shall apply, for which purpose any new Property Leases shall be in the agreed terms attached to this Agreement marked SL and DL (as appropriate).

### **Schedule 2.3 (Third Party Delivery of Passenger Services and Other Franchisees)**

5.10 The prescribed percentage for the purpose of paragraph 1.2(d) of Schedule 2.3 (Third Party Delivery of Passenger Services and Other Franchisees) of the Terms is five per cent.

### **Schedule 2.5 (Transport, Travel and Other Schemes)**

5.11 The prescribed Integrated Transport Schemes for the purpose of paragraph 1.1 of Schedule 2.5 (Transport, Travel and Other Schemes) of the Terms are as follows:

None.

5.12 The prescribed concessionary travel schemes for the purpose of paragraph 2.1(a) of Schedule 2.5 of the Terms are as follows:

- (a) London Concessionary Fare Scheme;
- (b) Surrey Education Authority Season Ticket Scheme;
- (c) West Sussex Education Authority Season Ticket Scheme; and
- (d) Kent Educational Season Ticket Scheme.

**5.13 *The prescribed multi-modal schemes for the purpose of paragraph 3.1(a) of Schedule 2.5 of the Terms are as follows:***

- (a) *the Brighton Area PLUSBUS scheme (bound by and including the Stations located at Shoreham-by-Sea and Falmer) in conjunction with the Brighton and Hove Bus and Coach Company Limited; and***
- (b) *the Crawley and Gatwick area PLUSBUS scheme (between and including Stations located at Horley and Ifield) in conjunction with Metrobus Limited.***<sup>154</sup>

### **Schedule 3 (Priced Options)**

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<sup>154</sup> Date of change 16/9/2009

- 5.14 The Priced Options and the terms upon which the Secretary of State may exercise each Priced Option for the purpose of Schedule 3 (Priced Options) of the Terms, are set out in Appendix 4 (List of Priced Options).

#### **Schedule 7.1 (Performance Benchmarks)**

- 5.15 The Cancellations Benchmarks for the purpose of paragraph 1.1 of Schedule 7.1 (Performance Benchmarks) of the Terms are set out in Appendix 5 (Cancellations Benchmark Table).
- 5.16 The Capacity Benchmarks for the purpose of paragraph 1.2 of Schedule 7.1 (Performance Benchmarks) of the Terms are set out in Appendix 6 (Capacity Benchmark Table).
- 5.17 The Service Delivery Benchmarks for the purpose of paragraph 1.4 of Schedule 7.1 (Performance Benchmarks) of the Terms are set out in Appendix 7 (Service Delivery Benchmark Table).

#### **Schedule 8.1 (Franchise Payments)**

5.18 <sup>155</sup>

5.19 <sup>156</sup>

#### **Schedule 8.2 (Annual Franchise Payments)**

- 5.20 The agreed figures for the purposes of the definitions of “FXD”, “VCRPI”, “VCAEI”, “PRPI” and “TRRPI” in the formula set out in Schedule 8.2 (Annual Franchise Payments) of the Terms are shown in the table set out in Appendix 8 (Figures for Calculation of Annual Franchise Payments).
- 5.21 The prescribed month and the prescribed date for the purposes of the definitions of “RPI” and “AEI” in the formula set out in Schedule 8.2 of the Terms are, respectively, January and January 2009.

#### **Schedule 9.3 (Runs of the Financial Model)**

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<sup>155</sup> Where text has been omitted from the document this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

<sup>156</sup> Where text has been omitted from the document this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

5.22 The percentage agreed profit margin for the purpose of paragraphs 7.1(a) and (b)(i) of Schedule 9.3 (Runs of the Financial Model) of the Terms shall be determined by reference to the following table:<sup>157</sup>

### **Schedule 12 (Financial Obligations and Covenants)**

5.23 The agreed amounts of any Performance Bond for the purposes of paragraph 4.4 of Schedule 12 (Financial Obligations and Covenants) of the Terms are, respectively:

- (a) £<sup>158</sup>, being 5.5 per cent. of the Aggregate Forecast Operating Costs of the Franchisee for the period from the Start Date to the first anniversary of the Start Date, as forecast in the Initial Business Plan;
- (b) £<sup>159</sup>, being 5.5 per cent. of the Aggregate Forecast Operating Costs of the Franchisee for the year commencing on the first anniversary of the Start Date, as forecast in the Initial Business Plan;
- (c) £<sup>160</sup>, being 5.5 per cent. of the Aggregate Forecast Operating Costs of the Franchisee for the year commencing on the second anniversary of the Start Date, as forecast in the latest practicably available Business Plan; and
- (d) 5.5 per cent. of the Aggregate Forecast Operating Costs of the Franchisee for each subsequent year (or part thereof) during the Franchise Term, as forecast in the latest practicably available Business Plan, provided that for the purpose of determining the amount of any Performance Bond in respect of any part year, the Aggregate Forecast Operating Costs of the Franchisee for such

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<sup>157</sup> Where text has been omitted from the document this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

<sup>158</sup> Where text has been omitted from the document this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

<sup>159</sup> Where text has been omitted from the document this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

<sup>160</sup> Where text has been omitted from the document this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

part year shall be increased by dividing such costs by the number of Reporting Periods in such part year and multiplying by 13.

### **Schedule 14.3 (Key Contracts)**

5.24 The Key Contracts as at the date of this Agreement for the purpose of paragraph 1.2 of Schedule 14.3 (Key Contracts) of the Terms are set out in Appendix 9 (List of Key Contracts).

### **Schedule 14.4 (Designation of Franchise Assets)**

5.25 The Primary Franchise Assets as at the date of this Agreement for the purpose of paragraph 2.1(a) of Schedule 14.4 (Designation of Franchise Assets) of the Terms are listed in Appendix 10 (List of Primary Franchise Assets).

### **Schedule 16 (Pensions)**

5.26 The relevant sections of the Railways Pension Scheme for the purpose of paragraph 1 of Schedule 16 (Pensions) of the Terms are:

- (a) the Gatwick Express Franchise Section; and
- (b) the Southern Franchise Section.

### **Schedule 18 (Franchise Continuation Criteria)**

5.27 The relevant date for the purpose of paragraph 1.2 of Schedule 18 (Franchise Continuation Criteria) of the Terms is the date prescribed in paragraph (b) of the definition of Expiry Date.

### **Schedule 19 (Other Provisions)**

5.28<sup>161</sup> The details of the parties for the purpose of paragraph 5.1(a) of Schedule 19 (Other Provisions) of the Terms are as follows.

Name:	The Department for Transport
<b>Address:</b> <sup>162</sup>	<b>33 Horseferry Road, London SW1P 4DR</b>
Facsimile:	<b>020 7944 2446</b>

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<sup>161</sup> Date of Change 05/05/2011

<sup>162</sup> Date of change 01/10/2011

E-mail: ***Franchise.notices@dft.gsi.gov.uk***

Attention: ***Director, Rail Commercial Contracts***

Name: Southern Railway Limited

Address: 3rd Floor, 41-51 Grey Street, Newcastle upon Tyne NE1  
6EE

Facsimile: 0191 211 3218

E-mail: ***carolyn.sephton@go-ahead.com***

Attention: ***Company Secretary***

## **6. COMMITTED OBLIGATIONS**

The Franchisee shall deliver the Committed Obligations that are set out in Appendix 11 (List of Committed Obligations and Related Provisions) in accordance with the terms thereof.

## **7. SUPPLEMENTAL TERMS**

7.1 The provisions of Appendix 12 (2012 Olympic Games and Paralympic Games) shall apply.

7.2 The provisions of Appendix 13 (South Central Specific Provisions) shall apply.

## **8. RECALIBRATION OF THE BENCHMARKS**

The Benchmarks shall be recalibrated in accordance with the provisions of Appendix 14 (Recalibration of the Benchmarks).

## **9. DOCUMENTS IN THE AGREED TERMS**

The parties hereby acknowledge that the list of documents in the agreed terms is set out in Appendix 15 (List of Documents in the Agreed Terms).

## **10. AGREED CAPACITY REQUIREMENTS**

The Agreed Capacity Requirements are specified in Appendix 16 (Capacity Metrics and Timings)

## **11. ENTIRE AGREEMENT**

- 11.1 This Agreement, the Conditions Precedent Agreement and the Terms contain the entire agreement between the parties in relation to the subject matter of this Agreement and supersede all prior agreements and arrangements between the parties other than any confidentiality agreements or undertakings which the Franchisee may have entered into with the Secretary of State in connection with his proposal to secure the provision of the Passenger Services under this Agreement.
- 11.2 The Franchisee hereby acknowledges that it is not entering into this Agreement, the Conditions Precedent Agreement and the Terms in reliance on any warranties, representations or undertakings howsoever or to whomsoever made except in so far as such warranties, representations or undertakings are:
- (a) contained in this Agreement; or
  - (b) embodied in any warranties, representations or undertakings contained in the long form report provided by the Reporting Accountants in respect of :
    - (i) the South Central franchise dated 19 September 2008; and
    - (ii) the Gatwick Express franchise dated 31 July 2008.
- 11.3 The Franchisee hereby acknowledges and agrees with the Secretary of State (for himself and as trustee for each of the other persons referred to therein) to the disclaimer of liability which is contained in the section entitled "Important Notice" contained in any document supplied by or on behalf of the Secretary of State in connection with this Agreement, the process leading to the entering into of this Agreement, or the Franchise Services (including any "Invitation to Tender" issued in connection therewith).
- 11.4 The Franchisee irrevocably and unconditionally waives any right which it may otherwise have to claim damages in respect of and/or to rescind this Agreement, the Conditions Precedent Agreement and the Terms on the basis of any warranty, representation (whether negligent or otherwise, and whether made prior to and/or in this Agreement, the Conditions Precedent Agreement and the Terms) or undertaking howsoever or to whomsoever



made unless and to the extent that such warranty, representation or undertaking was made fraudulently.

**IN WITNESS** whereof the parties hereto have executed this Agreement the day and year first before written.

**THE CORPORATE SEAL** of the )  
SECRETARY OF STATE FOR TRANSPORT )  
is hereunto affixed: )

Authenticated by authority of the  
Secretary of State for Transport

**SIGNED** for and on behalf of )  
SOUTHERN RAILWAY LIMITED )

Director:

Director/Secretary:

## APPENDIX 1

### Secretary of State Risk Assumptions (*Clause 5.1(y)*)<sup>163</sup>

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<sup>163</sup> Where text has been omitted from the document this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

## APPENDIX 2

Target Revenue (expressed in real terms) (*Clause 5.1(ae)*)<sup>164</sup>

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<sup>164</sup> Where text has been omitted from the document this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

## APPENDIX 3

### The Train Fleet (*Clause 5.3*)

#### 1. The Composition of the Train Fleet

The Train Fleet consists of:

- 1.1 the rolling stock vehicles specified in Table 1, with the capacity characteristics referred to there, until the lease expiry dates referred to there;
- 1.2 following any such lease expiry, substitute rolling stock vehicles having:
  - (a) at least the capacity specified in respect of the original rolling stock vehicles being substituted; and
  - (b) reliability, capability and quality that is at least equal to the reliability, capability and quality of the original rolling stock vehicles being substituted; and
- 1.3 from the dates specified in Table 2, the additional rolling stock vehicles referred to against those dates, having:
  - (a) in the case of any additional rolling stock vehicles of the same class as any original rolling stock vehicles:
    - (i) at least the capacity specified in respect of such original rolling stock vehicles or such greater capacity as may be specified in Table 2; and
    - (ii) reliability, capability and quality that is at least equal to the reliability, capability and quality of such original rolling stock vehicles; and
  - (b) in the case of any other additional rolling stock vehicles:
    - (i) at least the capacity specified in respect of any original rolling stock vehicles that are, in the reasonable opinion of the Secretary of State, most similar to such additional rolling stock vehicles; and
    - (ii) reliability, capability and quality that is, in the reasonable opinion of the Secretary of State, at least

equal to the reliability, capability and quality of any original rolling stock vehicles that are, in the reasonable opinion of the Secretary of State, most similar to such additional rolling stock vehicles.

**Table 1 (existing vehicles)<sup>165</sup>**

**Table 2 (additional vehicles)<sup>166</sup>**

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**165** Where text has been omitted from the document this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

**166** Where text has been omitted from the document this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

## APPENDIX 4

### List of Priced Options (Clause 5.14)

#### 1. **GSM-R<sup>167</sup>**

##### **Description, objective and specification**

##### 1.1 **This Priced Option relates to:**

- (a) **the procurement, installation and maintenance of GSM-R radio units to the Train Fleet;**
- (b) **the training of drivers (and other relevant Franchise Employees) employed by the Franchisee in the use of that equipment and the maintenance of that equipment;**
- (c) **any costs associated with any requirement under any Rolling Stock Lease to obtain the approval from a relevant rolling stock provider to install such equipment; and**
- (d) **any costs associated with the removal and making good of any legacy radio systems in any rolling stock vehicles comprised in the Train Fleet.**

##### **Price for exercising this Priced Option (in £ base date)**

- 1.2 **Where this Priced Option is called in accordance with its terms, the price for this Priced Option shall be the price set out in Tables 1A and 1B in Part 2 to this Appendix 4 and adjustments to Franchise Payments shall be made accordingly.**

##### **Timescale for implementing this Priced Option from the date it is called**

- 1.3 **The timescale for the implementation of this Priced Option will be no later than:**
- (a) **31 December 2011, in respect of any rolling stock vehicle comprised in the Train Fleet which as at the Start Date is equipped with "NRN" radio only; and**

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<sup>167</sup> Date of Change 27/07/2009

(b) **for all other rolling stock vehicles comprised in the Train Fleet the earlier of:**

(i) **30 June 2014; and**

(ii) **the date which falls 18 months after the date on which Network Rail has provided the relevant infrastructure equipment (including the relevant trackside equipment, radio masts and base stations) across the whole of the network on which the Passengers Services operate.**

1.4 **It is agreed that the timescale for completion of the fitment of GSM-R Radio Equipment to any rolling stock which is “dual fitted” with both “NRN” and “CSR” radio will be the date set out in paragraph 1.3(b) unless the “NRN” radio is required for the rolling stock to remain in passenger service after 31 December 2011 in which case the relevant timescale for completion shall be as set out in paragraph 1.3(a).**

#### **Other effects on the Franchise Agreement**

1.5 **The only effects on the Franchise Agreement will be:**

(a) **the inclusion of the following in Appendix 11 (List of Committed Obligations and Related Provisions):**

(i) **a new Committed Obligation in Part 1 to Appendix 11 (List of Committed Obligations and Related Provisions) which reads:**

**[x1] “The Franchisee shall (including by working with Network Rail to agree and implement a GSM-R delivery and implementation programme pursuant to paragraph [x3]) use all reasonable endeavours to:**

**[(A1)] procure and install GSM-R Radio Equipment to the driving cabs of all rolling stock vehicles comprised in the Train Fleet; and**

***[(B1)] provide training to its train drivers and all other relevant Franchise Employees in the use of the GSM-R Radio Equipment so installed,***

***by dates which are earlier than the dates set out in paragraph [(A2)] and [(B2)] (as the case may be) and in any event shall complete such procurement, installation and training by no later than:***

***[(A2)] 31 December 2011, in respect of any rolling stock vehicles comprised in the Train Fleet which as at the Start Date are equipped with “NRN” radios only; and***

***[(B2)] the earlier of:***

***(i) 30 June 2014; and***

***(ii)<sup>168</sup>***

***[x2] The Franchisee shall keep a stock of operational spare GSM-R Radio Equipment equal to 10% of the number of GSM-R unit sets required to be fitted to the rolling stock vehicles comprised in the Train Fleet. In addition the Franchisee shall ensure that it has the equipment reasonably required to test the GSM-R installation prior to their entry into operational service and to maintain the GSM-R Equipment once in use.***

***[x3] The Franchisee will work with Network Rail to jointly agree a GSM-R delivery and***

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<sup>168</sup> Where text has been omitted from the document this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.



***implementation programme including a phased introduction in a manner similar to that set out in the document in agreed form marked “GSM-R implementation rollout” to reduce the risks to overall project delivery and with the aim of completing the fitment as early as reasonably practicable.***

***[x4] The Franchisee shall provide the Secretary of State with a progress update regarding the GSM-R roll out and fitment programme at least every three months until the fitment is completed.***

***[x5]*** <sup>169</sup>

***(i) not providing any relevant infrastructure equipment (including the relevant trackside equipment, radio masts and base stations) across the network on which the Passenger Services operate (“Infrastructure Equipment”) and such Infrastructure Equipment is essential to the successful introduction by the Franchisee of the GSM-R Radio Equipment;” and***

***(ii) not procuring the GSM-R Radio Equipment which it has undertaken to procure on behalf of (and, for the avoidance of doubt, at the cost of) the Franchisee and other Train Operators (as part of Stage 6 of the GSM-R project).***

***[x6] It is agreed by the Secretary of State and the Franchisee that the timescales for the completion of the fitment of GSM-R Radio Equipment to any rolling stock***

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<sup>169</sup> Where text has been omitted from the document this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

**which is “dual fitted” with both “NRN” and “CSR” radio will be the date set out in paragraph [X1][B2] unless the “NRN” radio is required for the rolling stock to remain in passenger service after 31 December 2011 in which case the relevant timescale for completion shall be as set out in paragraph [X1][A2].**

- (b) **the inclusion of a new definition in Clause 5.2 of this Franchise Agreement as follows:**

**“GSM-R Radio Equipment” means a digital radio system based on the GSM-R radio communication standard adapted for use on the European railways and which as a minimum meets all the mandatory requirements for an operational radio within the Control, Command and Signalling TSI (including Notified National Technical Rules) and which is to be used as a train radio (either fixed or transportable) within the meaning set out in the Railway Group Standard GE/RT 8080 Train Radio Systems for Voice and Related Messaging Communications issue 1, December 2003 (as amended from time to time)”;**

- (c) the addition of a new entry in the Table in Part 3 to Appendix 11 (List of Committed Obligations and Related Provisions) which reads:<sup>170</sup>

(d) 171

(e) 172

(f) 173

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<sup>170</sup> Where text has been omitted from the document this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

<sup>171</sup> Where text has been omitted from the document this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

<sup>172</sup> Where text has been omitted from the document this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

- (g) *the need to make such other consequential amendments to the rights and obligations of the parties including the Train Plan as are reasonably required to give effect to the implementation of this Priced Option. In the absence of such agreement, such consequential amendments shall be as reasonably determined by the Secretary of State.*

*The Secretary of State and the Franchisee agree that any amendments made by the Secretary of State pursuant to paragraphs 1.4 (a) to (f) in order to give effect to the implementation of this Priced Option in accordance with its terms shall not be a Change.*

Latest date for calling this Priced Option to maintain the price in paragraph 1.2

- 1.5 *The latest date on which the Secretary of State may call this Priced Option in order to maintain the price quoted at paragraph 1.2 is [27 July 2009].*
- 1.6 *If the Secretary of State calls this Priced Option at any time later than the date specified in paragraph 1.5 then the provisions of paragraph (b) of the definition of Change shall apply.*

**Condition for the implementation of this Priced Option**

- 1.7 *The Franchisee shall only be required to implement this Priced Option in accordance with its terms if Network Rail has provided the relevant infrastructure equipment (including the relevant trackside equipment, radio masts and base stations) across the whole of the network on which the Passenger Services operate by 31 December 2012*
- 1.8 *For the avoidance of doubt, if the condition specified in paragraph 1.7 is not met then it shall be a Change under paragraph (b) of the definition of Change.*

## **2. East Coastway Timetable Recast**

**Description, objective and specification**

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<sup>173</sup> Where text has been omitted from the document this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

2.1 This Priced Option relates to the amendment of the Service Level Commitment to permit a revised service pattern for East Coastway passenger services by the introduction of certain Timetable changes with effect from the Passenger Change Date occurring in December 2010 and the redeployment of rolling stock to the London Bridge to Uckfield route in the Peak. The revised Timetable to be introduced pursuant to this Priced Option is described in the document in agreed terms marked “**RT-PO2**” subject to such reasonable amendments as may be proposed by the Franchisee to take account of the outcome of the stakeholder consultation exercise referred to at paragraph 22 of Part 1 of Appendix 11 (List of Committed Obligations and Related Provisions).

2.2 The objective of this Priced Option is to:

- (a) provide improved connections at Ashford International with high speed services to and from St Pancras International;
- (b) provide additional capacity on Passenger Services operating between Brighton and Eastbourne and between Uckfield and London Bridge in the Peak; and
- (c) provide improved Passenger Services at Three Oaks and Winchelsea.

**Price for exercising this Priced Option (in £ base date)**

2.3 Where this Priced Option is called in accordance with its terms, the price for this Priced Option shall be the price set out in Tables 2A and 2B in Part 2 to this Appendix 4 and adjustments to Franchise Payments shall be made accordingly.

**Timescale for implementing this Priced Option from the date it is called**

2.4 The timescale for the implementation of this Priced Option will be no later than the Passenger Change Date occurring in December 2010.

**Other effects on the Franchise Agreement**

2.5 The effects on the Franchise Agreement will be as follows:

- (a) with effect from the Passenger Change Date in December 2010 the deletion of the Agreed Capacity Table in Appendix 16 (Capacity Metrics and Timings) and its replacement with the following table:

### Agreed Capacity Table

	London Victoria Services and South London Line Services into London Victoria				London Bridge Services and South London line services into London Bridge				Brighton (Coastway) Services only (peak hour only)	
Column 1	Column 2	Column 2A	Column 3	Column 3A	Column 4	Column 4A	Column 5	Column 5A	Column 6	Column 7
	AM Peak (Arrival – number of vehicles)	AM Peak (Arrival – number of vehicles)	PM Peak (Departures – number of vehicles)	PM Peak (Departures – number of vehicles)	AM Peak (Arrival – number of vehicles)	AM Peak (Arrival – number of vehicles)	PM Peak (Departures – number of vehicles)	PM Peak (Departures – number of vehicles)	AM Peak (Arrival – number of vehicles)	PM Peak (Departures – number of vehicles)
SLC1	585	24	632	12	488	24	418	12	34	34
SLC2A1 and SLC 2A2	595	24	634	12	508	24	420	12	35	35
SLC2B	619	24	654	12	544	24	464	12	41	39
SLC3A	623	N/A	658	N/A	536	N/A	478	N/A	41	39
SLC3B	687	N/A	728	N/A	580	N/A	520	N/A	43	43

- (b) <sup>174</sup>
- (c) the applicable Service Level Commitment shall be amended so as to ensure that the Franchisee will be able to deliver the Timetable as described in the document in agreed terms marked “RT-PO2” subject to such reasonable amendments as may be proposed by the Franchisee to take account of the outcome of the stakeholder consultation exercise referred to at paragraph 22 of Part 1 of Appendix 11 (List of Committed Obligations and Related Provisions); and
- (d) the need to make such other consequential amendments to the rights and obligations of the parties including the Train Plan as are reasonably required to give effect to the implementation of this Priced Option. In the absence of such agreement, such consequential amendments shall be as reasonably determined by the Secretary of State.

The Secretary of State and the Franchisee agree that any amendments made by the Secretary of State pursuant to paragraphs 2.5(a) to (d) in order to give effect to the implementation of this Priced Option in accordance with its terms shall not be a Change.

### **Latest date for calling this Priced Option to maintain the price in paragraph 2.2**

2.6 The latest date on which the Secretary of State may call this Priced Option in order to maintain the price quoted at paragraph 2.2 is 28 February 2010.

### **2.7 Conditions to the calling of this Priced Option**

- (a) The Secretary of State agrees only to call this Priced Option in accordance with its terms if he:
- (i) is satisfied that the results of the stakeholder consultation exercise undertaken by the Franchisee in accordance with the Committed Obligation at paragraph 22 of Appendix 11 (List of Committed Obligations and

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<sup>174</sup> Where text has been omitted from the document this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

Related Provisions) support the implementation of this Priced Option;

(ii) reasonably determines that the Franchisee, if it complies with its obligations under paragraphs 8.1 to 8.3 (inclusive) of Schedule 1.1 (Service Development) of the Terms, will be able to obtain the relevant timetable development rights in order to secure a Timetable in the form described in paragraph 2.1; and

(iii) <sup>175</sup>

### **3. Enhanced Station Improvements**

#### **Description, objective and specification**

3.1 This Priced Option relates to the implementation of an enhanced programme to improve facilities at the following 27 Stations:

Balcombe, Battersea Park, Burgess Hill, Carshalton, Caterham, Coulsdon South, Dorking, Earlswood, East Dulwich, Epsom, Horley, Horsham, Merstham, Preston Park, Purley, Purley Oaks, Salfords, Sanderstead, South Croydon, Streatham, Streatham Common, Sutton, Thornton Heath, Tulse Hill, Wallington, Wandsworth Common and Wivelsfield.

#### **Price for exercising this Priced Option (in £ base date)**

3.2 Where this Priced Option is called in accordance with its terms, the price for this Priced Option shall be the price set out in Tables 3A and 3B in Part 2 to this Appendix 4 and adjustments to Franchise Payments shall be made accordingly.

#### **Timescale for implementing this Priced Option from the date it is called**

3.3 The timescale for the implementation of this Priced Option will be the date that is the later of 42 months after the date on which this Priced Option is called and 31 March 2013.

#### **Other effects on the Franchise Agreement**

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<sup>175</sup> Where text has been omitted from the document this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.



3.4 The effects on the Franchise Agreement will be:

- (a) the inclusion of the following in Appendix 11 (List of Committed Obligations and Related Provisions):
  - (i) a new Committed Obligation in Part 1 to Appendix 11 (List of Committed Obligations and Related Provisions) which reads:

“[x1] In addition to any other Committed Obligation (including those specified in paragraphs 3.15 to 3.19 and paragraph 9.2 of this Appendix 11) the Franchisee shall, on or before [insert date that is the later of 42 months from the date on which the Priced Option is called and 31 March 2013], improve facilities at the following 27 Stations and in so doing shall incur expenditure of not less than £<sup>176</sup>:

Balcombe, Battersea Park, Burgess Hill, Carshalton, Caterham, Coulsdon South, Dorking, Earlswood, East Dulwich, Epsom, Horley, Horsham, Merstham, Preston Park, Purley, Purley Oaks, Salfords, Sanderstead, South Croydon, Streatham, Streatham Common, Sutton, Thornton Heath, Tulse Hill, Wallington, Wandsworth Common and Wivelsfield.

The improvements to be made to facilities at such Stations shall be determined by the Franchisee (in consultation with Network Rail and other relevant stakeholders including the Secretary of State) and may include some or all of the following:

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<sup>176</sup> Where text has been omitted from the document this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

- (a) refurbishment of toilets and/or reopening of toilets which are not in passenger use as at the Start Date;
- (b) refurbishment of waiting room accommodation and/or reopening of waiting room accommodation which are not in passenger use as at the Start Date;
- (c) provision of new or additional platform seating;
- (d) provision of new or additional platform shelters;
- (e) provision of improved station signage;
- (f) introduction and/or improvement to customer information systems and passenger announcement systems in waiting rooms;
- (g) introduction of “white” lighting to improve visibility and security; and
- (h) general redecoration and improvements to station buildings.

[x2] In order to assist the Secretary of State in the monitoring of the Franchisee’s compliance under paragraph [x1] the Franchisee shall on or before the end of the thirteenth Reporting Period following the later of [insert the date on which the Priced Option is called] and the Start Date provide to the Secretary of State a delivery plan which sets out the facilities that will be improved (and the date of completion of

such improvements) at each of the 27 Stations set out in paragraph [x1].”

- (b) the addition of a new entry in the Table in Part 3 to Appendix 11 (List of Committed Obligations and Related Provisions) which reads:<sup>177</sup>
- (c) from the date of commencement of the first National Passenger Survey to be conducted following the deadline for completion of all the enhanced station improvements, being 31 March 2013, the Customer Satisfaction Benchmark relating to the Customer Satisfaction Measure on Stations set out in each of the Customer Satisfaction Table 1 and Customer Satisfaction Table 2 (respectively) (as each such term is defined in paragraph 4.7 of Appendix 13 (South Central Specific Provisions)) shall be and shall be deemed amended by increasing each number shown in the third column headed “South London” of both tables by 1.

### **Latest date for calling this Priced Option to maintain the price in paragraph 3.2**

- 3.5 The latest date on which the Secretary of State may call this Priced Option in order to maintain the price quoted at paragraph 3.2 is 20 September 2009.
- 3.6 If the Secretary of State calls this Priced Option at any time later than the date specified in paragraph 3.5 then the provisions of paragraph (b) of the definition of Change shall apply.

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<sup>177</sup> Where text has been omitted from the document this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

## Part 2

### 1. GSM-R

#### **Table 1A: Target Revenue (expressed in real terms) (Clause 5.1(ae))<sup>178</sup>**

This table sets out the increment to the Target Revenue set out in Appendix 2 (Target Revenue (expressed in real terms)) to this Agreement where this Priced Option is to be implemented by 31 December 2011 in respect of any rolling stock vehicles comprised in the Train Fleet which as at the Start Date are equipped with “NRN” radios and 30 June 2013 in respect of all other rolling stock vehicles comprised in the Train Fleet:

#### **Table 1B: Figures for Calculation of Annual Franchise Payments (Clause 5.20)<sup>179</sup>**

This table sets out the increment to the figures for calculation of the Annual Franchise Payments set out in Appendix 8 (Figures for Calculation of Annual Franchise Payments) to this Agreement where this Priced Option is to be implemented by 31 December 2011 in respect of any rolling stock vehicles comprised in the Train Fleet which as at the Start Date are equipped with “NRN” radios and 30 June 2013 in respect of all other rolling stock vehicles comprised in the Train Fleet:

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<sup>178</sup> Where text has been omitted from the document this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

<sup>179</sup> Where text has been omitted from the document this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

## **EAST COASTWAY TIMETABLE RECAST**

### **Table 2A: Target Revenue (expressed in real terms) (Clause 5.1(ae))<sup>180</sup>**

This table sets out the increment to the Target Revenue set out in Appendix 2 (Target Revenue (expressed in real terms)) to this Agreement where this Priced Option is to be implemented by the Passenger Change Date occurring in December 2010:

### **Table 2B: Figures for Calculation of Annual Franchise Payments (Clause 5.20)<sup>181</sup>**

This table sets out the increment to the figures for calculation of the Annual Franchise Payments set out in Appendix 8 (Figures for Calculation of Annual Franchise Payments) to this Agreement where this Priced Option is to be implemented by the Passenger Change Date occurring in December 2010:

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<sup>180</sup> Where text has been omitted from the document this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

<sup>181</sup> Where text has been omitted from the document this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

### 3. **Enhanced Station Improvements**

#### **Table 3A: Target Revenue (expressed in real terms) (Clause 5.1(ae))<sup>182</sup>**

This table sets out the increment to the Target Revenue set out in Appendix 2 (Target Revenue (expressed in real terms)) to this Agreement where this Priced Option is to be implemented by 31 March 2013.

#### **Table 3B: Figures for Calculation of Annual Franchise Payments (Clause 5.20)<sup>183</sup>**

This table sets out the increment to the figures for calculation of the Annual Franchise Payments set out in Appendix 8 (Figures for Calculation of Annual Franchise Payments) to this Agreement where this Priced Option is to be implemented by 31 March 2013

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<sup>182</sup> Where text has been omitted from the document this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

<sup>183</sup> Where text has been omitted from the document this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

**APPENDIX 5<sup>184 185</sup>**

**Cancellations Benchmark Table (Clause 5.15)**

<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>	<b>Column 4</b>	<b>Column 5</b>	
<b>Franchise Year/ Reporting Period</b>	<b>Target Performance Level (%)</b>	<b>Improvement Plan Performance Level (%)</b>	<b>Breach Performance Level (%)</b>	<b>Default Performance Level (%)</b>	
<b>Year 1</b>	<b>Period 7</b>	<b>0.62</b>	<b>0.67</b>	<b>0.71</b>	<b>0.74</b>
	<b>Period 8</b>	<b>0.62</b>	<b>0.67</b>	<b>0.71</b>	<b>0.74</b>
	<b>Period 9</b>	<b>0.62</b>	<b>0.67</b>	<b>0.71</b>	<b>0.74</b>
	<b>Period 10</b>	<b>0.62</b>	<b>0.67</b>	<b>0.71</b>	<b>0.74</b>
	<b>Period 11</b>	<b>0.62</b>	<b>0.66</b>	<b>0.71</b>	<b>0.74</b>
	<b>Period 12</b>	<b>0.62</b>	<b>0.66</b>	<b>0.71</b>	<b>0.74</b>
	<b>Period 13</b>	<b>0.62</b>	<b>0.66</b>	<b>0.71</b>	<b>0.74</b>
<b>Year 2</b>	<b>Period 1</b>	<b>0.62</b>	<b>0.66</b>	<b>0.71</b>	<b>0.74</b>
	<b>Period 2</b>	<b>0.62</b>	<b>0.66</b>	<b>0.71</b>	<b>0.74</b>
	<b>Period 3</b>	<b>0.62</b>	<b>0.66</b>	<b>0.71</b>	<b>0.74</b>
	<b>Period 4</b>	<b>0.62</b>	<b>0.66</b>	<b>0.71</b>	<b>0.74</b>
	<b>Period 5</b>	<b>0.62</b>	<b>0.66</b>	<b>0.71</b>	<b>0.74</b>
	<b>Period 6</b>	<b>0.62</b>	<b>0.66</b>	<b>0.71</b>	<b>0.74</b>
	<b>Period 7</b>	<b>0.62</b>	<b>0.66</b>	<b>0.71</b>	<b>0.74</b>
	<b>Period 8</b>	<b>0.61</b>	<b>0.66</b>	<b>0.71</b>	<b>0.74</b>
	<b>Period 9</b>	<b>0.61</b>	<b>0.66</b>	<b>0.71</b>	<b>0.74</b>
	<b>Period 10</b>	<b>0.61</b>	<b>0.66</b>	<b>0.71</b>	<b>0.74</b>
	<b>Period 11</b>	<b>0.61</b>	<b>0.66</b>	<b>0.71</b>	<b>0.74</b>
	<b>Period 12</b>	<b>0.61</b>	<b>0.66</b>	<b>0.71</b>	<b>0.74</b>
	<b>Period 13</b>	<b>0.61</b>	<b>0.66</b>	<b>0.70</b>	<b>0.74</b>
<b>Year 3</b>	<b>Period 1</b>	<b>0.61</b>	<b>0.66</b>	<b>0.70</b>	<b>0.74</b>
	<b>Period 2</b>	<b>0.61</b>	<b>0.66</b>	<b>0.70</b>	<b>0.73</b>
	<b>Period 3</b>	<b>0.61</b>	<b>0.66</b>	<b>0.70</b>	<b>0.73</b>
	<b>Period 4</b>	<b>0.61</b>	<b>0.66</b>	<b>0.70</b>	<b>0.73</b>
	<b>Period 5</b>	<b>0.61</b>	<b>0.66</b>	<b>0.70</b>	<b>0.73</b>
	<b>Period 6</b>	<b>0.61</b>	<b>0.66</b>	<b>0.70</b>	<b>0.73</b>
	<b>Period 7</b>	<b>0.61</b>	<b>0.66</b>	<b>0.70</b>	<b>0.73</b>
	<b>Period 8</b>	<b>0.61</b>	<b>0.66</b>	<b>0.70</b>	<b>0.73</b>
	<b>Period 9</b>	<b>0.61</b>	<b>0.66</b>	<b>0.70</b>	<b>0.73</b>
	<b>Period 10</b>	<b>0.61</b>	<b>0.65</b>	<b>0.70</b>	<b>0.73</b>
	<b>Period 11</b>	<b>0.61</b>	<b>0.65</b>	<b>0.70</b>	<b>0.73</b>
	<b>Period 12</b>	<b>0.61</b>	<b>0.65</b>	<b>0.70</b>	<b>0.73</b>
	<b>Period 13</b>	<b>0.61</b>	<b>0.65</b>	<b>0.70</b>	<b>0.73</b>
<b>Year 4</b>	<b>Period 1</b>	<b>0.61</b>	<b>0.65</b>	<b>0.70</b>	<b>0.73</b>
	<b>Period 2</b>	<b>0.61</b>	<b>0.65</b>	<b>0.70</b>	<b>0.73</b>
	<b>Period 3</b>	<b>0.61</b>	<b>0.65</b>	<b>0.70</b>	<b>0.73</b>
	<b>Period 4</b>	<b>0.61</b>	<b>0.65</b>	<b>0.70</b>	<b>0.73</b>

<sup>184</sup> Date of Change 16/12/2010

<sup>185</sup> Date of change 30/07/2013

	<i>Period 5</i>	<i>0.61</i>	<i>0.65</i>	<i>0.70</i>	<i>0.73</i>
	<i>Period 6</i>	<i>0.61</i>	<i>0.65</i>	<i>0.70</i>	<i>0.73</i>
	<i>Period 7</i>	<i>0.61</i>	<i>0.65</i>	<i>0.70</i>	<i>0.73</i>
	<i>Period 8</i>	<i>0.61</i>	<i>0.65</i>	<i>0.70</i>	<i>0.73</i>
	<i>Period 9</i>	<i>0.60</i>	<i>0.65</i>	<i>0.70</i>	<i>0.73</i>
	<i>Period 10</i>	<i>0.60</i>	<i>0.65</i>	<i>0.70</i>	<i>0.73</i>
	<i>Period 11</i>	<i>0.60</i>	<i>0.65</i>	<i>0.69</i>	<i>0.72</i>
	<i>Period 12</i>	<i>0.60</i>	<i>0.65</i>	<i>0.69</i>	<i>0.72</i>
	<i>Period 13</i>	<i>0.60</i>	<i>0.65</i>	<i>0.69</i>	<i>0.72</i>
<b>Year 5</b>	<i>Period 1</i>	<i>0.60</i>	<i>0.65</i>	<i>0.69</i>	<i>0.72</i>
	<i>Period 2</i>	<i>0.60</i>	<i>0.65</i>	<i>0.69</i>	<i>0.72</i>
	<i>Period 3</i>	<i>0.60</i>	<i>0.65</i>	<i>0.69</i>	<i>0.72</i>
	<i>Period 4</i>	<i>0.60</i>	<i>0.65</i>	<i>0.69</i>	<i>0.72</i>
	<i>Period 5</i>	<i>0.84</i>	<i>0.91</i>	<i>0.97</i>	<i>1.01</i>
	<i>Period 6</i>	<i>0.84</i>	<i>0.91</i>	<i>0.97</i>	<i>1.01</i>
	<i>Period 7</i>	<i>0.84</i>	<i>0.91</i>	<i>0.97</i>	<i>1.01</i>
	<i>Period 8</i>	<i>0.84</i>	<i>0.91</i>	<i>0.97</i>	<i>1.01</i>
	<i>Period 9</i>	<i>0.84</i>	<i>0.90</i>	<i>0.97</i>	<i>1.01</i>
	<i>Period 10</i>	<i>0.84</i>	<i>0.90</i>	<i>0.97</i>	<i>1.01</i>
	<i>Period 11</i>	<i>0.84</i>	<i>0.90</i>	<i>0.97</i>	<i>1.01</i>
	<i>Period 12</i>	<i>0.84</i>	<i>0.90</i>	<i>0.97</i>	<i>1.01</i>
	<i>Period 13</i>	<i>0.84</i>	<i>0.90</i>	<i>0.97</i>	<i>1.01</i>
<b>Year 6</b>	<i>Period 1</i>	<i>0.84</i>	<i>0.90</i>	<i>0.97</i>	<i>1.01</i>
	<i>Period 2</i>	<i>0.84</i>	<i>0.90</i>	<i>0.97</i>	<i>1.01</i>
	<i>Period 3</i>	<i>0.84</i>	<i>0.90</i>	<i>0.97</i>	<i>1.01</i>
	<i>Period 4</i>	<i>0.84</i>	<i>0.90</i>	<i>0.97</i>	<i>1.01</i>
	<i>Period 5</i>	<i>0.84</i>	<i>0.90</i>	<i>0.97</i>	<i>1.01</i>
	<i>Period 6</i>	<i>0.84</i>	<i>0.90</i>	<i>0.97</i>	<i>1.01</i>
	<i>Period 7</i>	<i>0.84</i>	<i>0.90</i>	<i>0.97</i>	<i>0.99</i>
	<i>Period 8</i>	<i>0.84</i>	<i>0.90</i>	<i>0.95</i>	<i>0.99</i>
	<i>Period 9</i>	<i>0.84</i>	<i>0.90</i>	<i>0.95</i>	<i>0.99</i>
	<i>Period 10</i>	<i>0.83</i>	<i>0.90</i>	<i>0.95</i>	<i>0.99</i>
	<i>Period 11</i>	<i>0.83</i>	<i>0.90</i>	<i>0.95</i>	<i>0.99</i>
	<i>Period 12</i>	<i>0.83</i>	<i>0.90</i>	<i>0.95</i>	<i>0.99</i>
	<i>Period 13</i>	<i>0.83</i>	<i>0.90</i>	<i>0.95</i>	<i>0.99</i>
<b>Year 7</b>	<i>Period 1</i>	<i>0.83</i>	<i>0.90</i>	<i>0.95</i>	<i>0.99</i>
	<i>Period 2</i>	<i>0.83</i>	<i>0.90</i>	<i>0.95</i>	<i>0.99</i>
	<i>Period 3</i>	<i>0.83</i>	<i>0.90</i>	<i>0.95</i>	<i>0.99</i>
	<i>Period 4</i>	<i>0.83</i>	<i>0.90</i>	<i>0.95</i>	<i>0.99</i>
<b>Until end of Franchise Term</b>					

1. **Start of the Franchise**

The Reporting Period in the cells entitled “Year 1 Period 7” shall be the first Reporting Period of the Franchise Term.



**APPENDIX 6**<sup>186 187</sup>

**Capacity Benchmark Table (Clause 5.16)**

<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>	<b>Column 4</b>	<b>Column 5</b>	
<b>Franchise Year/ Reporting Period</b>	<b>Target Performance Level (%)</b>	<b>Improvement Plan Performance Level (%)</b>	<b>Breach Performance Level (%)</b>	<b>Default Performance Level (%)</b>	
<b>Year 1</b>	<b>Period 7</b>	<b>1.25</b>	<b>1.34</b>	<b>1.44</b>	<b>1.50</b>
	<b>Period 8</b>	<b>1.25</b>	<b>1.34</b>	<b>1.44</b>	<b>1.50</b>
	<b>Period 9</b>	<b>1.25</b>	<b>1.34</b>	<b>1.44</b>	<b>1.50</b>
	<b>Period 10</b>	<b>1.25</b>	<b>1.34</b>	<b>1.43</b>	<b>1.50</b>
	<b>Period 11</b>	<b>1.25</b>	<b>1.34</b>	<b>1.43</b>	<b>1.50</b>
	<b>Period 12</b>	<b>1.25</b>	<b>1.34</b>	<b>1.43</b>	<b>1.50</b>
	<b>Period 13</b>	<b>1.25</b>	<b>1.34</b>	<b>1.43</b>	<b>1.49</b>
<b>Year 2</b>	<b>Period 1</b>	<b>1.24</b>	<b>1.34</b>	<b>1.43</b>	<b>1.49</b>
	<b>Period 2</b>	<b>1.24</b>	<b>1.34</b>	<b>1.43</b>	<b>1.49</b>
	<b>Period 3</b>	<b>1.24</b>	<b>1.34</b>	<b>1.43</b>	<b>1.49</b>
	<b>Period 4</b>	<b>1.24</b>	<b>1.34</b>	<b>1.43</b>	<b>1.49</b>
	<b>Period 5</b>	<b>1.24</b>	<b>1.33</b>	<b>1.43</b>	<b>1.49</b>
	<b>Period 6</b>	<b>1.24</b>	<b>1.33</b>	<b>1.43</b>	<b>1.49</b>
	<b>Period 7</b>	<b>1.24</b>	<b>1.33</b>	<b>1.43</b>	<b>1.49</b>
	<b>Period 8</b>	<b>1.24</b>	<b>1.33</b>	<b>1.43</b>	<b>1.49</b>
	<b>Period 9</b>	<b>1.24</b>	<b>1.33</b>	<b>1.42</b>	<b>1.49</b>
	<b>Period 10</b>	<b>1.24</b>	<b>1.33</b>	<b>1.42</b>	<b>1.49</b>
	<b>Period 11</b>	<b>1.24</b>	<b>1.33</b>	<b>1.42</b>	<b>1.48</b>
	<b>Period 12</b>	<b>1.24</b>	<b>1.33</b>	<b>1.42</b>	<b>1.48</b>
	<b>Period 13</b>	<b>1.24</b>	<b>1.33</b>	<b>1.42</b>	<b>1.48</b>
<b>Year 3</b>	<b>Period 1</b>	<b>1.24</b>	<b>1.33</b>	<b>1.42</b>	<b>1.48</b>
	<b>Period 2</b>	<b>1.23</b>	<b>1.33</b>	<b>1.42</b>	<b>1.48</b>
	<b>Period 3</b>	<b>1.23</b>	<b>1.33</b>	<b>1.42</b>	<b>1.48</b>
	<b>Period 4</b>	<b>1.23</b>	<b>1.33</b>	<b>1.42</b>	<b>1.48</b>
	<b>Period 5</b>	<b>1.23</b>	<b>1.32</b>	<b>1.42</b>	<b>1.48</b>
	<b>Period 6</b>	<b>1.23</b>	<b>1.32</b>	<b>1.42</b>	<b>1.48</b>
	<b>Period 7</b>	<b>1.23</b>	<b>1.32</b>	<b>1.42</b>	<b>1.48</b>
	<b>Period 8</b>	<b>1.23</b>	<b>1.32</b>	<b>1.41</b>	<b>1.48</b>
	<b>Period 9</b>	<b>1.23</b>	<b>1.32</b>	<b>1.41</b>	<b>1.47</b>
	<b>Period 10</b>	<b>1.23</b>	<b>1.32</b>	<b>1.41</b>	<b>1.47</b>
	<b>Period 11</b>	<b>1.23</b>	<b>1.32</b>	<b>1.41</b>	<b>1.47</b>
	<b>Period 12</b>	<b>1.23</b>	<b>1.32</b>	<b>1.41</b>	<b>1.47</b>
	<b>Period 13</b>	<b>1.23</b>	<b>1.32</b>	<b>1.41</b>	<b>1.47</b>
<b>Year 4</b>	<b>Period 1</b>	<b>1.23</b>	<b>1.32</b>	<b>1.41</b>	<b>1.47</b>
	<b>Period 2</b>	<b>1.22</b>	<b>1.32</b>	<b>1.41</b>	<b>1.47</b>
	<b>Period 3</b>	<b>1.22</b>	<b>1.32</b>	<b>1.41</b>	<b>1.47</b>
	<b>Period 4</b>	<b>1.22</b>	<b>1.31</b>	<b>1.41</b>	<b>1.47</b>

<sup>186</sup> Date of Change 16/12/2010

<sup>187</sup> Date of change 30/07/2013

	<i>Period 5</i>	1.22	1.31	1.41	1.47
	<i>Period 6</i>	1.22	1.31	1.40	1.47
	<i>Period 7</i>	1.22	1.31	1.40	1.46
	<i>Period 8</i>	1.22	1.31	1.40	1.46
	<i>Period 9</i>	1.22	1.31	1.40	1.46
	<i>Period 10</i>	1.22	1.31	1.40	1.46
	<i>Period 11</i>	1.22	1.31	1.40	1.46
	<i>Period 12</i>	1.22	1.31	1.40	1.46
	<i>Period 13</i>	1.22	1.31	1.40	1.46
<b>Year 5</b>	<i>Period 1</i>	1.22	1.31	1.40	1.46
	<i>Period 2</i>	1.21	1.31	1.40	1.46
	<i>Period 3</i>	1.21	1.31	1.40	1.46
	<i>Period 4</i>	1.21	1.30	1.40	1.46
	<i>Period 5</i>	2.02	2.17	2.32	2.44
	<i>Period 6</i>	2.02	2.17	2.32	2.42
	<i>Period 7</i>	2.02	2.17	2.32	2.42
	<i>Period 8</i>	2.02	2.17	2.32	2.42
	<i>Period 9</i>	2.02	2.17	2.32	2.42
	<i>Period 10</i>	2.02	2.17	2.32	2.42
	<i>Period 11</i>	2.02	2.17	2.32	2.42
	<i>Period 12</i>	2.02	2.17	2.32	2.42
	<i>Period 13</i>	2.02	2.17	2.32	2.42
<b>Year 6</b>	<i>Period 1</i>	2.02	2.17	2.32	2.42
	<i>Period 2</i>	2.02	2.17	2.32	2.42
	<i>Period 3</i>	2.00	2.15	2.30	2.42
	<i>Period 4</i>	2.00	2.15	2.30	2.40
	<i>Period 5</i>	2.00	2.15	2.30	2.40
	<i>Period 6</i>	2.00	2.15	2.30	2.40
	<i>Period 7</i>	2.00	2.15	2.30	2.40
	<i>Period 8</i>	2.00	2.15	2.30	2.40
	<i>Period 9</i>	2.00	2.15	2.30	2.40
	<i>Period 10</i>	2.00	2.15	2.30	2.40
	<i>Period 11</i>	2.00	2.15	2.30	2.40
	<i>Period 12</i>	2.00	2.15	2.30	2.40
	<i>Period 13</i>	2.00	2.15	2.30	2.40
<b>Year 7</b>	<i>Period 1</i>	2.00	2.15	2.30	2.40
	<i>Period 2</i>	2.00	2.14	2.29	2.39
	<i>Period 3</i>	1.99	2.14	2.29	2.39
	<i>Period 4</i>	1.99	2.14	2.29	2.39
<b>Until end of Franchise Term</b>					

## 1. Start of the Franchise

The Reporting Period in the cells entitled “Year 1 Period 7” shall be the first Reporting Period of the Franchise Term.

**APPENDIX 7**<sup>188 189 190 191 192 193 194 195</sup>

**Service Delivery Benchmark Table (Clause 5.17)**

Column 1		Column 2	Column 3	Column 4	Column 5
Franchise Period	Year/Reporting	Target Performance Level	Improvement Plan Performance Level	Breach Performance Level	Default Performance Level
<b>Year 1</b>	Period 7	23,990	25,790	27,590	28,790
	Period 8	23,980	25,770	27,570	28,770
	Period 9	23,960	25,760	27,560	28,750
	Period 10	23,950	25,740	27,540	28,740
	Period 11	23,930	25,730	27,520	28,720
	Period 12	23,920	25,710	27,510	28,700
	Period 13	23,900	25,700	27,490	28,690
<b>Year 2</b>	Period 1	23,890	25,680	27,470	28,670
	Period 2	23,880	25,670	27,460	28,650
	Period 3	23,880	25,670	27,460	28,660
	Period 4	23,870	25,660	27,440	28,650
	Period 5	23,850	25,640	27,430	28,630
	Period 6	23,840	25,620	27,410	28,610
	Period 7	23,820	25,610	27,390	28,590
	Period 8	23,810	25,590	27,380	28,580
	Period 9	23,800	25,580	27,360	28,560
	Period 10	24,550	26,390	28,230	29,460
	Period 11	24,540	26,380	28,220	29,450
	Period 12	24,520	26,360	28,200	29,430
	Period 13	24,510	26,350	28,190	29,410
<b>Year 3</b>	Period 1	24,490	26,330	28,170	29,390
	Period 2	24,480	26,320	28,150	29,380
	Period 3	24,640	26,490	28,340	29,570
	Period 4	24,620	26,470	28,320	29,550
	Period 5	24,610	26,460	28,300	29,530
	Period 6	24,590	26,440	28,290	29,520
	Period 7	24,580	26,430	28,270	29,500
	Period 8	24,560	26,400	28,250	29,470

<sup>188</sup> Date of Change 16/12/2010

<sup>189</sup> Date of second Change wef 04/03/11

<sup>190</sup> Date of Change 02/09/2011

<sup>191</sup> Date of Change 10/05/2012

<sup>192</sup> Date of change 15/08/2012

<sup>193</sup> Date of change 05/02/2013

<sup>194</sup> Date of change 28/06/2013

<sup>195</sup> Date of change 30/07/2013

	Period 9	24,550	26,390	28,240	29,460
	Period 10	24,310	26,140	27,970	29,180
	Period 11	24,300	26,130	27,950	29,160
	Period 12	24,280	26,110	27,940	29,140
	Period 13	24,270	26,100	27,910	29,130
<b>Year 4</b>	Period 1	24,260	26,080	27,890	29,110
	Period 2	24,240	26,060	27,880	29,090
	Period 3	24,330	26,150	27,970	29,180
	Period 4	24,300	26,130	27,950	29,170
	Period 5	24,290	26,120	27,940	29,150
	Period 6	24,270	26,100	27,920	29,130
	Period 7	24,260	26,090	27,900	29,120
	Period 8	24,250	26,070	27,890	29,100
	Period 9	24,230	26,050	27,870	29,080
	Period 10	24,050	25,850	27,650	28,860
	Period 11	24,030	25,830	27,640	28,850
	Period 12	24,020	25,820	27,620	28,830
	Period 13	24,000	25,800	27,600	28,800
<b>Year 5</b>	Period 1	23,990	25,790	27,590	28,780
	Period 2	23,970	25,770	27,570	28,770
	Period 3	24,250	26,080	27,900	29,100
	Period 4	24,240	26,050	27,880	29,080
	Period 5	33,910	36,460	39,000	40,700
	Period 6	33,890	36,430	38,990	40,670
	Period 7	33,870	36,410	38,950	40,640
	Period 8	33,850	36,390	38,920	40,610
	Period 9	33,820	36,360	38,910	40,600
	Period 10	33,810	36,340	38,880	40,570
	Period 11	33,780	36,320	38,850	40,540
	Period 12	33,770	36,300	38,840	40,520
	Period 13	33,750	36,270	38,810	40,500
<b>Year 6</b>	Period 1	33,730	36,260	38,780	40,470
	Period 2	33,710	36,230	38,770	40,450
	Period 3	33,680	36,220	38,740	40,430
	Period 4	33,670	36,190	38,710	40,400
	Period 5	33,640	36,180	38,700	40,360
	Period 6	33,610	36,150	38,670	40,330
	Period 7	33,600	36,110	38,640	40,320
	Period 8	33,570	36,090	38,630	40,290
	Period 9	33,560	36,060	38,580	40,260
	Period 10	33,530	36,050	38,560	40,240
	Period 11	33,520	36,020	38,540	40,220
	Period 12	33,490	36,010	38,510	40,190
	Period 13	33,470	35,980	38,490	40,170
<b>Year 7</b>	Period 1	33,450	35,970	38,470	40,150
	Period 2	33,430	35,940	38,440	40,120
	Period 3	33,420	35,920	38,420	40,100

	Period 4	33,390	35,900	38,400	40,070
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1. **Start of the Franchise**

The Reporting Period in the cells entitled “Year 1 Period 7” shall be the first Reporting Period of the Franchise Term.

## APPENDIX 8

### Figures for Calculation of Annual Franchise Payments (*Clause 5.20*)<sup>196</sup>

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<sup>196</sup> Where text has been omitted from the document this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

## APPENDIX 9

### List of Key Contracts (*Clause 5.24*)

The following items have as at the date of the Franchise Agreement been agreed between the parties to be Key Contracts:

1. Any Access Agreement to which the Franchisee is a party other than in its capacity as a Facility Owner.
2. Any Property Lease including the Property Leases listed in paragraph 4 of Appendix 2 (List of Conditions Precedent Documents) to the Conditions Precedent Agreement.
3. Any Rolling Stock Related Contract including the Rolling Stock Leases listed in Table 1 and Table 2 of Appendix 3 (The Train Fleet), but excluding any Rolling Stock Related Contract relating only to rolling stock vehicles funded by Additional Rolling Stock Investment.
4. Any contract or arrangement for the lending, seconding, hiring, contracting out, supervision, training, assessment, or accommodation by another Train Operator of any train drivers, conductors or other train crew used by the Franchisee in the provision of the Passenger Services.
5. Any contract or arrangement for the subcontracting or delegation to another Train Operator of the provision of any of the Passenger Services (whether or not the consent of the Secretary of State is required to such subcontracting or delegation under paragraph 1 of Schedule 2.3 (Third Party Delivery of Passenger Services and Other Franchisees)).
6. Any contract or arrangement with a Train Operator (other than an Access Agreement) for the provision to the Franchisee of train dispatch, performance or supervision of platform duties, security activities, evacuation procedures, advice or assistance to customers, assistance to disabled customers, operation of customer information systems, cash management or ticket issuing systems administration.
7. Any contract or arrangement with a Train Operator for the provision of breakdown or recovery, and track call services to assist in the provision of the Passenger Services.

8. Any contract or arrangement for the supply of spare parts or Spares.
9. Any contract or arrangement for the maintenance of track and other related infrastructure.
10. Any licences of Marks to the Franchisee.
11. Any licence of any CRM System or Yield Management System.
12. The Agreement for the supply and maintenance of a self service ticket issuing system between New Southern Railway Limited and Shere Limited.



## APPENDIX 10

### List of Primary Franchise Assets (*Clause 5.25*)<sup>197</sup>

Description of Primary Franchise Asset	Commitment not to de designate?
The Master Rental Agreement between Barclays Mercantile Business Finance Limited and New Southern Railway Limited dated 31 July 2006 (including the Individual Leases).	N
The Spares Storage Facility situated at Selhurst Depot	N
<b><i>The Electrostar Lot 10B MSA.</i></b>	<b><i>N</i></b>

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<sup>197</sup> Date of Change 20/09/2009

## APPENDIX 11

### List of Committed Obligations and Related Provisions (Clause 6)

#### Part 1 to Appendix 11

#### List of Committed Obligations

##### 1. Secure Station Accreditation

1.1 On or before 31 October 2010 the Franchisee shall achieve "Secure Station Scheme" status (in accordance with the guidelines published by the Department for Transport on 24 March 2005 (as modified on 22 May 2006) for each of the 95% Stations. For the purposes of this paragraph 1.1 the 95% Stations are:

- (a) such Stations as the Franchisee may specify and:
  - (i) which account for 95% of the station footfall as derived from "Lennon" or such other sources as the Secretary of State may reasonably agree; and
  - (ii) include all of the Stations which have been identified by British Transport Police at the Start Date as high risk locations; and
- (b) each of the Greater London Stations other than the Stations located at Belmont, Birkbeck, Clapham High Street and Wandsworth Road; and
- (c) each of the following Stations: Angmering, Bognor Regis, Earlswood, East Worthing, Emsworth, Goring-by-Sea and Southwick.

1.2 Without prejudice to the rights of the Secretary of State under this Agreement, where at any time during the Franchise Term a Station ceases to have the "Secured Station Scheme" status achieved in respect of that Station pursuant to paragraph 1.1 the Franchisee shall ensure that, within 6 months from the date on which such status ceases to apply in respect of that Station, such status is achieved again in respect of that Station.

## 2. **ITSO Smartmedia Ticketing**

2.1 Subject to paragraph 2.4 the Franchisee shall on or before 31 January 2012 introduce and operate an ITSO-Certified Smartmedia ticketing system throughout the area in which the Passenger Services are provided by:

- (a) providing, purchasing and installing such ITSO-Certified Smartmedia product retailing equipment, cards, readers and validators at the ITSO Stations and at such other stations as the Franchisee deems appropriate in order to operate an optimal ITSO-based scheme across the area in which the Passenger Services are provided;
- (b) providing and installing ITSO-Certified Smartmedia functionality on any automated gates which are fitted at any of the ITSO Stations;
- (c) providing portable ITSO-Certified Smartmedia handheld checkers to substantially all of its revenue protection staff when on duty;
- (d) negotiating and supporting effective maintenance, communications, power and other operating arrangements for the ITSO-based scheme; and
- (e) developing and supporting, or procuring the development and support of, an ITSO-Certified Smartmedia back office.

2.2 The Franchisee shall co-operate and actively engage with ATOC, other Train Operators, RSP and TfL as appropriate in:

- (a) developing an approach to the provision of information regarding the use of ITSO-Certified Smartmedia to facilitate use of more sophisticated ticket types and demand management over time; and
- (b) establishing processes, business rules and necessary system changes in order to achieve the effective delivery of its obligations under this paragraph 2.

2.3 The Franchisee shall use all reasonable endeavours to:

- (a) participate in any ATOC approved Smartmedia related ticketing scheme; and

- (b) co-operate with other Train Operators who either have or will have a certified ITSO Smartmedia functionality, to ensure reciprocal operation of ITSO-Certified Smartmedia cards.
- 2.4 The Franchisee shall not be in breach of the provisions of paragraph 2.1 if its failure to introduce and operate an ITSO-Certified Smartmedia ticketing system by the specified date is caused by delay in fitting or converting any Oyster validation equipment scheduled to be fitted or converted at any ITSO Station which is a Greater London Station where this was caused solely by TfL (or its contractors or agents) not carrying out such fitting or converting works in accordance with the planned timescales.

## **OYSTER PAYG**

- 2.5 The Franchisee will co-operate with TfL in collective industry discussions about an agreement under which the Franchisee will agree to accept Oyster PAYG fares in respect of the Passenger Services as soon as is reasonably practicable. In the event that a railway industry agreement to accept Oyster PAYG fares on franchised passenger rail services is reached, the Franchisee agrees to enter into a consequent appropriate legal agreement with TfL under which Oyster PAYG fares will be accepted by the Franchisee for the remainder of the Franchise Term. Should an industry agreement not be reached by 30 April 2010, the Franchisee will continue cooperating with TfL to introduce Oyster PAYG fares in respect of the Passenger Services as soon as reasonably practicable provided that the Franchisee and the Secretary of State agree that the terms of such introduction are not detrimental to the overall commercial position of the franchise.
- 2.6 During the Franchise Term, the Franchisee agrees to provide "Oyster Top Ups" from ticket vending machines which are in place at Greater London Stations at the Start Date (subject to the Secretary of State funding the upgrade of these machines as part of the Oyster PAYG roll out.).
- 2.7 The Franchisee agrees that the introduction of Oyster PAYG will not be a Change nor otherwise entitle the Franchisee to receive any compensation payment from the Secretary of State pursuant to the terms of the Franchise Agreement, save as specified in paragraph 2.6.

2.8 For the purposes of this paragraph 2 the ITSO Stations are:

(a) **Outside London (26 stations)**

Bexhill, Bognor Regis, Brighton, Burgess Hill, Chichester, Crawley, Dorking, Eastbourne, East Grinstead, Epsom, Gatwick Airport, Haywards Heath, Horsham, Hove, Hurst Green, Lewes, Leatherhead, Littlehampton, Oxted, Redhill, Reigate, Seaford, Shoreham By Sea, Three Bridges, Uckfield, Worthing; and

(b) **In London (18 stations)**

Balham, Carshalton, Coulsdon South, Mitcham Eastfields, East Croydon, East Dulwich, Gipsy Hill, London Victoria, Norbury, Peckham Rye, Purley, Streatham, Streatham Common, Streatham Hill, Sutton, Thornton Heath, Tulse Hill and Wallington.

### 3. Improvements at Stations

#### Ticket Vending Machines

3.1 The Franchisee shall:

- (a)<sup>i</sup> on or before 31 December 2010 install 30 ticket vending machines at Stations to be determined by the Franchisee, such ticket vending machines to be additional to those which existed at such Stations as at the Start Date; and
- (b)<sup>198</sup> ***on or before 31 January 2012 install at least a further 126 ticket vending machines (in addition to those referred to in paragraph 3.1(a)) at Stations to be determined by the Franchisee and in so doing shall incur expenditure of not less than £<sup>199</sup>. All such ticket vending machines shall be equipped with car park retailing functionality for the sale of permits to use the car park at Stations. The Franchisee shall be permitted to propose to the Secretary of State an alternative automated retail solution for the sale of tickets at any Station and if the Secretary of State in his unfettered discretion agrees to such a proposal (whether because it represents better value to passengers and/or would minimise costs thereby allowing for***

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<sup>198</sup> Date of Change 06/04/2011

<sup>199</sup> **Where text has been omitted from the document this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.**

***additional outputs to be acquired from the committed expenditure or otherwise) then the Franchisee will implement such an alternative automated retail solution at that Station instead of installing the ticket vending machines as originally contemplated. The Franchisee's obligations under this paragraph 3.1(b) shall be in addition to its obligations under paragraphs 2 and 3.4.***

- 3.2 In order to assist the Secretary of State in the monitoring of the Franchisee's compliance with its obligations under paragraphs 3.1(a) and 3.1(b) the Franchisee shall on or before the end of the sixth Reporting Period following the Start Date provide to the Secretary of State a delivery plan which sets out:
- (a) the Stations where the ticket vending machines or such alternative automated retail facilities as may be agreed pursuant to paragraph 3.1(b) will be installed (giving details of the numbers and type of machines to be installed at each such Station);
  - (b) the dates of completion of such installation at each such Station; and
  - (c) a brief explanation as to the reasons why the Franchisee has opted to install the ticket vending machines (or such alternative automated retail facilities as may be agreed pursuant to paragraph 3.1(b)) at such Stations.
- 3.3 On or before the date that is 3 months after the Start Date the Franchisee shall ensure that all the ticket vending machines located at the Stations as at the Start Date provide "Ticket on Departure" facilities.
- 3.4 On or before 31 December 2010 the Franchisee shall ensure that the functionality and ease of use of the ticket vending machines already located at the Stations as at the Start Date are improved by the inclusion of some or all of the following features and in so doing shall incur expenditure of not less than £<sup>200</sup>:

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<sup>200</sup> Where text has been omitted from the document this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

- (a) availability of zone extensions in the London area and season ticket options which are additional to those which existed as at the Start Date;
- (b) improved screen layouts and screen navigation;
- (c) wider credit card and cash acceptance;
- (d) improved processor speeds and intelligence; and
- (e) any other improvements that may be agreed with the Secretary of State.

### **Automatic Ticket Gates**

3.5 Subject to obtaining the approval of HM Railway Inspectorate, any planning or listed building consents and any other consents that may be required under the relevant Station Leases and/or Access Agreements (“**Relevant Consent**”) the Franchisee shall:

- (a)<sup>201</sup> ***Install automatic ticket gates at the Stations specified in the first column of the following table at the entrances specified in the second column by the date in the third column:***

<b>Stations</b>	<b>Entrances</b>	<b>Date</b>
Angmering	Main entrance and secondary entrance	31 July 2010
Ashtead	Main entrance and secondary entrance	31 December 2010
Bognor Regis	Entrance to the platforms	31 May 2010
Burgess Hill	Main entrance; car park entrance to Platform 1; and car park entrance to Platform 2.	31 December 2010
Crawley	Main entrance and secondary entrance	31 August 2010

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<sup>201</sup> Date of change 16/6/2010

Dorking	Sole station entrance	30 April 2010
East Grinstead	Sole station entrance	30 April 2011
Falmer	Main entrance and secondary entrance	30 September 2010
Hassocks	Main entrance and secondary entrance	30 September 2010
Haywards Heath	Main entrance and secondary entrance	31 December 2010
Leatherhead	Main entrance and secondary entrance	31 December 2010
Polegate	Main entrance and secondary entrance	31 December 2010
<b>Littlehampton<sup>202</sup></b>	<b>Main entrance</b>	<b>30 September 2011</b>

Shoreham-by-Sea	Main entrance; disabled entrance to Platform 1; and disabled entrance to Platform 2.	30 September 2010
Three Bridges	Entrance to the platforms	30 June 2010

- (b) on or before 31 March 2011 install automatic ticket gates at the Stations specified in the first column of the following table and at the entrances specified in the second column:

<b>Stations</b>	<b>Entrances</b>
Coulsdon South	Main entrance and secondary entrance
Horley	Main entrance and secondary entrance
Merstham	Main entrance and secondary entrance

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<sup>202</sup> Date of Change 22/12/2010



Oxted	Main entrance
Reigate	Main entrance and secondary entrance

(c) on or before 31 December 2011 install automatic ticket gates at:

(i) the main entrance to Gatwick Airport Station; and

(ii) the following locations at London Victoria Station:

(A) the concourse entrance to platforms 13 and 14;

(B) the approach to the passenger lift which gives access from the upper level of the Station to platforms 13 and 14; and

(C) such location which gives access to platforms 13 and 14 from the upper level of the Station. This location is to conform with the operators view of the most practical site for facilitating passenger flows.

and prior to such installation of automatic ticket gates the Franchisee shall install 2 additional ticket vending machines at Gatwick Airport and 10 additional ticket vending machines at London Victoria the location of which shall ensure ease of access to ticket vending facilities for passengers using platforms 13 and 14.<sup>203</sup>

3.6 The Franchisee shall immediately notify the Secretary of State where it has not been able to obtain a Relevant Consent in respect of any Station referred to in paragraphs 3.5(a), (b) or (c) (“**Original Station**”), and shall as soon as reasonably practicable thereafter, provide the Secretary of State with a written proposal (“**Proposal**”) identifying one or more alternative

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<sup>203</sup> Date of Change 28/04/2011

Stations at which it considers it may be appropriate to install automatic ticket gates (an “**Alternative Location**”). Such Proposal shall:-

- (a) provide an explanation as to why the Franchisee considers each such Alternative Location to be an appropriate location for the installation of automatic ticket gates, specifying the passenger footfall, known levels of fare evasion and any specific security issues at each such Alternative Location; and
- (b) identify the cost of installing automatic ticket gates at each such Alternative Location.

- 3.7 Without prejudice to the provisions of paragraph 6 of Part 2 (Miscellaneous Provisions) of this Appendix 11, based on the Proposal, the Franchisee and the Secretary of State shall agree (or in the absence of agreement the Secretary of State shall reasonably determine) the Alternative Location at which the Franchisee shall be required, in the same way as specified in paragraphs 3.5(a), (b) or (c) (as the case may be), to install automatic ticket gates in place of the Original Station, provided that the cost to the Franchisee of installing ticket gates at the Alternative Location shall not exceed the cost which would have been incurred by the Franchisee in installing automatic ticket gates at the Original Station.
- 3.8 For the avoidance of doubt, in circumstances where paragraph 3.6 applies, a Committed Obligation Payment Adjustment shall be made pursuant to paragraph 2 of Part 3 (Late/Non Completion of Committed Obligations) to this Appendix 11 in respect of any Reporting Period in which the Franchisee fails to install automatic ticket gates at any Alternative Location.
- 3.9 The Franchisee shall ensure (at its own cost) that all the gates which form part of the TfL Gating Schemes (as such term is defined in paragraph 4 of Appendix 1 (Secretary of State Risk Assumptions)) once installed and operational continue to be made available and effectively maintained for the remainder of the Franchise Term. For the avoidance of doubt, the provisions of paragraph 2.2 of Part 2 (Miscellaneous Provisions) to this Appendix 11 shall apply in respect of the Franchisee’s obligations under this paragraph 3.9.
- 3.10 The Franchisee shall ensure that the automatic ticket gates to be installed by it at the Stations referred to in paragraphs 3.5(a) to (c) together with those to be installed by the Franchisee to replace the existing obsolete automatic

ticket gates at Epsom Station shall (unless otherwise agreed by the Secretary of State) consist of at least 76 standard gates and 46 gates of a wider dimension to permit passengers carrying luggage to pass without undue inhibition. At least 6 such gates of a wider dimension will be installed at the station specified in paragraph 3.5(c)(i) and at least 4 gates of a wider dimension at the station specified in paragraph 3.5(c)(ii).

- 3.11 Within 6 months of the installation of automatic ticket gates at the Station referred to in paragraph 3.5 (c)(i), the Franchisee shall provide to the Secretary of State a report (in a form to be agreed with the Secretary of State before the Start Date) detailing the level of Peak and Off Peak ticket office queuing times and adherence to the 5 minute peak and 3 minute off peak queuing standard contained in the Ticketing and Settlement Agreement.

### **Station Car Parks**

- 3.12 The Franchisee shall:

- (a) on or before 31 March 2013:-
- (i) provide no less than 1000 car parking spaces at Stations; and
  - (ii) subject to obtaining all necessary planning and other consents, provide at least a further 122 car parking spaces at Stations,

in each case in addition to those which exist on the Start Date and with the location of such car parking spaces to be determined by the Franchisee;

- (b) ***on or before 30 April 2011 install car park retailing functionality onto all ticket vending machines which existed at Stations as at the Start Date and the 30 ticket vending machines installed in accordance with paragraph 3.1 (a), for the sale of permits to use the car park at Stations;***<sup>204</sup>
- (c) on or before the date that is one year from the Start Date install displays showing real time train departure information (in addition to

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<sup>204</sup> Date of Change 06/04/2011

those which exist on the Start Date) at 10 Station car parks to be determined by the Franchisee;

- (d) within the first 12 months of the Franchise Term undertake a trial of automatic number plate technology at Brighton Station car park for season ticket and car park permit holders enabling vehicle recognition and automatic entrance and exit from the car park and if, in the reasonable opinion of the Franchisee, the technology works in practice, proves to be cost effective and is welcomed by passengers (the Franchisee having conducted a survey of a reasonable sample of those passengers involved in the trial to establish whether or not this is the case), extend the automatic number plate recognition technology to a further nine Station car parks by no later than 31 March 2013 at locations to be determined by the Franchisee.

3.13 In order to assist the Secretary of State in the monitoring of the Franchisee's compliance with its obligations under:

- (a) paragraph 3.12(a) the Franchisee shall on or before the end of the thirteenth Reporting Period following the Start Date provide to the Secretary of State a delivery plan which sets out:
  - (i) the Stations at which the additional car parking spaces will be provided with a plan showing the location and the number of additional car parking spaces that will be provided at each such Station;
  - (ii) the dates by which the additional car parking spaces will be provided at each such Station; and
  - (iii) a brief explanation as to the reasons why the Franchisee has opted to provide the additional car parking spaces at the relevant Stations;

**(b) not used<sup>205</sup>**

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<sup>205</sup> Date of Change 06/04/2011

- (c) paragraph 3.12(c) the Franchisee shall on or before the end of the sixth Reporting Period following the Start Date provide to the Secretary of State a delivery plan which sets out:
- (i) the Station car parks at which the Franchisee will install the real time train departure information displays;
  - (ii) the dates by which the real time train departure information displays will be installed at each such Station car park; and
  - (iii) a brief explanation as to the reasons why the Franchisee has opted to install the real time train departure information displays at each such Station car park.

3.14 The Franchisee shall co-operate and actively engage with Network Rail in developing an approach to the provision of additional car parking spaces at the Stations located at Redhill and Three Bridges and at other Stations (to the extent appropriate).

### **Station Environment**

3.15<sup>ii</sup> On or before 30 September 2010 the Franchisee shall carry out a deep clean and minor fault rectification works at all Stations which are Greater London Stations and in doing so shall incur expenditure of not less than £<sup>206</sup>. The deep clean and minor fault rectification works shall be carried out in such a way as to achieve the outputs specified in the specification of works set out in the document in agreed terms marked “**GLA Deep Clean Specification**” and the quality of the works undertaken by the Franchisee pursuant to this paragraph 3.15 shall be assessed as specified in the GLA Deep Clean Specification. The Franchisee shall notify the Secretary of State and TfL as soon as the deep clean and minor fault rectification works have been completed at any such Greater London Station.

3.16 On or before 31 March 2011 the Franchisee shall carry out a deep clean and minor fault rectification works at all Stations other than the Greater London

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<sup>206</sup> Where text has been omitted from the document this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

Stations and in doing so shall incur expenditure of not less than £<sup>207</sup>. The deep clean and minor fault rectification works shall be carried out in such a way as to achieve the outputs specified in a specification to be prepared by the Franchisee and approved by the Secretary of State by the Start Date (the “**Non-GLA Deep Clean Specification**”) and the quality of the works undertaken by the Franchisee pursuant to this paragraph 3.16 shall be assessed as specified in the Non-GLA Deep Clean Specification. The Franchisee shall notify the Secretary of State as soon as the deep clean and minor fault rectification works have been completed at any such Station.

3.17 On or before **31 October 2012**<sup>208</sup> the Franchisee shall improve the facilities at those Stations known as Brighton, Haywards Heath, Hove, Lewes, Redhill, Three Bridges and Worthing and in so doing shall procure expenditure of not less than £<sup>209</sup>. The improvements to be made to facilities at such Stations shall be determined by the Franchisee (in consultation with Network Rail and other relevant Stakeholders including the Secretary of State) and may include some or all of the following:

- (a) refurbishment of waiting accommodation and toilets;
- (b) introduction of and/or improvement to customer information systems and passenger announcement systems in waiting rooms;
- (c) introduction of “white” lighting to improve visibility and security; and
- (d) general redecoration.

3.18 In addition to its obligations in paragraph 3.17 the Franchisee shall on or before 31 May 2011 improve customer information systems at Stations and in doing so shall incur expenditure of not less than £<sup>210</sup>. The improvements to be made to the customer information systems will include:

- (a) customer information systems coverage at all Stations;

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<sup>207</sup> Where text has been omitted from the document this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

<sup>208</sup> Date of Change 29/10/2010

<sup>209</sup> Where text has been omitted from the document this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

<sup>210</sup> Where text has been omitted from the document this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

- (b) installation of fastest train A-Z boards at the Stations located at Brighton, East Croydon, Epsom<sup>iiiiv</sup>, Gatwick Airport, Purley, Redhill, Sutton (Surrey), Three Bridges and Worthing;
  - (c) reliability enhancements; and
  - (d) other general enhancements as necessary.
- 3.19 By no later than 31 December 2009, the Franchisee shall introduce designated meeting points at not less than 16 Stations including London Victoria, East Croydon, Brighton and London Bridge to assist groups of passengers to meet and travel together and disabled passengers to meet their station host.
- 3.20 In order to improve the provision of information to passengers, by no later than 31 December 2009, the Franchisee shall complete a zoning exercise at all Stations to identify some or all of the following:
- (a) Welcome Zone – containing station facility and community information;
  - (b) Ticket Zone – containing ticket purchasing and real time passenger service information;
  - (c) Train Zone – containing penalty fare and timetable information; and
  - (d) Onward Journey Zone – containing multi-modal travel information.
- 3.21 By no later than 31 December 2010, the Franchisee shall ensure that passenger information at all Stations is relocated in accordance with the zoning exercise referred to in paragraph 3.20.
- 3.22 *On or before 31 May 2011 the Franchisee shall install two benches at Polegate Station.***<sup>211</sup>
- 3.23 *On or before 30 June 2012, the Franchisee shall install two benches at Leatherhead Station.***<sup>212</sup>

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<sup>211</sup> Insert new text wef 16/03/11

<sup>212</sup> Insert new text wef 09/02/12

## **Service Quality Management System Passenger Benefits**

**3.24** <sup>213</sup> *On or before 31 July 2013<sup>214</sup> the Franchisee shall, in consultation with the Secretary of State, make improvements as listed below to improve the information available to passengers at times of disruption and, in so, doing shall incur a total expenditure of no less than £<sup>215</sup>.*

**a) The Franchisee shall install wall mounted screens at remote booking on points and Personal Needs Break points in order to display disruption messages and in so doing shall incur expenditure of no less than £<sup>216</sup>. These improvements are to be made to such facilities to be determined by the Franchisee and shall include the following:**

**i. Depots: Norwood, Redhill, Eastbourne, London Bridge Horsham and Three Bridges; and**

**ii. Personal Needs Break points: Haywards Heath, Horsham Up Side room, Littlehampton. Bognor Regis, Clapham Junction (Platform 13) East Croydon, Gatwick Airport (new point on overbridge), Oxted, Purley and Victoria (Platform 19).**

**iii. In order to fulfil this obligation the Franchisee shall, in consultation with the Secretary of State, continue to install wall mounted screens at further locations until the full expenditure listed in 3.24(a) is achieved. Additional locations may include: Barnham (down platform room), Caterham Depot, Epsom Depot, East Grinstead PNB, Streatham Hill PNB, Worthing PNB, Barnham PNB, Brighton PNB, Selhurst PNB and Victoria PNB.**

**b) The Franchisee shall install radio microphones at stations over and above those identified as a part of the NPS Action Plan and those identified for CIS Reasons to enable communication to passengers at times of disruption. In so doing the Franchisee shall incur expenditure of no less than £<sup>217</sup>. The installations are to be made at**

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<sup>213</sup> Insert new text wef 06/03/2013

<sup>214</sup> Date of change 31/05/2013 (date amended from 31 May 2013 to 31 July 2013)

<sup>215</sup> Where text has been omitted from the document this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000

<sup>216</sup> Where text has been omitted from the document this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000

<sup>217</sup> Where text has been omitted from the document this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000



**stations to be determined by the Franchisee after site surveys are conducted and may include:**

- i. Eastbourne, Bognor; Littlehampton, Gatwick, and East Croydon.***
  - ii. In order to fulfil this obligation the Franchisee shall, in consultation with the Secretary of State, continue to install radio microphones at further stations which would benefit from such installation until the full expenditure listed in 3.24(b) is achieved.***
- c) On or before 31 August 2013 the Franchisee shall improve the facilities at further Depots, Personal Needs Break points or Stations at locations to be determined by the Franchisee in consultation the Secretary of State to ensure any additional cost saving arising from the changes to SQMS allocated to providing passenger benefits above the amount listed in 3.24 are used until the full expenditure is incurred.**

#### **4. Rolling Stock and Depots**

##### **Rolling Stock**

- 4.1        218**
- 4.2        219**
- 4.3        220**
- 4.4        221**

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**218** Where text has been omitted from the document this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

**219** Where text has been omitted from the document this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

**220** Where text has been omitted from the document this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

**221** Where text has been omitted from the document this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

- 4.5 From 31 December 2011 the Franchisee shall use all reasonable endeavours to ensure that, so far as is reasonably practicable without causing unreasonable delay or Cancellation to any Passenger Service:
- (a) the availability of functional train toilets assessed on a Reporting Period by Reporting Period basis across all of the Class 171, Class 377 and Class 442 rolling stock vehicles comprised in the Train Fleet is greater than or equal to 95% in respect of all such rolling stock vehicles in passenger revenue earning service in the operation of the Passenger Services; and
  - (b) working air conditioning functionality assessed on a Reporting Period by Reporting Period basis across all of the Class 171, Class 377 and Class 442 rolling stock vehicles comprised in the Train Fleet is greater than or equal to 98% in respect of all such rolling stock vehicles in passenger revenue earning service in the operation of the Passenger Services.

4.6 The Franchisee shall, as part of its reporting arrangements pursuant to paragraph 4.1 of Schedule 7.2 (Service Quality Management) of the Terms, provide a report to the Secretary of State which demonstrates its performance in respect of its obligations under paragraph 4.5.

- 4.7 222
- 4.8 223
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- 4.10 225
- 4.11 226

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**222** Where text has been omitted from the document this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

**223** Where text has been omitted from the document this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

**224** Where text has been omitted from the document this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

**225** Where text has been omitted from the document this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

- 4.12 Any references to SLC2B or SLC3B in paragraphs 4.10 and 4.11 shall be construed as references to SLC2B or SLC3B (as the case may be) or any Alternative SLC (as such term is defined in Clause 5.3A of this Agreement) having substantially the same effect as SLC2B or SLC3B.
- 4.13 As soon as reasonably practicable after the Start Date and in any event by no later than one year from the Start Date, the Franchisee shall, if implementation has not been completed prior to the Start Date, complete the implementation of the solution to delays between train arrival and door opening at London Victoria Station associated with GPS signal problems. The Franchisee shall maintain and operate such solution, or enhanced solutions should they become available, for the remainder of the Franchise Term.

**4.13A<sup>227</sup> On or before 31<sup>st</sup> December 2010 the franchisee shall procure an interactive train fault and failure diagnostic toolkit that will help identify in-service faults on each unit type employed by Southern and provide clear instruction on how to manage the failure to minimise service disruption. The Franchisee agrees to:**

- (a) Implement the system in its Operational Control Centre by 31 March 2011**
- (b) Share the methodology behind the system with other Train Operators**

**4.14<sup>228</sup> The franchisee is to run a passenger service from 09 December 2012 until the end of the franchise which will depart from Uckfield and arrive at London Bridge Monday to Friday on or before 0630, the calling pattern of this service will be Buxted, Crowborough, Eridge, Cowden, Edenbridge Town, Oxted, East Croydon.**

## **Depots**

**4.15 <sup>229</sup>On or before 31 December 2011 the Franchisee shall procure that the Depots located at Brighton, Eastbourne, Selhurst and Stewarts Lane**

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<sup>226</sup> Where text has been omitted from the document this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

<sup>227</sup> Date of Change 15/11/2010

<sup>228</sup> Date of new insertion 12/09/2012

<sup>229</sup> Date of change 30/4/2010

***shall be subjected to an enhancement programme and in so doing shall incur expenditure of not less than £<sup>230</sup>. The enhancement programme must include:***

- (a) by 30 November 2011, modifications to extend the permanent way on yard siding 1 at Selhurst Depot to create 10 car length (200m) capacity on that road;***
- (b) by 30 December 2010 Design and construct a side pitted road at Stewarts Lane depot to provide for the effective maintenance of Class 442 units;***

***and may include some or all of the following:***

- (c) enhancement of the spares storage facilities at Brighton Depot; and***
- (d) enhancements to the repair shed including the installation of traction power (shore supply) systems at Selhurst Depot.***
- (e) enhancements to controlled emission toilet discharge facilities at each or any of the Depots located at Eastbourne, Brighton, Stewarts Lane, Selhurst, or at any other locations to be selected by the Franchisee.***

## **5. Accessibility**

- 5.1 On or before 31 December 2013 the Franchisee shall develop at least 30 station travel plans and incur expenditure of not less than £<sup>231</sup> in the implementation of the recommendations of such station travel plans. Of the station travel plans to be developed in accordance with this paragraph 5.1, at least 10 shall be developed at Stations which are Greater London Stations, at least 10 shall be developed at Stations other than the Greater London Stations and a station travel plan shall be developed in respect of each Station where the Franchisee proposes to provide over 100 additional car

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<sup>230</sup> Where text has been omitted from the document this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

<sup>231</sup> Where text has been omitted from the document this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

parking spaces. Each station travel plan shall, at the time of its development, be consistent with the following requirements:

- (a) examine ways in which overall access to the relevant Station can be improved whilst focusing on the access and egress at the relevant Station for all modes including on foot;
- (b) draw on the experiences and results of the station travel plans which are being piloted by ATOC as at the date of this Agreement; and
- (c) be developed in conjunction with the affected local authorities, other transport operators, Network Rail and local user representatives and include the “TfL Strategic Urban Realm Planning Study programme” in respect of the station travel plans to be developed for the Stations which are Greater London Stations.

**5.2<sup>232 233</sup> On or before the 31 July 2014, or such later date as ITSO on Prestige is delivered , the Franchisee shall introduce multi modal “Pay As You Go” ITSO-Certified Smartmedia ticketing:**

- (a) in the Brighton area (bounded by and including the Stations located at Shoreham-by-Sea, Preston Park and Falmer) in conjunction with the Brighton and Hove Bus and Coach Company Limited; and**
- (b) in the Crawley and Gatwick area (between and including Stations located at Horley and Ifield) in conjunction with Metrobus Limited.**

**5.2A On or before the date that is three years from the Start Date the Franchisee shall introduce Plusbus on ITSO-Certified Smartmedia ticketing:**

- (a) in the Brighton area (bounded by and including the Stations located at Shoreham-by-Sea, Preston Park and Falmer) in conjunction with the Brighton and Hove Bus and Coach Company Limited; and**

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<sup>232</sup> Date of Change 02/04/2012

<sup>233</sup> Date of Change 22/07/2013

- (b) *in the Crawley and Gatwick area (between and including Stations located at Horley and Ifield) in conjunction with Metrobus Limited.*

**5.2B On or before the 31 December 2013, or such later date as ITSO on Prestige is delivered but no later than the 1 June 2015, the Franchisee shall contribute £<sup>234</sup> to the Secretary of State for the development of Smartmedia systems/ticketing.**

5.3 On or before:

- (a) 31 January 2011 the Franchisee shall provide no less than 750 bicycle parking facilities (in addition to those which exist at the Start Date) at Stations to be determined by the Franchisee including by reference to the existing capacity and passenger demand for such facilities at the relevant Station; and
- (b) 31 December 2013 the Franchisee shall provide no less than a further 750 bicycle parking facilities at Stations to be determined by the Franchisee including by reference to the outcome of the 30 station travel plans to be developed and implemented by the Franchisee pursuant to paragraph 5.1 and the existing capacity and passenger demand for such facilities at the relevant Station.

Any bicycle parking facilities provided by the Franchisee pursuant to this paragraph 5.3 shall comply with the TRANSEC security instructions as set out in the DfT Bike and Rail Policy document published on the 27th October 2006.

5.4 On or before the date that is two years from the Start Date the Franchisee shall install “real time” multimodal information screens at:

- (a) the Stations known as Aldrington, Brighton, Crawley, Falmer, Fishersgate, Gatwick Airport, Haywards Heath, Horley, Hove, Ifield, Lewes, London Road (Brighton), Moulsecoomb, Preston Park, Portslade, Shoreham-by-Sea, Southwick and Worthing; and

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<sup>234</sup> Where text has been omitted from the document this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

(b) a further 17 Stations to be determined by the Franchisee,  
and in doing so shall incur expenditure of not less than £<sup>235</sup>.

5.5 <sup>v</sup>Within 12 months of the Start Date, the Franchisee shall ensure that all disabled bays provided at car parks at Stations meet the requirements of BS 8300:2001, Design of buildings and their approaches to meet the needs of disabled people, code of practice.

5.6 The Franchisee shall:

- (a) with effect from the first anniversary of the Start Date, achieve and maintain a success rate in respect of its Assisted Passenger Reservation Service (“APRS”) of not less than 97% (assessed on a moving annual average basis). In order to establish the success rate for the purposes of this paragraph 5.6(a), the Franchisee shall at the end of each Reporting Period contact not less than 20% of the total number of passengers who made reservations through the APRS in that Reporting Period and record those incidences where assistance was provided in accordance with such reservations and those incidences where no such assistance was provided; and
- (b) ensure that calls to the telephone help line number in respect of the APRS shall be provided free of charge.

5.7 The Franchisee shall within 12 months from the Start Date produce and make available to passengers a step free guide in respect of each Station identifying whether there is step free access at each Station (and if so, where it is) and advising on alternative provision where step free access is not available (the “**Step Free Guide**”). The Step Free Guide shall be consistent with the guide provided by TfL in respect of its passenger services and include information on the platform-train stepping distances. The Franchisee shall conduct an annual review of the Step Free Guide and, where considered appropriate following such review, update the Step Free Guide.

## 6. **Innovative Tickets and Payments**

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<sup>235</sup> Where text has been omitted from the document this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

- 6.1 On or before 31 December 2012, the Franchisee shall introduce on a trial basis three innovative season ticket types using ITSO-Certified Smartmedia technology on the Arun Valley to London Victoria route. Such trial shall be conducted by the Franchisee for at least one year. The season ticket types to be trialled shall be as follows (or such other types as may be agreed between the Franchisee and the Secretary of State):
- (a) cash back season tickets;
  - (b) early bird flexible season tickets; and
  - (c) three day season tickets.
- 6.2 No later than three months following conclusion of the trial referred to in paragraph 6.1 the Franchisee shall provide to the Secretary of State a feasibility report detailing the costs and benefits of introducing such innovative season ticket types throughout the Franchise. Where such feasibility report shows that there is a good business case for the introduction of any innovative season ticket type across the Franchise, the Franchisee shall introduce such innovative season ticket type throughout the Franchise in accordance with the terms of the proposals set out in the feasibility report.
- 6.3 Subject to obtaining all necessary consents including where necessary amendment to the Ticketing and Settlement Agreement the Franchisee shall, on or before 31 December 2010, use all reasonable endeavours to introduce a facility ("Direct Debit Facility") whereby purchasers of season tickets are able to make payments in instalments to the Franchisee in respect of such tickets by way of direct debit. Once introduced the Franchisee shall make the Direct Debit Facility available to passengers.
- 6.4 The Franchisee shall donate £1 to a charity for each Annual Season Ticket that it sells online, such charity to be determined by the Franchisee.

## 7. **Investors in People**

- 7.1 The Franchisee shall use all reasonable endeavours to achieve "Investors in People" accreditation within two years of the Start Date.

## 8. **Environment**

- 8.1 Subject to obtaining the approval of Network Rail and the lessor under the relevant Rolling Stock Lease the Franchisee shall:



- (a) on or before 31 July 2010 and for the duration of the Franchise Term ensure that all of the Class 377 rolling stock vehicles comprised in the Train Fleet as at the Start Date have full regenerative braking capability across all Routes operated by such rolling stock vehicles; and
- (b) on or before 31 December 2012 install on board metering equipment on:
  - (i) 18 Class 377 rolling stock units comprised in the Train Fleet;
  - (ii) 6 Class 455 or Class 456 rolling stock units comprised in the Train Fleet;
  - (iii) 2 Class 442 rolling stock units comprised in the Train Fleet; and
  - (iv) 2 Class 313 rolling stock units comprised in the Train Fleet.

8.2 On or before the date that is four years from the Start Date the Franchisee shall reduce non traction electricity consumption by 25% in comparison to the quantified baseline performance data established for year end 2008/09 (which in all circumstances shall exclude third party non traction electricity consumption). The Franchisee shall ensure that such reduction in non traction electricity consumption is maintained until the end of the Franchise Term.

8.3 On or before 31 July 2011 the Franchisee shall increase the recycling rate of mixed inert waste from the non hazardous solid waste stream by 60% in comparison with the quantified baseline performance data established for year end 2009/10. The Franchisee shall ensure that such recycling rate of mixed inert waste from the non hazardous solid waste stream is maintained until the end of the Franchise Term<sup>236</sup>

8.4 The Franchisee shall:

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<sup>236</sup> Date of change 14/04/2011

- (a) ensure that it maintains any ISO14001 accreditation already achieved as at the Start Date at any location across the Franchise; and
- (b) within two years of the Start Date use all reasonable endeavours to achieve ISO14001 accreditation across the Franchise.

8.5 <sup>237</sup>

8.6 Within 3 months of the Start Date, the Franchisee shall prepare and submit to the Secretary of State an Environmental Management Plan. The Franchisee shall implement the Environmental Management Plan in accordance with its terms. The Environmental Management Plan will be updated on at least an annual basis and will include:

- (a) an assessment of franchise environmental performance prior to the Start Date for the purpose of compiling quantified performance benchmarks against which to measure improvement during the Franchise Term; and
- (b) improvement targets across all areas of environmental performance including:
  - (i) reduction in traction energy consumption;
  - (ii) reduction in diesel consumption of not less than 2% over the Franchise Term;
  - (iii) reduction in non traction electricity consumption in accordance with paragraph 8.2;
  - (iv) increased usage of renewable power and consequential impact on CO2 emissions;
  - (v) reduction in gas usage of not less than 8% over the Franchise Term;
  - (vi) reduction in water usage; and

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<sup>237</sup> Where text has been omitted from the document this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

(vii) increased recycling in accordance with paragraph 8.3.

8.7 Prior to conducting the assessment contemplated under paragraph 8.6(a) the Franchisee shall provide to the Secretary of State for comments the details of how such an assessment would be carried out (including the underlying data that will inform the quantified performance benchmarks against which the Franchisee's performance will be measured during the Franchise Term). In compiling such quantified performance benchmarks the Franchisee shall take into account any comments received from the Secretary of State pursuant to this paragraph 8.7.

8.8 The Franchisee shall ensure that its Franchise Employees who are drivers undertake regular driving style energy efficiency training using upgraded driving simulators. For these purposes the Franchisee shall by no later than 30 September 2010 invest not less than £<sup>238</sup> on the upgrade of its driving simulators.

## 9. **Security**

9.1 On or before 31 March 2010 the Franchisee shall:

- (a) introduce a "Safer Travel Team" with an establishment of no less than 38 personnel consisting of 32 British Transport Police accredited Rail Enforcement Officers, four British Transport Police officers seconded to the Franchisee pursuant to paragraph 9.1(b) and two team managers as a permanently expanded security presence deployed on the network to apprehend criminals and deter criminality and other anti social behaviour; and
- (b) use all reasonable endeavours to agree with British Transport Police the secondment to the Franchisee at the Franchisee's expense of three further British Transport Police officers at Sergeant level (in addition to the one such secondees in place at the Start Date) to bring police expertise and leadership skills to the Franchisee,

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<sup>238</sup> Where text has been omitted from the document this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

and for the avoidance of doubt the provisions of paragraph 2.3(a) of Part 2 to this Appendix 11 shall apply to the Franchisee's obligations in this paragraph 9.1.

9.2 On or before 31 March 2011 the Franchisee shall:

(a) install two way help points with induction loops on each of the platforms at the following Stations:

Angmering, Bexhill, Billingshurst, Durrington, East Worthing, Emsworth, Goring by Sea, Hampden Park, Hurst Green, Lancing, Lingfield, London Road (Brighton), Merstham, Moulsecomb, Pulborough, Rye, Seaford, Upper Warlingham, West Worthing and Wivelsfield; and

(b) install two way help points with induction loops at a further 20 Stations to be determined by the Franchisee such that the total number of help points installed pursuant to paragraph 9.2(a) and 9.2(b) shall not be less than 80.

9.3 In order to assist the Secretary of State in the monitoring of the Franchisee's compliance with its obligations under paragraph 9.2(b) the Franchisee shall on or before the end of the sixth Reporting Period following the Start Date provide to the Secretary of State a delivery plan which sets out:

(a) the Stations where the help points will be installed;

(b) the dates of completion of such installation at each such Station; and

(c) a brief explanation as to the reasons why the Franchisee has opted to install the help points at such Stations.

## 10. **Station Security**

10.1 The Franchisee shall ensure that on or before 31 March 2011 all Stations have centrally monitored CCTV facilities including by:

(a) the installation of at least 176 CCTV cameras at the 22 Stations which do not have CCTV cameras as at the Start Date; and

(b) ensuring that all of the CCTV cameras at all of the Stations are connected to the Franchisee's integrated security control centre and

are regularly monitored by staff at all times when the Stations are open to passengers.

10.2 The Franchisee shall:

- (a) ensure that the "Park Mark" accreditation already achieved at the 24 Car Parks as at the Start Date is maintained for the duration of the Franchise Term; and
- (b) on or before 31 December 2011 secure the "Park Mark" accreditation for a further 17 car parks.

10.3 For the purposes of paragraph 10.2 the 24 Car Parks are: Angmering, Arundel, Ashtead, Balcombe, Billingshurst, Brighton, Buxted, Cheam, Christ's Hospital, Crowborough, Hassocks, Horsham, Hove, Lancing, Lewes, Lingfield, Merstham (x 2), Polegate, Pulborough (x 2), Whyteleafe, Woldingham and Worthing.

10.4 Subject to paragraph 10.5, the Franchisee shall normally remove graffiti:

- (a) from Stations, within twenty-four hours of it being reported either by a Franchise Employee or a passenger; and
- (b) from rolling stock vehicles, within twenty-four hours or if later prior to such rolling stock entering into Passenger Service (so far as is reasonably practicable without causing unreasonable delay or Cancellation to such Passenger Service);

and subject to paragraph 10.5 shall in any event do so within 14 days in accordance with the procedure for the removal of graffiti, such procedure having been commenced within twenty-four hours of it being reported either by a Franchise Employee or a passenger.

10.5 In circumstances where the removal of such graffiti requires a Restriction of Use, a risk assessment or specialist attention or is outside the area of the Station Lease of the affected Station or cannot be rectified at the reported location or appears on out-berthed stock or requires specialist chemicals or parts or involves window etching (or such other exceptional circumstances as may be agreed by the Secretary of State) the Franchisee shall remove such graffiti as soon as reasonably practicable having commenced the procedure for such removal within seven days of it being reported either by a Franchise Employee or a passenger. For the purposes of this paragraph 10.5, "out-

berthed stock" means rolling stock that is not returned to one of the following locations overnight: Brighton, Selhurst and Stewarts Lane Depots.

## 11. **Staffing**

11.1 The Franchisee shall:

- (a) within 6 months of the Start Date appoint an individual whose duties will include acting as Olympic Games Champion with a job description appropriate to such a role and maintain such appointment until at least 31 December 2012. Such individual shall represent the Franchisee at all key meetings concerning the 2012 Olympic and Paralympic Games (the "**Games**") and co-ordinate the Franchisee's preparation for the Games; and
- (b) by the first anniversary of the Start Date, the Franchisee shall appoint a Thameslink Champion from the Duty Station Managers based at London Bridge Station, who will have specific responsibility for:
  - (i) attending meetings on the planning of works at London Bridge Station as appropriate;
  - (ii) ensuring Franchise Employees based at London Bridge Station are fully aware of the changes taking place arising from the Thameslink Programme; and
  - (iii) ensuring appropriate information about the Thameslink Programme is provided to passengers,

and for the avoidance of doubt the provisions of paragraph 2.3(a) of Part 2 to this Appendix 11 shall apply to the Franchisee's obligations in this paragraph 11.1.

### **Staffing of Gates At Stations**

11.2 Subject to paragraph 11.3, the Franchisee shall ensure that from the earlier of the date on which the automatic ticket gates installed at the Stations listed in the second column of the following table (headed "Table to paragraph 11.2") (the "**Gatelines**") become operational and the date specified in the first column of such table until the end of the Franchise Term, the Gatelines are managed and in operational use each day:

- (a) in respect of any Station at which Gatelines are installed at the Start Date (“**Pre-Start Date Gated Station**”), during the Relevant Period (as defined in paragraph 11.3 below) for at least the rostered hours applicable to such Station at the Start Date; and
- (b) in respect of any Station which is not a Pre-Start Date Gated Station and in respect of any Pre-Start Date Gated Station after the expiry of the Relevant Period, by at least one Franchise Employee for the hours indicated in respect of that Station in the third column of the following table headed “Hours per Day”.

11.3 For the purposes of paragraph 11.2, Relevant Period means in respect of a Pre-Start Date Gated Station which is a Greater London Station, the period of 6 months from the Start Date and in respect of a Pre-Start Date Gated Station which is not a Greater London Station, the period of 3 months from the Start Date.

11.4 Notwithstanding the provisions of paragraph 1 of Part 3 (Late/Non Completion of Committed Obligations) to this Appendix 11, the Franchisee shall not be regarded as being in breach of paragraph 11.2 unless in any 3 consecutive Reporting Periods the level of staffing provided in aggregate across all of the Gatelines is less than 95% of the total number of hours during which such Gatelines are required to be managed and in operational use pursuant to paragraph 11.2 during any such Reporting Period (the “**Gateline Minimum Staffing Level**”), provided that a Committed Obligation Payment Adjustment shall be made pursuant to paragraph 2 of Part 3 (Late/Non Completion of Committed Obligations) to this Appendix 11 in respect of any Reporting Period in which the Gateline Minimum Staffing Level is not achieved.

**Table to paragraph 11.2<sup>239</sup>**

<i><b>Date for commencement of staffing arrangements</b></i>	<i><b>Station</b></i>	<i><b>Hours per day</b></i>

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<sup>239</sup> Insert new text wef 08/02/11

		<b>Monday to Friday</b>	<b>Saturday</b>	<b>Sunday</b>
<b>31 December 2010</b>	<b>Angmering</b>	<b>0600 - 2000</b>	<b>0600 - 2000</b>	<b>0600 - 2000</b>
<b>31 December 2010</b>	<b>Ashtead</b>	<b>0600 - 2000</b>	<b>0600 - 2000</b>	<b>0600 - 2000</b>
<b>30 April 2010</b>	<b>Balham</b>	<b>0530 - 0030</b>	<b>0530 - 0030</b>	<b>0530 - 0030</b>
<b>30 April 2010</b>	<b>Battersea Park</b>	<b>0530 - 0030</b>	<b>0530 - 0030</b>	<b>0530 - 0030</b>
<b>31 July 2013<sup>240</sup></b>	<b>Bognor Regis</b>	<b>0700 - 1430</b>	<b>0700 - 1430</b>	<b>0700 - 1430</b>
<b>20 December 2009</b>	<b>Brighton</b>	<b>First to last train staffing</b>	<b>First to last train staffing</b>	<b>First to last train staffing</b>
<b>31 July 2013<sup>241</sup></b>	<b>Burgess Hill</b>	<b>0600 - 2330</b>	<b>0600 - 2330</b>	<b>0600 - 2330</b>
<b>30 April 2010</b>	<b>Carshalton</b>	<b>0530 - 0030</b>	<b>0530 - 0030</b>	<b>0530 - 0030</b>
<b>31 August 2010<sup>242</sup></b>	<b>Carshalton Beeches</b>	<b>0700 - 2200</b>	<b>0900 - 1900</b>	<b>1000 - 1600</b>
<b>31 July 2013<sup>243</sup></b>	<b>Chichester</b>	<b>0530 - 2300</b>	<b>0600 - 2330</b>	<b>0700 - 2300</b>
<b>20 December 2009</b>	<b>Chichester</b>	<b>0530 - 0030</b>	<b>0530 - 0030</b>	<b>0530 - 0030</b>
<b>31 March 2011</b>	<b>Coulsdon South</b>	<b>0530 - 0030</b>	<b>0530 - 0030</b>	<b>0530 - 0030</b>
<b>31 July 2013<sup>244</sup></b>	<b>Crawley</b>	<b>0500 -</b>	<b>0500 -</b>	<b>0600 -</b>

<sup>240</sup> Date of change 11/06/2013

<sup>241</sup> Date of change 11/06/2013

<sup>242</sup> Date of change 14/05/2010

<sup>243</sup> Date of change 11/06/2013

<sup>244</sup> Date of change 11/06/2013



<b>Date for commencement of staffing arrangements</b>	<b>Station</b>	<b>Hours per day</b>		
		<b>Monday to Friday</b>	<b>Saturday</b>	<b>Sunday</b>
		<b>2230</b>	<b>2230</b>	<b>2300</b>
<b>31 December 2010</b>	<b>Dorking</b>	<b>0600 - 2000</b>	<b>0600 - 2000</b>	<b>0600 - 2000</b>
<b>20 December 2009</b>	<b>East Croydon</b>	<b>First to last train staffing</b>	<b>First to last train staffing</b>	<b>First to last train staffing</b>
<b>30 June 2012</b>	<b>East Grinstead</b>	<b>0600 - 2000</b>	<b>0600 - 2000</b>	<b>0600 - 2000</b>
<b>20 December 2009</b>	<b>Eastbourne</b>	<b>0545 - 2315</b>	<b>0545 - 2315</b>	<b>0630 - 0000</b>
<b>31 July 2013<sup>245</sup></b>	<b>Epsom</b>	<b>0600 - 2200</b>	<b>0600 - 2200</b>	<b>0600 - 2200</b>
<b>31 July 2013<sup>246</sup></b>	<b>Falmer</b>	<b>0600 - 2330</b>	<b>0600 - 2330</b>	<b>0700 - 2300</b>
<b>31 December 2011</b>	<b>Gatwick Airport</b>	<b>First to last train staffing</b>	<b>First to last train staffing</b>	<b>First to last train staffing</b>
<b>30 April 2010</b>	<b>Gipsy Hill</b>	<b>0530 - 0030</b>	<b>0530 - 0030</b>	<b>0530 - 0030</b>
<b>31 July 2013<sup>247</sup></b>	<b>Hassocks</b>	<b>0630 - 1330</b>	<b>N/A</b>	<b>N/A</b>
<b>31 July 2013<sup>248</sup></b>	<b>Haywards Heath</b>	<b>0600 - 2330</b>	<b>0600 - 2330</b>	<b>0600 - 2330</b>

<sup>245</sup> Date of change 11/06/2013

<sup>246</sup> Date of change 11/06/2013

<sup>247</sup> Date of change 11/06/2013

<sup>248</sup> Date of change 11/06/2013

<b>Date for commencement of staffing arrangements</b>	<b>Station</b>	<b>Hours per day</b>		
		<b>Monday to Friday</b>	<b>Saturday</b>	<b>Sunday</b>
<b>31 July 2013<sup>249</sup></b>	<b>Horley</b>	<b>0600 - 2330</b>	<b>0600 - 2330</b>	<b>0600 - 2330</b>
<b>31 July 2013<sup>250</sup></b>	<b>Horsham</b>	<b>0550 - 2320</b>	<b>0550 - 2320</b>	<b>0700 - 2200</b>
<b>20 December 2009</b>	<b>Hove</b>	<b>0530 - 2245</b>	<b>0530 - 2245</b>	<b>0700 - 2300</b>
<b><sup>251</sup>31 December 2010</b>	<b>Leatherhead</b>	<b>0600 – 23.30</b>	<b>0600 – 23.30</b>	<b>0600 – 23.30</b>
<b>20 December 2009</b>	<b>Lewes</b>	<b>0600 - 2330</b>	<b>0600 - 2330</b>	<b>0700 - 2300</b>
<b>20 December 2009</b>	<b>London Bridge</b>	<b>0530 - 0030</b>	<b>0530 - 0030</b>	<b>0530 - 0030</b>
<b>31 July 2013<sup>252</sup></b>	<b>Merstham</b>	<b>0600 - 2000</b>	<b>0600 - 2000</b>	<b>0600 - 2000</b>
<b>30 April 2010</b>	<b>Norbury</b>	<b>0530 - 0030</b>	<b>0530 - 0030</b>	<b>0530 - 0030</b>
<b>31 July 2013<sup>253</sup></b>	<b>Oxted</b>	<b>0600 - 2000</b>	<b>0600 - 2000</b>	<b>0600 - 2000</b>
<b>30 April 2010</b>	<b>Peckham Rye</b>	<b>0530 - 0030</b>	<b>0530 - 0030</b>	<b>0530 - 0030</b>
<b>31 July 2013<sup>254</sup></b>	<b>Polegate</b>	<b>0600 -</b>	<b>0600 -</b>	<b>0700 -</b>

<sup>249</sup> Date of change 11/06/2013

<sup>250</sup> Date of change 11/06/2013

<sup>251</sup> Date of Change 10/10/2011

<sup>252</sup> Date of change 11/06/2013

<sup>253</sup> Date of change 11/06/2013

<sup>254</sup> Date of change 11/06/2013

<b>Date for commencement of staffing arrangements</b>	<b>Station</b>	<b>Hours per day</b>		
		<b>Monday to Friday</b>	<b>Saturday</b>	<b>Sunday</b>
		<b>2300</b>	<b>2300</b>	<b>2300</b>
<b>31 July 2013<sup>255256</sup></b>	<b>Littlehampton</b>	<b>0635 - 2230</b>	<b>0635 - 2230</b>	<b>0700 - 2100</b>
<b>31 July 2013<sup>257</sup></b>	<b>Purley</b>	<b>0600 - 2330</b>	<b>0600 - 2330</b>	<b>0600 - 2330</b>
<b>31 July 2013<sup>258</sup></b>	<b>Redhill</b>	<b>0600 - 2330</b>	<b>0600 - 2330</b>	<b>0600 - 2330</b>
<b>31 March 2011</b>	<b>Reigate</b>	<b>0600 - 2000</b>	<b>N/A</b>	<b>N/A</b>
<b>31 May 2010<sup>259</sup></b>	<b>Selhurst</b>	<b>0530 – 0030</b>	<b>0600 – 0030</b>	<b>0700 - 0030</b>
<b>31 December 2010</b>	<b>Shoreham-by-Sea</b>	<b>0600 - 2000</b>	<b>0600 - 2000</b>	<b>0600 - 2000</b>
<b>30 April 2010</b>	<b>South Croydon</b>	<b>0530 - 0030</b>	<b>0530 - 0030</b>	<b>0530 - 0030</b>
<b>30 April 2010</b>	<b>Streatham</b>	<b>0530 - 0030</b>	<b>0530 - 0030</b>	<b>0530 - 0030</b>
<b>30 April 2010</b>	<b>Streatham Common</b>	<b>0530 - 0030</b>	<b>0530 - 0030</b>	<b>0530 - 0030</b>
<b>30 April 2010</b>	<b>Streatham Hill</b>	<b>0530 - 0030</b>	<b>0530 - 0030</b>	<b>0530 - 0030</b>
<b>20 December</b>	<b>Sutton</b>	<b>0530 -</b>	<b>0530 -</b>	<b>0530 -</b>

<sup>255</sup> Date of Change 22/12/2010

<sup>256</sup> Date of change 11/06/2013

<sup>257</sup> Date of change 11/06/2013

<sup>258</sup> Date of change 11/06/2013

<sup>259</sup> Date of change 14/5/2010

<b><i>Date for commencement of staffing arrangements</i></b>	<b><i>Station</i></b>	<b><i>Hours per day</i></b>		
		<b><i>Monday to Friday</i></b>	<b><i>Saturday</i></b>	<b><i>Sunday</i></b>
<b><i>2009</i></b>		<b><i>0030</i></b>	<b><i>0030</i></b>	<b><i>0030</i></b>
<b><i>30 April 2010</i></b>	<b><i>Thornton Heath</i></b>	<b><i>0530 - 0030</i></b>	<b><i>0530 - 0030</i></b>	<b><i>0530 - 0030</i></b>
<b><i>31 July 2013<sup>260</sup></i></b>	<b><i>Three Bridges</i></b>	<b><i>0600 - 2330</i></b>	<b><i>0600 - 2330</i></b>	<b><i>0600 - 2330</i></b>
<b><i>30 April 2010</i></b>	<b><i>Tulse Hill</i></b>	<b><i>0530 - 0030</i></b>	<b><i>0530 - 0030</i></b>	<b><i>0530 - 0030</i></b>
<b><i>20 December 2009</i></b>	<b><i>London Victoria (excluding Platforms 13 and 14)</i></b>	<b><i>First to last train staffing</i></b>	<b><i>First to last train staffing</i></b>	<b><i>First to last train staffing</i></b>
<b><i>31 December 2011</i></b>	<b><i>Platforms 13 and 14 at London Victoria</i></b>	<b><i>First to last train staffing</i></b>	<b><i>First to last train staffing</i></b>	<b><i>First to last train staffing</i></b>
<b><i>30 April 2010</i></b>	<b><i>Wallington</i></b>	<b><i>0530 - 0030</i></b>	<b><i>0530 - 0030</i></b>	<b><i>0530 - 0030</i></b>
<b><i>31 July 2013<sup>261</sup></i></b>	<b><i>Worthing</i></b>	<b><i>0530 - 2300</i></b>	<b><i>0530 - 2300</i></b>	<b><i>0700 - 2300</i></b>

## **Staffing of the Greater London Stations**

11.5 The Franchisee shall ensure that with effect from 30 April 2010 until the end of the Franchise Term at least one Franchise Employee (which for the

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<sup>260</sup> Date of change 11/06/2013

<sup>261</sup> Date of change 11/06/2013

avoidance of doubt may be the same Franchise Employee as is managing a Gateline in operational use at the relevant Station pursuant to paragraph 11.2) is present at each of the Stations which are Greater London Stations or which are Managed Stations (excluding Belmont, Birkbeck, Clapham High Street and Wandsworth Road) (“GLA Staffed Stations”) each day (excluding Boxing Day) between the period commencing from five minutes prior to first timetabled departure of a passenger service from the Station until five minutes after the time of actual departure of the last timetabled passenger service. Notwithstanding the provisions of paragraph 1 of Part 3 (Late/Non Completion of Committed Obligations) to this Appendix 11 (but without prejudice to the provisions of paragraph 11.7), the Franchisee shall not be regarded as being in breach of this provision unless in each of any 3 consecutive Reporting Periods such level of staffing is provided:

- (a) in aggregate across all of the GLA Staffed Stations for less than 95% of the total number of hours during which such GLA Staffed Stations are required to be staffed pursuant to this paragraph 11.5 during any such Reporting Period; or
- (b) in respect of any individual GLA Staffed Station for less than 90% of the number of hours during which such GLA Staffed Station is required to be staffed pursuant to this paragraph 11.5 during any such Reporting Period.

11.6 The Franchisee shall ensure that with effect from 30 April 2010 until (i) the end of the Franchise Term in respect of Belmont and Birkbeck Stations; and (ii) the commencement of SLC3A in respect of Clapham High Street and Wandsworth Road Stations (together, the “GLA Other Stations”) at least one Franchise Employee is present at the Stations listed in the first column of the following table (headed “Table to paragraph 11.6”) on those days on which Passenger Services call at each such Station for the hours indicated in respect of that Station in the second column of such table headed “Hours per Day”. Notwithstanding the provisions of paragraph 1 of Part 3 (Late/Non Completion of Committed Obligations) to this Appendix 11 (but without prejudice to the provisions of paragraph 11.7), the Franchisee shall not be regarded as being in breach of this provision unless in each of any 3 consecutive Reporting Periods such level of staffing is provided:

- (a) in aggregate across all GLA Other Stations for less than 95% of the total number of hours during which such GLA Other Stations are

required to be staffed pursuant to this paragraph 11.6 during any such Reporting Period; or

- (b) in respect of any individual GLA Other Station for less than 90% of the number of hours during which such GLA Other Station is required to be staffed pursuant to this paragraph 11.6 during any such Reporting Period.

**Table to paragraph 11.6**

Station	Hours per day		
	Monday to Friday	Saturday	Sunday
Belmont	3 hours	3 hours	3 hours
Birkbeck	3 hours	3 hours	3 hours
Clapham High Street	3 hours	3 hours	3 hours
Wandsworth Road	3 hours	3 hours	3 hours

11.7 A Committed Obligation Payment Adjustment shall only be made pursuant to paragraph 2 of Part 3 (Late/Non Completion of Committed Obligations) to this Appendix 11 in respect of any Reporting Period in which the level of staffing provided in aggregate across all GLA Staffed Stations and GLA Other Stations is less than 95% of the total number of hours during which such Stations are required to be staffed pursuant to paragraphs 11.5 and 11.6 respectively during such Reporting Period.

11.8 The Franchisee shall ensure that with effect from the Start Date until the end of the Franchise Term at least one Franchise Employee (which for the avoidance of doubt may be the same Franchise Employee as is managing a Gateline in operational use at the relevant Station pursuant to paragraph 11.2) is present at the Stations (“**Non-GLA Staffed Stations**”) listed in the first column of the table headed “Table to paragraph 11.8” below:

- (a) in respect of each Non-GLA Staffed Stations marked with an \* in such table:
  - (i) from the Start Date until the date specified in respect of such Station in the first column of the table headed

“Table to paragraph 11.2” above, for not less than the rostered hours applicable to such Station at the Start Date; and

(ii) from the date specified in respect of such Station in the first column of the table headed “Table to paragraph 11.2” above until the end of the Franchise Term, for the hours indicated in respect of that Non-GLA Staffed Station in the second column headed “Hours per Day” of the table headed “Table to paragraph 11.8” below; and

(b) in respect of all other Non-GLA Staffed Stations, for the hours indicated in respect of that Non-GLA Staffed Station in the second column of the table headed “Table to paragraph 11.8” below.

11.9 Notwithstanding the provisions of paragraph 1 of Part 3 (Late/Non Completion of Committed Obligations) to this Appendix 11, the Franchisee shall not be regarded as being in breach of the provisions of paragraph 11.8 unless in any 3 consecutive Reporting Periods such level of staffing is provided:

(a) in aggregate across all Non-GLA Staffed Stations for less than 95% of the total number of hours during which such Non-GLA Staffed Stations are required to be staffed pursuant to paragraph 11.8 during such Reporting Period (the “**Aggregate Non-GLA Minimum Staffing Level**”); or

(b) in respect of any individual Non-GLA Staffed Station for less than 90% of the number of hours during which such Non-GLA Staffed Station is required to be staffed pursuant to paragraph 11.8 during such Reporting Period,

provided that a Committed Obligation Payment Adjustment shall only be made pursuant to paragraph 2 of Part 3 (Late/Non Completion of Committed Obligations) to this Appendix 11 in respect of any Reporting Period in which the Aggregate Non-GLA Minimum Staffing Level is not achieved.

**Table to paragraph 11.8**

Station	Hours per day
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	<b>Monday to Friday</b>	<b>Saturday</b>	<b>Sunday</b>
Angmering*	0600 - 2000	0600 - 2000	0600 - 2000
Arundel	0600 - 1925	0810 - 1445	0810 – 1645
Ashtead*	0600 - 2000	0600 - 2000	0600 - 2000
Balcombe	0700 - 0900		
Barnham	First to Last train staffing	First to Last train staffing	First to Last train staffing
Berwick	0610 - 1145		
Bexhill	0610 - 1935	0610 - 1935	0810 - 1545
Billingshurst	0600 - 1925	0710 - 1345	0810 – 1645
Bognor Regis	First to Last train staffing	First to Last train staffing	First to Last train staffing
Bosham	0610 - 1025		
Brighton	First to Last train staffing	First to Last train staffing	First to Last train staffing
<sup>262</sup> <b>Burgess Hill*</b>	<b>0600 - 2330</b>	<b>0600 - 2330</b>	<b>0600 - 2330</b>
Buxted	0600 - 0830		
Caterham	0530 – 0100	0530 – 0100	0710 – 0100
Chichester	First to Last train staffing	First to Last train staffing	First to Last train staffing
Chipstead	0610 - 1040		
Christs Hospital	0610 - 1040		
Clapham Junction (platforms 13-17)	First to Last train staffing	First to Last train staffing	First to Last train staffing
Cooden Beach	0630 - 1300		
Crawley*	0500 - 2230	0500 - 2230	0600 – 2300
Crowborough	0600 - 1235	0630 - 1305	

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<sup>262</sup> Date of change 11/06/2013



Station	Hours per day		
	Monday to Friday	Saturday	Sunday
Dorking	0530 - 0100	0530 - 0100	0600 – 0100
Dormans	0630 - 1015		
Durrington-on-Sea	0610 - 1935	0710 - 1345	0810 – 1545
Earlswood	0630 - 1035		
East Grinstead	0545 - 0040	0545 - 0040	0735 - 2340
Eastbourne	First to Last train staffing	First to Last train staffing	First to Last train staffing
Edenbridge Town	0630 - 1305	0700 - 1335	
Emsworth	0640 - 1315	0640 - 1315	
Epsom	First to Last train staffing	First to Last train staffing	First to Last train staffing
Eridge	0600 - 1235	0645 - 1320	
Ewell East	0630 - 1305	0810 – 1445	
Falmer*	0600 - 2000	0625 - 1950	0910 – 1645
Ford	0630 - 1305	0630 – 1305	
Gatwick Airport	First to Last train staffing	First to Last train staffing	First to Last train staffing
Goring-by-Sea	0620 - 1255	0620 - 1255	<b>0810 - 1545<sup>263</sup></b>
Ham Street	0555 – 1230	0555 – 1230	
Hampden Park	0610 - 1935	0610 - 1245	0650 – 1425
Hassocks	0610 - 1935	0640 - 2005	0910 – 1645
Haywards Heath	First to Last train staffing	First to Last train staffing	First to Last train staffing
<sup>264</sup> <b>Horley*</b>	<b>0600 - 2330</b>	<b>0600 - 2330</b>	<b>0600 - 2330</b>

<sup>263</sup> Date of change 16/9/2009

<sup>264</sup> Date of change 11/06/2013

Station	Hours per day		
	Monday to Friday	Saturday	Sunday
Horsham	First to Last train staffing	First to Last train staffing	First to Last train staffing
Hove	First to Last train staffing	First to Last train staffing	First to Last train staffing
Hurst Green	0550 - 1905	0645 - 1320	0755 – 1610
Ifield	0600 - 1235	0700 - 1335	
Kingswood	0600 - 0930		
Lancing	0610 - 1935	0630 - 1955	0810 – 1545
Leatherhead*	0600 - 0030	0600 - 0030	0600 - 0030
Lewes	First to Last train staffing	First to Last train staffing	First to Last train staffing
Lingfield	0620 - 1935	0730 - 1405	0810 - 1625
Littlehampton	First to Last train staffing	First to Last train staffing	First to Last train staffing
Littlehaven	0700 – 0900		
London Bridge	First to Last train staffing	First to Last train staffing	First to Last train staffing
London Road (Brighton)	0655 - 1330	0655 - 1330	
London Victoria	First to Last train staffing	First to Last train staffing	First to Last train staffing
<sup>265</sup> <b>Merstham*</b>	<b>0600 - 2000</b>	<b>0600 - 2000</b>	<b>0600 - 2000</b>
Moulsecoomb	0650 - 1330	0650 - 1400	
Newhaven Town	0615 - 1250	0615 - 1250	
Oxted*	0530 - 0045	0530 - 0045	0600 - 0030

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<sup>265</sup> Date of change 11/06/2013

Station	Hours per day		
	Monday to Friday	Saturday	Sunday
Pevensey & Westham	0630 - 1040	0700 - 1040	
Plumpton	0555 – 1030		
Polegate*	0600 - 2000	0600 - 2000	0600 - 2000
Portslade*	0555 - 2000	0555 - 2000	0600 - 2000
Preston Park	0600 - 1910	0600 - 1910	0910 - 1645
Pulborough	0600 - 1925	0710 - 1345	
Redhill	First to Last train staffing	First to Last train staffing	First to Last train staffing
Reigate*	0600 - 2000	0710 - 1345	
Rye	0540 - 1905	0540 - 1905	0910 - 1645
Salfords	0630 – 1035		
Seaford	0610 - 1935	0610 - 1935	0825 – 1600
Shoreham-by-Sea*	0540 - 2000	0600 - 2000	0600 - 2000
Southbourne	0635 - 1310	0635 - 1310	
Southwick	0640 - 1315	0640 - 1315	0810 – 1545
Tadworth	0600 – 1030		
Tattenham Corner	0610 - 1328	0910 - 1628	
Three Bridges	First to Last train staffing	First to Last train staffing	First to Last train staffing
Uckfield	0550 - 1225	0625 - 1300	
Upper Warlingham	0635 - 1955	0725 - 1400	0810 – 1545
Warblington	0755 - 0915		
West Worthing	0620 - 1945	0640 - 2005	0810 – 1545
Whyteleafe	0555 - 1230	0620 – 1225	

Station	Hours per day		
	Monday to Friday	Saturday	Sunday
Whyteleafe South	0645 - 1015		
Wivelsfield	0610 - 1935	0610 - 1935	0730 - 1430
Woldingham	0610 – 0930		
Worthing	First to Last train staffing	First to Last train staffing	First to Last train staffing

11.10 It is agreed by the Secretary of State and the Franchisee that the provisions of paragraph 2.3(a) of Part 2 to this Appendix 11 shall not apply to any of the obligations of the Franchisee in paragraphs 11.2, 11.5, 11.6 and 11.8.

11.11 The Franchisee shall:

- (a) provide a report to the Secretary of State by no later than 14 days after the end of each Reporting Period, such report to self certify the extent of the Franchisee’s compliance with its obligations in paragraphs 11.2, 11.5, 11.6 and 11.8 including compliance with its obligation to ensure that each individual Station is staffed for at least 90% of the number of hours applicable in respect of such individual Station; and
- (b) ensure that it has appropriate systems in place for the collation of the information necessary for the purposes of the provision to the Secretary of State of the information required pursuant to paragraph 11.11(a).

Without prejudice to any other audit rights the Secretary of State may have under the Franchise Agreement, the Secretary of State, his employees and agents on his behalf shall have the right to carry out audits of the extent to which the Franchisee carries out its obligations set out in paragraphs 11.2, 11.5, 11.6 and 11.8.

11.12 Within 6 months of the Start Date, the Franchisee shall ensure that each customer facing Franchise Employee who does not have immediate access to fixed line facilities (excluding drivers) shall have access to on-demand real time information in relation to the Passenger Services when on duty,

including by making available to such Franchise Employees Blackberry devices or other Personal Digital Assistants.

## **Revenue Protection Officers**

11.13 <sup>266</sup>

### **12. Renaming of Smitham Station**

12.1 The Franchisee shall co-operate with Croydon Council and undertake a joint public consultation in relation to the renaming of Smitham Station. The Franchisee shall as soon as reasonably practicable thereafter submit the results of the joint public consultation to the Secretary of State and in conjunction with Croydon Council shall make recommendations to the Secretary of State in respect of the new name of Smitham Station. At the direction of the Secretary of State and at the expense of the Franchisee, the Franchisee shall use reasonable endeavours to implement the new name in its signage, maps, timetables and other associated systems (including passenger information systems) by no later than the Subsidiary Change Date in May 2011 or any other subsequent Passenger Change Date proposed by Croydon Council and notified to the Franchisee provided that the new name is confirmed to the Franchisee not less than six months prior to the proposed date of implementation.

### **13. Stakeholder Interfaces/Consultation**

13.1 Within four weeks after the Start Date in respect of the first Franchisee Year and as soon as reasonably practicable prior to the commencement of each Franchisee Year thereafter the Franchisee shall deliver to the Secretary of State a Stakeholder Management Plan. The Franchisee will implement the Stakeholder Management Plan in accordance with its terms. For the purposes of this paragraph 13.1 the Stakeholder Management Plan is a plan to be developed by the Franchisee and which amongst others sets out the relevant stakeholders, establishes targets which measure the effectiveness of the plan and maps out the Franchisee's strategy for engagement with such stakeholders (including the method, frequency and objectives of such engagement).

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<sup>266</sup> Where text has been omitted from the document this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

13.2 The Franchisee shall:

- (a) create a “Station Partnership Scheme” in conjunction with Sussex Community Rail Partnership which encourages adoption of Stations located in East and West Sussex by local groups for the purpose of improving the care and condition of such Stations;
- (b) use all reasonable endeavours to ensure that within 12 months from the Start Date at least 12 such Stations are signed up to the scheme; and
- (c) invest at least £25,000 to support the implementation of any initiatives developed by the scheme.

13.3 The Franchisee shall:

- (a) continue to be a member of the Sussex Community Rail Partnership and shall every Franchisee Year invest £40,000 on projects, payment of the salary for the partnership officer and other administrative costs. Any money not invested at the end of each Franchisee Year shall be required to be invested in the following Franchisee Year and any outstanding uninvested sum by the end of the Franchise Term; and
- (b) in partnership with the relevant local authorities and the Train Operator for the South West Trains franchise (or any successor franchisee from time to time) seek to establish and contribute to the funding of a new non-designated Community Rail Partnership between Bedhampton and Chichester.

13.4 Every Reporting Period for the whole of the Franchise Term the Franchisee shall hold a meeting session at least at one Station and on at least one train across the Franchise whereby at least one local manager and one senior manager or a Director of the Franchisee shall meet with passengers (“**Meet the Manager Sessions**”). The Franchisee shall at least one week in advance publish the dates of each Meet the Manager Session on its website, in its passenger magazine and announce such dates at Stations and on trains. The Franchisee shall procure that any feedback received from passengers during each Meet the Manager Session is followed up and where necessary a response is provided to the passenger in a manner to be determined by the

Franchisee. The comments received during each Meet the Manager Session shall be published by the Franchisee on its website.

13.5 The Franchisee shall:

- (a) continue to operate the Stakeholder Advisory Board with meetings held at least every 6 months. The Stakeholder Advisory Board shall include at least 7 representatives who are passengers and shall be formally constituted to provide advice and recommendations to the Franchisee on strategic and policy issues; and
- (b) within the first 12 months after the Start Date create a new web-based passenger panel which will be comprised of at least 1000 passengers who regularly use the Passenger Services. The passenger panel shall provide a forum for consultation with and feed back from passengers.

#### 14. **Major Projects**

14.1 Unless otherwise agreed by the parties, within 10 weeks from the Start Date and every month thereafter the Franchisee shall attend a meeting with employees of the Secretary of State on his behalf to discuss progress (including measures to mitigate any risk associated with such major projects) in respect of the major projects specified in paragraphs 7.1(a), 7.1(b) and 7.1(d) of Appendix 13 (South Central Specific Provisions).

14.2 With effect from the Start Date, the Franchisee shall have in place a Franchise Improvement Director whose role will be to manage major change initiatives on behalf of the Franchisee and whose responsibilities will include:

- (a) acting as a single point of focus for external partners including the Secretary of State, Network Rail and other stakeholders involved in major change initiatives;
- (b) managing negotiations with the Secretary of State in respect of any Change;
- (c) managing a Franchise Improvement Directorate which will be responsible for:
  - (i) developing the Franchisee's input into major change initiatives;

- (ii) co-ordinating the delivery of franchise commitments;  
and
- (iii) stakeholder management.

14.3 For the avoidance of doubt, the provisions of paragraph 2.3(a) of Part 2 to this Appendix 11 shall apply to the Franchisee's obligations under paragraph 14.2.

## 15. **Rail Replacement Bus Services**

15.1 In addition to its obligations in paragraph 8 of Schedule 1.2 of the Terms the Franchisee shall within 12 months of the Start Date implement the following measures to improve the customer experience during times of planned disruption:

- (a) provide clear signage to guide passengers between trains and replacement bus services at every Station served by a replacement bus;
- (b) ensure rail replacement bus service timetables are integrated with timetables for Passenger Services and that the scheduled departure times and calling patterns of the rail replacement bus services are displayed on the customer information systems at each Station served by a rail replacement bus;
- (c) use all reasonable endeavours to ensure that rail replacement buses are no more than 6 years old on 95% of rail replacement bus services; and
- (d) work with TfL and other local authorities to maximise the use of existing public transport modes for the provision of rail replacement services,

and the Franchisee shall monitor its fulfilment of the above obligations, including where appropriate in accordance with the provisions of paragraph 4 of Schedule 7.2 (Service Quality Management) of the Terms, and report the extent of its compliance with such obligations to the Secretary of State.

15.2 The Franchisee shall use all reasonable endeavours to provide the measures specified at paragraph 15.1 during times of unplanned disruption to the Passenger Services.



## 16. Gatwick Express Services

16.1 The Franchisee shall as a minimum:

(a) retain the use of the name “Gatwick Express” in respect of the Gatwick Express Services and ensure that from the Start Date the name “Gatwick Express” is displayed on all departure screens and boards in respect of relevant Passenger Services;

(b) from the Start Date produce and make available to passengers a dedicated pocket timetable for all of the Gatwick Express Services;

(c) ***provide on-board catering services:***<sup>267</sup>

***(i) on all Gatwick Express Services commencing their journey from London Victoria or Gatwick between the hours of 0650 to 2015, Mondays to Fridays; 0705 to 2015 on Saturdays and 0650 – 1715 on Sundays; and***

***(ii) on all Gatwick Express Services commencing their journeys in Brighton (“ extended Gatwick Express Services”) on Mondays to Fridays.***

***The Franchisee shall not be regarded as being in breach of this provision (and for the avoidance of doubt no Committed Obligation Payment Adjustment shall be made) unless in any Reporting Period the Franchisee provides on-board catering services on less than 95% of the total number of such services operating during that Reporting Period;***

(d) within 3 months of the Start Date ensure that the location of any first class accommodation on board each rolling stock vehicle used for the provision of the Gatwick Express Services is displayed on customer information systems located at Gatwick Airport Station;

(e) ensure that any rolling stock vehicle used for the provision of the Gatwick Express Services includes luggage carrying facilities reasonably appropriate for Passenger Services carrying a high volume of airline passengers; and

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<sup>267</sup> Date of change 17/9/2009

- (f) ensure that appropriate multi lingual announcements are made on the Gatwick Express Services in English, French, German, Spanish and Italian.

16.2 For the purposes of paragraph 16.1 Gatwick Express Services means any of the Passenger Services operating between London Victoria and Gatwick Airport which are not scheduled to call at intermediate stations.

## 17. **Ticketless Travel Surveys**

17.1 In addition to its obligations in paragraph 1 of Schedule 1.3 (Ticket Collection and Ticketing) of the Terms and from the first Franchisee Year until the end of the Franchise Term the Franchisee shall carry out bi-annual surveys of ticketless travel in such form and in a manner to be determined by the Franchisee and approved by the Secretary of State. The outcome of the surveys carried out by the Franchisee under this paragraph will:

- (a) assess all forms of ticketless travel including overriding and possession of invalid tickets; and
- (b) be used by the Franchisee to prioritise the deployment of the Revenue Protection Officers as well as identifying further opportunities for gating and installation of ticket issuing equipment.

## 18. **Information about Passengers**

18.1 In addition to its obligations in paragraph 1.1 of Schedule 1.5 of the Terms the Franchisee shall on the date that is 3 months from the Start Date and every quarter thereafter provide to the Secretary of State (and TfL but only in respect of the Passenger Services operated to and from the Greater London Stations) a crowding report (including all the underlying data) which will be in a form to be agreed with the Secretary of State by the Start Date.

18.2 The Franchisee shall undertake a review of the passenger demand levels and the long term financial viability of the following Passenger Services and submit a report to the Secretary of State:

- (a) by 25 December 2012 in respect of the Ashford to Rye peak shuttle;
- (b) by 25 December 2011 in respect of the:
  - (i) Watford to Milton Keynes Passenger Services;

- (ii) Purley to Tattenham Corner off peak shuttle; and
- (iii) Tonbridge to Redhill to London Bridge Off Peak Passenger Services.

The report will be prepared in a professional and competent manner providing the information reasonably necessary to make decisions about these Passenger Services.

## 19. Performance

19.1 The Franchisee shall work with London Overground Rail Operations Limited (or any successor operator of the passenger services provided by London Overground Rail Operations Limited) (“**LOROL**”) to maximise performance of the services of both the Franchisee and LOROL following the introduction of East London Line services to Crystal Palace and West Croydon and shall reflect the outcome of this joint approach within their respective joint performance improvement plans.

## 20. Plusbus Schemes and Multi Modal Announcements

### Plusbus Schemes

20.1 The Franchisee shall:

- (a) continue to participate in the “Plusbus” schemes operated across the Franchise as at the Start Date; and
- (b) use all reasonable endeavours to introduce a new “Plusbus” scheme to Horsham in partnership with Arriva by the first anniversary of the Start Date.

### Multi Modal Announcements

20.2 The Franchisee shall:

- (a) within 6 months of the Start Date commission surveys of passengers and stakeholders (including TfL, Passenger Focus and London Travelwatch) in relation to the scope and frequency of multi-modal travel announcements to be made on trains and at Stations. The surveys will specifically address (but not be limited to):

- (i) announcements at Greater London Stations detailing planned or unplanned disruption to London Underground, DLR, Tramlink and other National Rail operator services;
  - (ii) announcements at Stations outside the London area detailing planned or unplanned disruption to other principal public transport modes;
  - (iii) announcements at Stations regarding planned service disruptions on the relevant route / service group; and
  - (iv) announcements on-train regarding principal interchange locations.
- (b) taking account of the results of these surveys, introduce changes to the scope and frequency of such announcements by 31 December 2010;
  - (c) ensure that the scope, frequency and accuracy of such announcements is regularly reviewed through the passenger panel described in paragraph 13.5 (b) and through consultation with other relevant stakeholders; and
  - (d) work with the Secretary of State and TfL to improve the provision of information regarding all public transport modes in the London area, so as to better integrate National Rail and TfL services. This will include displaying at relevant Stations and on trains a Rail Services in London map (“RSL Map”) which is being developed by TfL and will be provided by TfL to the Franchisee along with relevant updates (together with display cases to display such maps). The location for the RSL Map at each Station will be identified through the information zoning exercise described in paragraph 3.19.

## 21. **Previous Franchise Plan Commitments/Investments**

- 21.1 The Franchisee shall ensure that for the duration of the Franchise Term the Previous Franchise Plan Improvements are properly maintained (allowing for reasonable wear and tear) and continue to be operational and effective in providing a service to passengers to the greatest extent reasonably practicable. **“Previous Franchise Plan Improvements”** means:

- (a) the passenger lounges, easy access lifts and family waiting areas at Sutton Station; and
- (b) the customer information systems specified in Annex 1 of this Appendix 11.

21.2 For the avoidance of doubt, it shall not be a contravention of the Committed Obligation in paragraph 21.1 if the Franchisee:

- (a) upgrades, improves or replaces facilities provided under any Previous Franchise Plan Improvements in accordance with the terms of any other Committed Obligation (including those contained in paragraphs 3.12(c), 3.17(b), 3.18, 3.20, 3.21, 5.1, 5.4, 15.1(b), 16.1(a) and (d) and 20.2 and any Committed Obligation which becomes applicable following the exercise of a Priced Option); or
- (b) otherwise undertakes works which have the effect of enhancing the quality and/or functionality of facilities provided under any Previous Franchise Plan Improvements.

21.3 The Franchisee shall continue to procure the provision of car parking spaces reserved for and suitable for use of disabled persons at car parks leased to the Franchisee as follows:

- (a) at hard surfaced car parks containing 25 parking spaces or less overall at least 1 reserved space shall be provided;
- (b) at least 2 reserved spaces shall be provided at Eridge, Ewell East, Leatherhead, Purley Oaks and Three Bridges;
- (c) except with regard to the station car parks listed at paragraph (d), at hard surfaced car parks containing 26 or more spaces overall at least 2 reserved spaces shall be provided; and
- (d) at the following car parks the following number of reserved spaces shall be provided:

Bognor Regis	4	Eastbourne	4
Brighton	8	Haywards Heath	4
Chichester	4	Lewes	4

## 22. **East Coastway Consultation Exercise**

22.1 The Franchisee shall commence the following consultation exercise in respect of the proposal to introduce a revised pattern of service for the East Coast services as described in paragraph 2.1 of Appendix 4 (Priced Options) ("**East Coastway Revised Services**"):

- (a) by no later than 31 October 2009, commence discussions and consultation with the Rail Passengers' Council in relation to the East Coastway Revised Services;
- (b) by no later than 30 November 2009, communicate its proposals in respect of the East Coastway Revised Services to passengers and other key stakeholders (including South East England Development Agency, relevant local authorities, local user groups and representatives and Sussex Community Rail Partnership) and establish an appropriate forum for the discussion of such proposals with such passenger and stakeholders; and
- (c) by no later than 31 January 2010 submit the findings of the consultation and discussions described in paragraphs 22.1(a) and 22.1(b) to the Secretary of State and make final recommendations to the Secretary of State in respect of the East Coastway Revised Services.

## 23 **GSM-R**<sup>268</sup>

**23.1 The Franchisee shall (including by working with Network Rail to agree and implement a GSM-R delivery and implementation programme pursuant to paragraph 23.3) use all reasonable endeavours to:**

- (a) procure and install GSM-R Radio Equipment to the driving cabs of all rolling stock vehicles comprised in the Train Fleet; and**

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<sup>268</sup> Date of Change 29/07/2010

**(b) provide training to its train drivers and all other relevant Franchise Employees in the use of the GSM-R Radio Equipment so installed,**

**by dates which are earlier than the dates set out in paragraph 23.1(i) and 23.1(ii) (as the case may be) and in any event shall complete such procurement, installation and training by no later than:**

**(i) 31 December 2011, in respect of any rolling stock vehicles comprised in the Train Fleet which as at the Start Date are equipped with “NRN” radios only; and**

**(ii) the earlier of:**

**(1) 30 June 2014; and**

**(2)<sup>269</sup>**

**23.2 The Franchisee shall keep a stock of operational spare GSM-R Radio Equipment equal to 10% of the number of GSM-R unit sets required to be fitted to the rolling stock vehicles comprised in the Train Fleet. In addition the Franchisee shall ensure that it has the equipment reasonably required to test the GSM-R installation prior to their entry into operational service and to maintain the GSM-R Equipment once in use.**

**23.3 The Franchisee will work with Network Rail to jointly agree a GSM-R delivery and implementation programme including a phased introduction in a manner similar to that set out in the document in agreed form marked “GSM-R implementation rollout” to reduce the risks to overall project delivery and with the aim of completing the fitment as early as reasonably practicable.**

**23.4 The Franchisee shall provide the Secretary of State with a progress update regarding the GSM-R roll out and fitment programme at least every three months until the fitment is completed.**

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<sup>269</sup> Where text has been omitted from the document this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000

**23.5<sup>270</sup>**

**23.6** *It is agreed by the Secretary of State and the Franchisee that the timescales for the completion of the fitment of GSM-R Radio Equipment to any rolling stock which is “dual fitted” with both “NRN” and “CSR” radio will be the date set out in paragraph 23.1(ii) unless the “NRN” radio is required for the rolling stock to remain in passenger service after 31 December 2011 in which case the relevant timescale for completion shall be as set out in paragraph 23.1(i).*

**24** *Enhanced Station Improvements*

**24.1** *In addition to any other Committed Obligation (including those specified in paragraphs 3.15 to 3.19 and paragraph 9.2 of this Appendix 11) the Franchisee shall, on or before 31 October 2012<sup>271</sup>, improve facilities at the following 27 Stations and in so doing shall incur expenditure of not less than<sup>272</sup>:*

*Balcombe, Battersea Park, Burgess Hill, Carshalton, Caterham, Coulsdon South, Dorking, Earlswood, East Dulwich, Epsom, Horley, Horsham, Merstham, Preston Park, Purley, Purley Oaks, Salfords, Sanderstead, South Croydon, Streatham, Streatham Common, Sutton, Thornton Heath, Tulse Hill, Wallington, Wandsworth Common and Wivelsfield.*

*The improvements to be made to facilities at such Stations shall be determined by the Franchisee (in consultation with Network Rail and other relevant stakeholders including the Secretary of State) and may include some or all of the following:*

*(a) refurbishment of toilets and/or reopening of toilets which are not in passenger use as at the Start Date;*

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<sup>270</sup> Where text has been omitted from the document this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000

<sup>271</sup> Date of Change 29/10/2010

<sup>272</sup> Where text has been omitted from the document this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000



- (b) refurbishment of waiting room accommodation and/or reopening of waiting room accommodation which are not in passenger use as at the Start Date;**
- (c) provision of new or additional platform seating;**
- (d) provision of new or additional platform shelters;**
- (e) provision of improved station signage;**
- (f) introduction and/or improvement to customer information systems and passenger announcement systems in waiting rooms;**
- (g) introduction of “white” lighting to improve visibility and security; and**
- (h) general redecoration and improvements to station buildings.**

**24.2 In order to assist the Secretary of State in the monitoring of the Franchisee’s compliance under paragraph 24.1 the Franchisee shall on or before the end of the thirteenth Reporting Period following the Start Date provide to the Secretary of State a delivery plan which sets out the facilities that will be improved (and the date of completion of such improvements) at each of the 27 Stations set out in paragraph 24.1.**

**<sup>273</sup>24.3 On or before 31 March 2014 the Franchisee will ensure that the total expenditure of £<sup>274</sup> is met by carrying out the following;**

- a) On or before 31 October 2013 the Franchisee shall improve the facilities at Gatwick Airport Station and in so doing shall procure expenditure of not less than £<sup>275</sup>. The improvements to be made to such facilities at Gatwick Airport to be determined by the Franchisee in consultation with Network Rail and other relevant Stakeholders including the Secretary of State and may include the following:**
  - i) Refurbishment of waiting accommodation**
  - ii) Introduction of new seating**

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<sup>273</sup> Date of new insertion 25/01/2013

<sup>274</sup> Where text has been omitted from the document this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000

<sup>275</sup> Where text has been omitted from the document this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000

- iii) Information points*
- iv) Improved gate line signage*

**b) On or before 30 September 2013 the Franchisee will install energy efficient lighting at a further 15 Stations and in doing so shall procure expenditure of not less than £<sup>276</sup>. The 15 Stations may include:**

**Hassocks  
Wivelsfield  
Haywards Heath  
Salfords  
Earlswood  
Norbury  
Streatham Common  
Balham  
Battersea Park  
Tulse Hill**

**c) On or before 31 March 2014 the Franchisee shall improve the facilities at further Stations to be determined by the Franchisee and in doing so shall procure expenditure of not less than £<sup>277</sup>. The improvements to be made to such facilities at these stations to be determined by the Franchisee in consultation with Network Rail and other relevant Stakeholders including the Secretary of State and may include some of the following:**

- i) Refurbishment of booking hall**
- ii) Deep clean**
- iii) Improved signage**
- iv) Improvements to waiting rooms**
- v) Improvements to toilets**
- vi) Improvements to waiting shelters**

**d)<sup>278</sup> On or before 30 November 2013 the franchisee shall further improve the facilities at Gatwick Airport Station and in doing so shall**

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<sup>276</sup> Where text has been omitted from the document this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000

<sup>277</sup> Where text has been omitted from the document this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000

<sup>278</sup> Date of new insertion wef 30/09/2013

**procure expenditure of not less than £<sup>279</sup>. These further improvements may include the following:**

- i) a waiting room on the Gatwick Airport concourse, including seating and an information pod**
- ii) the replacement of all tactile materials on stairs**
- iii) seating on the concourse for persons with restricted mobility**

**25<sup>280</sup> The Franchisee shall provide to the Secretary of State by no later than 31 March 2012 a fully costed (including timescales for implementation) stabling strategy that offers solution(s) to deal with the stabling of all of the HLOS Units.**

## **26<sup>281</sup>. HLOS STABLING**

**On or before 31 August 2013 the Franchisee shall procure that it improves the facilities available to it in relation to the stabling of rolling stock. Such improvements:**

**26.1 shall include creating stabling capacity that is usable by the Franchisee for stabling 5 Class 377 trains in 10 car formation. Such stabling capacity:**

- (a) shall be in addition to that which is usable by the Franchisee for stabling Class 377 trains in 10 car formation as at the date of the HLOS Stabling Deed of Amendment;**
- (b) shall be in addition to the stabling work funded by the Thameslink Programme;**
- (c) may be introduced within a Depot, at sidings and/or at any other location on Network Rail's network; and**

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**279** Where text has been omitted from the document this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000

**280** Date of new insertion 26/01/2012

**281** Date of new insertion 30/11/2012

**(d) may include the introduction of one berth or more for stabling a Class 377 train in 10 car formation at each Depot located at Stewarts Lane, Dorking and Horsham; and**

**26.2 shall include enhancements to sanding and maintenance facilities,**

**(together the "HLOS Stabling Facilities").**

**27<sup>282</sup> HLOS OPTION STABLING AND MAINTENANCE FEASIBILITY STUDY**

***It is acknowledged by the Secretary of State and the Franchisee that there is a limited timescale in which to prepare facilities for the operation and maintenance of the HLOS Option Units and accordingly the Franchisee has submitted to the Secretary of State a feasibility study (the "HLOS Option Stabling and Maintenance Feasibility Study") in the form set out in Annex 2 to Part 1 of this Appendix 11 which the Franchisee believes sets out a realistic and achievable list of works and measures that are required to implement the expansion or changes to the existing maintenance, stabling and stores facilities of the Franchisee so as to enable the Franchisee to:***

**27.1 *successfully accept delivery of and maintain the HLOS Option Units alongside the rest of its Train Fleet and, to the extent possible, facilitate stabling on the Routes of the HLOS Option Units in 5 car formation; and***

**27.2 *provide an appropriate solution in respect of the Cascaded Rolling Stock.***

**28<sup>283</sup> HLOS OPTION STABLING AND MAINTENANCE REVIEW AND PROPOSAL**

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<sup>282</sup> Date of new insertion 20/12/2012

<sup>283</sup> Date of new insertion 20/12/2012

**28.1 The Franchisee shall, on or before 31 August 2013, procure details of the reasonable costs by way of a series of costed work packages in relation to the list of works and measures that are required to implement the expansion or changes to the existing maintenance, stabling and stores facilities of the Franchisee as set out in the HLOS Option Stabling and Maintenance Feasibility Study.**

**28.2 The Franchisee shall provide to the Secretary of State the details of those costs referred to in paragraph 28.1 (whether in totality or in individual work packages) in draft form as soon as and wherever practicable and in final form as and when they are obtained. The Franchisee may provide to the Secretary of State final form costs for any work package forming part of the Stabling and Maintenance One-Off Activities at any time and is not required to delay submission of the final form costs for such work package until final form costs are available for any one or more of the remaining work packages that form part of the Stabling and Maintenance One-Off Activities. The Franchisee shall provide such final form costs:**

- (a) in the case of work intended to be carried out by Network Rail, with a range of costs calculated on the basis that the work will be contracted using a Basic Implementation Agreement; and**
- (b) in all other cases, with a range of costs calculated to GRIP Level 5 or a standard equivalent to GRIP Level 5.**

**28.3 The Secretary of State shall review the details of all such costs as provided by the Franchisee in such final form, such review to be completed within 20 Weekdays of such provision. Following such review, the Secretary of State may within such period of 20 Weekdays:**

- (a) approve the costs; or**
- (b) require the Franchisee to conduct a further review of those costs; or**
- (c) require the Franchisee to provide costs in respect of an alternative work package as proposed by the Secretary of State and/or the Franchisee provided always that any alternative work package shall not prejudice the delivery, acceptance, stabling, maintenance or operation of the HLOS Option Units; or**
- (d) elect to cancel all or part of the work package where such work package or part thereof or an alternative suitable work package is being undertaken by a third party provided always that any such alternative work package shall not prejudice the delivery, acceptance, stabling, maintenance or operation of the HLOS Option Units.**

**28.4 If the Secretary of State does not notify the Franchisee within such 20 Weekday period of any objection or requirement for further review or a cost proposal as set out above (or if the Secretary of State subsequently agrees to such costs) then the Secretary of State shall be deemed to have agreed to the particular works and measures being undertaken (and the corresponding costs shall become "Agreed Stabling and Maintenance One-Off Costs"). Where the Secretary of State requires the Franchisee to provide further cost information in accordance with paragraphs 28.3(b) or 28.3(c), the provisions of paragraph 28.3 and this paragraph 28.4 shall apply mutatis mutandis in respect of the Secretary of State's review of the revised cost proposal.**

- 28.5** *The Parties acknowledge that the costs to be provided by the Franchisee are likely to consist of a range of costs (in accordance with the standards set out above) rather than a fixed cost, and therefore (without prejudice to paragraph 31.2 of Appendix 13 (South Central Specific Provisions)) the Secretary of State's agreement (or deemed agreement) to such costs shall be deemed to be agreement to the upper boundary of such a range.*
- 28.6** *There shall be a Change if the Secretary of State exercises any right under paragraph 28.3(b), 28.3(c) or 28.3(d) which has a prejudicial effect on the delivery, acceptance, stabling, maintenance or operation of the HLOS Option Units. Any such Change shall be deemed to be a Qualifying Change whether or not such Change meets the requirements of the definition of Qualifying Change.*
- 28.7** *The Franchisee shall, on or before 31 August 2013, provide to the Secretary of State a detailed, realistic and achievable project plan (the "HLOS Option Stabling and Maintenance Review and Proposal") which sets out:*
- (a) the procedure by which all 8 of the HLOS Option Units will be manufactured, delivered and accepted on or before the Passenger Change Date in December 2014; and*
  - (b) full details of the costs (in the case of work intended to be carried out by Network Rail, with a range of costs calculated on the basis that the work will be contracted using a Basic Implementation Agreement, and in all other cases with a range of costs calculated to GRIP Level 5 or a standard equivalent to GRIP Level 5) in relation to the list of works and measures that are required to implement the expansion or changes to the existing maintenance, stabling and*

*stores facilities of the Franchisee as set out in the HLOS Option Stabling and Maintenance Feasibility Study.*

**28.8** *The Franchisee shall supply such other information and details as may reasonably be requested by the Secretary of State in relation to the HLOS Option Stabling and Maintenance Review and Proposal.*

**29<sup>284</sup> CASCADED ROLLING STOCK REVIEW**

**29.1** *The Franchisee shall, within a reasonable time of its receipt of a written request from the Secretary of State for the Franchisee to operate the HLOS Option Units:*

- (a)** *in conjunction with the Secretary of State, carry out a review of the rolling stock operated by the Franchisee under the Franchise Agreement, for the purpose of analysing the options available for a cascade of some of the Franchisee's class 377/2 vehicles to another franchise (the "Cascaded Rolling Stock") and the consequential maintenance arrangements;*
- (b)** *endeavour to agree with the Secretary of State the most appropriate cascade and maintenance solution; and*
- (c)** *if the Secretary of State and the Franchisee are unable to agree on the most appropriate cascade and maintenance solution in accordance with paragraph 29.1(b), the Secretary of State shall have the power to direct the cascade of up to 24 vehicles within the Cascaded Rolling Stock, provided that no such cascade shall be required to take effect without the consent of both parties on or before the later of:*

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<sup>284</sup> Date of new insertion 20/12/2012



- (i) the date of introduction into passenger revenue earning service of the last HLOS Option Unit; and**
- (ii) the date of completion of the expansion or changes to the existing maintenance, stabling and stores facilities of the Franchisee as set out in the HLOS Option Stabling and Maintenance Feasibility Study.**

**29.2 The Secretary of State and the Franchisee acknowledge that:**

- (a) any cascade will be implemented using a lease or sub-lease (or leases or sub-leases), to be entered into between the Franchisee and each other relevant franchisee on reasonable commercial and bona fide arm's length terms;**
- (b) any such lease or sub-lease shall (notwithstanding the definition otherwise applicable to such term) constitute a Thameslink Trading Agreement; and**
- (c) any Cascaded Rolling Stock shall be deemed to be excluded from the applicable table at Appendix 3 (The Train Fleet) to the Franchise Agreement whilst cascaded to the other relevant franchisee.**

**29.3 The Secretary of State and the Franchisee acknowledge that if the Franchisee and each other relevant franchisee are unable to agree on the terms of any lease or sub-lease of the Cascaded Rolling Stock in accordance with paragraph 29.2, the Secretary of State shall have the power to direct the terms of such lease or sub-lease provided that:**

- (a) any such lease or sub-lease shall be on terms which require the other relevant franchisee to undertake and be responsible for all maintenance and repair of the Cascaded Rolling Stock in accordance with the requirements of the applicable head lease;**

- (b) the rental passing under such lease or sub-lease shall be calculated by applying the same methodology used to calculate the rentals under the Electrostar Lot 10A Sub Lease;**
- (c) any such lease or sub-lease shall be on terms which require inspections upon delivery and redelivery in order to monitor and ensure that the Cascaded Rolling Stock is redelivered in the same condition (fair wear and tear excepted) as it is delivered; and**
- (d) shall otherwise be substantially in the same form of the Electrostar Lot 10A Sub Lease save that the Franchisee shall not be required to provide or procure technical support."**

**30<sup>285</sup> On or before 5 September 2013, the Franchisee shall submit to the Secretary of State an implementation and acceptance plan (the "HLOS Phase 2 Implementation and Acceptance Plan") which sets out, as a minimum:**

- (a) the approach to be adopted by the Franchisee to achieve the expected delivery profile for the HLOS Phase 2 Core Order Units as set out in the Original HLOS Phase 2 Core Order Units Delivery Schedule;**
- (b) the approach to operational arrangements proposed by the Franchisee to:**
  - (i) facilitate the procurement of all Relevant Consents (as defined in the HLOS Phase 2 MSA) required for the operation of the HLOS Phase 2 Core Order Units;**

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<sup>285</sup> Date of new insertion 30/07/2013

- (ii) enable the delivery, testing and acceptance of the HLOS Phase 2 Core Order Units under Part D of the HLOS Phase 2 MSA; and**
- (iii) manage the cascade of HLOS Phase 2 Core Order Units to the TSGN Franchisee and the processes the Franchisee expects to undertake with the TSGN Franchisee to enable the HLOS Phase 2 Core Order Units to achieve Qualified Provisional Acceptance or Acceptance, as the case may be, and enter into passenger revenue-earning service; and**
- (c) the strategy proposed by the Franchisee for the maintenance and stabling of the HLOS Phase 2 Core Order Units based on the stabling assumptions notified to the Franchisee by the Secretary of State and such strategy shall include a realistic and achievable list of the works and measures that are required to enable the successful delivery, maintenance and stabling of the HLOS Phase 2 Core Order Units provided that if the Secretary of State has not notified the Franchisee of the stabling assumptions on or before 31 July 2013, the date by which the Franchisee shall be obliged to deliver the strategy referred to in this paragraph (c) shall be extended beyond 5 September 2013 by such number of days as is equal to the number of days which elapse after 31 July 2013 until the date on which the Secretary of State notifies the Franchisee of the stabling assumptions.**

**31<sup>286</sup> On or before 5 September 2013, the Franchisee shall submit to the Secretary of State:**

- (a) the form of an operating lease in respect of the HLOS Phase 2 Core Order Units which the Franchisee will, subject to the approval of the Secretary of State, enter into with the TSGN Franchisee in satisfaction of its obligations under paragraph 33.3(a) of Appendix 13 (South Central Specific Provisions) in circumstances where no HLOS Phase 2 Financier has been procured and no HLOS Phase 2 Operating Lease has come into effect; and**
- (b) a summary of the principal terms of an operating sub-lease in respect of the HLOS Phase 2 Core Order Units which the Franchisee would be willing to enter into with the TSGN Franchisee in satisfaction of its obligations under paragraph 33.3(a) of Appendix 13 (South Central Specific Provisions) in circumstances where a HLOS Phase 2 Financier has been procured and the HLOS Phase 2 Operating Lease comes into effect,**

**it being acknowledged in each case that such form of operating lease and such summary of principal terms of an operating sub-lease may be subject to further change as a result of the on-going HLOS Phase 2 Financing Procurement Process.**

**32<sup>287</sup> On or before 30 November 2013, the Franchisee shall submit to the Secretary of State an estimate of:**

- (a) the capital costs that it expects to incur in providing the infrastructure and capital equipment required to maintain and stable the HLOS Phase 2 Core Order Units; and**

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<sup>286</sup> Date of new insertion 30/07/2013

<sup>287</sup> Date of new insertion 30/07/2013

**(b) the costs that it expects to incur in procuring or facilitating driver training for the HLOS Phase 2 Core Order Units.**

**33<sup>288</sup> Before the cascade of the HLOS Phase 2 Core Order Units to the TSGN Franchisee, the Franchisee shall provide assistance to the Secretary of State and/or the TSGN Franchisee to facilitate the smooth migration of the HLOS Phase 2 Core Order Units. In particular, the Franchisee shall liaise with the TSGN Franchisee to manage the introduction of the HLOS Phase 2 Core Order Units and take all reasonable steps to assist the TSGN Franchisee in obtaining the necessary approvals for the HLOS Phase 2 Core Order Units."**

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<sup>288</sup> Date of new insertion 30/07/2013

## **Part 2 to Appendix 11**

### **Miscellaneous Provisions**

#### **1. Application**

This Appendix sets out further terms which apply to the Committed Obligations set out in Part 1 (List of Committed Obligations) to this Appendix 11 and the references to Committed Obligations in each Part of this Appendix 11 are only to the Committed Obligations in Part 1.

#### **2. Continuation of Availability**

2.1 Save as expressly provided in this Appendix 11, the Franchisee shall maintain facilities established in accordance with its Committed Obligations in full operational order throughout the remainder of the Franchise Term.

2.2 The Franchisee shall be treated as maintaining Committed Obligations notwithstanding temporary non-availability due to accidental damage or vandalism or maintenance, repair or replacement activities, or temporary staff absence, subject in each case to the Franchisee taking all reasonable steps to keep any such period of temporary non-availability to a minimum.

2.3 Where Part 1 to this Appendix 11 includes a commitment regarding staffing or particular appointments it plans to make:

- (a) the obligation of the Franchisee applies, but shall not be regarded as being contravened by:
  - (i) temporary absences (for example for sickness or holiday); or
  - (ii) temporary non-fulfilment of a relevant post whilst the Franchisee is recruiting for that post, subject to the Franchisee using all reasonable endeavours to keep the duration between appointments as short as reasonably practicable; and
- (b) the Franchisee's rights and obligations in relation to the numbers or deployment of its other staff remain unaffected.

### **3. Expenditure Commitments**

#### **Annual Expenditure**

- 3.1 Where Part 1 (List of Committed Obligations) to this Appendix 11 provides for the expenditure of an annual amount (or an amount over some other period) by the Franchisee, that amount:
- (a) is assessed net of Value Added Tax; and
  - (b) is the amount required to be expended by the Franchisee itself or procured by the Franchisee to be expended.

#### **Expenditure Commitments in real amounts**

- 3.2 All expenditure commitments set out in Part 1 to this Appendix 11, to the extent they have not already been incurred by the Franchisee, shall be indexed by the Retail Prices Index (in the same way as variable costs are indexed in Schedule 8.2 (Annual Franchise Payments) to the Terms).

#### **Expenditure by Network Rail**

- 3.3 All amounts which the Franchisee has committed (whether unconditionally or otherwise) pursuant to Part 1 to this Appendix 11 to expend in connection with improvements to track or Stations shall be in addition to any expenditure made by Network Rail as part of its infrastructure improvements or maintenance programme to the extent such expenditure is not directly funded or reimbursed by the Franchisee.

### **4. Liaison and Co-Operation**

Where the Franchisee is committed to liaison and co-operation under Part 1 (List of Committed Obligations) to this Appendix 11, it shall participate actively in the relevant measures including through the application of management time and internal resources, correspondence and attendance at meetings, in each case as the Franchisee reasonably considers in all the circumstances to be an appropriate use of its resources and effective to help achieve the relevant objective.

### **5. Nature of Commitment**

- 5.1 Any commitment in terms of Part 1 (List of Committed Obligations) to this Appendix 11 shall be in addition to any obligation of the Franchisee

elsewhere in this Agreement and nothing in this Appendix 11 shall limit or restrict an obligation imposed on the Franchisee elsewhere in this Agreement.

5.2 Where in Part 1 to this Appendix 11, references are made to particular manufacturers or suppliers of equipment or services, the Franchisee may fulfil its relevant commitment by using reasonable equivalents.

5.3 Each commitment under this Appendix 11 shall come to an end on expiry of the Franchise Term for whatever reason, save in respect of any accrued payments owed pursuant to Part 3 (Late/Non-Completion of Committed Obligations) to this Appendix 11 but not yet paid.

## 6. **Third Party Consents, Agreement and Conditions**

6.1 Where, in Part 1 to this Appendix 11, any commitment of the Franchisee is expressed to be conditional upon the satisfaction of any condition (including the occurrence of any event or the obtaining of any third party consents, approvals and/or entering into any agreement or arrangement with a third party) the Franchisee shall use all reasonable endeavours to procure that such condition is satisfied within such timescales (if any) as are set out in Part 1 to this Appendix 11 in relation to such obligations.

6.2 Without limiting paragraph 6.1 or any other commitment of the Franchisee if any commitment of the Franchisee set out in Part 1 of this Appendix 11 is expressly subject to the satisfaction of any condition (including the occurrence of any event or the obtaining of any third party consents, approvals and/or entering into any agreement or arrangement with a third party) and the Franchisee is unable to satisfy such condition within the timescales set out in Part 1 of this Appendix 11 then paragraph 6.3 shall apply.

6.3 The Franchisee shall:

- (a) as soon as reasonably practicable notify the Secretary of State if it is unable to procure the satisfaction of any condition (including the occurrence of any event or the obtaining of any third party consents, approvals and/or entering into any agreement or arrangement with a third party) relating to any commitment set out in Part 1 to this Appendix 11 despite having complied with its obligations in paragraph 6.1; and



- (b) to the extent required by the Secretary of State (and at his absolute discretion) ensure that any amount that cannot be spent due to the non-fulfilment of any such condition is either expended as soon as reasonably practicable on such other improvements to enhance the quality of the Passenger Services and/or Station Services as are approved by the Secretary of State or paid by the Franchisee to the Secretary of State at the next Payment Date or such other date as the Secretary of State may specify.

## 7. **Review of Compliance**

- 7.1 Progress with Committed Obligations is an agenda item for Franchise Performance Meetings and the Franchisee shall ensure that at such meetings, the Secretary of State is given such progress reports as he may reasonably request.
- 7.2 In addition to its obligation under paragraph 7.1, the Franchisee shall from time to time promptly provide such evidence of its compliance with any Committed Obligation as the Secretary of State may reasonably request.
- 7.3 Where in respect of any commitment in Part 1 to this Appendix 11 the Franchisee is required to provide a plan to assist the Secretary of State in the monitoring of the Franchisee's compliance with such commitment the Franchisee shall:
  - (a) provide regular updates at the Franchise Performance Meetings of:
    - (i) any progress it has made in the implementation of such plan since the last Franchise Performance Meeting;
    - (ii) any material change to such plan;
    - (iii) the occurrence or non-occurrence (as the case may be) of any event or series of events which were anticipated or not anticipated (as the case may be) at the time such plan was being finalised; and
    - (iv) its informed opinion as to any amendments to such plan that it considers would be required to enable it to fulfil its obligations in respect of such commitment; and

- (b) unless as may otherwise be agreed by the Secretary of State, implement such plan in accordance with its terms.

## **Part 3 to Appendix 11**

### **Late/Non Completion of Committed Obligations**

#### **1. Late Completion or Non-Delivery of Committed Obligations**

If the Franchisee fails to deliver in full a Committed Obligation in accordance with and by the timeframe specified for its delivery in Part 1 (List of Committed Obligations) to this Appendix 11, such late, partial or non-delivery shall constitute a contravention of this Agreement.

#### **2. Committed Obligation Payment Adjustment**

2.1 In addition to being a contravention of this Agreement, if any of the Committed Obligations referred to in the Table is not delivered in full by the date specified for that Committed Obligation in column 3 of the Table, the Franchisee shall pay to the Secretary of State:

(a) in respect of each Reporting Period or part thereof for which that Committed Obligation remains undelivered in full from such date; and

(b) until the Committed Obligation is delivered in full,

a Committed Obligation Payment Adjustment, being the amount set out in column 4 of the Table, as adjusted in accordance with paragraph 2.3 or 2.4 (as appropriate).

2.2 Column 5 of the Table shall specify which of paragraphs 2.3 or 2.4 shall apply to each Committed Obligation specified therein, should any such Committed Obligation be partially delivered by the date specified for that Committed Obligation in column 3 of the Table.

#### **Pro-rating of Committed Obligation Payment Adjustment where partial delivery**

2.3 Where:

(a) in relation to any Committed Obligation referred to in column 5 of the Table to be subject to the terms of this paragraph 2.3 that is expressed in terms of a requirement to deliver or carry out activities in respect of a specified number of facilities; and

- (b) the Franchisee has delivered or carried out the relevant activity in respect of one or more but less than the number of facilities specified in that Committed Obligation by the relevant delivery date,

then the relevant Committed Obligation Payment Adjustment shall be reduced pro rata by reference to the number of facilities so delivered or by reference to the number of those activities that have been carried out (as appropriate).

### **Adjustment to Committed Obligation Payment Adjustment where partial spend**

2.4 Where:

- (a) in relation to any Committed Obligation referred to in column 5 of the Table to be subject to the terms of this paragraph 2.4 that is expressed in terms of a requirement to spend a specified a sum in fulfilling its stated objective; and
- (b) the Franchisee has spent less than the sum specified in that Committed Obligation in fulfilling its stated objectives by the relevant delivery date,

then the relevant Committed Obligation Payment Adjustment shall be reduced pro rata by reference to the amount actually spent by that delivery date.

2.5

- (a) Where in relation to any Committed Obligation that is expressed in terms of a requirement to spend a specified a sum in fulfilling its stated objective, the Franchisee is able to achieve that stated objective within the timeframe specified for its delivery without investing the full amount referred to in that Committed Obligation, whether because of cost savings or securing additional investment from third parties, the Franchisee may apply to the Secretary of State for the consent referred to in paragraph 2.5(b).
- (b) The Secretary of State's consent for the purposes of paragraph 2.5(a) is his consent for the Franchisee to invest any unspent amount towards the fulfilment of such other commitments as the Franchisee proposes at that time. That consent may not be unreasonably withheld.

- (c) If the Secretary of State consents to an application pursuant to paragraph 2.5(a) in respect of any Committed Obligation, then:
  - (i) Part 1 to Appendix 11 and this Part 3 shall be amended to reflect the terms of any new commitments; and
  - (ii) no Committed Obligation Payment Adjustment shall be payable in respect of the unspent amount that relates to that Committed Obligation.

2.6 The Committed Obligation Payment Adjustment shall be payable in accordance with Schedule 8.1 (Franchise Payments) of the Terms.

**Table: Committed Obligations where a Committed Obligation Payment Adjustment applies<sup>289</sup>.**

### 3. Waiver of Payments under this Part 3

- 3.1 The Secretary of State may at his reasonable discretion decide to waive his rights to receive any payments payable in respect of a late, partial or non-delivery of any Committed Obligations.
- 3.2 In deciding whether to waive such rights the Secretary of State may, but shall not be obliged to, take into consideration the circumstances under which the late, partial or non-delivery arose.

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<sup>289</sup> Where text has been omitted from the document this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

## **ANNEX 1**

### **Customer Information Systems provided under the Previous Franchise Agreement**

1. All Stations except Marshlink and Warnham, Fishersgate, Normans Bay and Southease are fitted with real time automated public address systems. This includes functionality for long line live PA and manually recorded announcements;
2. All manned Stations except Rye and Appledore have local microphones for emergency use;
3. All Stations served by more than two trains per hour off peak in each direction have visual displays on the platform;
4. All Stations fitted with visual displays are capable of displaying up to 60 minutes worth of train running information;
5. Middle and large stations have additional visual information concentrating on departure summaries, popular destination summaries, general information text displays. Booking halls and staff areas are also covered;
6. All Stations fitted with PA are capable of selective zoning with high and low volume settings;
7. All Stations fitted with PA are capable of announcement inhibits by means of announcement type;
8. All Stations fitted with PA are capable of delivering up to 3 announcements per train. Stations categorised by Network Rail as category A Stations are unlimited;
9. All Stations in noise sensitive areas are fitted with information points activated on demand; and
10. The system control centre is open 364 days a year, 24 hours and 7 days a week.

**Annex 2 to Part 1 of Appendix 11** <sup>290</sup>

**(HLOS Option Stabling and Maintenance Feasibility Study)**

**HLOS Option Vehicles**

Stabling and Maintenance Feasibility Study



Issue: 1  
Date: 10/12/12  
Author: J Killeen  
Approved: G.McFadden  
Doc ID: SN/ENG/HLOS/MAS001

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<sup>290</sup> Date of new insertion 20/12/2012

## **Executive Summary**

A feasibility study has been undertaken in respect of the maintenance and stabling requirements to accommodate the 40 additional dual voltage 377/6 vehicles. Consideration has been given to maintenance depot activities, depot capacity and movements, stabling capacity, CET facilities and sanding facilities on the Southern network. This report details the outcome of the study and the works required to facilitate this change.

Works have been identified to ensure that the 40 additional vehicles can be accommodated and maintained on the network in the most cost effective manner. These works are based on enhancing existing assets on the network, using existing track layout and depot facilities where possible.

An integrated plan has been identified at Selhurst depot that minimises the need for new dedicated facilities and takes advantage of current projects underway at the depot. Works to be carried out include extension of 25kV AC test facilities, inspection shed road extension, installation of side pits and additional storage for new specialist AC spares. At Brighton an AC test facility will be installed to accommodate units for use on Thameslink routes and avoid congestion of movements around Selhurst depot.

The approach to identify stabling capacity centred on locations that already have existing infrastructure, signalling and track bed in place, seeking to avoid new locations that require expensive and time consuming works. This approach resulted in locations at Tattenham Corner, Stewarts Lane and Redhill being identified as the most cost effective solution.

This feasibility study concludes that that it is possible to accommodate and maintain the additional vehicles on the Southern network through a series of works to existing assets on the network. These works represent the minimum amount of activity necessary to accommodate the change.

The development and implementation of these works are timescale critical, and work has begun to delivery as soon as possible on an item by item basis. An overall report with detailed timescales and costs to GRIP stage 5 will be completed no later than 31<sup>st</sup> August 2013.



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## **1 Introduction & Background**

A feasibility study has been undertaken in respect of the maintenance and stabling requirements for the 40 additional dual voltage 377/6 vehicles. Consideration has been given to the following areas;

- depot maintenance activities;
- depot capacity and movements;
- stabling capacity;
- CET facilities; and
- sanding facilities.

Changes to accommodate the 130 Class 377/6 vehicles are already planned and underway. The works considered here build upon those changes and where possible take advantage of opportunities these existing works present – for example an opportunity to expand on the planned extension of roads in the inspection shed at Selhurst.

### ***Study Findings***

In order to determine the works required to accommodate the maintenance and stabling of the 40 additional vehicles, the study noted the following key findings:

- The additional vehicles being supplied results in a total increase in vehicles operating on the Southern and Thameslink network, as well as a significant increase in dual voltage rolling stock compared to that currently in operation on the West London Line and an increase in 5 car / 10 car formations to maintain;
- The internal cascade of vehicles means that more dual voltage class 377s will support Thameslink operation. These units need to be maintained where they can best serve this operation whilst also minimising empty stock mileage;
- Current depot facilities at Selhurst are at capacity, specifically overnight stabling and the operational capacity of the depot to cope with the current level of morning departures and evening arrivals.
- CET and tanking facilities are at full capacity across the network; and
- Value for money improvements can be achieved through using existing facilities where possible and minimising infrastructure work at stabling locations such as signalling and track renewal.

Southern's approach to accommodating the maintenance and stabling of the additional vehicles seeks to address the issues raised in the most cost effective manner.

### ***Key Assumptions***

The following represent the key assumptions used in the development of this approach:

- 40 additional vehicles;
- the additional option vehicles are of 5-car configuration and are dual voltage;
- vehicles will be maintained by Southern; and

- overall maintenance mileage will increase further by providing fully maintained cascade rolling stock for the Thameslink network.

## 2 **Depot Maintenance**

The approach to maintaining the additional units is driven by two key requirements, the maintenance of the additional dual voltage units required for West London Line operation and supporting the increase in Class 377 operation on the Thameslink routes. This approach has been developed by focussing on use of existing facilities and taking advantage of works already underway at Southern locations.

In summary the required works are as follows:

Area	Works Required	Outcome
<b>Selhurst</b>	Extension of 25kv AC test facility to 5-car Extension of further roads in inspection shed Provision of side pits in roads 1&2 of inspection shed Additional stores provision	Increased maintenance accommodated without need for major works Ability to maintain 5-car ac units Sufficient storage to accommodate AC specific spares Takes advantage of works underway on existing projects
<b>Brighton</b>	Installation of dual voltage test facility	Minimises empty rolling stock movement of cascaded stock operating on Thameslink routes Provides alternative location to Selhurst which cannot accommodate any increase in movements on depot
<b>CET</b>	Provision of additional CET facilities	Additional CET requirements accommodated on Network in most cost effective manner
<b>Sanding</b>	Use of existing facility at Selhurst field sidings	Takes advantage of existing project, avoids cost of new installation

### **Selhurst Depot**

Selhurst depot is currently at full capacity for maintenance activity and number of arrivals and departures to and from the depot. The works identified at Selhurst depot to provide the additional capacity required are integrated to accommodate both the additional maintenance and the introduction of 5-car AC unit maintenance.

### **25KV test facility**

Selhurst has an existing facility for testing Class 377 AC operation. This facility is currently configured for 4-car units and needs to be updated, modified and extended to accommodate 5-car units.

The option to extend toward the inspection shed is limited, some additional length could be realised by relocating the signal and de-railer. Extending away from the shed is also limited by the curvature of the track and the proximity to points. A combination of both allows for a 5-car unit to be accommodated. However, as the unit could be either way



around on the test facility, there will be a requirement to extend the overhead catenary and as a consequence, the security caging. In summary the following works are required:

- relocate signal and de-railer;
- extend facility outwards from both ends to facilitate berthing of a 5-car;
- extend & modify the 25KV overhead line (OHL) catenary to allow units to be tested irrespective of their orientation.

### Inspection Shed extension

Selhurst Depot is currently designed to accommodate trains which are a maximum of 8-car in length within the maintenance facility with stabling roads and berths configured for 4, 8 or 12 car unit lengths. Therefore, the introduction of 5-car units has already led to a number of schemes being developed for the 377/6 fleet.

The addition of the further 5-car results in a level of maintenance demand that cannot be managed with current maintenance arrangements. A solution has been identified that manages this increased demand through works to the inspection shed, which integrates with the location of the AC test facility described above.



To accommodate the maintenance the following works are required:

- **Extension of roads** - Subsequent to the order for 130 x 377/6 vehicles, Southern planned for the road extension works in the inspection shed to cater for the longer units. Developing this solution to increase the number of extended roads would be cost effective and straightforward, and would take advantage of the preparation works undertaken so far. Therefore the programme will be expanded to a total of 4 roads increasing to 10-car length;
- **Side pits installed to roads 1&2** - the current diesel roads 1 and 2 will require excavation to provide side pits along the whole length of the roads. This will result in all roads in the inspection sheds having side pits. This removes the need for diesel trains to use electric roads and is required to manage the number of movements inside the depot which are restrictive due to the depot being at capacity; and
- **Introduction of an overhead gantry** - to allow removal of roof mounted equipment.

### Spares storage

Plans have been developed to rationalise existing spares storage arrangements and to build new facilities to ensure the 377/6 spares can be segregated and securely housed in the most appropriate locations within the depots. Changes are required to cater for additional capital and maintenance spares and tooling that arise from the additional dual voltage vehicles, including:

- **transformer and other specialised electrical equipment storage facilities,**
- **additional racking for spares;**
- **increase of the Inspection shed stores footprint to support the increase in the number of exams in the inspection shed.**

## Selhurst Depot Works Summary



### ***Brighton Depot dual voltage unit testing***

Selhurst depot is at full capacity in terms of numbers of arrivals and departures to and from the depot, so cannot accommodate any further movements on depot. Also, Brighton is a more natural starting and finishing position for the Class 377 units that are cascaded to operate on Thameslink routes. Completing exams on these cascaded dual voltage units at Brighton minimises empty rolling stock mileage for trains operating on Thameslink routes, and reduces the risk of congestion at Selhurst depot that would result from increased depot movements. However, Brighton depot currently does not have the capability to test dual voltage units post exam.

Facilities will be installed at Brighton to enable overhead line testing to be carried out. A review of the depot will be undertaken to determine the best solution.

### ***CET Facilities***

The additional rolling stock increases the requirements on CET and tanking facilities beyond current capacity. The installation of CET facilities is dependent on train diagrams, stabling, location of cleaners, ability of location to accommodate the plant and waste disposal, and agreement of necessary parties for the activity to be carried out.

Southern has identified locations at Horsham and Selhurst field sidings, either of which would be adequate. A CET review will be carried out to determine which location of the two is most suitable. We will cost to provide a single additional line of CET that provides tanking and de-tanking facilities for up to 6 units (3 units on each adjacent road). Once this review is completed, the works will be carried out at the chosen location.

### ***Sanding Facilities***

The additional rolling stock increases the requirements on sanding beyond current capacity. However, Southern has identified that sanding facilities are being installed at Selhurst field sidings. Assuming these are available for use, there is no need for further sanding facilities to be provided.



### 3 Stabling

As part of the introduction of the initial 130 vehicles, Southern will be introducing additional stabling at Stewarts Lane, Horsham and Dorking as current capacity has been reached. To accommodate the additional rolling stock it is assumed that as a minimum an additional stabling for up to 40 vehicles will be required.

The approach taken in the assessment was to identify locations that meet the following criteria:

- Sidings are or were located at the site historically;
- Have existing signalled connections;
- The location is the Metro area;
- Have reasonable access from an existing Southern train crew depot; and
- Southern drivers currently sign any routes required to access the location.

The logic of this approach is that the planning requirements for new facilities and, particularly, any new signalling works are time consuming and disproportionately expensive and would not be cost effective or meet the timescale requirements for this project.

The following locations have been identified as the most cost effective solution to deliver the additional capacity:

#### ***Tattenham Corner Sidings***

Tattenham Corner has two signalled sidings located on the up side of the running line north of the station that could potentially be used for stabling.



***Redhill Up Loop Sidings***

A 12- car stabling location has been identified at Redhill Up Loop Sidings that can be returned to use following regeneration works.



***Stewarts Lane loop***

Two new stabling locations are currently being developed at Stewarts Lane, Cabbage Patch sidings. There is an opportunity to develop an additional 12- car stabling berth by utilising an unused loop.



To bring these locations into service track condition and power will be confirmed and appropriate levels of security, fencing, lighting and walking routes will be installed.

#### **4**      **Conclusion**

This feasibility study concludes that that it is possible to accommodate and maintain the additional vehicles on the Southern network through a series of works to existing assets on the network.

To achieve this change, works are required at Selhurst, Brighton, CET locations and stabling locations. These works include extension to inspection shed roads, AC test facility works, additional storage for spares and works to make stabling locations fit for use. These represent the minimum amount of activity necessary to accommodate the change.

The development and implementation of these works are timescale critical, and work has begun to delivery as soon as possible on an item by item basis. An overall report with detailed timescales and costs to GRIP stage 5 will be completed no later than 31<sup>st</sup> August 2013.



## APPENDIX 12

### 2012 Olympic Games and Paralympic Games (Clause 7.1)

#### 1. Acknowledgement

The parties acknowledge that:

- (a) London will host the Games in 2012;
- (b) as a key provider of public transport services into and out of London, the surrounding area and other areas serving as venues for the Games, the Franchisee will have an important role to play during the Franchise Term in helping to make the staging of the Games successful; and
- (c) the Olympic Delivery Authority must prepare and keep under review the Olympic Transport Plan for addressing transport matters relating to the Games.

#### 2. Franchisee Co-Operation

The Franchisee:

- (a) shall at its own cost, co-operate and consult as reasonably required by and with the Olympic Delivery Authority, the LOCOG, the Secretary of State, TfL, Network Rail, the British Transport Police and any other relevant party in connection with any arrangements directly or indirectly connected with the Games, including:
  - (i) the provision of additional and/or specific railway passenger services;
  - (ii) the carrying out of necessary works to the network;
  - (iii) the provision of additional and/or specific security arrangements at stations at which the Passenger Services call and on the Passenger Services;
  - (iv) the provision of specific integrated ticketing in relation to the Passenger Services; and

- (v) advertising and marketing of the Games in relation to the Franchise Services; and
- (b) shall not for the purposes of publicity, advertising, marketing or any other reason, without the prior written consent of LOCOG, represent that any product or service provided by the Franchisee under this Agreement:
  - (i) has been endorsed or approved by LOCOG, the Olympic Delivery Authority or any other Olympic body; or
  - (ii) is in any way associated with those organisations or the Games,including by publishing or issuing any statement (factual or otherwise) about the Franchisee's products or services under this Agreement.

### 3. **Entry into the Olympic Services Delivery Plan**

3.1 The Secretary of State may require the Franchisee to enter into a plan with him:

- (a) to facilitate, in particular, the implementation of the railway aspects of the Olympic Transport Plan;
- (b) to the extent not already provided for under paragraph 3.1(a), to:
  - (i) implement any or all of the matters referred to in paragraph 2; and
  - (ii) any other matter relevant to the planning or staging of the Games,

(the ***Olympic Services Delivery Plan***).

3.2 The Secretary of State shall give the Franchisee reasonable notice of the terms of the Olympic Services Delivery Plan he wishes to enter into and the date on which he wishes to enter into the Olympic Services Delivery Plan.

- 3.3 The Franchisee may make representations to the Secretary of State in respect of the Secretary of State's proposed terms of the Olympic Services Delivery Plan.
- 3.4 If the Secretary of State and the Franchisee cannot agree on the terms of the Olympic Services Delivery Plan, then the Secretary of State shall reasonably determine such terms.
- 3.5 On the date notified to the Franchisee by the Secretary of State pursuant to paragraph 3.2, the Secretary of State and the Franchisee shall enter into the Olympic Services Delivery Plan.

#### 4. **Financial Effects of the Olympic Services Delivery Plan**

For the purpose of paragraph (j) of the definition of Change, the Franchisee's implementation of the Olympic Services Delivery Plan shall be a Change, insofar as such implementation results in the imposition of costs on and receipt of revenue by the Franchisee.

#### 5. **Implementation of the Olympic Services Delivery Plan**

The Franchisee shall implement the Olympic Services Delivery Plan in accordance with its terms.

#### 6 <sup>291</sup>**OLYMPIC REVENUE INCENTIVE**

***6.1 As soon as reasonably practicable after 9 September 2012, the parties shall agree the Olympic Revenue Incentive Franchise Payment Adjustment that shall be made in accordance with paragraph 6.2.***

***6.2 The Olympic Revenue Incentive Franchise Payment Adjustment shall be determined in accordance with the following formula:<sup>292</sup>***

***where:***

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<sup>291</sup> Date of new insertion 22/06/2012

<sup>292</sup> Where text has been omitted from the document this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

***GFR*** means the amount of revenue directly attributable to any Fare allocated to the Franchisee for the purpose of travel on the Franchise Services in Reporting Period 5 of the Franchisee Year beginning on 1 April 2012,

*and shall not be less than zero.*

**6.3** *The Olympic Revenue Incentive Franchise Payment Adjustment (if any) payable pursuant to this paragraph 6 shall:*

(c) *be payable by the Franchisee to the Secretary of State and shall be made on the first Payment Date falling after determination of the Olympic Revenue Incentive Franchise Payment Adjustment pursuant to paragraphs 6.1 and 6.2; and*

(d) *be repaid by the Secretary of State to the Franchisee if and to the extent that any Revenue Share Adjustment is payable by the Franchisee in respect of the Franchisee Year beginning on 1 April 2012.”*

## APPENDIX 13

### South Central Specific Provisions (Clause 7.2)

1. **Thameslink Trading Arrangements**<sup>293</sup>
2. **Thameslink Key Output 1 (Daily Hire of Rolling Stock)**<sup>294</sup>
3. **Electrostar Lot 10b**<sup>295</sup>
4. **Customer Satisfaction Benchmarks**
- 4.1 It is agreed by the Franchisee that:
  - (a) the National Passenger Surveys conducted by the Rail Passengers' Council pursuant to paragraph 2 of Schedule 1.5 (Information about Passengers) of the Terms shall be an Actionable National Passenger Survey for the purposes of this paragraph 4; and
  - (b) the methodology to be adopted by the Rail Passengers' Council in conducting any such National Passenger Survey shall be as described in the document in agreed terms marked "**CSM**" (the "**Passenger Survey Methodology**"),  
  
provided that:
    - (i) the first Actionable National Passenger Survey shall be the National Passenger Survey conducted by the Rail Passengers' Council in or around Spring 2010;
    - (ii) the Franchisee's performance against each Customer Satisfaction Benchmark will be measured in respect of each Service Group based on an average of the results of the two National Passenger Surveys conducted by

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<sup>293</sup> Where text has been omitted from the document this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

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the Rail Passengers' Council in any one calendar year in respect of each such Service Group except that:

- (A) where the last Franchisee Year is scheduled to end at a point in the calendar year where only the first of the two National Passenger Surveys due to be carried out in that calendar year is available the Franchisee's performance against each Customer Satisfaction Benchmark will be measured in respect of each Service Group on the basis of such first National Passenger Survey conducted by the Rail Passengers' Council in that Franchisee Year ("**relevant Actionable National Passenger Survey**"); and
  - (B) where the last Franchisee Year is scheduled to end at a point in the calendar year where none of the National Passenger Surveys due to be carried out in that calendar year is available the provisions of paragraphs 4.3 to 4.5 shall have no further application.
- (iii) if the Rail Passengers' Council ceases to undertake National Passenger Surveys then the Actionable National Passenger Survey for the purposes of this paragraph 4 shall be such other passenger survey as the Secretary of State may, after consultation with the Franchisee, reasonably determine to be appropriate in the circumstances.

4.2 If:

- (a) at any time during the Franchise Term the methodology adopted in conducting any National Passenger Survey (or replacement survey pursuant to paragraph 4.1(b)(iii)) which is an Actionable Passenger Survey pursuant to this paragraph 4 is materially inconsistent with the Passenger Survey Methodology; and
- (b) the Secretary of State reasonably determines that in consequence a revision to the Customer Satisfaction Benchmark is required in

order to hold constant the risk of the Franchisee failing to satisfy the requirements of the Customer Satisfaction Benchmark,

then the Secretary of State shall make such revisions to such Customer Satisfaction Benchmark (and any other relevant provision of this paragraph 4) as he reasonably considers appropriate to hold constant such risk.

4.3 If in respect of the circumstances:

- (a) where the Franchisee's performance is to be measured in respect of each Service Group based on an average of the results of the two National Passenger Surveys conducted by Rail Passengers' Council in any one calendar year, the average results of the two Actionable National Passenger Surveys referred to in paragraph 4.1; or
- (b) set out in paragraph 4.1(b)(ii)(A), the results of the relevant Actionable Passenger Survey,

show that the level of customer satisfaction in respect of a Customer Satisfaction Measure is below the relevant Customer Satisfaction Benchmark relating to such Customer Satisfaction Measure the Franchisee shall, unless the Secretary of State shall otherwise direct, incur additional expenditure in order to secure the required improvements.

4.4 Without limiting paragraph 4.3, on each occasion that the Franchisee becomes obliged to incur additional expenditure to secure a required improvement, the Franchisee shall produce an action plan which is consistent with its obligations under paragraph 4.3 and in compliance with the following provisions:

- (a) the Franchisee shall (1) produce, (2) obtain the Secretary of State's approval of, and (3) commence the implementation of the action plan within 3 months after the date on which the results of such Actionable National Passenger Survey which triggered the requirement for the required improvement were published or otherwise made available to the Franchisee;
- (b) the action plan will contain specific tangible action points and indicate in the case of each action point:

- (i) how that action will contribute to meeting the Customer Satisfaction Measure;
  - (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 plan shall include specific review dates; and
  - (iv) how performance of the action is to be measured;
- (c) the action plan will identify the additional expenditure associated with each action; and
- (d) for the purposes of satisfying its obligations under paragraph 4.3, the Franchisee shall not be required to incur additional expenditure of more than the capped expenditure in a Franchisee Year.

4.5 The Franchisee shall, as soon as reasonably practicable after such information is made available to the Franchisee, publicise its performance against the Customer Satisfaction Benchmarks by displaying such information at all of the Stations categorised by Network Rail as category A, B and C stations and on its website.

4.6 Upon the termination of this Franchise Agreement the Franchisee shall pay to the Secretary of State, by way of adjustment to Franchise Payments, an amount equivalent to the amount of any additional expenditure that the Franchisee is committed to incur pursuant to paragraph 4.3 and which it has not incurred at the end of the Franchise Term.

4.7 For the purposes of this paragraph 4:

**“additional expenditure”** means, in respect of a single Customer Satisfaction Measure, £100,000 (One Hundred Thousand Pounds), such expenditure being additional to:

- (i) any sums provided for expenditure in respect of the same or similar commitments in the Business Plan for the Franchisee Year (the **“First Franchisee Year”**) in which the obligation to incur additional expenditure under paragraph 4.3 first arises (the **“Existing Expenditure”**), and in any subsequent Franchisee Year, shall be in



addition to the amount of the Existing Expenditure as increased by an amount equivalent to any increase in the Retail Prices Index between the beginning of the First Franchisee Year of the expenditure and the beginning of that subsequent Franchisee Year; and

- (ii) without limiting the preceding paragraph 4.7(i), any expenditure made or to be made by the Franchisee for the purposes of complying with the provisions of Schedule 1 (Passenger Service Obligations), Schedule 4 (Persons with Disabilities and Disability Discrimination), Schedule 7 (Performance Benchmarks/Service Quality Management) of the Terms and Appendix 11 (List of Committed Obligations and Related Provisions) of this Franchise Agreement;

**“capped expenditure”** means £500,000 (Five Hundred Thousand Pounds);

**“Customer Satisfaction Benchmark”** means:

- (a) in respect of the circumstances where the Franchisee’s performance is to be measured in respect of each Service Group based on an average of the results of the two National Passenger Surveys conducted by Rail Passengers’ Council in any one calendar year, each of the customer satisfaction benchmarks relating to each Customer Satisfaction Measure as set out in the second, third and fourth columns of the Customer Satisfaction Table 1; or
- (b) in respect of the circumstances set out in paragraph 4.1(b)(ii)(A), each of the customer satisfaction benchmarks relating to each Customer Satisfaction Measure as set out in the second, third and fourth columns of the Customer Satisfaction Table 2;

**“Customer Satisfaction Measure”** means the factors set out in the Passenger Survey Methodology and described as “Stations”, “Trains” and “Customer Services”;

**“Customer Satisfaction Table 1”** means the table below headed “Combined Benchmarks”:

## **COMBINED BENCHMARKS**<sup>296</sup>

“**Customer Satisfaction Table 2**” means the table below headed “Spring Only Benchmarks”

## **SPRING ONLY BENCHMARKS**<sup>297</sup>

“**required improvement**” means an improvement in the level of customer satisfaction for the relevant Customer Satisfaction Measure as measured by a National Passenger Survey so that such level is equal to or higher than the related Customer Satisfaction Benchmark; and

“**Service Group**” means each of :

- (i) Sussex & Coast being Brighton Main Line, East Coastway, West Coastway and Arun Valley, Horsham and Arun Valley, Watford Junction to Clapham Junction and Gatwick Airport and Redhill and Tonbridge services and Uckfield and Oxted services;
- (ii) South London being Sutton and Mole Valley London services, Cheam and Sutton London services, Dorking and Epsom London services, Purley and East Croydon London services and Caterham & Tattenham Corner lines; and.
- (iii) Gatwick Express being all the Passenger Services that are specifically branded as “Gatwick Express” services and call, without stopping at intermediate stations, from London Victoria to Gatwick Airport.

## **5. Rolling Stock Costs**

5.1 The Franchisee shall co-operate with the reasonable requirements of the Secretary of State in implementing any proposals he may have to:

- (a) reduce, taking into account any change in the allocation of risk between the parties, the aggregate net costs relating to the leasing and/or maintenance arrangements in respect of relevant rolling

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<sup>296</sup> Where text has been omitted from the document this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

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stock vehicles under the Rolling Stock Related Contracts without any corresponding reduction in the performance and/or other output related requirements, and/or the specification or quantum of associated services that are available for those rolling stock vehicles under any Rolling Stock Related Contract; and

- (b) enable the Secretary of State to realise any consequent savings that arise in accordance with paragraph 5.3.

5.2 Without limiting paragraph 5.1, the Franchisee shall:

- (a) upon reasonable notice, attend meetings with the Secretary of State and any or all of the rolling stock leasing companies to discuss those proposals;
- (b) provide the Franchisee's opinion on those proposals and such opinion and any supporting information provided by the Franchisee shall be subject to paragraph 1 of Schedule 17 (Confidentiality) of the Terms. The Secretary of State acknowledges and agrees that:
  - (i) he shall not be entitled to disclose any information provided by the Franchisee pursuant to this paragraph 5.2(b) under paragraph 4.1 or 4.2 of Schedule 17 (Confidentiality) of the Terms; and
  - (ii) disclosure of any information provided by the Franchisee pursuant to this paragraph 5.2(b) pursuant to a request made in accordance of the Freedom of Information Act 2000 may prejudice the commercial interests of the Franchisee and that he shall have due regard to any representations made by the Franchisee in this regard.
- (c) review and comment on implementation timetables and programmes for any reductions in costs relating to the operation of rolling stock vehicles;
- (d) agree, and where required use all reasonable endeavours to achieve, any amendments to any Rolling Stock Related Contract which the Secretary of State considers to be necessary or

desirable, and in such form as he may specify, in order to facilitate the implementation of those proposals and use all reasonable endeavours to maximise the reductions referred to in paragraph 5.1(a);

- (e) where and to the extent that the Secretary of State considers it requisite for the purpose of implementing or facilitating the implementation of those proposals, to exercise any or all of the Franchisee's rights under any Rolling Stock Related Contract or any related rights which the Franchisee may have, in each case as the Secretary of State may specify. The Franchisee's obligations under this paragraph 5.2 include, where the Secretary of State so requires, the pursuit of any disputed issue by litigation or other form of dispute resolution provided for by the relevant Rolling Stock Related Contract. The Franchisee shall comply with the requirements of the Secretary of State in respect of the prosecution and resolution or determination of any such disputed issue. The Secretary of State shall indemnify the Franchisee against all direct losses, costs and expenses (including, without limitation, reasonable legal fees) relating to or arising out of the Franchisee's performance of its obligations under this paragraph 5.2(e). The Franchisee shall, to the extent reasonably practicable and without prejudice to the foregoing provisions of this paragraph 5.2(e), give prior notice of the nature and likely extent of such losses, costs and expenses and shall be under an obligation to mitigate such direct losses, costs and expenses to the extent reasonably practicable; and
- (f) make available to the Secretary of State on an open book basis as and when reasonably requested, full information and explanation as to the extent of the costs that may be saved by the implementation of any such proposals.

5.3 The parties hereby agree that to the extent that the Franchisee is required to take any action under paragraph 5.1 or 5.2 and/or that the aggregate net costs relating to rolling stock vehicle leasing and/or maintenance arrangements payable by the Franchisee under any Rolling Stock Related Contract are reduced, taking into account any change in the allocation of risk between the parties, as a consequence of:

- (a) the implementation of any or all of the Secretary of State's proposals referred to in paragraph 5.1 including:
  - (i) the entering into of any agreement between the counterparty to any Rolling Stock Related Contract and the Secretary of State or any other government instrumentality under which it has been agreed to alter amounts payable under the relevant contract;
  - (ii) any revision (with the agreement of the ORR, where applicable) of any existing code of practice which the counterparty has in place, or the creation of a new code of practice, where the effect of the revision or new code is to change, directly or indirectly, the basis upon which rentals or other payments are fixed, determined, set or agreed under rolling stock leases or other Rolling Stock Related Contracts whether entered into before or after the coming into effect of the revised or new code of practice; and/or
  - (iii) the giving by the counterparty of any undertaking to any competition authority whether voluntarily or as required by law in respect of its participation in the rolling stock leasing and/or maintenance market in Great Britain; and/or
- (b) the determination, finding, decision or requirements of any competition authority,

then a Change shall occur and that Change shall be deemed to be a Qualifying Change whether or not such Change meets the requirements of the definition of Qualifying Change.

5.4 For the purposes of paragraph 5.3:

- (a) the reference to a Rolling Stock Related Contract includes any such contract which is in place at the Start Date and also any further replacement or additional such contract to which the Franchisee is a party at any time during the Franchise Term;

- (b) the additional assumptions which the parties shall agree or the Secretary of State shall reasonably determine pursuant to paragraph 5.2 of Schedule 9.3 (Runs of the Financial Model) of the Terms shall include (where relevant) those necessary in order to ascertain the extent of the reduction in costs payable under any Rolling Stock Related Contract:
  - (i) to which the Franchisee is not a party as at the date of this Franchise Agreement; and
  - (ii) in respect of which no relevant assumption has been included in the Record of Assumptions;
- (c) the reference to aggregate net costs payable by the Franchisee under the Rolling Stock Related Contracts shall be deemed to include any introduction of or increase in amounts paid by any party to the Franchisee the effect of which, taken together with the costs payable by the Franchisee under the relevant contracts and any change in the allocation of risk between the parties, is to produce a net reduction in costs incurred by the Franchisee in relation to those Rolling Stock Related Contracts; and
- (d) in determining any Revised Inputs the Secretary of State shall have due regard to the rolling stock assumptions and proposals made by the Franchisee which are included in the Financial Model, the Operational Model and/or the Record of Assumptions, (which shall constitute the basis on which any reduction in aggregate net costs shall be assessed) and to any other effects of the proposals on the other costs and risks of the Franchisee in connection with the leasing, operation and maintenance of the relevant rolling stock vehicles, including (without limitation) external costs.

## 6. **Electronic Advertising Media**

- 6.1 The Franchisee shall not, without the prior written consent of the Secretary of State (such consent not to be unreasonably withheld), install or procure the installation of electronic advertising media (including video or audio broadcast systems) on any rolling stock vehicle within the Train Fleet which as at the Start Date did not have any such electronic advertising media installed.

- 6.2 In seeking the Secretary of State's consent to the installation of such electronic advertising media, the Franchisee shall provide to the Secretary of State;
- (a) the results of representative surveys carried out on no less than two separate occasions that demonstrate that the users of the Passenger Services are in favour of the installation and proposed content of such electronic advertising media; and
  - (b) a detailed report of its proposals, explaining, amongst other things:
    - (i) the impact on the passenger environment of the relevant rolling stock vehicles within the Train Fleet; and
    - (ii) the forecast net financial benefit to the Franchisee of installing such media.

## 7. Major Projects

- 7.1 Without prejudice to the Franchisee's rights and obligations under Schedule 1.7 (Extended Restrictions of Use) of the Terms the Franchisee shall, to the extent so requested by the Secretary of State following consultation with the Franchisee and other train operators likely to be affected by major projects, co-operate and liaise to the extent reasonably required with Network Rail, the Secretary of State and all the relevant parties in connection with any major project developed during the Franchise Term including but not limited to:
- (a) the Thameslink Programme;
  - (b) the scheme known as the "East London Line Extension";
  - (c) London 2012 Olympic and Paralympic Games;
  - (d) any enhancement scheme which Network Rail is required to deliver in Control Period 4 pursuant to ORR's "Periodic Review 2008"; and
  - (e) the National Stations Improvement Programme.
- 7.2 In fulfilling its obligations to co-operate and liaise pursuant to paragraph 7.1, the Franchisee shall amongst other things seek to:

- (a) participate in a positive and constructive manner and in a way which offers full transparency of information available from the Franchisee to the Secretary of State; and
- (b) identify solutions that minimise overall rail industry costs.

## 8. **Co-Operation with Transport for London**

8.1 The Franchisee shall on or before the Start Date agree and enter into an agreement with TfL (or its nominee) for the provision (at a fair and reasonable cost) of monitoring services for CCTV and help point equipment at the following stations which are to transfer from New Southern Railway Limited to TfL or its nominee prior to the Start Date:

- (a) Anerley;
- (b) Brockley;
- (c) Crystal Palace;
- (d) Forest Hill;
- (e) Honor Oak Park;
- (f) New Cross Gate;
- (g) Norwood Junction;
- (h) Penge;
- (i) Sydenham; and
- (j) West Croydon

(together the "Lorol Stations").

8.2 At the request of the Secretary of State the Franchisee shall co-operate to the extent reasonably required with TfL such co-operation to include consulting with TfL in relation to bids in respect of the Passengers Services operated to and from the Greater London Stations and which the Franchisee proposes to make to Network Rail under the Track Access Agreement for Train Slots in relation to a Timetable which will come into force on a Passenger Change Date and providing information reasonably required by TfL for budget planning purposes.



8.3 The Franchisee agrees with the Secretary of State that:

- (a) it shall upon reasonable notice grant TfL (or its representatives and agents) reasonable access to the Greater London Stations for the purposes of carrying out passenger surveys or conducting research in respect of matters relevant to its statutory functions;
- (b) the Franchisee shall co-operate with TfL (in such manner as TfL may reasonably request or as the Secretary of State may reasonably direct) in order to enable TfL to carry out such passenger surveys or conduct such research.

8.4 <sup>298</sup>

## 9. **New Year Eve Services**

Between 0105 and 0505 on 1 January in each Franchisee Year, the Franchisee shall provide a “free to use” Passenger Service of three trains per hour from London Victoria to East Croydon, departing at approximately twenty minute intervals and calling at Battersea Park, Clapham Junction, Wandsworth Common, Balham, Streatham Common, Norbury, Thornton Heath and Selhurst.

## 10. **South Central Depots**

### 10.1 **Contractual Documents**

- (a) The Franchisee (other than with the Secretary of State’s prior written consent or approval (not to be unreasonably withheld or delayed)) shall:
  - (i) in material respects comply with its obligations and enforce its rights; and
  - (ii) not waive or purport to waive any material obligation of any other party,

in each case under the Depot Sub Leases to which the Franchisee may be a party from time to time.

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<sup>298</sup> Where text has been omitted from the document this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

- (b) The Franchisee shall not, without the Secretary of State's prior written consent or approval (not to be unreasonably withheld or delayed):
  - (i) vary or purport to vary or agree to any variation of the terms and conditions of any Depot Sub Leases;
  - (ii) take any steps to terminate any of the Depot Sub Leases.

## 10.2 Assignment of the Depot Works Agreements

- (a) At any time when under either the DepCo Direct Agreement or the Section 54 Undertaking the Secretary of State is obliged or entitled to require that any of the Depot Works Agreements (including the whole of any such agreement or agreements or only insofar as any such agreements relate to any of the Depot Sub Leases) are assigned to the Secretary of State or as he may direct, the Franchisee shall, to the extent so requested by the Secretary of State:
  - (i) assign its interest under such of the Depot Works Agreements and the Section 54 Undertaking (or such parts thereof) as the Secretary of State may require to the Secretary of State or as he may direct; and/or
  - (ii) unconditionally consent to the assignment by any other person of such person's interest under such of the Depot Works Agreements and the Section 54 Undertaking (or such parts thereof) as the Secretary of State may require, to the Secretary of State or as he may require.
- (b) Any assignment in accordance with paragraph 10.2(a) shall be on such terms as the Secretary of State may reasonably require, including the following:
  - (i) that the Franchisee shall not be released from any accrued but unperformed obligation, the consequences of any antecedent breach of a covenant or obligation in any of the Depot Works Agreements or any liability in

respect of any act or omission under or in relation to any of the Depot Works Agreements prior to, or as at the date of, any such assignment (except to the extent that the Secretary of State or its nominee agreed to assume and be responsible for such unperformed obligation, such liability or the consequences of such breach in connection with the relevant assignment); and

- (ii) that neither the Secretary of State nor his nominee shall be obliged, in connection with the assignment, to agree to assume and be responsible for any unperformed obligation, liability or consequences of breach referred to in paragraph 10.2(b)(i) and the Franchisee shall indemnify the Secretary of State or his nominee, as the case may be, on an after tax basis against any cost, losses, liabilities or expenses suffered or incurred in relation thereto.
- (c) Notwithstanding paragraphs 10.2(a) and 10.2(b) upon any expiry of this Franchise Agreement the Secretary of State shall, if he exercises his rights under paragraphs 10.2(a) and 10.2(b), not require the Franchisee to assign its interest under the Depot Works Agreements or the Section 54 Undertaking other than to a person to whom the same can be assigned in accordance with the Section 54 Undertaking.

### 10.3 Superior Lease Rent

- (a) The Franchisee shall exercise its rights in relation to any rent review under each Superior Lease in good faith.
- (b) The Franchisee shall forward to the Secretary of State a copy of each Review Notice received by the Franchisee. As soon as reasonably practicable thereafter (and in any event by no later than 1 month after the date upon which the Review Notice was received by the Franchisee) the Franchisee shall notify the Secretary of State of how it proposes to respond to the Review Notice, including whether the Franchisee recommends that the Revised Rent proposed in the Review Notice should be accepted, together with the Franchisee's reasons for that recommendation and such

supporting documentation as the Secretary of State may reasonably require.

- (c) The Franchisee shall not agree the Revised Rent payable under Superior Lease without the Secretary of State's prior written consent. If the Secretary of State fails to notify the Franchisee that he disagrees with the Revised Rent within 2 weeks of receipt of all matters to be provided by the Franchisee to the Secretary of State under paragraph (b), the Secretary of State shall be deemed to have consented for the purpose of this paragraph (c).
- (d) If the Secretary of State disagrees with the amount of any Revised Rent which the Franchisee has notified the Secretary of State it recommends is accepted, the Secretary of State may by notice in writing require the Franchisee to require the Revised Rent to be determined by a valuer in accordance with paragraph 2.2 of Part 1 of Schedule 4 of the Superior Lease. As part of such determination process the Franchisee shall, in submitting any oral or written representations to such valuer, have due regard to any representations made by the Secretary of State.
- (e) If the Secretary of State serves notice on the Franchisee under paragraph (d) then, provided that the level of the Revised Rent determined by the valuer in accordance with paragraph 2.2 of Part 1 of Schedule 4 of the Superior Lease is not lower than the Revised Rent which the Franchisee recommended was agreed, the Secretary of State shall reimburse the Franchisee with the reasonable costs incurred by the Franchisee in participating in the determination of the Revised Rent under paragraph 2.2 of Part 1 of Schedule 4 (which shall include the amount of any costs which the person appointed to determine the Revised Rent may award against the Franchisee).

#### 10.4 **Alterations and Change of User**

The Franchisee shall not, without the Secretary of State's prior written consent, make any alteration or addition to any of the Enhanced Depots nor use any of the Enhanced Depots (or any part thereof) other than for the purposes of light maintenance depot to the extent that to do either of the same would result in an increase in the Improvement Rent payable under the

relevant Depot Sub Lease without the Secretary of State's prior written consent.

#### 10.5 **Cashflow Agreement**

The Franchisee shall, in circumstances when it is entitled to do so, unless otherwise agreed by the Secretary of State (such agreement not to be unreasonably withheld) require DepCo to produce a Cashflow Report in accordance with clause 4.1 or 5.1 of the Cashflow Agreement.

#### 10.6 **Insurance**

- (a) The Franchisee shall, in respect of each Enhanced Depot, maintain an insurance policy (and shall not do or omit to do anything which is likely to result in such insurance being or becoming void, voidable or unenforceable) in such amount as is sufficient to cover its obligation to pay any Improvement Rent in respect of such Enhanced Depot during any period whilst the Rent payable by DepCo under the relevant Superior Lease is suspended pursuant to Depot Access Condition E8. Such insurance shall be with an insurer and in a form satisfactory to the Secretary of State and shall be capable of being transferred to a Successor Operator.
- (b) In relation to any insurance policy maintained by the Franchisee from time to time pursuant to its obligations under paragraph 10.6(a) the Franchisee shall not agree to increase the Excess (as defined in the Depot Access Conditions which shall itself have the meaning specified in the Superior Lease) to £100,000 or above without the Secretary of State's prior written consent.
- (c) There shall be a Change if at any time there is an Uninsured Event (as defined in paragraph 10B of the Depot Letting Conditions (as defined in the relevant Superior Lease)) provided that in respect of such Change the only Revised Input shall be the amount of the difference between the cost to the Franchisee of obtaining alternative light maintenance facilities to replace those affected by the Uninsured Event and the amount of the rent payable (excluding any amount which ceases (including temporarily) to be payable as a result of such Uninsured Event) by the Franchisee under the relevant Depot Sub Lease(s) (in the case of any increase up to a

maximum adjustment of the amount of the Improvement Rent payable in respect of such Enhanced Depot).

#### 10.7 **Maintenance of the Enhanced Depots**

- (a) The Franchisee shall ensure that each Enhanced Depot is maintained to the standard required in the relevant Depot Sub Lease.
- (b) As soon as reasonably practicable after the end of the Franchise Period but by no later than 28 days after the end of the Franchise Period the Secretary of State (or his nominee) and the Franchisee shall use all reasonable endeavours to agree:
  - (i) how far (if at all) the state of repair and/or condition of each of the Enhanced Depots falls short of the standard required in the relevant Depot Sub Lease (“**Required State**”); and
  - (ii) the proper costs (excluding VAT) (the “**Cost**”) of bringing each such Enhanced Depot(s) up to the Required State.
- (c) If the Secretary of State (or his nominee) and the Franchisee are unable to agree on any matter referred to in paragraph 10.7(b), such matter shall be determined in accordance with the Dispute Resolution Rules.
- (d) If pursuant to paragraphs 10.7(b) or 10.7(c) it is agreed or determined that works are required to bring any Enhanced Depot up to the Required State (the “Works”) the Franchisee shall procure that the Works are carried out and completed as soon as reasonably practicable but by no later than 6 months from the date of such agreement or determination. The Franchisee shall procure that the Works are carried out and completed:
  - (i) with that degree of skill, diligence, prudence and foresight which would be exercised by a skilled and experienced contractor carrying out works that are similar to the Works;

- (ii) in compliance with all applicable Laws and requirements of any competent authority; and
  - (iii) so as to cause as little inconvenience or interference as possible with the use of such Enhanced Depot by the Successor Operator.
- (e) Any failure by the Franchisee to comply with its obligations under this paragraph 10.7 shall be deemed to be a contravention of the Franchise Agreement and the Secretary of State shall be entitled to recover the costs of carrying out the Works from the Performance Bond.

10.8 For the purposes of this paragraph 10:

**“Cashflow Agreement”** has the meaning ascribed to that term in each Depot Sub Lease;

**“DepCo”** means Lombard Corporate Finance (September 1) Limited (registered number 2392930) whose registered office is at The Quadrangle The Promenade Cheltenham GL50 1PX;

**“DepCo Direct Agreement”** means the direct agreement dated 13 June 2003 between (1) The Strategic Rail Authority and (2) DepCo;

**“Depot Sub Lease”** means, in relation to any Enhanced Depot, the sub lease of that depot between (1) DepCo and (2) New Southern Railway Limited as transferred to the Franchisee pursuant to the Start Date Transfer Scheme;

**“Depot Works Agreements”** means:

- (i) the Agreement for Works dated 13 June 2003 and made between New Southern Railway Limited and DepCo;
- (ii) the Cashflow Agreement;
- (iii) the Licence for Alterations (as that term is defined in each Depot Sub Lease);
- (iv) each licence to Underlet between (1) Network Rail, (2) DepCo and (3) New Southern Railway Limited;
- (v) the Side Agreement (as defined in each Depot Sub Lease); and

(vi) the Reimbursement Letter dated 13 June 2003 from DepCo to New Southern Railway Limited under which DepCo will reimburse New Southern Railway Limited with certain sums incurred by New Southern Railway Limited,

as each such document has been transferred to the Franchisee pursuant to the Start Date Transfer Scheme;

**“Enhanced Depot”** means each of the light maintenance depots at Selhurst, Brighton, Eastbourne, Littlehampton and Streatham Hill and the depot at Bognor Regis;

**“Improvement Rent”** has the meaning specified in each Depot Sub Lease;

**“Rent”** means the aggregate of the Rent and Equipment Rent (each as defined in and payable under each Superior Lease) from time to time;

**“Review Date”** has the meaning specified in paragraph 1.1 of Part 1 of Schedule 4 of each Superior Lease;

**“Review Notice”** has the meaning specified in paragraph 2.1 of Part 1 of Schedule 4 of each Superior Lease;

**“Revised Rent”** has the meaning specified in paragraph 1.2.2 of Part 1 of Schedule 4 of each Superior Lease;

**“Section 54 Undertaking”** means the Section 54 Undertaking dated 13 June 2003 between (1) The Secretary of State (2) New Southern Railway Limited and (3) DepCo as transferred to the Franchisee pursuant to the Start Date Transfer Scheme; and

**“Superior Lease”** means, in relation to any Enhancement Depot, the lease of that depot made between (1) Network Rail and (2) DepCo.

11. <sup>299</sup>**Not Used**

12. **London Bridge Station Works - Compensation from Network Rail**<sup>300</sup>

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<sup>299</sup> Date of Change 26/01/2012

<sup>300</sup> Where text has been omitted from the document this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.



13. **Class 377 Enhancements**<sup>301</sup>

14. **Fares Policy for January 2010 Fares Setting Round**

14.1 For the Fares Setting Round which ends in January 2010 until the Fares Setting Round which ends in January 2011 (“**2010 Fare Year**”) the provisions set out in paragraph 14.2 shall apply in place of the relevant provisions set out in paragraph 2 of Schedule 5.5 of the Terms.

14.2 The Regulated Price or Regulated Child Price (as the case may be) for any Fare in the 2010 Fare Year shall be an amount equal to the Preceding Year Ticket Price x PII provided that the Regulated Price or Regulated Child Price (as the case may be) may, if it is not a whole multiple of 10p, and without prejudice to Schedule 5.4 of the Terms, be rounded up to the nearest whole multiple of 10p.

14.3 For the purposes of this paragraph 14:

the terms “**Preceding Year Ticket Price**”, “**RPI**” and “**K**” each have the meanings given to such terms in paragraph 2.1 of Schedule 5.5 of the Terms; and

PII is the Permitted Individual Increase for the 2010 Fare Year which is determined as follows:

$$\text{PII} = \frac{(100 \times \text{RPI}) + k}{100}$$

15.<sup>302</sup> **ELECTROSTAR LOT 10B (FRANCHISEE AS OWNER)**

15.1 **Financing Arrangements**<sup>303</sup>

15.2 **Leasing Arrangements**<sup>304</sup>

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<sup>301</sup> Where text has been omitted from the document this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

<sup>302</sup> Date of Change 20/09/2009

<sup>303</sup> Where text has been omitted from the document this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

<sup>304</sup> Where text has been omitted from the document this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

### **15.3 Reporting Arrangements**

- (a) The Franchisee shall provide to the Secretary of State on a monthly basis a report (including any regular or periodic reports provided to the Franchisee by the Manufacturer) which sets out the progress made towards achieving Acceptance by the dates specified in the Electrostar Lot 10B MSA and any potential threats to future progress towards achieving such dates.**
- (b) The Franchisee shall notify the Secretary of State of any contract review meetings to be held by the Franchisee with the Manufacturer in respect of the Electrostar Lot 10B Units and in addition shall seek to convene such meetings if reasonably requested by the Secretary of State. The Secretary of State reserves the right to attend (as an observer) any such contract review meetings and shall nominate up to two persons (such persons to be employees of the Secretary of State and notified in advance to the Franchisee) who shall attend such meetings (as observer(s)) on his behalf.**
- (c) If the Electrostar Lot 10B Units are still at that time owned by the Franchisee, the Secretary of State and the Franchisee shall one year after the Start Date meet for the purposes of discussing the future of the Electrostar Lot 10B Units including options for procuring a sale of the Electrostar Lot 10B Units. At such meeting, the Franchisee shall be entitled to request that the Secretary of State specifies a date on which the Secretary of State shall purchase the Electrostar Lot 10B Units from the Franchisee (the "SoS Purchase Date"). Nothing in this paragraph 15.3(c) shall be construed or implied as an obligation on the Secretary of State to specify the SoS Purchase Date, and whether or not the Secretary of State specifies such SoS Purchase Date shall be at his absolute discretion. For the avoidance of doubt the Secretary of State, as at Start Date, has no intention of specifying such SoS Purchase Date.**

**16.<sup>305</sup> ELECTROSTAR LOT 10B UNITS (FRANCHISEE AS LESSEE)**

**16.1 The Secretary of State and the Franchisee acknowledge that the Previous Franchise Operator commenced a competitive process for the financing of the Electrostar Lot 10B Units (the “Lot 10B Procurement Process”) on terms specified under the Previous Franchise Agreement. The Franchisee hereby agrees to continue and complete the Lot 10B Procurement Process in accordance with relevant law and with a view to securing a willing purchaser for the Electrostar Lot 10B Units (the “Lot 10B Purchaser”). If the Lot 10B Procurement Process does not result in the Franchisee securing a Lot 10B Purchaser the Secretary of State may require the Franchisee to undertake further procurement processes on the same basis (or such other basis as may be agreed by the Secretary of State and the Franchisee) as that required in respect of the Lot 10B Procurement Process until such a time as a Lot 10B Purchaser is secured provided that:**

- (a) the total number of such procurement processes (including the Lot 10B Procurement Process) that the Franchisee can be required to undertake before the Expiry Date shall not exceed four; and**
- (b) in any Franchisee Year the Franchisee cannot be required to undertake more than one procurement process.**

**16.2** <sup>306</sup>

**16.3** <sup>307</sup>

**16.4** <sup>308</sup>

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<sup>305</sup> Date of Change 20/09/2009

<sup>306</sup> Where text has been omitted from the document this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

<sup>307</sup> Where text has been omitted from the document this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

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**16.5**<sup>309</sup>

**16.6** <sup>310</sup>

**17. <sup>311</sup>HLOS CAPACITY RELIEF**

**17.1 The Franchisee shall use reasonable endeavours to introduce the HLOS Units into passenger revenue earning service by the Principal Change Date in December 2013.**

**17.2 The Franchisee shall observe and comply with all the conditions and obligations on its part under the HLOS MSA.**

**17.3 The Franchisee shall not:**

**(a) exercise any option (including any option pursuant to clause 6.3 (subsequent order) of the HLOS MSA) or other discretion under the HLOS MSA (or exercise any right or carry out any of its obligations under the HLOS MSA in a manner) that would result in increased payments or delay in the Acceptance of any of the HLOS Units or which may impact on the ability of the Franchisee to comply with the terms of the Franchise Agreement; or**

**(b) amend or waive any of the terms of the HLOS MSA;**

**without, in each case, the prior written consent of the Secretary of State (not to be unreasonably withheld or delayed) and the Franchisee shall immediately supply a copy of all draft and executed agreements amending the HLOS MSA (including any variation thereunder) to the Secretary of State.**

**17.4 The contractual acceptance dates in relation to each HLOS Unit are set out in the table in Annex 3 to this Appendix 13 (the “HLOS Units Delivery Schedule”).**

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<sup>309</sup> Where text has been omitted from the document this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

<sup>310</sup> Where text has been omitted from the document this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

<sup>311</sup> Date of new insertion 26/01/2012

**17.5 The Franchisee shall use reasonable endeavours to ensure that the actual delivery date of each HLOS Unit is the same as the contractual acceptance date as specified in respect of that HLOS Unit in the HLOS Units Delivery Schedule. The Franchisee's obligations under this paragraph 17.5 include an obligation to use reasonable endeavours to minimise the impacts of the actual delivery date in relation to any HLOS Unit not being the same as the contractual acceptance date as specified in respect of that HLOS Unit in the HLOS Units Delivery Schedule.**

**17.6 Reporting Arrangements**

**(a) The Franchisee shall provide to the Secretary of State on a monthly basis a report (including any regular or periodic reports provided to the Franchisee by the Manufacturer) which sets out the progress made towards achieving Acceptance by the dates specified in the HLOS Units Delivery Schedule and any potential threats to future progress towards achieving such dates (including any steps which the Manufacturer or the Franchisee has taken or is proposing to take in order to minimise the impact of any potential threats to achieving such dates).**

**(b) The Franchisee shall notify the Secretary of State of any contract review meetings to be held by the Franchisee with the Manufacturer in respect of the HLOS Units and in addition shall seek to convene such meetings if reasonably requested by the Secretary of State. The Secretary of State reserves the right to attend (as an observer) any such contract review meetings and shall nominate up to two persons (such persons to be employees of the Secretary of State and notified in advance to the Franchisee) who shall attend such meetings (as observer(s)) on his behalf.**

**<sup>312</sup>18. ADJUSTMENTS TO FRANCHISE PAYMENTS FOLLOWING ACCEPTANCE OF ANY HLOS UNIT**

**18.1 An HLOS Franchise Payment Adjustment shall be made in accordance with paragraphs 18.2 and 18.3 in respect of any Reporting Period in which an HLOS Unit is Accepted.**

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<sup>312</sup> Date of new insertion 26/01/2012

**18.2 Each HLOS Franchise Payment Adjustment under this paragraph 18 shall be determined in accordance with the following formula:**

$$\text{HLOS FPA} = \text{ALP}$$

**where:**

**ALP is the amounts payable in that Reporting Period under the HLOS Operating Lease in respect of each HLOS Unit that is Accepted in that Reporting Period provided that ALP shall be zero in respect of any Reporting Period in which there is no HLOS Operating Lease in existence and further provided that ALP shall be zero in respect of any Reporting Period falling after the date on which the Run of the Financial Model carried out in accordance with clause 4.2 of the HLOS Option and Financing Deed of Amendment comes into effect.**

**18.3 Each HLOS Franchise Payment Adjustment pursuant to this paragraph 18 in respect of any Reporting Period shall be payable by the Secretary of State to the Franchisee and shall be made on the first Payment Date falling no less than seven days after any determination of a HLOS Franchise Payment Adjustment pursuant to paragraph 18.2. Where subsequent to the date of the HLOS Deed of Amendment, the amounts of the lease payments funded or to be funded by the HLOS Franchise Payment Adjustment pursuant to this paragraph 18.3 are affected by a Qualifying Change, then the consequences of that change on such amounts shall be taken into account in the Financial Model in accordance with Schedule 9 (Changes) of the Terms (so that the effect of the change on such amounts, but not the underlying costs before the change, is included in any Estimated Revision or Run of the Financial Model in respect of that Qualifying Change).**

**18.3A<sup>313</sup> If any HLOS Unit (an "Early HLOS Unit") has been Accepted prior to its contractual acceptance date as set out in the HLOS Units Delivery Schedule, an HLOS Franchise Payment Adjustment shall be made in respect of that Early HLOS Unit for each Reporting Period commencing with the Reporting Period during which such Early HLOS Unit has been Accepted and each subsequent Reporting Period. The HLOS Franchise**

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<sup>313</sup> Date of new insertion 20/12/2012

**Payment Adjustment under this paragraph 18.3A for each such Reporting Period shall be the aggregate of the amounts payable in that Reporting Period in respect of that Early HLOS Unit under the HLOS Operating Lease and any maintenance reserve agreement provided that:**

- (a) no HLOS Franchise Payment Adjustment shall be payable for an Early HLOS Unit in respect of any Reporting Period if the contractual acceptance date as set out in the HLOS Units Delivery Schedule is prior to the commencement of such Reporting Period; and**
- (b) there shall be a pro-rata reduction to the HLOS Franchise Payment Adjustment payable for an Early HLOS Unit in respect of any Reporting Period if the contractual acceptance date for that Early HLOS Unit as set out in the HLOS Units Delivery Schedule falls during such Reporting Period.**

**18.4** <sup>314</sup>

**18.5** <sup>315</sup>

**18.6** <sup>316</sup>

**18.7** <sup>317</sup>

**18.8** <sup>318</sup>

**19** <sup>319</sup>

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<sup>314</sup> Where text has been omitted from the document this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

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<sup>318</sup> Where text has been omitted from the document this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

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**22<sup>322</sup> FRANCHISEE STILL A PARTY TO THE HLOS MSA AS FINANCIER AT THE END OF THE FRANCHISE PERIOD**

**22.1 The Secretary of State hereby undertakes to the Franchisee that at the end of the Franchise Period in circumstances where the Franchisee remains a party to the HLOS MSA as Financier (as that term is defined in the HLOS MSA) he shall:**

**(a) exercise his option under paragraph 3.1(b) of Schedule 15.4 (Provisions Applying on and after Termination) to require that all of the of the relevant rights, future liabilities and future obligations of the Franchisee under the HLOS MSA, the HLOS Spares Supply Agreement and in respect of any HLOS Units and HLOS Spares and Special Tools are designated as Primary Franchise Assets and transferred to a Successor Operator pursuant to the Transfer Scheme and in these circumstances the form of Supplemental Agreement shall be and shall be deemed amended so that the amount payable by the Successor Operator to the Franchisee under such Supplemental Agreement in respect of the transfer of all such relevant rights and future obligations and future liabilities shall be:**

**(i) where the Franchisee has not paid any HLOS Subsequent Payments to the Manufacturer under the HLOS MSA as at that date, nil; or**

**(ii) where the Franchisee has paid any HLOS Subsequent Payments to the Manufacturer under the HLOS MSA as at that date pursuant to paragraph 20.2(a) but not 20.2(b) an**

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<sup>319</sup> Where text has been omitted from the document this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

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<sup>321</sup> Where text has been omitted from the document this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

<sup>322</sup> Date of new insertion 26/01/2012



**amount that is equal to the aggregate of any HLOS Subsequent Payments that have actually been paid by the Franchisee to the Manufacturer under the HLOS MSA as that date.**

**22.2 The Secretary of State and the Franchisee hereby agree that at the end of the Franchise Period and in circumstances where the Franchisee remains a party to the HLOS MSA as Financier (as that term is defined in the HLOS MSA) the rights of the Franchisee in respect of any HLOS Units and HLOS Spares and Special Tools any rights and future obligations and future liabilities of the Franchisee under the HLOS MSA and the HLOS Spares Supply Agreement shall be and shall be deemed to be designated as Primary Franchise Assets pursuant to paragraph 3 of Schedule 14.4 (Designation of Franchise Assets) of the Terms.**

### **23<sup>323</sup> ONE OFF COSTS ACTIVITIES**

**It is acknowledged by the Secretary of State and the Franchisee that the Franchisee in complying with its obligations introduced by the HLOS Deed of Amendment will need or be required to undertake activities, some of which are specified in Annex 4 to this Appendix 13, which would result in it incurring one off costs which have not been accounted for in the increments to the figures for the calculation of Annual Franchise Payments set out in Appendix 8 of the HLOS Deed of Amendment (the "One Off Costs Activities"). Accordingly an HLOS Franchise Payment Adjustment shall be paid by the Secretary of State to the Franchisee on the next Payment Date in February 2012, such HLOS Franchise Payment Adjustment to be an amount that is equal to £<sup>324</sup>. It is agreed by the Franchisee that the HLOS Franchise Payment Adjustment to be made pursuant to this paragraph 23 fully compensates the Franchisee for the performance of the One Off Costs Activities and in no circumstance shall the Secretary of State be obliged to fund the Franchisee for undertaking any One Off Costs**

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<sup>323</sup> Date of new insertion 26/01/2012

<sup>324</sup> Where text has been omitted from the document this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

**Activities regardless of whether or not these are specifically listed in Annex 3 to this Appendix 13.**

**24<sup>325326</sup> Not Used**

**25<sup>327</sup>. HLOS STABLING STRATEGY**

**25.1 If the Franchisee places orders in relation to the HLOS Stabling Facilities the Secretary of State shall pay to the Franchisee by way of adjustment to Franchise Payments a sum not exceeding £<sup>328</sup> (the “HLOS Stabling Placing Orders Milestone Payment”) in relation to such orders placed on or before the 14 December, provided that:-**

- (a) the franchisee has provided to the Secretary of State such documentary evidence as the Secretary of State may reasonably require that such orders have been placed;**
- (b) the HLOS Stabling Placing Orders Milestone Payment shall under no circumstances be payable if for any reason such orders are not placed; and**
- (c) if payable, the HLOS Stabling Placing Orders Milestone Payment shall be paid on the next Payment Date following such order placing.**

**25.2 If the Franchisee achieves practical completion of the improvements to the facilities in relation to the HLOS Stabling Facilities the Secretary of State shall pay to the Franchisee by way of adjustment to Franchise Payments a sum of £<sup>329</sup> (the “HLOS Stabling Practical Completion Milestone Payment”) on completion of such improvement in the facilities on or before 31 August 2013 provided that:-**

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<sup>325</sup> Date of new insertion 26/01/2012

<sup>326</sup> Date of deletion 30/07/2013

<sup>327</sup> Date of new insertion 30/11/2012

<sup>328</sup> Where text has been omitted from the document this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

<sup>329</sup> Where text has been omitted from the document this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

- (a) the Franchisee has provided to the Secretary of State a certificate signed by a statutory director of the Franchisee confirming that practical completion has occurred;**
- (b) the HLOS Stabling Practical Completion Milestone Payment shall under no circumstances be payable if for any reason such practical completion for the HLOS Stabling Facilities is not achieved; and**
- (c) if payable, the HLOS Stabling Practical Completion Milestone Payment shall be paid on the next Payment Date following such practical completions.**

**25.3 If the Franchisee introduces into operational service the HLOS Stabling Facilities the Secretary of State shall pay to the Franchisee by way of adjustment to Franchise Payments a sum of £<sup>330</sup> (the “HLOS Stabling Operational Introduction Milestone Payment”) in respect of that introduction of the HLOS Stabling Facilities on or before the passenger change date in December 2013 provided that:-**

- (a) the Franchisee has provided to the Secretary of State certificates signed by a statutory director of the Franchisee confirming that the stabling has been introduced into operational service;**
- (b) the HLOS Stabling Operational Introduction Milestone Payment shall under no circumstances be payable if for any reason such facilities are not introduced into operational service;**
- (c) if payable, the HLOS Stabling Operational Introduction Milestone Payment shall be paid on the next Payment Date following such introduction into service; and**

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<sup>330</sup> Where text has been omitted from the document this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

- (d) ***the parties acknowledge that it is anticipated (but is not required) that the HLOS Stabling Practical Completion Milestone Payment and the HLOS Stabling Operational Introduction Milestone Payment may become due and payable on or around the same date.***

***25.4 Within 21 days of the end of every three Reporting Periods after the date of the HLOS Stabling Deed of Amendment the Franchisee shall provide the Secretary of State a report setting out the costs reasonably and properly incurred by the Franchisee in the preceding three Reporting Periods in respect of the procurement of the HLOS Stabling Facilities. Each such report shall be accompanied by a certificate signed by a statutory director of the Franchisee confirming that the amounts set out in the report have been incurred by the Franchisee together with such documentary evidence as the Secretary of State may reasonably require.***

***25.5 If the aggregate expenditure reasonably and properly incurred by the Franchisee in relation to the procurement of and following the entering into operational service of the HLOS Stabling Facilities, or at the end of the Franchise Term in relation to those activities if the project is not complete is less than £<sup>331</sup> according to the Franchisee's reports pursuant to paragraph 25.4, the Franchisee shall pay to the Secretary of State by way of adjustment to Franchise Payments an amount equal to such shortfall from £<sup>332</sup> (the "HLOS Stabling Wash-Up Payment") provided that:***

- (a) ***the HLOS Stabling Wash-Up Payment shall under no circumstances be payable if for any reason the aggregate amount reasonably and properly incurred by the Franchisee***

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<sup>331</sup> Where text has been omitted from the document this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

<sup>332</sup> Where text has been omitted from the document this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

*in relation to the procurement of the HLOS Stabling Facilities is equal to or greater than £<sup>333</sup>; and*

- (b) if payable, the HLOS Stabling Wash-Up Payment shall be paid on the next Payment Date following the delivery of the last report pursuant to paragraph 25.4.*

**26<sup>334</sup> HLOS OPTION CAPACITY RELIEF**

**26.1 The contractual acceptance dates in relation to each HLOS Option Unit are set out in the HLOS Option Units Delivery Schedule.**

**26.2 The Franchisee shall:**

- (a) use reasonable endeavours to introduce the HLOS Option Units into passenger revenue earning service by the Principal Change Date in December 2014, and use reasonable endeavours to ensure that the actual delivery date of each HLOS Option Unit is the same as the contractual acceptance date as specified in respect of that HLOS Option Unit in the HLOS Option Units Delivery Schedule; and*
- (b) take all reasonable steps to fulfil its role as the Secretary of State's delivery partner with respect to the HLOS Option Units in a diligent and effective manner. Such steps shall include, where appropriate or as requested in writing by the Secretary of State, enforcing the Franchisee's rights under the Amended HLOS MSA provided that the Secretary of State shall reimburse any reasonable and proper costs incurred by the Franchisee in connection with any court proceedings (or entry into any dispute resolution process) under the Amended HLOS MSA that the Franchisee is requested by the Secretary of State to undertake pursuant to this paragraph 26.2(b).*

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<sup>333</sup> Where text has been omitted from the document this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

<sup>334</sup> Date of insertion 20/12/2012

**26.3** *The Franchisee's obligations under paragraph 26.2(a) include an obligation to use reasonable endeavours to minimise the impacts of the actual delivery date in relation to any HLOS Option Unit not being the same as the contractual acceptance date as specified in respect of that HLOS Option Unit in the HLOS Option Units Delivery Schedule.*

**26.4** *With respect to the HLOS Units and the Original Order:*

*(a) the Franchisee shall, to the extent reasonably practicable, ensure that the exercise of the HLOS Option and the carrying out of all related activities as contemplated by the HLOS Option and Financing Deed of Amendment and the HLOS Option Letter in no way prejudices any aspect of the Original Order (including without limitation the delivery of the HLOS Units, which are due to be accepted and introduced into passenger revenue earning service by the Passenger Change Date in December 2013); and*

*(b) the Franchisee's obligations with respect to the exercise of the HLOS Option and the carrying out of all related activities as contemplated by the HLOS Option and Financing Deed of Amendment and the HLOS Option Letter (whether set out in this Appendix 13 (South Central Specific Provisions) or otherwise) shall be without prejudice to any of the Franchisee's obligations with respect to the HLOS Units or the Original Order (whether set out in this Appendix 13 (South Central Specific Provisions) or otherwise).*

**26.5 Reporting Arrangements**

*(a) The Franchisee shall provide to the Secretary of State on a monthly basis a report (including any regular or periodic reports provided to the Franchisee by the Manufacturer) which sets out the progress made towards achieving Acceptance by the dates specified in the HLOS Option Units Delivery Schedule and any potential threats to future progress towards achieving such dates (including any steps which the Manufacturer or the Franchisee has taken or is proposing to take in order to minimise the impact of any potential threats to achieving such dates).*

**(b) The Franchisee shall notify the Secretary of State of any contract review meetings to be held by the Franchisee with the Manufacturer in respect of the HLOS Option Units and in addition shall seek to convene such meetings if reasonably requested by the Secretary of State. The Secretary of State reserves the right to attend (as an observer) any such contract review meetings and shall nominate up to two persons (such persons to be employees of the Secretary of State and notified in advance to the Franchisee) who shall attend such meetings (as observer(s)) on his behalf.**

**27<sup>335</sup> Milestone Payments**

**27.1 It is acknowledged by the Secretary of State and the Franchisee that the Franchisee has submitted to the Secretary of State the HLOS Option Stabling and Maintenance Feasibility Study in the form set out in Annex 2 to Part 1 of Appendix 11 and accordingly the Secretary of State shall pay to the Franchisee by way of adjustment to Franchise Payments the sum of £<sup>336</sup> (the "HLOS Option Stabling and Maintenance Feasibility Study Milestone Payment") which shall be paid on the Payment Date in January 2013.**

**27.2 If the Franchisee has provided to the Secretary of State the HLOS Option Stabling and Maintenance Review and Proposal in accordance with paragraph 28.7 of Part 1 of Appendix 11 (List of Committed Obligations and Related Provisions) on or before 31 August 2013 the Secretary of State shall pay to the Franchisee by way of adjustment to Franchise Payments the sum of £<sup>337</sup> (the "HLOS Option Stabling and Maintenance Review and Proposal Milestone Payment") provided that:**

**(a) the HLOS Option Stabling and Maintenance Review and Proposal Milestone Payment shall under no circumstances be payable if for**

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<sup>335</sup> Date of insertion 20/12/2012

<sup>336</sup> Where text has been omitted from the document this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

<sup>337</sup> Where text has been omitted from the document this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

*any reason the HLOS Option Stabling and Maintenance Review and Proposal has not been so provided; and*

- (b) if payable, the HLOS Option Stabling and Maintenance Review and Proposal Milestone Payment shall be paid on the next Payment Date following such provision.*

**28<sup>338</sup> HLOS OPTION UNITS ACCEPTANCE**

**28.1** *If any HLOS Option Unit (an "Early HLOS Option Unit") has been Accepted prior to its contractual acceptance date as set out in the HLOS Option Units Delivery Schedule, an HLOS Option Franchise Payment Adjustment shall be made in respect of that Early HLOS Option Unit for each Reporting Period commencing with the Reporting Period during which such Early HLOS Option Unit has been Accepted and each subsequent Reporting Period. The HLOS Option Franchise Payment Adjustment under this paragraph 28.1 for each such Reporting Period shall be the aggregate of the amounts payable in that Reporting Period in respect of that Early HLOS Option Unit under the HLOS Option Operating Lease and any maintenance reserve agreement provided that:*

- (a) no HLOS Option Franchise Payment Adjustment shall be payable for an Early HLOS Option Unit in respect of any Reporting Period if the contractual acceptance date for that Early HLOS Option Unit as set out in the HLOS Option Units Delivery Schedule is prior to the commencement of such Reporting Period; and*
- (b) there shall be a pro rata reduction to the HLOS Option Franchise Payment Adjustment payable for an Early HLOS Option Unit in respect of any Reporting Period if the contractual acceptance date for that Early HLOS Option Unit as set out in the HLOS Option Units Delivery Schedule falls during such Reporting Period.*

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<sup>338</sup> Date of insertion 20/12/2012



- 28.2** *If any HLOS Option Unit has not been Accepted by its contractual acceptance date as set out in the HLOS Option Units Delivery Schedule in circumstances where this is not a consequence of any breach or default by the Franchisee under any agreement to which it is a party including the Amended HLOS MSA then there shall be a Change. This Change shall be deemed to be a Qualifying Change whether or not such Change meets the requirements of the definition of Qualifying Change.*
- 28.3** *In paragraphs 28.1 and 28.2, "Accepted" shall have the meaning given to such term in the Amended HLOS MSA.*

**A.** <sup>339</sup>*LIQUIDATED DAMAGES UNDER THE AMENDED HLOS MSA*

*The Franchisee shall:*

- 29.1** *on the next Payment Date following the receipt by the Franchisee of any HLOS Option Liquidated Damages pay to the Secretary of State an HLOS Option Franchise Payment Adjustment, such HLOS Option Franchise Payment Adjustment to be an amount that is equal to such HLOS Option Liquidated Damages so received;*
- 29.2** *as soon as reasonably practicable notify the Secretary of State upon becoming aware that any HLOS Option Liquidated Damages may be payable and shall supply such information as the Secretary of State may reasonably require in relation thereto; and*
- 29.3** *exercise such rights as it may have under the Amended HLOS MSA (as the case may be) in such manner and take such other action as the Secretary of State may reasonably require in connection with any HLOS Option Liquidated Damages (including in relation to any agreement of the amount of any such HLOS Option Liquidated Damages and submitting any relevant dispute to any relevant dispute resolution procedures under the Amended HLOS MSA) provided that the Secretary of State shall reimburse any reasonable and proper costs incurred by the Franchisee in connection with any court proceedings (or entry into any dispute resolution process under the Amended HLOS MSA) that the Franchisee is requested by the Secretary of State to undertake pursuant to this paragraph 29.*

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<sup>339</sup> Date of insertion 20/12/2012

**30<sup>340</sup> PAYMENT OF HLOS OPTION FRANCHISEE INCREMENTAL COSTS**

**30.1 The Secretary of State agrees that he will reimburse the Franchisee for all HLOS Option Franchisee Incremental Costs:**

- (a) to the extent that such sums have not otherwise been reimbursed to the Franchisee, and do not fall to be reimbursed by the Secretary of State to the Franchisee by virtue of any other provision binding on the Parties (including without limitation the section titled "Payment of Southern's Costs" contained in the HLOS Option Letter), the intention of the Parties being that the Franchisee shall not be reimbursed the same sums more than once; and**
- (b) provided that the Franchisee accounts for the HLOS Option Franchisee Incremental Costs and provides reasonable supporting evidence for them.**

**30.2 The Secretary of State and the Franchisee agree that paragraph 30.1 above shall be implemented using the Runs of the Financial Model to be carried out in accordance with clauses 4.2 and 4.3 of the HLOS Option and Financing Deed of Amendment (and for the avoidance of doubt paragraph 30.1 shall not otherwise give the Franchisee any right to reimbursement of any HLOS Option Franchisee Incremental Costs).**

**31<sup>341</sup> OPTION ONE-OFF COSTS ACTIVITIES AND STABLING AND MAINTENANCE ONE-OFF COSTS ACTIVITIES**

**31.1 It is acknowledged by the Secretary of State and the Franchisee that the Franchisee in complying with its obligations introduced by the HLOS Option and Financing Deed of Amendment will need or be required to undertake activities in relation to the HLOS Option Units, which are specified in Annex 6 to this Appendix 13, which would result in it incurring one-off costs ("Option One-Off Costs") which will not be**

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<sup>340</sup> Date of insertion 20/12/2012

<sup>341</sup> Date of insertion 20/12/2012

**accounted for in the Runs of the Financial Model to be carried out in accordance with clauses 4.2 and 4.3 of the HLOS Option and Financing Deed of Amendment (the "Option One-Off Costs Activities"). For the avoidance of doubt, the Option One-Off Costs do not include the costs of implementation and operation of any rolling stock cascade solution developed pursuant to paragraph 29 of Part 1 of Appendix 11 (List of Committed Obligations and Related Provisions). Accordingly an HLOS Option Franchise Payment Adjustment shall be paid by the Secretary of State to the Franchisee on the next Payment Date following the date of the HLOS Option and Financing Deed of Amendment, such HLOS Option Franchise Payment Adjustment to be an amount that is equal to £<sup>342</sup>. It is agreed by the Franchisee that the HLOS Option Franchise Payment Adjustment to be made pursuant to this paragraph 31.1 fully compensates the Franchisee for the performance of the Option One-Off Costs Activities and in no circumstance shall the Secretary of State be obliged to fund the Franchisee for undertaking any Option One-Off Costs Activities regardless of whether or not these are specifically listed in Annex 6 to this Appendix 13.**

**31.2 It is acknowledged by the Secretary of State and the Franchisee that the Franchisee's existing maintenance, stabling and stores facilities are insufficient to enable the Franchisee to successfully accept delivery of, stable and maintain the HLOS Option Units alongside the rest of its Train Fleet and that in implementing the expansion or changes to the existing maintenance, stabling and stores facilities of the Franchisee as set out in the HLOS Option Stabling and Maintenance Feasibility Study (the "Stabling and Maintenance One-Off Costs Activities") the Franchisee will incur one-off costs ("Stabling and Maintenance One-Off Costs") which will not be accounted for in the Runs of the Financial Model to be carried out in accordance with clauses 4.2 and 4.3 of the HLOS Option and Financing Deed of Amendment. Accordingly:**

- (a) one or more HLOS Option Franchise Payment Adjustments shall be paid by the Secretary of State to the Franchisee in an amount equal (in aggregate) to the Stabling and Maintenance**

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<sup>342</sup> Where text has been omitted from the document this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

**One-Off Costs incurred by the Franchisee up to the Payment Date in September 2013, provided that (i) such costs are Agreed Stabling and Maintenance One-Off Costs and (ii) the Franchisee accounts for the Stabling and Maintenance One-Off Costs and provides the Secretary of State with reasonable supporting evidence showing that they have in fact been incurred (and for these purposes it shall be sufficient that the Franchisee is contractually bound to a third party to pay such sums – even if it has not yet paid such sums – and "reasonable supporting evidence" in this case may consist of an invoice from such third party). Each HLOS Option Franchise Payment Adjustment made pursuant to this paragraph 31.2(a) shall be made on the next Payment Date following the date on which the Franchisee provides the supporting evidence set out above;**

**(b) an HLOS Option Franchise Payment Adjustment shall be made by the Secretary of State to the Franchisee on the Payment Date in October 2013 in an amount equal to:**

**(i) the total of the top of the applicable price range of all Stabling and Maintenance One-Off Costs set out in the HLOS Option Stabling and Maintenance Review and Proposal, provided that such costs are Agreed Stabling and Maintenance One-Off Costs; minus**

**(ii) the total of all Stabling and Maintenance One-Off Costs which have already been paid by the Secretary of State to the Franchisee in accordance with paragraph 31.2(a);**

**(c) within 21 days of the end of Reporting Period 6 and Reporting Period 13 in each Franchisee Year, the Franchisee shall provide the Secretary of State with a report setting out the costs reasonably and properly incurred by the Franchisee in**

*the preceding six or seven (as appropriate) Reporting Periods in respect of the Stabling and Maintenance One-Off Costs (excluding, for the avoidance of doubt, any costs which are not Agreed Stabling and Maintenance One-Off Costs). Each such report shall be accompanied by a certificate signed by a statutory director of the Franchisee confirming that the amounts set out in the report have been incurred by the Franchisee together with such documentary evidence as the Secretary of State may reasonably require; and*

*(d) if the aggregate Stabling and Maintenance One-Off Costs reasonably and properly incurred and paid by the Franchisee in relation to the Stabling and Maintenance One-Off Costs Activities following the completion of such Stabling and Maintenance One-Off Costs Activities, or at the end of the Franchise Term if the Stabling and Maintenance One-Off Costs Activities are not then complete, (but excluding, for the avoidance of doubt, any costs which are not Agreed Stabling and Maintenance One-Off Costs) are less than the total HLOS Option Franchise Payment Adjustments made by the Secretary of State in accordance with paragraphs 31.2(a) and (b) according to the Franchisee's reports pursuant to paragraph 31.2(c), the Franchisee shall pay to the Secretary of State by way of adjustment to Franchise Payments an amount equal to such shortfall (the "Stabling and Maintenance One-Off Costs Wash-Up Payment") provided that:*

*(i) the Stabling and Maintenance One-Off Costs Wash-Up Payment shall under no circumstances be payable if for any reason the aggregate amount reasonably and properly incurred by the Franchisee in relation to the Stabling and Maintenance One-Off Costs Activities (but excluding, for the avoidance of doubt, any costs which are not Agreed Stabling and Maintenance One-Off Costs) is equal to or greater than the total HLOS Option Franchise Payment Adjustments*

*made by the Secretary of State in accordance with paragraphs 31.2(a) and (b); and*

- i) if payable, the Stabling and Maintenance One-Off Costs Wash-Up Payment shall be paid on the next Payment Date following the delivery of the last report pursuant to paragraph 31.2(c).*

*2. It is agreed by the Franchisee that the HLOS Option Franchise Payment Adjustments to be made pursuant to this paragraph 31.2 fully compensate the Franchisee for the implementation of the expansions or changes to maintenance, stabling or stores facilities as set out in the HLOS Option Stabling and Maintenance Feasibility Study and the HLOS Option Stabling and Maintenance Review and Proposal.*

**31.3** *It is acknowledged by the Secretary of State and the Franchisee that the HLOS Option Units shall not form part of the Train Fleet until such time as the Franchisee has completed the implementation of the expansion or changes to maintenance, stabling or stores facilities as set out in the HLOS Option Stabling and Maintenance Review and Proposal.*

**32**<sup>343 344</sup> *Not Used*

**33**<sup>345</sup> **HLOS CAPACITY RELIEF**

**33.1** *The Franchisee shall use reasonable endeavours to:*

- (a) ensure that the HLOS Phase 2 Core Order Units achieve Qualified Provisional Acceptance or Acceptance, as the case may be, in accordance with the Amended HLOS Phase 2 Core Order Units Delivery Schedule; and*
- (B) enable the TSGN Franchisee to introduce the HLOS Phase 2 Core Order Units into passenger revenue-earning service by the Subsidiary Change Date in May 2015.*

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<sup>343</sup> Date of insertion 20/12/2012

<sup>344</sup> Date of deletion 30/07/2013

<sup>345</sup> Date of new insertion 30/07/2013

**33.2 The Franchisee shall observe and comply with all the conditions and obligations on its part under the HLOS Phase 2 MSA.**

**33.3 The Franchisee shall (and for these purposes it is acknowledged that the Franchisee does not control the willingness of the TSGN Franchisee or any other third party to enter into the sub-lease, lease or deed of novation as appropriate):**

**(a) at the Secretary of State's direction given at any time during the Franchise Period:**

**(i) enter into a sub-lease (or, in the absence of a financing, a lease) in respect of the HLOS Phase 2 Core Order Units until the end of the Franchise Term with the TSGN Franchisee on terms that require the Franchisee to maintain the HLOS Phase 2 Core Order Units until the end of the Franchise Period and any such sub-lease or lease shall be deemed to be a Thameslink Trading Agreement. For the avoidance of doubt, any such sub-lease (or, in the absence of a financing, lease) shall reflect the summary of principal terms of the operating sub-lease or form of operating lease (as applicable) submitted to the Secretary of State by the Franchisee in accordance with paragraph 31 of Part 1 of Appendix 11 (List of Committed Obligations and Related Provisions) as changed as a result of the on-going HLOS Phase 2 Financing Procurement Process; and/or**

**(ii) enter into a sub-lease (or in the absence of a financing, a lease) in respect of the HLOS Phase 2 Option Units until the end of the Franchise Term with such third party as the Secretary of State may nominate; and/or**

**(b) (without prejudice and always subject to the Franchisee's rights of reimbursement at paragraphs 38 and 40 of Appendix 13 (South Central Specific Provisions)) at the Secretary of State's direction given at the end of the Franchise Period, enter into a deed of**

*novation in respect of the HLOS Phase 2 MSA, the HLOS Phase 2 Operating Lease, the HLOS Phase 2 Spares Supply Agreement and/or each HLOS Phase 2 MSA Associated Document (as applicable) with such third party as the Secretary of State may nominate and pursuant to which such third party will step into such agreements as operator in the place of the Franchisee (and in the absence of a financing as financier in the place of the Franchisee) and will acquire all rights that arise after the end of the Franchise Period and Assumed Obligations of the Franchisee thereunder with effect from the end of the Franchise Period,*

*in each case, on such terms as are approved in writing by the Secretary of State.*

**33.4 The Franchisee shall not:**

*(a) exercise any option (including any option under clause 6.3 of the HLOS Phase 2 MSA in respect of the HLOS Phase 2 Option Units), exercise any other discretion under the HLOS Phase 2 MSA, exercise any right (including the right to nominate the Cascaded Network as defined in the HLOS Phase 2 MSA), or carry out any of its obligations under the HLOS Phase 2 MSA in a manner that would result in increased payments or delay in the Acceptance of any of the HLOS Phase 2 Core Order Units or which may impact on the ability of the Franchisee to comply with the terms of the Franchise Agreement; or*

*(b) amend or waive any of the terms of the HLOS Phase 2 MSA,*

*without, in each case, the prior written consent of the Secretary of State (not to be unreasonably withheld or delayed) and the Franchisee shall immediately supply a copy of all draft and executed agreements amending the HLOS Phase 2 MSA (including any variation thereunder) to the Secretary of State.*

**33.5 The Secretary of State may at any time and from time to time by notice in writing to the Franchisee direct the Franchisee to exercise any rights**



*that it retains at the time of the notice in relation to any option (including any option under clause 6.3 of the HLOS Phase 2 MSA in respect of the HLOS Phase 2 Option Units), to exercise any other discretion under the HLOS Phase 2 MSA, to exercise any right (including the right to nominate the Cascaded Network as defined in the HLOS Phase 2 MSA) or to carry out any of its obligations under the HLOS Phase 2 MSA. On being directed by the Secretary of State to exercise any option under clause 6.3 of the HLOS Phase 2 MSA in respect of the HLOS Phase 2 Option Units, and if at that time the Franchisee retains the right so to do, the Franchisee shall as soon as reasonably practicable deliver an Option Notice (as defined in the HLOS Phase 2 MSA) to the Manufacturer in accordance with clause 6.3 of the HLOS Phase 2 MSA requiring the Manufacturer to supply the HLOS Phase 2 Option Units to the Franchisee. The Franchisee shall be reimbursed by the Secretary of State for any payment that becomes due as a result of the exercise of any such option such that cleared funds are received by the Franchisee to such bank account as the Franchisee may have previously specified to the Secretary of State pursuant to paragraph 2.5(a) of Schedule 8.1 (Franchise Payments) of the Terms no later than the day prior to the date on which the Franchisee is required under the HLOS Phase 2 MSA to make such payment in respect of the HLOS Phase 2 Option Units to the Manufacturer.*

**33.6** *The HLOS Phase 2 Core Order Units shall be deemed to be excluded from the applicable table at Appendix 3 (The Train Fleet) to the Franchise Agreement whilst sub-leased (or, in the absence of a financing, leased), novated or otherwise cascaded to the TSGN Franchisee.*

**33.7** *Reporting Arrangements*

**(a)** *The Franchisee shall provide to the Secretary of State on a monthly basis a report (including any regular or periodic reports provided to the Franchisee by the Manufacturer) which sets out the progress made towards achieving Acceptance by the dates specified in the Amended HLOS Phase 2 Core Order Units Delivery*

***Schedule and any potential threats to future progress towards achieving such dates (including any steps which the Manufacturer or the Franchisee has taken or is proposing to take in order to minimise the impact of any potential threats to achieving such dates).***

- (b) The Franchisee shall notify the Secretary of State of any contract review meetings to be held by the Franchisee with the Manufacturer in respect of the HLOS Phase 2 Core Order Units and in addition shall seek to convene such meetings if reasonably requested by the Secretary of State. The Secretary of State reserves the right to attend (as an observer) any such contract review meetings and shall nominate up to two persons (such persons to be notified in advance to the Franchisee) who shall attend such meetings (as observer(s)) on his behalf.***
- (c) The Franchisee shall update the HLOS Phase 2 Implementation and Acceptance Plan not less than 3 months before the contractual acceptance date of the first HLOS Phase 2 Core Order Unit as set out in the Amended HLOS Phase 2 Core Order Units Delivery Schedule.***

**34<sup>346</sup> ADJUSTMENTS TO FRANCHISE PAYMENTS IN RESPECT OF THE HLOS CORE ORDER UNITS**

**34.1 An HLOS Phase 2 Franchise Payment Adjustment shall be made in accordance with paragraphs 34.2 and 34.3 in respect of any Reporting Period.**

**34.2 Each HLOS Phase 2 Franchise Payment Adjustment shall be determined in accordance with the following formula:**

$$\mathbf{HLOS2FPA = ALP}$$

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<sup>346</sup> Date of new insertion 30/07/2013

where:

*ALP is the aggregate of amounts that became due in that Reporting Period under paragraphs 33.5, 34.4, 35.1, 35.2, 35.3, 39.1 or 39.3 of Appendix 13 (South Central Specific Provisions).*

**34.3** *Each HLOS Phase 2 Franchise Payment Adjustment pursuant to this paragraph 0 in respect of any Reporting Period shall be payable by the Secretary of State to the Franchisee and shall be made on the first Payment Date falling no less than seven days after any determination of a HLOS Phase 2 Franchise Payment Adjustment pursuant to paragraph 0 (provided that any payment due under paragraphs 0, 0, 0 or 0 shall be paid on the date which it is due under such paragraph and shall not be delayed until the next Payment Date).*

**34.4** <sup>347</sup>

**34.5** <sup>348</sup>

**35 PAYMENT OF THE CONTRACT PRICE UNDER THE HLOS PHASE 2 MSA**

**35.1** *It is acknowledged by the Secretary of State and the Franchisee that the Franchisee will be required under the HLOS Phase 2 MSA to pay to the Manufacturer the first instalment of the HLOS Phase 2 Contract Price (such instalment being an amount that is equal to the amount of the HLOS Phase 2 Initial Payment) on signature of the HLOS Phase 2 MSA (the "First HLOS Phase 2 Contract Price Payment Date"). The Secretary of State shall, on or before the earlier of the end of the Franchise Period and the first Payment Date to occur after the First HLOS Phase 2 Contract Price Payment Date, pay to the Franchisee the aggregate of:*

*(a) an amount that is equal to the first invoiced amount (exclusive of VAT) so paid by the Franchisee; and*

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<sup>347</sup> Where text has been omitted from the document this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000

<sup>348</sup> Where text has been omitted from the document this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000

**(b)** <sup>349</sup>

**35.2 It is acknowledged and agreed by the Secretary of State and the Franchisee that if an HLOS Phase 2 Financier has not been procured by the date that:**

**(a) any HLOS Phase 2 Subsequent Payment will be due under the HLOS Phase 2 MSA (other than any Final Instalment Payment), the Franchisee shall pay to the Manufacturer the amount of such HLOS Phase 2 Subsequent Payment with the Franchisee being reimbursed in full for each such payment by:**

**(i) an HLOS Phase 2 Financier, if such HLOS Phase 2 Financier is procured before the end of the Franchise Period as contemplated by paragraph 37; or**

**(ii) a Successor Operator at the end of the Franchise Period in accordance with the provisions of paragraph 38; or**

**(iii) the Secretary of State either in the same way as he pays the Final Instalment Payment pursuant to paragraph 35.2(b) or at any time after the Franchisee has paid such HLOS Phase 2 Subsequent Payment,**

**provided that the Secretary of State may elect whether the Franchisee is reimbursed under paragraph 35.2(a)(i), (ii) or (iii);**

**(b) any Final Instalment Payment is due, the Franchisee shall pay to the Manufacturer the Final Instalment Payment with the Franchisee being reimbursed for each such payment by the Secretary of State such that cleared funds are received by the Franchisee to such bank account as the Franchisee may have previously specified to the Secretary of State pursuant to paragraph 2.5(a) of Schedule 8.1 (Franchise Payments) of the**

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<sup>349</sup> Where text has been omitted from the document this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000

*Terms no later than the day prior to the date the Franchisee is required under the HLOS Phase 2 MSA or the HLOS Spares Supply Agreement to pay each such Final Instalment Payment to the Manufacturer. Such payment shall be by way of adjustment to the Franchise Payments and shall not create any debt between the Franchisee and the Secretary of State. As soon as the Franchisee is aware of any likely change to the date on which it is required to make payment under the HLOS Phase 2 MSA or the HLOS Phase 2 Spares Supply Agreement as indicated in the last monthly report provided to the Secretary of State under paragraph 33.7(a), the Franchisee shall promptly notify the Secretary of State; and*

**(c)** <sup>350</sup>

### **35.3 Liquidated Damages under the HLOS Phase 2 MSA**

**The Franchisee shall:**

- (a) on the first Payment Date to occur after the receipt by the Franchisee of any HLOS Phase 2 Liquidated Damages pay to the Secretary of State an HLOS Phase 2 Franchise Payment Adjustment, such HLOS Phase 2 Franchise Payment Adjustment to be an amount that is equal to such HLOS Phase 2 Liquidated Damages so received;**
- (b) as soon as reasonably practicable notify the Secretary of State upon becoming aware that any HLOS Phase 2 Liquidated Damages may be payable and shall supply such information as the Secretary of State may reasonably require in relation thereto; and**
- (c) exercise such rights as it may have under the HLOS Phase 2 MSA (as the case may be) in such manner and take such other action as**

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<sup>350</sup> **Where text has been omitted from the document this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000**

*the Secretary of State may reasonably require in connection with any HLOS Phase 2 Liquidated Damages (including in relation to any agreement of the amount of any such HLOS Phase 2 Liquidated Damages and submitting any relevant dispute to any relevant dispute resolution procedures under the HLOS Phase 2 MSA) provided that the Secretary of State shall reimburse any reasonable and proper costs incurred by the Franchisee in connection with any court proceedings (or entry into any dispute resolution process under the HLOS Phase 2 MSA that the Franchisee is requested by the Secretary of State to undertake pursuant to this paragraph 35.3).*

**36<sup>351</sup> MAINTENANCE OF THE HLOS PHASE 2 CORE ORDER UNITS**

*The Franchisee shall use reasonable endeavours to:*

- (a) maintain and stable the HLOS Phase 2 Core Order Units in accordance with the strategy for the maintenance and stabling of the HLOS Phase 2 Core Order Units submitted to the Secretary of State by the Franchisee in accordance with paragraph 30(c) of Part 1 of Appendix 11 (List of Committed Obligations and Related Provisions); and*
- (b) procure the infrastructure and capital equipment required to maintain and stable the HLOS Phase 2 Core Order Units at a cost that is no more than the estimate of capital costs submitted to the Secretary of State by the Franchisee in accordance with paragraph 32(a) of Part 1 of Appendix 11 (List of Committed Obligations and Related Provisions),*

*in each case, substantially in the form approved by the Secretary of State in writing or as amended from time to time with the consent of the Secretary of State (such consent not to be unreasonably withheld or delayed).*

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<sup>351</sup> Date of new insertion 30/07/2013

**37<sup>352</sup> PROCUREMENT OF THE FINANCING FOR THE HLOS PHASE 2 UNITS**

**37.1 The Secretary of State and the Franchisee agree that the Franchisee will conduct a competitive procurement process (the "HLOS Phase 2 Financing Procurement Process") for the financing of the HLOS Phase 2 Purchased Equipment. The invitation to tender issued by the Franchisee in connection with the HLOS Phase 2 Financing Procurement Process shall acknowledge and inform the bidders that the Secretary of State is likely to require that the HLOS Phase 2 Units be cascaded to one or more operators of passenger services on routes on the UK network and that the selected financier (the "HLOS Phase 2 Financier") shall be required to work with the Secretary of State to facilitate any such cascade. They further agree that the terms of the procurement will require the HLOS Phase 2 Financier to:**

- (a) enter into the Financier Novation Agreement (as defined in the HLOS Phase 2 MSA) whereby the HLOS Phase 2 Financier will step into the HLOS Phase 2 MSA as financier in place of the Franchisee accordingly acquiring all rights and obligations of the Franchisee as financier thereunder and on the basis that the Franchisee shall be released from all obligations and liability under the HLOS Phase 2 MSA in its capacity as financier;**
- (b) immediately enter into an operating lease with the Franchisee (the "HLOS Phase 2 Operating Lease") for the period until the end of the Franchise Term, the terms of such HLOS Phase 2 Operating Lease to be as specified by the Franchisee (and approved by the Secretary of State) in the invitation to tender it issues to potential bidders during the HLOS Phase 2 Financing Procurement Process and to include, without limitation the right for the Franchisee to novate the HLOS Phase 2 Operating Lease to the TSGN Franchisee and/or to grant a sub-lease to the TSGN Franchisee in**

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**352** Date of new insertion 30/07/2013

*respect of the HLOS Phase 2 Units at the Secretary of State's direction;*

- (c) without prejudice to the Franchisee's obligations under paragraph 5 of Schedule 14.3 (Key Contracts) of the Terms enter into a Direct Agreement with the Secretary of State in respect of the HLOS Phase 2 Units;*
- (d) immediately pay to the Franchisee in full without any deduction an amount equal to the HLOS Phase 2 Initial Payment and (if any HLOS Phase 2 Subsequent Payments have been paid, or are scheduled to be paid prior to the entry into of the HLOS Phase 2 Operating Lease and is paid prior to such entry, by the Franchisee) such Subsequent HLOS Phase 2 Payments; and*
- (e) in its response to the invitation to tender issued by the Franchisee, provide priced options for the financing of the HLOS Phase 2 Purchased Equipment (the specification of such priced options to be agreed by the Franchisee and the Secretary of State prior to issue of the relevant invitation to tender) including without limitation, priced options where:
  - (i) a deed of undertaking issued pursuant to section 54 of the Act or some other form of guarantee or commitment in respect of the HLOS Phase 2 Purchased Equipment is entered into by the Secretary of State; and*
  - (ii) such a deed of undertaking or other form of guarantee or commitment in respect of the HLOS Phase 2 Purchased Equipment is not provided by the Secretary of State.**

**37.2** *The Franchisee shall deliver to the Secretary of State for comment a draft invitation to tender together with draft evaluation criteria in relation to the HLOS Phase 2 Financing Procurement Process by no later than 31 October 2013. The draft invitation to tender will make such provision as is required by Law to permit the role for the Secretary of State in the HLOS Phase 2 Financing Procurement Process envisaged by this*



**paragraph 37. The Secretary of State shall have the right within 15 working days of receipt of such draft invitation to tender and draft evaluation criteria to comment on them and the Franchisee shall have due regard to such comments.**

**37.3 Without limiting paragraph 37.1, the Franchisee shall use all reasonable endeavours to issue the invitation to tender in the form of the submitted draft incorporating any amendments arising out of the comments of the Secretary of State. The Franchisee agrees to evaluate bids in accordance with the draft evaluation criteria as they may be modified by the Franchisee having due regard to the comments of the Secretary of State.**

**37.4 At each Franchise Performance Meeting following the date of the HLOS Phase 2 Deed of Amendment until such a time as an HLOS Phase 2 Financier is procured the Franchisee shall provide to the Secretary of State with such progress reports and information on the conduct of the HLOS Phase 2 Financing Procurement Process as he shall reasonably require.**

**37.5 In the context of the duties of the Secretary of State with regard to the expenditure of public funds the Franchisee agrees to:**

**(a) provide the Secretary of State as soon as reasonably practicable with copies of all submitted bids, responses to clarifications from the Franchisee and any amended or resubmitted bids to the extent permitted by Law. The Franchisee shall not be obliged to send copies of bids and amended or resubmitted bids to the Secretary of State where the bidder has imposed a confidentiality obligation preventing this but the Franchisee agrees that the invitation to tender will explicitly state that any such condition will be non-compliant with the tender process and render the bidder liable to disqualification and the Franchisee agrees to so disqualify any such bid;**

**(b) provide the Secretary of State with its evaluation report to appropriate industry standards (as soon as reasonably practicable**

*after it is finalised and in any event no later than 30 September 2014) and provide such further information pertaining to such final evaluation report as the Secretary of State may reasonably require including copies of previous drafts of the evaluation report; and*

- (c) permit the Secretary of State to comment on the documents and information provided to it pursuant to paragraphs 37.5(a) and 37.5(b) above within 20 working days of receipt and have due regard to such comments.*

**37.6** *Without prejudice to any of the Secretary of State's other rights under the Franchise Agreement, and without fettering any relevant discretion of the Secretary of State whether under the Franchise Agreement or otherwise, the Franchisee acknowledges that the Secretary of State shall have the right, following submission of bids and evaluation, to direct that the Franchisee does not proceed with the HLOS Phase 2 Financing Procurement Process and accordingly the Franchisee shall in such circumstances not be permitted to enter into any agreement relating to the HLOS Phase 2 Units with any participant in the HLOS Phase 2 Financing Procurement Process.*

**37.7** *If the Secretary of State exercises his rights under paragraph 37.6 to require the Franchisee not to proceed with the HLOS Phase 2 Financing Procurement Process, the Franchisee may at any time up to 30 November 2014 (or such later date as the Franchisee and the Secretary of State may agree) commence another procurement process:*

- (a) on the same basis (or such other basis as may be agreed by the Secretary of State and the Franchisee) as that required under this paragraph 37 with consequent alterations to relevant dates;*
- (b) the provisions of paragraphs 37.2 to 37.6 shall apply in respect of any such procurement process; and*
- (c) the Secretary of State shall reimburse to the Franchisee such proper and reasonable additional costs incurred by the Franchisee in respect of the undertaking of such procurement process.*

**37.8 If the Secretary of State approves the bidder selected by the Franchisee pursuant to the HLOS Phase 2 Financing Procurement Process (if any) or any other procurement process commenced pursuant to paragraph 37.7:**

**(a) the Franchisee shall:**

- (i) (subject to compliance with relevant provisions of the Franchise Agreement) use reasonable endeavours to immediately enter into the HLOS Phase 2 Operating Lease and other relevant legal agreements with the HLOS Phase 2 Financier;**
- (ii) on or before the first Payment Date to occur after the date of receipt of payment from the HLOS Phase 2 Financier pay to the Secretary of State in full without any deduction an amount that is equal to the HLOS Phase 2 Initial Payment as received from the HLOS Phase 2 Financier as contemplated in paragraph 37.1(d) (the "Reimbursed HLOS Phase 2 Initial Amount");**
- (iii) <sup>353</sup>**
- (iv) set up a separate, dedicated interest bearing bank account (the "Escrow Account") with a clearing bank in the United Kingdom and will notify the Secretary of State of the identity of such bank and the account number of the Escrow Account. The Escrow Account will be set up so as to ensure that, so far as reasonably practicable, in the event of insolvency of the Franchisee monies standing to the credit of the Escrow Account are protected to the reasonable satisfaction of the Secretary of State prior to payment to him in accordance with the terms of the Franchise Agreement.**

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<sup>353</sup> Where text has been omitted from the document this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000

***The Franchisee shall ensure that any Reimbursed HLOS Phase 2 Initial Amount is, immediately upon receipt of such monies, deposited in the Escrow Account.***

**37.9** ***Within 3 months of the date of the execution of the HLOS Phase 2 Operating Lease, a Run of the Financial Model shall be carried out in respect of the implementation by the Franchisee of its obligations under paragraph 37 of Appendix 13 (South Central Specific Provisions). The Parties shall agree or the Secretary of State shall reasonably determine the Revised Inputs and/or Model Changes that are required for the purposes of the Variation introduced by paragraph 0 of Appendix 13 (South Central Specific Provisions). In agreeing or determining such Revised Inputs for the purposes of the Run of the Financial Model account shall be taken of the following matters:***

- (a) the Revised Inputs shall reflect the amounts payable by the Franchisee under the HLOS Phase 2 Operating Lease in respect of each HLOS Phase 2 Core Order Unit based on the Amended HLOS Phase 2 Core Order Units Delivery Schedule (but with such Amended HLOS Phase 2 Core Order Units Delivery Schedule updated for this purpose to allow for any Permitted Delay which is directly attributable to an act, error or omission on the part of the Franchisee), the HLOS Phase 2 Spares and Special Tools and any HLOS Phase 2 Option Units if applicable;***
- (b) the Revised Inputs shall reflect the amounts receivable by the Franchisee from the TSGN Franchisee or any other party following the cascade of the HLOS Phase 2 Core Order Units in respect of each HLOS Phase 2 Core Order Unit and the HLOS Phase 2 Spares and Special Tools and any HLOS Phase 2 Option Units if applicable; and***
- (c) no Revised Inputs shall be made in respect of any HLOS Phase 2 One Off Costs Activities.***

**37.10 Pursuant to paragraph 1.3(b) of Schedule 9.3 (Run of the Financial Model) of the Terms, the Secretary of State hereby notifies the Franchisee that he requires the Run of the Financial Model carried out pursuant to paragraph 37.9 of Appendix 13 (South Central Specific Provisions) to be audited. The cost of such audit shall be borne by the Secretary of State provided that he has approved such costs prior to them being incurred by the Franchisee. Following the audit and in accordance with and without limiting the provisions of Schedule 9 (Changes) of the Terms:**

- (a) paragraph 1 of Schedule 9.1 (Financial Consequences of Change) of the Terms shall apply such that the values of FXD, VCRPI, VCAEI, PRPI and TRRPI specified for each relevant Franchisee Year in the table set out in Appendix 8 (Figures for Calculation of Annual Franchise Payments) of the Existing Franchise Agreement shall be restated in the amounts and values ascertained by the Run of the Financial Model; and**
- (b) paragraph 1 of Schedule 9.2 (Identity of the Financial Model etc.) of the Terms shall apply such that the Franchisee shall deliver to the Secretary of State two copies of each of the agreed form versions of the Financial Model and the Record of Assumptions (each such copy in electronic format on CD-ROM and in hard format) and in accordance with paragraph 2 of Schedule 9.2 (Identity of the Financial Model etc.) of the Terms, such agreed form versions will be Placed in Escrow.**

**37.11 It is acknowledged by the Secretary of State and the Franchisee that the Run of the Financial Model under paragraph 37.9 is undertaken on the assumption that the HLOS Phase 2 Core Order Units shall be Accepted prior to the Subsidiary Change Date in May 2015 (the "HLOS Phase 2 Acceptance Assumption"). The Secretary of State and the Franchisee agree that if the HLOS Phase 2 Acceptance Assumption is not correct in circumstances where this is not as a consequence of any breach or default by the Franchisee under any relevant agreement to which it is a**

*party including the HLOS Phase 2 MSA and accordingly all of the HLOS Phase 2 Core Order Units have not been Accepted by that date then the estimated figures used for the purposes of the Run of the Financial Model under paragraph 37.9 shall be adjusted to reflect the actual figures following Acceptance of the final HLOS Phase 2 Core Order Unit.*

**38<sup>354</sup> FRANCHISEE STILL A PARTY TO THE HLOS PHASE 2 MSA AS FINANCIER AT THE END OF THE FRANCHISE PERIOD**

**38.1** *The Secretary of State hereby undertakes to the Franchisee that if at the end of the Franchise Period the Franchisee remains a party to the HLOS Phase 2 MSA as Financier (as that term is defined in the HLOS Phase 2 MSA) the Secretary of State shall exercise his option under paragraph 3.1(b) of Schedule 15.4 (Provisions Applying on and after Termination) of the Terms to require that all of the relevant rights, future liabilities and future obligations of the Franchisee under the HLOS Phase 2 MSA, the HLOS Phase 2 Spares Supply Agreement, any HLOS Phase 2 MSA Associated Document and in respect of any HLOS Phase 2 Units and HLOS Phase 2 Spares and Special Tools are designated as Primary Franchise Assets and transferred to a Successor Operator pursuant to the Transfer Scheme and in these circumstances the form of Supplemental Agreement shall be and shall be deemed amended so that the amount payable by the Successor Operator to the Franchisee under such Supplemental Agreement in respect of the transfer of all such relevant rights and future obligations and future liabilities shall be:*

- (a) where the Franchisee has not paid any HLOS Phase 2 Subsequent Payments to the Manufacturer under the HLOS Phase 2 MSA as at that date, nil; or*
- (b) where the Franchisee has paid any HLOS Phase 2 Subsequent Payments to the Manufacturer under the HLOS Phase 2 MSA or the HLOS Phase 2 Spares Supply Agreement as at that date pursuant to paragraph 35.2(a) but not paragraph 35.2(b) an amount*

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<sup>354</sup> Date of new insertion 30/07/2013

*that is equal to the aggregate of any HLOS Phase 2 Subsequent Payments that have actually been paid by the Franchisee to the Manufacturer under the HLOS Phase 2 MSA or the HLOS Phase 2 Spares Supply Agreement as at that date. For the avoidance of doubt, the amount payable pursuant to this paragraph 38.1(b) shall not include any Final Instalment Payment.*

**38.2** *The Secretary of State and the Franchisee hereby agree that if at the end of the Franchise Period the Franchisee remains a party to the HLOS Phase 2 MSA as Financier (as that term is defined in the HLOS Phase 2 MSA) the rights of the Franchisee in respect of any HLOS Phase 2 Units and HLOS Phase 2 Spares and Special Tools, any rights and future obligations and future liabilities of the Franchisee under the HLOS Phase 2 MSA and the HLOS Phase 2 Spares Supply Agreement shall be and shall be deemed to be designated as Primary Franchise Assets pursuant to paragraph 3 of Schedule 14.4 (Designation of Franchise Assets) of the Terms.*

**39<sup>355</sup> ONE OFF COSTS ACTIVITIES**

**39.1** <sup>356</sup>

**39.2** *It is agreed by the Franchisee that the HLOS Phase 2 Franchise Payment Adjustment to be made pursuant to paragraph 39.1 fully compensates the Franchisee for the performance of the HLOS Phase 2 One Off Costs Activities and in no circumstance shall the Secretary of State be obliged to otherwise fund the Franchisee for undertaking any HLOS Phase 2 One Off Costs Activities specifically listed in Annex 8 to this Appendix 13 (South Central Specific Provisions).*

**39.3** *Any other costs incurred by the Franchisee in carrying out works and activities required in respect of the HLOS Phase 2 Units which do not*

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<sup>355</sup> Date of new insertion 30/07/2013

<sup>356</sup> [Where text has been omitted from the document this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000](#)

**relate to the performance of the HLOS Phase 2 One Off Costs Activities and which have not been otherwise reimbursed by the Secretary of State under the HLOS Phase 2 Deed of Amendment shall be notified to the Secretary of State by the Franchisee and such costs shall be reimbursed in full by the Secretary of State provided that such costs:**

**(a) are incurred by the Franchisee in delivering the Committed Obligations set out in paragraphs 30 to 33 (inclusive) of Part 1 of Appendix 11 (List of Committed Obligations and Related Provisions);**

**(b) relate to:**

**(i) infrastructure works and capital equipment required to maintain and stable the HLOS Phase 2 Core Order Units identified as being required by one of the HLOS Phase 2 One Off Costs (these being costs which are estimated pursuant to paragraph 32(a) of Part 1 of Appendix 11 (List of Committed Obligations and Related Provisions));**

**(ii) costs incurred in procuring or facilitating driver training for the HLOS Phase 2 Core Order Units (these being costs which are estimated pursuant to paragraph 32(b) of Part 1 of Appendix 11 (List of Committed Obligations and Related Provisions)); or**

**(iii) activities that, as the date of the HLOS Phase 2 Deed of Amendment, the Franchisee could not reasonably have foreseen would be necessary in order to deliver the Committed Obligations set out in paragraphs 30 to 33 (inclusive) of Part 1 of Appendix 11 (List of Committed Obligations and Related Provisions); and**

**(c) are evidenced on an open book basis,**

**such reimbursement to be made on the next Payment Date which is not less than 6 weeks after the date on which the Franchisee notifies the**



**Secretary of State that it has incurred or will be incurring such costs and provides appropriate evidence of such costs.**

**40<sup>357</sup> TRANSFER OF ASSETS AT THE END OF THE FRANCHISE PERIOD**

**40.1 The Secretary of State intends to designate the Franchise Assets listed in paragraph 40.2 as Primary Franchise Assets under paragraph 3 of Schedule 14.4 (Designation of Primary Franchise Assets) of the Terms and exercise his option under paragraph 3.1(b) of Schedule 15.4 (Provisions Applying on and after Termination) of the Terms to require that the rights of the Franchisee in respect of those Primary Franchise Assets transfer to the Successor Operator pursuant to the Transfer Scheme and in these circumstances the form of Supplemental Agreement shall be deemed amended so that the amount payable by the Successor Operator to the Franchisee under such Supplemental Agreement for the transfer of the Franchisee's rights in respect of such Primary Franchise Assets shall be nil.**

**40.2 The Franchise Assets for the purposes of paragraph 40.1 shall include any Franchise Assets procured by the Franchisee using funding provided by the Secretary of State under the HLOS Deed of Amendment, the HLOS Option and Financing Deed of Amendment and the HLOS Phase 2 Deed of Amendment including, without limitation:**

**(a) any Franchise Assets if and to the extent funded by the Secretary of State under the HLOS Deed of Amendment as part of the One Off Costs Activities;**

**(b) any Franchise Assets if and to the extent funded by the Secretary of State under the HLOS Option and Financing Deed of Amendment as part of the:**

**Option One-Off Costs Activities; or**

**Stabling and Maintenance One-Off Costs Activities;**

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<sup>357</sup> Date of new insertion 30/07/2013

- (c) any Franchise Assets funded by the Secretary of State under the HLOS Phase 2 Deed of Amendment as part of the HLOS Phase 2 One Off Costs Activities;**
- (d) the HLOS Phase 2 MSA and each HLOS Phase 2 MSA Associated Documents (where the Franchisee remains a party to the HLOS Phase 2 MSA as the Operator); and**
- (e) the HLOS Phase 2 Spares Supply Agreement.**

**ANNEX 1<sup>358</sup>**

***Annex 1 to Appendix 13 Increments to Target Revenue and figures for calculating Annual Franchise Payments***

***Table 1: Increment to Target Revenue (applicable, if appropriate, from Principal Change Date in December 2013):***

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<sup>358</sup> Where text has been omitted from the document this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

**Table 2: Increments to Figures for Calculating Annual Franchise Payments  
(applicable, if appropriate, from Principal Change Date in December 2013)<sup>359</sup>**

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<sup>359</sup> Where text has been omitted from the document this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

**Table 3: Increment to Target Revenue (applicable, if appropriate, from Subsidiary Change Date in May 2014)<sup>360</sup>**

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<sup>360</sup> Where text has been omitted from the document this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

**Table 4: *Increments to Figures for Calculating Annual Franchise Payments (applicable, if appropriate, from Subsidiary Change Date in May 2014)***<sup>361</sup>

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<sup>361</sup> **Where text has been omitted from the document this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.**

***Table 5: Increments to Target Revenue (applicable, if appropriate, from Principal Change Date in December 2014)<sup>362</sup>***

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<sup>362</sup> Where text has been omitted from the document this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

**Table 6: Increments to Figures for Calculating Annual Franchise Payments  
(applicable, if appropriate, from Principal Change Date in December 2014)<sup>363</sup>**

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<sup>363</sup> Where text has been omitted from the document this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.



## ANNEX 2

### Hand Back Schedule

<b>Date</b>	<b>Number of 4 car Class 377 units to be returned by relevant date</b>
the Reporting Period end date occurring in September 2013	5 units including the three Class 377/2 units hired under the provisions of the Operating Hire Agreement
the Reporting Period end date occurring in October 2013	7 units
the Reporting Period end date occurring in November 2013	7 units
the Passenger Change Date occurring in December 2013	7 units

<sup>364</sup>Annex 3

**HLOS Units Delivery Schedule**

<b>Unit no</b>	<b>Scheduled Provisional Acceptance Dates</b>
1	13 December 2013
2	29 November 2013
3	22 November 2013
4	1 November 2013
5	18 October 2013
6	15 November 2013
7	8 November 2013
8	20 September 2013
9	20 September 2013
10	27 September 2013
11	27 September 2013
12	4 October 2013
13	4 October 2013
14	11 October 2013
15	11 October 2013
16	18 October 2013
17	25 October 2013
18	25 October 2013

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<sup>364</sup> Date of new Insertion 26/01/2012

19	1 November 2013
20	8 November 2013
21	15 November 2013
22	22 November 2013
23	29 November 2013
24	6 December 2013
25	6 December 2013
26	13 December 2013

***Annex 4 to Appendix 13 (One Off Cost Activities)***<sup>365</sup>

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<sup>365</sup> **Where text has been omitted from the document this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.**

**Annex 5 to Appendix 13<sup>366</sup>**

**(HLOS Option Units Delivery Schedule)**

<b><i>Unit Number</i></b>	<b><i>Scheduled Provisional Acceptance Date</i></b>
<b>27</b>	<b>27 February 2014</b>
<b>28</b>	<b>3 March 2014</b>
<b>29</b>	<b>5 March 2014</b>
<b>30</b>	<b>7 March 2014</b>
<b>31</b>	<b>11 March 2014</b>
<b>32</b>	<b>17 March 2014</b>
<b>33</b>	<b>20 March 2014</b>
<b>34</b>	<b>27 March 2014</b>

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<sup>366</sup> Date of insertion 20/12/2012

Annex 6 to Appendix 13<sup>367</sup>

(Option One-Off Costs Activities)

<b>OPTION ONE-OFF COSTS ACTIVITIES</b>
<b>Project Management</b>
<b>Project Manager</b>
<b>Project Engineer</b>
<b>Project Administrator</b>
<b>Technical Support</b>
<b>Safety Quality and Risk Manager</b>
<b>Disbursements</b>
<b>Project Legal Support</b>
<b>Depot Introduction Manager</b>
<b>Engineering</b>
<b>Development of Documentation</b>
<b>Update of MTF</b>
<b>Modification of PIS</b>
<b>Dual Branding</b>
<b>GSMR Aerial</b>
<b>PIBs Shield</b>
<b>Maintenance Training</b>
<b>Training Course Development</b>

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<sup>367</sup> Date of insertion 20/12/2012

<p><b><i>Trainer Training</i></b></p> <p><b><i>Conversion Course</i></b></p> <p><b><i>Training Delivery</i></b></p> <p><b><i>Training of Agency</i></b></p>
<p><b><i>Commissioning</i></b></p> <p><b><i>Acceptance Engineer</i></b></p> <p><b><i>Commissioning Engineer</i></b></p>
<p><b><i>Operations</i></b></p> <p><b><i>Trainer Familiarity</i></b></p> <p><b><i>Operational Documents</i></b></p>
<p><b><i>Depot/Maintenance</i></b></p> <p><b><i>Year One Support</i></b></p> <p><b><i>Examinations Team</i></b></p> <p><b><i>Depot Operating Procedures</i></b></p>
<p><b><i>Stabling</i></b></p> <p><b><i>Feasibility Work</i></b></p>
<p><b><i>Stores Facility</i></b></p> <p><b><i>Spares Storage</i></b></p> <p><b><i>Materials Management</i></b></p> <p><b><i>Transport</i></b></p>
<p><b><i>Warranty Management</i></b></p> <p><b><i>Provision of Site Facilities for Manufacturer</i></b></p>
<p><b><i>Infrastructure</i></b></p>

***Infrastructure Project Management***

***Professional Services***

***Legal Support***

***Procurement Support***

***Depot Modelling***

***Safety/Environmental Support***



**Annex 7 to Appendix 13**<sup>368</sup>

**(Original HLOS Phase 2 Core Order Units Delivery Schedule)**

<b>Unit no</b>	<b>Scheduled Provisional Acceptance Dates</b>
<b>1</b>	<b>06/11/2014</b>
<b>2</b>	<b>03/11/2014</b>
<b>3</b>	<b>28/10/2014</b>
<b>4</b>	<b>10/11/2014</b>
<b>5</b>	<b>13/11/2014</b>
<b>6</b>	<b>18/11/2014</b>
<b>7</b>	<b>21/11/2014</b>
<b>8</b>	<b>25/11/2014</b>
<b>9</b>	<b>28/11/2014</b>
<b>10</b>	<b>04/12/2014</b>
<b>11</b>	<b>08/12/2014</b>
<b>12</b>	<b>12/12/2014</b>
<b>13</b>	<b>18/12/2014</b>
<b>14</b>	<b>23/12/2014</b>
<b>15</b>	<b>02/01/2015</b>
<b>16</b>	<b>12/01/2015</b>
<b>17</b>	<b>21/01/2015</b>
<b>18</b>	<b>29/01/2015</b>
<b>19</b>	<b>06/02/2015</b>

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<sup>368</sup> Date of new insertion 30/07/2013

<b>20</b>	<b>18/02/2015</b>
<b>21</b>	<b>26/02/2015</b>
<b>22</b>	<b>10/03/2015</b>
<b>23</b>	<b>18/03/2015</b>
<b>24</b>	<b>26/03/2015</b>
<b>25</b>	<b>09/04/2015</b>
<b>26</b>	<b>16/04/2015</b>
<b>27</b>	<b>23/04/2015</b>
<b>28</b>	<b>01/05/2015</b>
<b>29</b>	<b>08/05/2015</b>

**Annex 8 to Appendix 13<sup>369</sup>**

**(HLOS Phase 2 One Off Cost Activities)**

<b>ONE OFF COSTS ACTIVITIES</b>
<b>Project Management</b> <ul style="list-style-type: none"><li>• <b>Project Manager</b></li><li>• <b>Project Engineer</b></li><li>• <b>Project Administrator</b></li><li>• <b>Technical Support</b></li><li>• <b>Safety Quality and Risk Manager</b></li><li>• <b>Travel and subsistence</b></li><li>• <b>Legal support</b></li><li>• <b>Contract establishment and management</b></li></ul>
<b>Asset Procurement</b> <ul style="list-style-type: none"><li>• <b>Support for MSA/SSA negotiations</b></li><li>• <b>Technical specification and initial design review</b></li><li>• <b>Legal support</b></li><li>• <b>Procurement support</b></li></ul>
<b>Financier Procurement</b> <ul style="list-style-type: none"><li>• <b>Support for procurement and negotiation</b></li><li>• <b>Legal support</b></li><li>• <b>Manufacturer's legal costs</b></li><li>• <b>Escrow set up costs</b></li></ul>
<b>Technical Documentation</b> <ul style="list-style-type: none"><li>• <b>Development of Documentation</b></li><li>• <b>Update of MTF</b></li><li>• <b>Update of Baby Codac</b></li><li>• <b>Software Licenses</b></li></ul>

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<sup>369</sup> Date of new insertion 30/07/2013

**Maintenance Training**

- *Training course development*
- *Conversion Course Training delivery*
- *Training of Agency*
- *Fleet controller training*
- *Bombardier system training*
- *Build line training*
- *Travel and subsistence for trainers and technical staff*

**Commissioning**

- *Acceptance Engineer*
- *Commissioning Engineer*
- *Short Term Planner*

**Franchise Agreement**

- *Cost model support Operations*
- *Legal costs*

**Warranty Management**

- *Provision of site facilities for Manufacturer*

**Driver Advisory System**

- *Facilitation of DAS usage*
- *Population of DAS system with route information*
- *Development of operational rules for DAS*
- *Facilitation DAS test running*
- *Development of a backroom hosting environment for DAS; Specifications, SLAs, Data Recovery environments*

**Operational**

- *Training of vocational trainers*
- *Training of competence development manager*
- *Training course development*
- *Maintenance staff training*

- ***Training document production***
- ***Shunter driver training***
- ***Operational documents***
- ***Stop Marks risk assessment***
- ***Stabling***
- ***Provision of IT***
- ***Stores staff for implementation***
- ***Stepping distance risk assessments for TSGN network***
- ***110 mph compatibility and certification facilitation,***
- ***Cab ergonomics: detailed study, risk assessment, driver guide development***
- ***Recording of additional voice PIS files***
- ***Gapping risk assessments***
- ***Platform stopping position review and associated infrastructure costings provision***
- ***Full evaluation of operating methods and any changes required***
- ***Assessment of effect on signal sighting – requirement for vision plots – potential signal changes***
- ***DOO equipment and dispatch method review – including whether there needs to be provision of CD/RA and/or additional train dispatch***
- ***Stepping distance assessments and associated costings for mitigation options, stencils, announcements, platform surfacing, white/yellow lining***
- ***Union consultation on safety systems and cab ergonomic design***
- ***Assessment and study on requirement for additional PIBs beacon locations***
- ***Driver training assessment and associated manpower requirement/trainer/briefing material costs***
- ***Additional staff training for attaching/detaching (One off cost to train and certify)***
- ***More shunt drivers (one off cost to train and certify)***
- ***Southern driver route knowledge training on the Atlantic lines and BSL to facilitate alternative stabling/ maintenance activity at***

### **Stewarts Lane**

- **Simulator development, delivery and implementation, simulator operational training development**
- **Maintenance and Stabling feasibility reviews**
- **Maintenance and stabling procurement, specifications and project management for cost generation**
- **Wayside server design and development, interface specifications, procurement activities.**

### **Spares and Logistics**

- **Capital spares requirements review – supply chain improvements and revised overhaul intervals will demonstrate a capital spares need of 4-5%**
- **Spares project manager to develop spares requirements lists and manage the SSA start up**
- **Stores staff for developing spares locations, ordering, receipting and putting away**
- **Catalogue number creation, PADs registration costs**
- **Changes to TACT to accommodate additional stores location, vendors and part types.**
- **Detailed review of supply chain to assist in the rationalisation of capital spares requirements:**
- **Review options of sharing capital spares across other fleets**
- **Rationalisation of overhaul processes to limit capital spares requirements**
- **Development of revised wheelset management regimes to limit capital spares requirements**

### **Regulatory and Legal**

- **Registration of meters for energy management**
- **Development of consultation technical file for metering**
- **Network Rail Management: costs involved in creating and submitting Vehicle Change pack, management of the process covering NR costs for reviewing Vehicle Change submission, VTAC and energy cost simulation**
- **Development of sub lease**
- **Real time PIS, developing a server and server access and SLAS for TSGN.**
- **CCTV: developing a server and server access and SLAS for TSGN**

## APPENDIX 14

### Recalibration of the Benchmarks (Clause 8)

#### 1. Cancellations Target Performance Level for First Reporting Period

In respect of the Cancellations Benchmark Table, the Target Performance Level specified therein for the first Reporting Period of the Franchise Term shall be recalibrated by:

- (a) taking the number of instances where a Previous Passenger Service was cancelled in accordance with the definitions of Cancellation and Partial Cancellation during the Performance Measurement Period, where a cancellation satisfying the definition of Cancellation shall count as 1 and a cancellation satisfying the definition of Partial Cancellation shall count as 0.5;
- (b) dividing the sum of that total by 13; and
- (c) calculating a percentage in respect of that total in accordance with the following:

$$\frac{A}{B} \times 100$$

where:

- A equals the number determined in accordance with paragraph 1(a), as divided in accordance with paragraph 1(b); and
- B equals the total number of Previous Passenger Services that were scheduled to be operated during the last Reporting Period prior to the Start Date.

#### 2. Capacity Target Performance Level for First Reporting Period

In respect of the Capacity Benchmark Table, the Target Performance Level specified therein for the first Reporting Period of the Franchise Term shall be recalibrated by:

- (a) taking the number of instances where a Previous Passenger Service operated in the period equivalent to the Peak was short

formed in accordance with the definition of Short Formation during the Performance Measurement Period; and

(b)<sup>370</sup> ***[Not used]***

(c)<sup>371</sup> ***calculating a percentage in respect of that number in accordance with the following:***

$$\frac{A}{B} \times 100$$

***where:***

***A equals the number determined in accordance with paragraph 2(a);***

***B equals the total number of Previous Passenger Services operated in the period equivalent to the Peak in the Performance Measurement Period prior to the Start Date;***

### **3. Service Delivery Target Performance Level for First Reporting Period**

In respect of the Service Delivery Benchmark Table, the Target Performance Level specified therein for the first Reporting Period of the Franchise Term shall be recalibrated by:

- (a) taking the minutes of delay attributed to the Train Operator that provided the Previous Passenger Services under its track access agreement with Network Rail in respect of the Performance Measurement Period; and
- (b) dividing the sum of that number by 13.

### **4. Target Performance Levels for each Benchmark for all Subsequent Reporting Periods**

The relevant Target Performance Level for the first Reporting Period of the Franchise Term, as determined pursuant to each of paragraphs 1 to 3

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<sup>370</sup> Date of Change 16/12/2010

<sup>371</sup> Date of Change 16/12/2010



(inclusive), shall then be used to determine the relevant Target Performance Level for each Reporting Period during the remainder of the Franchise Term by calculating:

- (a) the relevant Target Performance Level for the last scheduled Reporting Period of the Franchise Term in accordance with the following formula:

$$\frac{(100 - (0.5 \times 9))}{100} \times \text{TPL}$$

where:

TPL equals the relevant Target Performance Level for the first Reporting Period of the Franchise Term as determined pursuant to paragraph 1, 2 or 3 (as appropriate); and

- (b) the relevant Target Performance Levels for each intervening Reporting Period in the Franchise Term, by decreasing each such level on a straight-line basis from the level set for the first Reporting Period of the Franchise Term to the level set for the last Reporting Period of the Franchise Term.

## **5. Improvement Plan Performance Levels for each Benchmark for all Reporting Periods**

The Target Performance Levels for each Benchmark shall then be used to determine the relevant Improvement Plan Performance Level for each Reporting Period of the Franchise Term by calculating:

- (a) the relevant Improvement Plan Performance Level for each of the first Reporting Period and the last scheduled Reporting Period of the Franchise Term in accordance with the following formula:

$$\frac{(100 + 7.5)}{100} \times \text{TPL}$$

where:

TPL equals the relevant Target Performance Level for the first Reporting Period or the last scheduled Reporting Period (as appropriate) as determined pursuant to this Appendix 14; and

- (b) the relevant Improvement Plan Performance Levels for each intervening Reporting Period in the Franchise Term, by decreasing each such level on a straight-line basis from the level set for the first Reporting Period of the Franchise Term to the level set for the last Reporting Period of the Franchise Term.

**6. Breach Performance Levels for each Benchmark for all Reporting Periods**

The Target Performance Levels for each Benchmark shall then be used to determine the relevant Breach Performance Level for each Reporting Period of the Franchise Term by calculating:

- (a) the relevant Breach Performance Level for each of the first Reporting Period and the last scheduled Reporting Period of the Franchise Term in accordance with the following formula:

$$\frac{(100 + 15)}{100} \times \text{TPL}$$

where:

TPL equals the relevant Target Performance Level for the first Reporting Period or the last scheduled Reporting Period (as appropriate) as determined pursuant to this Appendix 14; and

- (b) the relevant Breach Performance Levels for each intervening Reporting Period in the Franchise Term, by decreasing each such level on a straight-line basis from the level set for the first Reporting Period of the Franchise Term to the level set for the last Reporting Period of the Franchise Term.

**7. Default Performance Levels for each Benchmark for all Reporting Periods**

The Target Performance Levels for each Benchmark shall then be used to determine the relevant Default Performance Level for each Reporting Period of the Franchise Term by calculating:

- (a) the relevant Default Performance Level for each of the first Reporting Period and the last scheduled Reporting Period of the Franchise Term in accordance with the following formula:

$$\frac{(100 + 20)}{100} \times \text{TPL}$$

where:

TPL equals the relevant Target Performance Level for the first Reporting Period or the last scheduled Reporting Period (as appropriate) as determined pursuant to this Appendix 14; and

- (b) the relevant Default Performance Levels for each intervening Reporting Period in the Franchise Term, by decreasing each such level on a straight-line basis from the level set for the first Reporting Period of the Franchise Term to the level set for the last Reporting Period of the Franchise Term.

## 8. Roundings

8.1 The:

- (a) Cancellations Benchmark percentages recalibrated pursuant to paragraphs 1 and 4 to 7 (inclusive); and
- (b) Capacity Benchmarks percentages recalibrated pursuant to paragraphs 2 and 4 to 7 (inclusive),

shall be rounded to two decimal places, with the midpoint (that is, 2.835) rounded upwards (that is, 2.84).

8.2 The Service Delivery Benchmarks recalibrated pursuant to paragraphs 3 to 7 (inclusive) shall be rounded to the nearest ten minutes of delay, with the midpoint (that is, 5,005) rounded upwards (that is, 5,010).

## 9. Definitions

For the purpose of this Appendix 14:

9.1 ***Previous Passenger Services*** means:

- (a) any railway passenger service operated under a Previous Franchise Agreement that is the same or substantially the same as any Passenger Service in terms of departure and arrival times and stopping patterns; or
- (b) if no such railway passenger service is found under paragraph (a), such other railway passenger service operated under a Previous Franchise Agreement which is similar in terms of departure and arrival times and stopping patterns to the Passenger Services as the Secretary of State may reasonably determine.

**Short Formation** means the operation of a railway passenger service with fewer rolling stock vehicles than the number of rolling stock vehicles scheduled to be operated by a Train Operator under the Previous Franchise Agreement or by the Franchisee, as applicable.

9.2<sup>372</sup> ***For the purpose of this Appendix 14, Paragraph 2 specifically Previous Passenger Services for Short Formations means:***

- (a) ***any railway passenger service operated under a Previous Franchise Agreement that is the same or substantially the same as any Passenger Service in terms of departure and arrival times and stopping patterns in the Morning and Evening Peak as specified in Appendix 16 Paragraph 1.1(b); or***
- (b) ***if no such railway passenger service is found under paragraph (a), such other railway passenger service operated under a Previous Franchise Agreement which is similar in terms of departure and arrival times and stopping patterns to the Passenger Services as the Secretary of State may reasonably determine.***

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<sup>372</sup> Date of Change 16/12/2010

## APPENDIX 15

### List of Documents in the Agreed Terms (Clause 9)

<b>377OHA</b>	Operating Hire Agreement
<b>377A Sub Lease</b>	Electrostar Lot 10A Sub Lease
<b>CFD</b>	Commuter Fares Document
<b>CSM</b>	Passenger Survey Methodology
<b><i>Electrostar Lot 10B FCC Lease<sup>373</sup></i></b>	<b><i>means the lease to be entered into between the Franchisee and the FCC Franchisee pursuant to paragraph 15.2(a) of Appendix 13 (South Central Specific Provisions) of the Franchise Agreement</i></b>
<b><i>GLA Deep Clean Specification</i></b>	GLA Deep Clean Document
<b><i>GSM-R Implementation Roll-out<sup>374</sup></i></b>	
<b>DL</b>	Depot Lease
<b>FM</b>	Financial Model
<b>IBP</b>	Initial Business Plan
<b>OM</b>	Operational Model
<b>OOA</b>	Olympic Option Agreement
<b>PC</b>	Passenger's Charter
<b>PFD</b>	Protected Fares Document
<b>POA</b>	Power of Attorney
<b>ROA</b>	Record of Assumptions
<b>RTPO2</b>	East Coastway Timetable
<b>SATRT</b>	Seasonally Adjusted Target Revenue Table
<b>SLC 1; SLC2A1;</b>	Service Level Commitment

<sup>373</sup> Date of Change 20/09/2009

<sup>374</sup> Date of Change 29/07/2010

<b>SLC2A2;</b> <b>SLC2B;</b> <b>SLC3A;and</b> <b>SLC3B.</b>	
<b><i>SL</i></b>	Station Lease
<b><i>SQAP</i></b>	Service Quality Audit Programme
<b><i>SQMS</i></b>	Service Quality Management System
<b><i>SQS</i></b>	Service Quality Standards
<b><i>TP</i></b>	Train Plan

## APPENDIX 16

### Capacity Metrics and Timings (Clause 10)

#### Agreed Capacity Requirements.

1.1 The Agreed Capacity Requirements are as set out below:

- (a) In respect of each Service Level Commitment set out in Column 1 of the following table (the “**Agreed Capacity Table**”) and for the entire period for which such Service Level Commitment applies, the Franchisee shall include (as a minimum) in its Train Plan:
  - (i) in respect of the London Victoria Services arriving at London Victoria Station in the AM Peak, the number of vehicles specified in Column 2 of the Agreed Capacity Table;
  - (ii) in respect of the South London Line Services arriving at London Victoria Station in the AM Peak, the number of vehicles specified in Column 2A of the Agreed Capacity Table;
  - (iii) in respect of the London Victoria Services departing from London Victoria Station in the PM Peak, the number of vehicles specified in Column 3 of the Agreed Capacity Table;
  - (iv) in respect of the South London Line Services departing from London Victoria Station in the PM Peak, the number of vehicles specified in Column 3A of the Agreed Capacity Table;
  - (v) in respect of the Passenger Services arriving at London Bridge Station in the AM Peak, the number of vehicles specified in Column 4 of the Agreed Capacity Table;
  - (vi) in respect of the South London Line Services arriving at London Bridge Station in the AM Peak, the number of

vehicles specified in Column 4A of the Agreed Capacity Table;

- (vii) in respect of the Passenger Services departing from London Bridge Station in the PM Peak, the number of vehicles specified in Column 5 of the Agreed Capacity Table;
- (viii) in respect of the South London Line Services departing from London Bridge Station in the PM Peak, the number of vehicles specified in Column 5A of the Agreed Capacity Table;
- (ix) in respect of the Coastway Services arriving at Brighton in the AM Peak, the number of vehicles specified in Column 6 of the Agreed Capacity Table; and
- (x) in respect of the Coastway Services departing from Brighton in the PM Peak, the number of vehicles specified in Column 7 of the Agreed Capacity Table.

(b) For the purposes of this Appendix 16:

**“AM Peak”** means a Passenger Service operated on a Weekday and which arrives at:

- (i) a Relevant Station between 0700 and 0959; or
- (ii) Brighton between 0800 and 0859.

**“Coastway Services”** means the Passenger Services operated on the routes between:

- (1) Brighton and Lewes;
- (2) Brighton and Lewes and other places to the east of Lewes,
- (3) Brighton and Hove; and
- (4) Brighton and Hove and other places to the west of Hove;



**“London Victoria Services”** means the Passenger Services arriving or departing from London Victoria station excluding any such Passenger Services which commence from or terminate at Gatwick Airport with no intermediate stops;

**“PM Peak”** means a Passenger Service operated on a Weekday and which departs from:

- (i) a Relevant Station between 1600 and 1859; or
- (ii) Brighton between 1700 and 1759;

**“Relevant Station”** means London Victoria or London Bridge Stations; and

**“South London Line Services”** means the Passenger Services operated to and from London Bridge or London Victoria via Peckham Rye.

### Agreed Capacity Table <sup>375</sup>

	London Victoria Services and South London Line Services into London Victoria				London Bridge Services and South London line services into London Bridge				Brighton (Coastway) Services only (peak hour only)	
Column 1	Column 2	Column 2A	Column 3	Column 3A	Column 4	Column 4A	Column 5	Column 5A	Column 6	Column 7
	AM Peak (Arrival – number of vehicles)	AM Peak (Arrival – number of vehicles)	PM Peak (Departures – number of vehicles)	PM Peak (Departures – number of vehicles)	AM Peak (Arrival – number of vehicles)	AM Peak (Arrival – number of vehicles)	PM Peak (Departures – number of vehicles)	PM Peak (Departures – number of vehicles)	AM Peak (Arrival – number of vehicles)	PM Peak (Departures – number of vehicles)
SLC1	585	24	632	12	488	24	418	12	34	34
SLC2A1 and SLC 2A2	595	24	634	12	506	24	418	12	34	34
SLC2B	624	24	656	12	550	24	459	12	40	38
SLC3A	623	N/A	658	N/A	534	N/A	476	N/A	40	38
SLC3B	687	N/A	728	N/A	578	N/A	518	N/A	42	42

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<sup>375</sup> Date of Change 14/09/2011

## **APPENDIX 17<sup>376</sup>**

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**376** Where text has been omitted from the document this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

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~~i By virtue of a derogation the Secretary of State for Transport has granted the Franchise Operator an extension for the installation of 3 of the 30 committed Ticket vending machines which are due to be installed at London Victoria on or before 31<sup>st</sup> December 2010~~

~~Start Date : 10/12/2010 End Date: 28/02/2011~~

#### DEROGATIONS PAGE

ii By virtue of a derogation the Secretary of State for Transport has granted the Franchise Operator an extension to the obligation; Southern provided evidence that two of the GLA stations, Balham and Norbury, are NSIP stations and that the works will not be completed by September 2010. For avoidance of doubt, this derogation commences on 17<sup>th</sup> September 2010 and will expire on 23<sup>rd</sup> September 2011 for Balham and 25<sup>th</sup> November 2011 for Norbury.

Start Date :17/09/2010 End Date:25/11/11

iii By virtue of a derogation the Secretary of State for Transport has granted the Franchise Operator the following: In respect of the Fastest Train A-Z Boards at Epsom Station only, further time to allow for the completion of major redevelopment work at that station until February 2012.

Start Date: 16/03/11 End Date 28/02/12

iv By virtue of a derogation the Secretary of State for Transport has granted the Franchise Operator the following: In respect of the Fastest Train A-Z Boards at Epsom Station only, further time to allow for the completion of major redevelopment work at that station until June 2012.

Start Date: 28/02/12 End Date 30/06/12

#### DEROGATIONS PAGE

~~v By virtue of a derogation the Secretary of State for Transport has granted the Franchise Operator an extension to the obligation; Southern provided evidence that the planned delivery of this obligation at Mitcham Station has been superseded by an Access for All development which will deliver more spaces than the initial Southern Plan. For avoidance of doubt, this derogation commences on 17<sup>th</sup> September 2010 and will expire on 30<sup>th</sup> October 2010.~~

~~Start Date :17/09/2010 End Date:30/10/2010~~

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By virtue of a derogation the Secretary of State for Transport has agreed to amend the date in respect of ensuring a model run is carried out in Paragraph 4.2 of the HLOS Option for 40 Vehicles and the Financing of the Amended MSA dated 20 December 2012, from 31 March 2013 to 31 May 2013.

Start Date : 31/03/2013                      End Date: 31/05/2013

By virtue of a derogation the Secretary of State for Transport has agreed to amend the date in respect of ensuring a model run is carried out in Paragraph 4.2 of the HLOS Option for 40 Vehicles and the Financing of the Amended MSA dated 20 December 2012, from 31 May 2013 to 31 July 2013.

Start Date : 31/05/2013                      End Date: 31/08/2013