

Dated

2014

- (1) THE SECRETARY OF STATE FOR TRANSPORT
- (2) [FRANCHISEE]

TSGN FRANCHISE AGREEMENT

Outstanding Issues include:

1. Ticketless Travel Regime (population of Appendices).

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THIS AGREEMENT is dated

2014

BETWEEN

- (1) **THE SECRETARY OF STATE FOR TRANSPORT**, whose principal address is at 33 Horseferry Road, London SW1P 4DR (the "**Secretary of State**"); and
- (2) [**FRANCHISEE**] (Company Number [●]), whose registered office is at [registered address] (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 the Franchise 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) The following provisions of this Agreement are intended to reflect and give effect to the matters referred to in Recitals (A) and (B) inclusive.

1. INTERPRETATION

- 1.1 In the Franchise Agreement, except to the extent the context otherwise requires:
 - (a) words and expressions defined in Part I of the Act have the same meanings when used therein provided that, except to the extent expressly stated, "railway" shall not have the wider meaning attributed to it by Section 81(2) of the Act;
 - (b) words and expressions defined in the Interpretation Act 1978 have the same meanings when used in the Franchise Agreement;
 - (c) the words "include", "including" and "in particular" are to be construed without limitation;
 - (d) references to any person include its successors, transferees or assignees;
 - (e) the words "subsidiary", "subsidiary undertaking", and "parent undertaking" each have the same meaning in the Franchise Agreement as in Section 1162 of the Companies Act 2006;
 - (f) references to documents "in the agreed terms" are references to documents initialled by or on behalf of the Secretary of State and the Franchisee. As at the date of this Agreement the documents "in the agreed terms" are as follows:

(i)	ABD	Data for determining Annual Benchmarks, Annual Breach Ticketless Travel Benchmark and Annual Target Ticketless Travel Benchmark where there are fewer than 13 Reporting Periods;
(ii)	BFP	Bid Fares Policy;
(iii)	CFD1	TGN Commuter Fares Document;
(iv)	CFD2	Combined Commuter Fares Document;
(v)	CR	Customer Report
(vi)	DL	Depot Lease;
(vii)	ERTMSP	Proposed ERTMS Implementation Plan;
(viii)	FF	Financial Formats;
(ix)	FM	Financial Model;
(x)	MP	Marketing Plan;
(xi)	OM	Operational Model;
(xii)	PC1	Passenger's Charter effective from the Start Date;
(xiii)	PC2	Passenger's Charter effective from the Combined Effective Date;
(xiv)	PFD1	TGN Protected Fares Document;
(xv)	PFD2	Combined Protected Fares Document;
(xvi)	PFS	Penalty Fares Scheme;
(xvii)	POA	Power of Attorney;
(xviii)	PSM	Passenger Survey Methodology;
(xix)	QuSS	QuEST Service Schedules;
(xx)	ROA	Record of Assumptions;
(xxi)	SL	Station Lease;
(xxii)	SOL	HLOS Phase 2 Lease;
(xxiii)	SSD	assumptions in relation to the Southern SEFT Deed;
(xxiv)	TP	Train Plan;
(xxv)	TSD	assumptions in relation to the TGN SEFT Deed;

- (xxvi) **TSR1, TSR2, TSR3, TSR4, TSR5, TSR6 and TSR7** Train Service Requirements; and
- (xxvii) **TTSM** Ticketless Travel Survey Methodology; and

- (g) references in any of the agreements comprising the Franchise Agreement to Recitals, clauses, Schedules, Parts, paragraphs and Appendices are to Recitals, clauses, Schedules, Parts of Schedules, paragraphs of Schedules and Appendices of Schedules of that agreement, unless expressly specified to the contrary, and the Schedules and Appendices form part of the agreement in which they appear;
- (h) references in any Schedule in any of the agreements comprising the Franchise Agreement to a Part, paragraph or Appendix are references to a Part, paragraph or Appendix of that Schedule (or the relevant Part of a Schedule), unless expressly specified to the contrary;
- (i) headings and references to headings shall be disregarded in construing the Franchise Agreement;
- (j) references to any enactment include any subordinate legislation made from time to time under such enactment and are to be construed as references to that enactment as for the time being amended or modified or to any enactment for the time being replacing or amending it and references to any subordinate legislation are to be construed as references to that legislation as for the time being amended or modified or to any legislation for the time being replacing or amending it;
- (k) references to an agreement or any other document shall be construed as referring to that agreement or document as from time to time supplemented, varied, replaced, amended, assigned or novated;
- (l) references to any particular provisions of any agreement or any other document shall be construed to include any other provisions of, or incorporated in, that agreement or other document which the Secretary of State reasonably considers have an equivalent effect or are intended to fulfil the same function;
- (m) words importing the masculine gender include the feminine and vice-versa, and words in the singular include the plural and vice-versa;
- (n) wherever provision is made for the giving or issuing of any notice, endorsement, consent, approval, waiver, certificate or determination by any person, unless otherwise specified, such notice, endorsement, consent, approval, waiver, certificate or determination shall be in writing and the words "notify", "endorse", "consent", "approve", "waive", "certify" or "determine" and other cognate expressions shall be construed accordingly;
- (o) references to materials, information, data and other records shall be to materials, information, data and other records whether stored in electronic, written or other form;
- (p) references to the Franchisee bidding for Train Slots or a Timetable shall mean the final action incumbent on the Franchisee under the Network Code to confirm to Network Rail its interests in the Train Slots to which that confirmation relates, and "bid" shall be construed accordingly;

- (q) references to the period of validity of any Fare are references to its period of validity excluding any rights of any purchaser thereof to extend such period under the Passenger's Charter, any equivalent document, or the terms and conditions attaching to such Fare (including any applicable conditions of carriage) in the event of the cancellation or delay of any of the railway passenger services for which such Fare is valid;
- (r) references to stations at which any train calls include stations at which such train commences or terminates its journey;
- (s) references to "railway passenger services" are to be construed subject to Section 40 of the Railways Act 2005;
- (t) references to the provision of railway passenger services include the organisation of the relevant train movements and making the necessary arrangements with Network Rail or any other relevant Facility Owner;
- (u) references in lower case letters to terms defined in clause 2 shall be construed, where relevant, as being references to the terms defined as such in the franchise agreement or relevant agreement made under Section 30 of the Act or Section 6 of the Railways Act 2005 with any other Train Operator;
- (v) amendments to or variations of contracts or arrangements include assignments, novations or other transfers of rights and/or obligations (in whole or in part) under such contracts or arrangements;
- (w) references to sums of money being expended by the Franchisee shall be to such sums exclusive of Value Added Tax;
- (x) the words "shall not be liable" are to be construed as meaning that no contravention of the Franchise Agreement and no Event of Default shall arise as a result of the occurrence of the matter to which such words relate;
- (y) references to a "contravention of the Franchise Agreement" (and cognate expressions) are to be construed as meaning a breach of the Franchise Agreement; and
- (z) wherever provision is made for the Franchisee to "procure" or "ensure" the delivery of an obligation under the Franchise Agreement, unless otherwise specified, that provision shall be construed as a primary obligation on the Franchisee to deliver that obligation.

1.2 This Agreement and the Conditions Precedent Agreement together constitute a single agreement, which is a "franchise agreement" for the purposes of the Act.

2. DEFINITIONS

2.1 In the Franchise Agreement, except to the extent the context otherwise requires, the following words and expressions have the following meanings:

"16 to 25 Railcard" means a Discount Card issued under the Discount Fare Scheme referred to in paragraph (a)(ii) of the definition of Discount Fare Scheme;

"2010 Nominal Ticket Sales" has the meaning given to it in paragraph 3 of Schedule 5.4 (Regulation of Fares Basket

	Values);
"2010 Ticket Revenue"	has the meaning given to it in paragraph 4.1 of Schedule 5.4 (Regulation of Fares Basket Values);
"Accepted" or "Acceptance"	shall have the meaning given to such term in the HLOS Phase 2 MSA;
"Access Agreement"	has the meaning given to the term "access agreement" in Section 83(1) of the Act;
"Act"	means the Railways Act 1993 and any regulations or orders made thereunder;
"Actual Operating Costs"	means: <ul style="list-style-type: none"> (a) the Franchisee's total operating expenses for the period being reviewed as stated in its profit and loss account, including any of the following operating expenses that are payable during that period: <ul style="list-style-type: none"> (i) amounts payable to the Secretary of State and Network Rail (excluding Revenue); (ii) taxation; (iii) shareholder distributions including dividends; (iv) interest payments or other financing charges due and paid (including any charges due and paid in respect of any bonding arrangements); (v) capital expenditure (net of grants received); and (vi) lease payments in relation to on-balance sheet leased assets, <p style="margin-left: 20px;">but excluding any of the following expenses that are payable in that period:</p> <ul style="list-style-type: none"> (A) interest relating to on-balance sheet leased assets; (B) depreciation;

- (C) amortisation; and
- (D) bad debt provisions; and

(b) either:

- (i) plus any reduction in the total amount owing by the Franchisee to creditors over that period; or
- (ii) less any increase in the total amount owing by the Franchisee to creditors over that period,

where creditors:

- (A) include any persons owed amounts by the Franchisee in respect of operating expenses, including the types of expenses set out in paragraphs (a)(i) to (a)(v) inclusive, provisions and deferred income balances; but
- (B) exclude persons owed amounts by the Franchisee in respect of lease liabilities in relation to on-balance sheet leased assets and liabilities in relation to grants received for the purchase of fixed assets;

“Actual Passenger Demand” has the meaning given to it in paragraph 1 of Schedule 1.5 (Information about Passengers);

“Actuary” has the meaning given to it in the Pension Trust;

“Additional Electrostar Units” means the six four car class 377/2 units with painted numbers as follows:

377/208;

377/209;

377/210;

377/213;

377/214; and

377/215;

"Administration Fee"

has the meaning given to it in paragraph 4.3 of Schedule 10.3 (Events of Default and Termination Events);

"Advance Purchase Train-specific Fares"

has the meaning given to it under the Ticketing and Settlement Agreement;

"Affiliate"

means, in respect of any person, any person by which that person is Controlled or which is Controlled by that person, or any person which is Controlled by any other Affiliate of that person;

"Aggregated Qualifying Change"

means two or more Changes which:

- (a) are notified or agreed (in the case of a Change which is a Variation pursuant to paragraph 1.1 of Schedule 9.5 (Variations to the Franchise Agreement and Incentivising Beneficial Changes)); or
- (b) a party has become aware of (in the case of any other kind of Change),

in a Franchisee Year (the "**Aggregation Year**") which individually do not exceed the Threshold Amount for the Aggregation Year taken alone but do exceed it when taken together. For the avoidance of doubt, where the Changes arise in different Franchisee Years, for the purposes of determining whether in aggregate they exceed the Threshold Amount:

- (c) the net present value of the adjustment in Franchise Payments which would result from a Run of the Financial Model in respect of each Change shall be calculated in accordance with the process described in the definition of Qualifying Change; and
- (d) there will be an Aggregated Qualifying

Change where the aggregate of the net present values of those Changes exceeds the Threshold Amount for the Aggregation Year;

- “Agreed Marketing Spend”** has the meaning given to such term in paragraph 4.1 of Schedule 6.2 (TSGN Franchise Specific Provisions);
- “Alliance Agreement”** has the meaning given to such term in paragraph 11.2 of Schedule 13 (Information and Industry Initiatives);
- “Alternative Scheme”** means a Committed Obligation proposed by the Franchisee in place of a Specimen Scheme accordance with paragraph 8 of Part 2 of Schedule 6.1 (Committed Obligations and Related Provisions);
- “Alternative TSR”** has the meaning given to such term in paragraph 1.2 of Schedule 1.1 (Service development);
- “Ancillary Revenue”** ¹means revenue received by the Franchisee in respect of:
- (a) parking of vehicles at stations;
 - (b) the provision of Light Maintenance Services and heavy maintenance services;
 - (c) the provision of Station Services but only in respect of the Station Services specified in paragraphs 3.1(b) and 3.2 of Schedule 1.6 (Franchise Services;
 - (d) the sub leasing, hiring or licensing of rolling stock vehicles or other assets;
 - (e) the sale of advertising space at Stations and on trains;
 - (f) the lending, seconding, hiring or contracting out of Franchise Employees to other Train Operators;
 - (g) the letting of property;
 - (h) the provision of Charter Services;
 - (i) the provision of consultancy services;

¹ To be amended to include other descriptions of Ancillary Revenue which seek to reflect specific bidding initiatives (other than those relating to Revenue) proposed by the bidder in its bid to the extent not already covered in the definition.

- (j) retail commission;
- (k) the sale of an asset to the extent that any such sale is permitted under the Franchise Agreement; and
- (l) the sale of goods or services provided principally for consumption or use on the relevant train including meals, light refreshments, newspapers, magazines, books, entertainment materials, phone cards or Wi-Fi,

provided that:

- (i) Ancillary Revenue shall exclude any revenue derived from the sale of goods or services under an arrangement which by itself would entitle a purchaser of such goods or services to travel on the Passenger Services without the need to purchase a Fare; and

- (ii) Ancillary Revenue shall include:

- (A) any amounts received from Network Rail excluding any amounts payable to the Secretary of State pursuant to paragraph 6 of Schedule 2.2 (Security of Access Agreement, Rolling Stock Leases, Station and Depot Leases, paragraphs 6.4 and 7 of Schedule 6.2 (TSGN Franchise Specific Provisions and Schedule 8.4 (Track Access Adjustments and Station Charge Adjustments)); and

- (B) income in the nature of compensation received by the

Franchisee from any person in respect of costs, losses or liabilities incurred by the Franchisee whether under or in respect of a contract or otherwise including:

(1) as provided under paragraph (A) above,

(2) under any TRSP Document, Rolling Stock Related Contract or contract of insurance; and

(3) loss of revenue but only to the extent that such revenue is comprised in this definition of Ancillary Revenue; but

(4) excluding any amounts (and where relevant compensation) received in respect of or related to any Fare, Penalty Fare, Discount Cards, Railcards, multi-model schemes, concessionary fares schemes or integrated transport schemes or any other similar or equivalent arrangement; and

nothing in this definition of Ancillary Revenue shall relieve the Franchisee of any liability to the Secretary of State howsoever arising;

"Annual Audited Accounts" means the accounts of the Franchisee which:

(a) comply with paragraph 3.11 of

Schedule 13 (Information and Industry Initiatives); and

- (b) are delivered to the Secretary of State by the Franchisee in accordance with paragraph 3.9 of Schedule 13 (Information and Industry Initiatives) and certified by the Franchisee's auditors as true and fair;

"Annual Benchmark"

means any of the Annual Cancellations Benchmark, Annual Peak Short Formation Benchmark and Annual TOC Minute Delay Benchmark;

"Annual Benchmark Table"

means, in relation to:

- (a) any Annual Cancellations Benchmark, the Annual Cancellations Benchmark Table;
- (b) any Annual Peak Short Formation Benchmark, the Annual Peak Short Formation Benchmark Table; and
- (c) any Annual TOC Minute Delay Benchmark, the Annual TOC Minute Delay Benchmark Table;

"Annual Breach Performance Level"

means, in relation to an Annual Benchmark for any Performance Calculation Year, the number set out in column 4 of the Annual Benchmark Table relating to that Annual Benchmark and in the row of that table for that Performance Calculation Year;

"Annual Breach Ticketless Travel Benchmark"

means, in relation to a Performance Calculation Year, the benchmark for that Performance Calculation Year as specified in column 3 of the table in Part 3 of the Appendix to Schedule 6.2 (TSGN Franchise Specific Provisions) provided that where a Performance Calculation Year is shorter than 13 Reporting Periods then the Annual Breach Ticketless Travel Benchmark for that Performance Calculation Year shall be as determined pursuant to 2.6(a) of Schedule 6.2 (TSGN Franchise Specific Provisions);

"Annual Cancellations Benchmark"

means for each Performance Calculation Year, each of the benchmarks specified in the Annual Cancellations Benchmark Table for that Performance Calculation Year provided that where a Performance Calculation Year is shorter than 13 Reporting Periods then the Annual Cancellations Benchmark for that Performance Calculation Year shall be as determined pursuant to paragraph 5(a) of

	Schedule 7.1 (Performance Benchmarks);
"Annual Cancellations Benchmark Table"	means the table set out in Part 2 of Appendix 1 of Schedule 7.1 (Performance Benchmarks);
"Annual Cap Performance Level"	means, in relation to an Annual Cancellations Benchmark and an Annual TOC Minute Delay Benchmark (as the case may be) for any Performance Calculation Year, the number set out in column 2 of the Annual Cancellations Benchmark Table or the Annual TOC Minute Delay Benchmark Table (as the case may be);
"Annual Financial Statements"	means the final draft financial statements of the Franchisee which: <ul style="list-style-type: none"> (a) comply with paragraph 3.11 of Schedule 13 (Information and Industry Initiatives); and (b) are delivered to the Secretary of State by the Franchisee in accordance with paragraph 3.7 of Schedule 13 (Information and Industry Initiatives);
"Annual Franchise Payment"	means, in relation to any Franchisee Year, the amount determined in accordance with Schedule 8.2 (Annual Franchise Payments);
"Annual Franchise Payment Components"	means the values of "FXD", "VCRPI", "VCAWE", "PRPI" and "ARRPI" specified for each Franchisee Year in the table set out in the Appendix (Figures for Calculation of Annual Franchise Payments) to Schedule 8.2 (Annual Franchise Payments);
"Annual Intermediate Peak Short Formation Payment Level"	means, in relation to the Annual Peak Short Formation Benchmark for any Performance Calculation Year, the number set out in column 3 of the Annual Peak Short Formation Benchmark Table and in the row of that table for that Performance Calculation Year;
"Annual Management Accounts"	means the management accounts of the Franchisee which: <ul style="list-style-type: none"> (a) comply with paragraph 3.10 of Schedule 13 (Information and Industry Initiatives); and (b) are delivered to the Secretary of State by the Franchisee in accordance with paragraph 3.6 of Schedule 13 (Information and Industry Initiatives);
"Annual Peak Short"	means for each Performance Calculation Year,

Formation Benchmark"	each of the benchmarks specified in the Annual Peak Short Formation Benchmark Table for that Performance Calculation Year provided that where a Performance Calculation Year is shorter than 13 Reporting Periods then the Annual Peak Short Formation Benchmark for that Performance Calculation Year shall be as determined pursuant to paragraph 5(b) of Schedule 7.1 (Performance Benchmarks);
"Annual Peak Short Formation Benchmark Table"	means the table set out in Part 2 of Appendix 2 of Schedule 7.1 (Performance Benchmarks);
"Annual Season Ticket"	means a Season Ticket Fare which is valid in Standard Class Accommodation from (and including) the day on which it first comes into effect until (but excluding) the day which falls 12 months after such day;
"Annual Target Performance Level"	means, in relation to an Annual Benchmark the number set out in column 2 of the Annual Benchmark Table relating to that Annual Benchmark and in the row of that table for that Performance Calculation Year;
"Annual Target Ticketless Travel Benchmark"	means, in relation to a Performance Calculation Year, the benchmark for that Performance Calculation Year as specified in column 2 of the table in Part 3 of the Appendix to Schedule 6.2 (TSGN Franchise Specific Provisions) provided that where a Performance Calculation Year is shorter than 13 Reporting Periods then the Annual Target Ticketless Travel Benchmark for that Performance Calculation Year shall be as determined pursuant to paragraph 2.6(a) of Schedule 6.2 (TSGN Franchise Specific Provisions);
"Annual Ticketless Travel Benchmark"	means any of the Annual Breach Ticketless Travel Benchmark and Annual Target Ticketless Travel Benchmark;
"Annual TOC Minute Delay Benchmark"	means for each Performance Calculation Year, each of the benchmarks specified in the Annual TOC Minute Delay Benchmark Table for that Performance Calculation Year provided that where a Performance Calculation Year is shorter than 13 Reporting Periods then the Annual TOC Minute Delay Benchmark for that Performance Calculation Year shall be as determined pursuant to paragraph 5(c) of Schedule 7.1 (Performance Benchmarks);
"Annual TOC Minute Delay Benchmark Table"	means the table set out in Part 2 of Appendix 3 of Schedule 7.1 (Performance Benchmarks);
"Assisted Passenger"	means the system known as the Assisted

Reservation System"	Passenger Reservation System as described in the Code of Practice as published in September 2010 (version 2 – valid from 1 September 2010);
"Assumed Revenue"	means in relation to any Reporting Period the amount determined as such in accordance with paragraph 3 of Schedule 8.1 (Franchise Payments);
"ATOC"	means the Association of Train Operating Companies including any of its successors and assigns;
"Average Weekly Earnings"	means the United Kingdom average weekly earnings measure excluding bonuses as published from time to time by the Office for National Statistics or, if such measure shall cease to be published or if, in the reasonable opinion of the Secretary of State, there is a material change in the basis of such measure, such other alternative index as the Secretary of State may, after consultation with the Franchisee, determine to be appropriate in the circumstances;
"Bank"	means a person which has a permission under Part 4A of the Financial Services and Markets Act 2000 to carry on the regulated activity of accepting deposits thereunder and which is reasonably acceptable to the Secretary of State;
"Bank Holiday"	means any day other than a Saturday or Sunday on which banks in the City of London are not open for business;
"Benchmark"	means any of the Cancellations Benchmark, TOC Minute Delay Benchmark and Peak Short Formation Benchmark;
"Benchmark Table"	means, in relation to: <ul style="list-style-type: none"> (a) any Cancellations Benchmark, the Cancellations Benchmark Table; and (b) any Peak Short Formation Benchmark, the Peak Short Formation Benchmark Table; and (c) any TOC Minute Delay Benchmark, the TOC Minute Delay Benchmark Table
"Bid Fares Policy"	means the document in the agreed form marked " BFP " and which complies with the requirements of paragraph 2 of Schedule 5.8

(Fares Regulation Information and Monitoring)

“Bid Profit Stream”

means the estimated total operating profit of the Franchisee from the date that the Change of Control (pursuant to paragraph 2.3 of Schedule 10.3 (Events of Default and Termination Events) is to occur until the Expiry Date as shown in the profit and loss forecast in the Initial Business Plan (without taking into account any Updated Business Plan) calculated in real terms as at the date of the Change of Control and applying the prevailing discount rate per annum (in real terms) stated in HM Treasury’s “Green Book Appraisal Guidelines” (such rate being 3.5 per cent. per annum (in real terms) as at the date of the Franchise Agreement);

“Bond Provider”

means any person or persons who may provide or be an obligor under a Performance Bond or Season Ticket Bond from time to time and who shall, unless the Secretary of State otherwise agrees, be a Bank;

“Bond Year”

means the period beginning on the Start Date and ending on the day immediately preceding the Combined Effective Date and any subsequent period of 13 Reporting Periods beginning on the day after the end of the preceding Bond Year provided that:

- (a) the Franchisee and the Secretary of State may agree to vary the Reporting Period in which a Bond Year ends from time to time; and
- (b) the last Bond Year shall expire on the expiry of the Franchise Period and may be a period of less than 13 Reporting Periods;

“Brand Licence”

means a licence between the Secretary of State (or any company wholly owned by the Secretary of State) and the Franchisee in respect of any registered or unregistered trademarks;

“Breach Initial Period Benchmark”

means, in relation to each of the first three Ticketless Travel Survey Periods falling within the first Performance Calculation Year the relevant benchmark specified in the table in Part 1 of Appendix to Schedule 6.2 (TSGN Franchise Specific Provisions);

“Breach Performance Level”

means, in relation to a Benchmark for any Reporting Period, the number set out in column 3 of the Benchmark Table relating to

that Benchmark and in the row of that table for that Reporting Period;

"Breach Period Performance Level"	means, in relation to a Benchmark for any Breach Reporting Period, the numbers set out in column 5 of the Benchmark Table relating to that Benchmark and in the row of that table for that Breach Reporting Period;
"Breach Reporting Periods"	means any of the 6 th to 12 th Reporting Periods in the first Performance Calculation Year;
"Breach Ticketless Travel Benchmark"	means, in relation to a Ticketless Travel Survey Period, the benchmark relevant for that Ticketless Travel Survey Period in that Performance Calculation Year as specified in column 3 of the table in Part 2 of the Appendix to Schedule 6.2 (TSGN Franchise Specific Provisions);
"British Transport Police"	means the British Transport Police created pursuant to Section 18 of the Railways and Transport Safety Act 2003 (or any successor or successors to its statutory policing functions);
"Business Action Plan"	means an action plan produced by the Franchisee in relation to the delivery of any aspect of the Franchise Services (including in respect of any outcome anticipated by its Business Plan, in accordance with paragraph 2.6 of Schedule 13 (Information and Industry Initiatives));
"Business Continuity Plan" and "BCP"	a business continuity and disaster recovery plan (including a Force Majeure Events recovery plan) required to be produced, maintained and implemented by the Franchisee in accordance with paragraph 3.3 of Schedule 10.4 (Force Majeure);
"Business Plan"	means the Initial Business Plan or any Updated Business Plan, as the context requires, to be delivered in accordance with paragraphs 2.1 and 2.2 of Schedule 13 (Information and Industry Initiatives);
"Calculation Year"	means: <ul style="list-style-type: none">(a) the period of 13 Reporting Periods starting with the first Reporting Period commencing in January 2015; and(b) each subsequent and non-overlapping period of 13 Reporting Periods during the Franchise Period commencing the day after the last day of the preceding

Calculation Year,

provided that the final Calculation Year may be shorter or longer than 13 Reporting Periods as follows:

- (i) except where paragraph (ii) below applies, the final Calculation Year shall start on the day after the last day of the immediately preceding Calculation Year and shall end on the last day of the Franchise Period; and
- (ii) where the Secretary of State extends the Franchise Agreement pursuant to paragraph 1.2 of Schedule 18 (Additional Reporting Periods) such that the Expiry Date falls prior to 30 June in the last calendar year of the Franchise Term, the final Calculation Year shall start with the first Reporting Period commencing in the January of the calendar year preceding the calendar year in which the Expiry Date falls, and shall end on the last day of the Franchise Period;

“Cancellation”

means a Passenger Service:

- (a) which is included in the Enforcement Plan of the Day and which is cancelled and attributed to the Franchisee pursuant to its Track Access Agreement; or
- (b) which is included in the Enforcement Plan of the Day and which operates less than 50 per cent. of its scheduled mileage (as prescribed in the Enforcement Plan of the Day) for reasons attributed to the Franchisee pursuant to its Track Access Agreement;

“Cancellations Benchmark”

means any of the performance levels in respect of Cancellations and Partial Cancellations set out in the Cancellations Benchmark Table;

“Cancellations Benchmark

means the table set out in Part 1 of Appendix 1 (Cancellations Benchmark Table) of Schedule

Table	7.1 (Performance Benchmarks);
"Cancellations Performance Sum"	means the amount of an adjustment to a Franchise Payment to be determined in accordance with paragraph 3.2 of Schedule 7.1 (Performance Benchmarks);
"Capacity Mitigation Plan"	has the meaning given to it in paragraph 8.1(a) of Schedule 1.1 (Service Development);
"Capital Expenditure"	has the meaning given to it in paragraph 2.4 of Schedule 9.5 (Variations to the Franchise Agreement and Incentivising Beneficial Changes);
"Cascaded Rolling Stock"	has the meaning given to it in paragraph 2.5 of Schedule 2.2 (Security of Access Agreements, Rolling Stock Leases, Station and Depot Leases);
"Certificate of Commencement"	means the certificate to be issued by the Secretary of State pursuant to the Conditions Precedent Agreement;
"Change"	<p>means if and whenever any of the following occurs:</p> <ul style="list-style-type: none"> (a) an event set out in any Secretary of State Risk Assumption specified in Schedule 9.3 (Secretary of State Risk Assumptions); (b) the Secretary of State and the Franchisee agree or the Secretary of State serves written notice on the Franchisee, exercising the Secretary of State's right to call any Priced Option: <ul style="list-style-type: none"> (i) on different terms from those specified in respect of that Priced Option in Part 2 (List of Priced Options) of Schedule 3 (Priced Options); and/or (ii) at any time after the last date for exercise of such Priced Option, <p>in each case, only to the extent of the difference from the price quoted in Part 3 (Price in respect of the Priced Option) to Schedule 3 (Priced Options) caused by the difference in terms and/or the late timing of the</p>

- agreement or call;
- (c) a Charge Variation;
 - (d) a Change of Law (excluding any Change of Law to the extent that it results in an adjustment to the Franchise Payments pursuant to Schedule 8.4 (Track Access Adjustments and Station Charge Adjustments));
 - (e) a change to the Train Service Requirement previously in force pursuant to the issue of an amended or new Train Service Requirement in accordance with paragraph 8.5 of Schedule 1.1 (Service Development);
 - (f) the issue of any TSR (TDR) Amendments pursuant to paragraph 5.7 of Schedule 1.1 (Service Development) or, subject to paragraph 5.10(b) of Schedule 1.1 (Service Development), any TSR (TDR) Amendments ceasing to have effect in accordance with paragraph 5.9 of Schedule 1.1 (Service Development);
 - (g) the Franchisee is required to take any action pursuant to paragraph 11.1(a) and/or paragraph 11.1(b) of Schedule 1.1 (Service Development);
 - (h) the Secretary of State effects an amendment to a Discount Fare Scheme, introduces a new Discount Fare Scheme or ceases to approve a Discount Fare Scheme for the purposes of Section 28 of the Act;
 - (i) the Secretary of State approves an amendment or proposed amendment to an Inter-Operator Scheme, as referred to in paragraph (a) of the definition of Inter-Operator Scheme to the extent and only to the extent that the Franchisee makes a saving as a consequence of such amendment or proposed amendment;
 - (j) the imposition, subject to the provisions of paragraph 2.6 of Schedule 4 (Persons with Disabilities and Disability Discrimination), of any increased access charges in respect of EA Requirements at Franchisee Access

Stations;

- (k) the Secretary of State exercises his power pursuant to paragraph 5 of Schedule 5.7 (Changes to Fares and Fares Regulation) to alter the obligations of and restrictions on the Franchisee under Schedule 5 (Fares);
- (l) the Franchisee is obliged to charge Value Added Tax on a Fare or there is an increase or decrease in the rate of Value Added Tax which it must charge on such Fare, in either case due to a change in the Value Added Tax treatment of the provision of Passenger Services;
- (m) the Secretary of State exercises his rights pursuant to paragraph 2.5(b) of Schedule 2.2 (Security of Access, Rolling Stock, Leases, Station and Depot Leases);
- (n) a Variation to the terms of the Franchise Agreement pursuant to paragraph 1 of Schedule 9.5 (Variations to the Franchise Agreement and Incentivising Beneficial Changes);
- (o) the Start Date is a date that is later than 0200 on 14 September 2014 for reasons solely attributable to any act or omission by the Secretary of State except where:
 - (i) the Secretary of State exercises his rights pursuant to Clauses 4.2 or 4.3 of the Conditions Precedent Agreement to alter such Start Date; or
 - (ii) the relevant acts or omissions of the Secretary of State arise as a result of or in connection with any failure by the Franchisee to satisfy any of the conditions precedent set out in the Conditions Precedent Agreement; or
- (p) the Combined Effective Date is a date that is later or earlier than 0200 on 26

July 2015 provided that:

(i) if such Change:

(A) is a Qualifying Change and arises because the Combined Effective Date is a date which is later than the 0200 on 26 July 2015 there shall be a further Qualifying Change on the occurrence of the actual Combined Effective Date; and/or

(B) has occurred because the Franchisee has contravened any of the obligations under paragraph 1 of Schedule 6.4 (Integration of the Southern Franchise Services) then for the avoidance of doubt, such Change shall be without prejudice to any other rights the Secretary of State may have (under the Franchise Agreement or otherwise) in respect of such contravention or default (including under paragraph 2 of Appendix 2 (Agreement or Determination of Revised Inputs) to Schedule 9.1 (Financial and Other Consequences of Change);

(ii) the provisions of paragraph 5 of Schedule 9.1 shall automatically apply without

the need for the service of a notice as contemplated under that paragraph;

- (q) either:
 - (i) the Secretary of State, in his absolute discretion, elects at any time within two months of the occurrence of a Force Majeure Event that such event shall be treated as a Change; or
 - (ii) a Force Majeure Event that continues with the effect of preventing the Franchisee from delivering, wholly or mainly, the Passenger Services for more than two consecutive months;
- (r) the Secretary of State exercises his discretion pursuant to paragraph 4.4 of Schedule 6.2 (TSGN Franchise Specific Provisions) to increase or decrease the amount of the Agreed Marketing Spend;
- (s) the exercise by the Secretary of State of his rights pursuant to paragraph 1.7 of Schedule 7.1 (Performance Benchmarks);
- (t) the circumstances specified in paragraph 5.7(c) of Schedule 6.4 (Integration of the Southern Services) occur;
- (u) the Secretary of State exercises his rights to vary the provisions of Schedule 7.2 (PEM Regime) in the manner contemplated in paragraph 6.2 of Schedule 7.2;
- (v) the exercise by the Secretary of State of his rights pursuant to paragraph 19.2 of Schedule 13 (Information and Industry Initiatives);
- (w) any two or more of the foregoing that the Secretary of State groups together in accordance with any procedures issued by him pursuant to paragraph 1.4 of Schedule 9.5 (Variations to the Franchise Agreement)

and Incentivising Beneficial Changes);

“Change of Control”

has the meaning given to it in paragraph 2.3 of Schedule 10.3 (Events of Default and Termination Events);

“Change of Law”

means the coming into effect after the date of the Franchise Agreement of:

- (a) Legislation; or
- (b) any applicable judgment of a court of Law which changes a binding precedent,

the terms of which apply only to the railway industry, a particular section of the railway industry or the provision of services to the railway industry and not to other transport modes or to industries other than the railway industry, and without limitation:

- (i) excluding any changes in Taxation;

- (ii) excluding any changes which were foreseeable at the date of the Franchise Agreement, and for this purpose, but without limitation, there shall be regarded as foreseeable any Legislation which on the date of the Franchise Agreement has been published:

- (A) in a draft parliamentary bill as part of a government departmental consultation paper;

- (B) in a parliamentary bill;

- (C) in a draft statutory instrument; or

- (D) as a proposal in the Official Journal of the European Communities except to the extent that such proposal is intended to apply

solely within
member states
other than the
United Kingdom,

to the extent that the same is subsequently enacted in substantially the same form as the form in which it was previously so published. In relation to the application of this sub paragraph (ii), each TSI shall be considered separately.

Change of Law (1) includes any Legislation, which only applies to the railway industry, which is made under the Health and Safety at Work etc. Act 1974 and which is not excluded under (i) and (ii) (a Specifically Included Change of Law), but (2) excludes any Legislation (other than a Specifically Included Change of Law) which is made with the intention or effect of specifically applying to (or disapplying in relation to) the railway industry any other Legislation which does not apply only to the railway industry;

“Charge Variation”

means a variation:

- (a) to a Relevant Agreement; and
- (b) which is effected as a result of a Charging Review (including any variation in connection with an Incremental Output Statement Charge);

“Charging Review”

means:

- (a) the exercise by the ORR of its powers under:
 - (i) Part 7 of Schedule 7 of the Track Access Agreement to which the Franchisee is a party on the Start Date or any Replacement Agreement which is or is deemed to be a Relevant Agreement in accordance with the definition of that term;
 - (ii) Condition F11.5 of the Station Access Conditions in relation to any station which is not an Independent Station; or

- (iii) Condition 42.5 of the Independent Station Access Conditions in relation to any station which is an Independent Station;
- (b) the following by the ORR of the procedure in Schedule 4A of the Act;
- (c) the exercise by the ORR of any of its powers or the following of any other procedure, which, in the Secretary of State's reasonable opinion:
 - (i) has an equivalent effect to; or
 - (ii) is intended to fulfil the same function as,

any of the powers referred to in paragraphs (a) or (b) in relation to any Relevant Agreement. For this purpose, Relevant Agreement includes any Relevant Agreement which is not the subject of any previous Charging Review; or
- (d) any amendment to a Relevant Agreement, or entry into a new Relevant Agreement which is approved by the ORR to the extent that it relates to an Incremental Output Statement Charge or a scheme to which that charge relates;

“Charter Service”

means a railway passenger service, whether operated on the same routes as the Passenger Services or not:

- (a) which is not reflected in the Timetable;
- (b) which does not conform to the pattern of railway passenger services normally provided by the Franchisee;
- (c) for which the advance booking or booking arrangements for seats on the relevant service are, in the reasonable opinion of the Secretary of State, materially different from those generally applicable to the Passenger Services;
- (d) for which tickets are available on a restricted basis or on terms and conditions which, in the reasonable

opinion of the Secretary of State, are materially different from those generally applicable to the Passenger Services; and/or

- (e) for which the departure time, journey time and calling pattern are, in the reasonable opinion of the Secretary of State, materially different from those of the Passenger Services,

and which, in the opinion of the Secretary of State, is not a railway passenger service provided by the Franchisee as part of the Passenger Services;

“Child Price”

means, in relation to any Fare, the amount charged or chargeable to a person under the age of 16 in respect of such Fare;

“Class 377 Lot 10A Units”

means the 12 dual voltage class 377 four car units ordered by the Southern Franchisee pursuant to a manufacture and supply agreement dated 8 March 2002 (as amended from time to time);

“Class 377 Lot 10B Units”

means the 11 dual voltage class 377 four car units ordered by the Southern Franchisee pursuant to a manufacture and supply agreement dated 5 March 2008 (as amended from time to time);

“Closed Scheme Employees”

has the meaning given to it in paragraph 2.2 of Schedule 16 (Pensions);

“Closure”

means a discontinuance or closure under Part 4 of the Railways Act 2005 of any of the Passenger Services or of any network on which the Passenger Services may be operated or of any of the Stations or of any part of such network or Station;

“Code of Practice”

means the code of practice for protecting the interests of users of railway passenger services or station services who have disabilities, as prepared, revised from time to time and published by the Secretary of State pursuant to Section 71B of the Act;

“Collateral Agreement”

means an agreement which is required to be entered into by the Franchisee with Network Rail or any other franchisee as a condition to any Access Agreement of which the Franchisee is the beneficiary;

“Combined Effective Date”

means the date upon which the Franchisee commences the operation of the Southern

Franchise Services, such date currently anticipated to be the 26 July 2015 or such earlier or later date as may be required by the Secretary of State (in consultation with the Franchisee);

“Combined Effective Date Transfer Scheme”

has the meaning given to such term in paragraph 3.1 of Schedule 6.4 (Integration of the Southern Franchise Services);

“Committed Obligations”

means any of the Franchisee's obligations listed in Part 1 (List of Committed Obligations) to Schedule 6.1 (Committed Obligations and Related Provisions);

“Community Rail Partnership”

means any not-for-profit organisation of the same name that has an interest in the development of responsive and good quality railway passenger services;

“Community Rail Route”

means any Route in respect of which the Secretary of State determines that any relevant Community Rail Partnership has an interest;

“Commuter Fare”

means any:

- (a) Weekly Season Ticket, Monthly Season Ticket, Quarterly Season Ticket and Annual Season Ticket (and their equivalent ITSO products) between each London Station and any other such station or other station;
- (b) unrestricted Single Fare and unrestricted Return Fare (and their equivalent ITSO products) between each London Station; and
- (c) unrestricted Single Fare and unrestricted Return Fare (and their equivalent ITSO products) from each Suburban Station to each London Station (but not in the other direction);
- (d) PAYG Peak Fare or PAYG Off-Peak Fare (and their equivalent ITSO products) between each London Station and any other such station (and if and when CPAY is introduced the CPAY equivalent Peak and Off Peak fares); and
- (e) any Flexi Season Ticket that may be offered for unlimited travel between each London Station and any other

such station or other station but which has restrictions on the permitted times of use or the volume of travel allowed. These restrictions may include permitting travel only on fewer than five days a week or outside Peak hours,

for which the Franchisee is entitled to be allocated all or part of the revenue therefrom pursuant to the Ticketing and Settlement Agreement;

"Commuter Fares Basket"

means the grouping of Commuter Fares:

- (a) determined by the Secretary of State pursuant to Schedule 5.3 (Allocation of Fares to Fares Baskets);
- (b) for the purposes of regulating aggregate Prices or Child Prices, as the case may be, in accordance with Schedule 5.4 (Regulation of Fares Basket Values);
- (c) amended by the Secretary of State from time to time in accordance with Schedule 5.7 (Changes to Fares and Fares Regulation); and
- (d) set out in the Commuter Fares Document;

"Commuter Fares Document"

means:

- (a) for the period commencing from the Start Date until the Combined Effective Date, the document in the agreed terms marked **CFD1**;
- (b) for the period commencing from the Combined Effective Date until the end of the Franchise Period, the document in the agreed terms marked **CFD2**,

in each case, as the same may be amended from time to time in accordance with Schedule 5.7 (Changes to Fares and Fares Regulation);

"Compulsory Inter-available Flow"

has the meaning given to it in the Ticketing and Settlement Agreement;

"Computer System"

means computer hardware and computer software, including licensed third party software and data protocols;

"Condition L Compensation"

has the meaning given to such term in

Amounts"	paragraph 7.5(e) of Schedule 6.2 (TSGN Franchise Specific Provisions);
"Conditions Precedent Agreement"	means the agreement between the Secretary of State and the Franchisee of even date herewith specifying certain conditions to be satisfied or waived by the Secretary of State prior to the issue of a Certificate of Commencement;
"Confidential Information"	has the meaning given to it in paragraph 1 of Schedule 17 (Confidentiality and Freedom of Information);
"Connection"	means a connection (however described) between any of the Passenger Services provided by the Franchisee and any other railway passenger service provided by it or any other Train Operator or any bus, ferry or shipping service and cognate phrases shall be construed accordingly;
"Connection Agreement"	means any agreement entered into by the Franchisee and Network Rail on or before the Start Date or the Combined Effective Date (as the case may be) relating to the connection of a Depot to the relevant part of the network;
"Contingency Plan"	has the meaning given to it in paragraph 1(a)(iv) of Schedule 10.4 (Force Majeure);
"Contract Manager"	means a person appointed from time to time by the Franchisee to fulfil certain duties including to manage the Franchise Agreement on behalf of the Franchisee and to facilitate the performance by the Franchisee of its obligations under the Franchise Agreement;
"Control"	<p>means, in respect of a person, that another person (whether alone or with others and whether directly or indirectly and whether by the ownership of share capital, the possession of voting power, contract or otherwise):</p> <ul style="list-style-type: none"> (a) has the power to appoint and/or remove all or the majority of the members of the board of directors or other governing body of that person or of any other person which Controls that person; (b) controls or has the power to control the affairs and policies of that person or of any other person which Controls that person; (c) is the parent undertaking of that

person or of any other person which Controls that person; or

- (d) possesses or is, or will be at a future date, entitled to acquire:
- (i) 30 per cent. or more of the share capital or issued share capital of, or of the voting power in, that person or any other person which Controls that person;
 - (ii) such part of the issued share capital of that person or any other person which controls that person as would, if the whole of the income of such person were distributed, entitle him to receive 30 per cent. or more of the amount so distributed; or
 - (iii) such rights as would, in the event of the winding-up of that person or any other person which controls that person or in any other circumstances, entitle him to receive 30 per cent. or more of the assets of such person which would then be available for distribution;

"CPAY"

means an arrangement operated by TfL under which contactless payment cards can be used by passengers to obtain access to the public transport services in London without the requirement for purchase of a separate ticket or permission to travel;

"Creating"

has the meaning given to it in the Ticketing and Settlement Agreement and cognate expressions shall be construed accordingly;

"CRM Data"

means Personal Data (including any or all of name, address, e-mail address and ticket purchasing history, credit and debit card details) collected by or on behalf of the Franchisee relating to persons travelling on or purchasing tickets for travel on the Passenger Services or other services for the carriage of passengers by railway;

"CRM Data Processor"

means any Data Processor who, from time to time, is processing or has processed CRM Data

on behalf of the Franchisee;

"CRM System"

means any system (whether a Computer System or otherwise) for the collection of CRM Data and/or onto which CRM Data is input, processed and/or held as such system may be amended or altered from time to time;

"Crossrail Programme"

means the programme of planning, preparatory, construction, tunnelling, station building, rebuilding and enhancement and engineering activities and works and the procurement of rolling stock and other assets and equipment being undertaken for the purposes of building the east west cross London railway system specified in the Crossrail Act 2008;

"Current Franchisee Accounting Year"

has the meaning given to it in paragraph 7.4 of Schedule 8.1 (Franchise Payments);

"Customer Report"

means a report to be published by the Franchisee for passengers which shall include the information specified in paragraph 11 of Schedule 6.2 (TSGN Franchise Specific Provisions), the first of such reports to be published on the Start Date to be in substantially the same form as the document in agreed terms marked "CR";

"DAFLs"

means the Depot Agreement for Lease (as defined in the MDCTA) in respect of the 'Three Bridges Depot' and 'Hornsey Depot' between Network Rail, Siemens PLC (registered number 727817), the FCC Franchisee, the TMM (as such term is defined in the TRSP MSA) and the Secretary of State;

"Data Controller"

has the same meaning as in the Data Protection Act;

"Data Processor"

has the same meaning as in the Data Protection Act;

"Data Protection Act"

means the Data Protection Act 1998 and any guidance issued from time to time by the Information Commissioner's Office;

"Dataset"

means Appendix 5 (Environmental Impact Monitoring Dataset) to Schedule 13 (Information and Industry Initiatives) as the same may be amended from time to time by the Secretary of State (acting reasonably);

"Data Site Information"

has the meaning given to it in paragraph 2.2(e) of Schedule 15.1 (Reletting Provisions);

“Data Subject”	has the same meaning as in the Data Protection Act;
“Deed of Operation Accession”	has the meaning given to such term in the Umbrella Agreement;
“Default Performance Level”	means, in relation to a Benchmark for any Reporting Period, the numbers set out in column 4 of the Benchmark Table relating to that Benchmark and in the row of that table for that Reporting Period;
“Defined Contribution Arrangement”	has the meaning given to it in the Railways Pensions Scheme;
“Delay Repay Compensation”	compensation payable to a holder of a ticket when such holder’s journey is delayed [as more particularly described in the Passenger Charter] ² ;
“Delayed Cascade Mitigation Plan”	has the meaning given to it in paragraph 2.7(c) of Schedule 2.2 (Security of Access Agreements, Rolling Stock Leases, Station and Depot Leases);
“Departure Station”	has the meaning given to it in paragraph 2(b) of Appendix 2 (Alternative Transport) to Schedule 4 (Persons with Disabilities and Disability Discrimination);
“Depot”	means a depot in respect of which the Franchisee has entered into a Depot Lease;
“Depot Access Conditions”	means the document entitled “National Depot Access Conditions”;
“Depot Lease”	means: <ul style="list-style-type: none"> (a) with effect from the Start Date any lease for the following depots: <ul style="list-style-type: none"> (i) Bedford Cauldwell Depot; (ii) Bedford Midland Road Depot; and (iii) Hornsey Depot; and (b) including, with effect from the Combined Effective Date, any lease for the following depots: <ul style="list-style-type: none"> (i) Brighton Depot;

² Definition to be confirmed by the DfT on receipt of the Passenger Charter.

- (ii) Bognor Regis Depot;
- (iii) Eastbourne Depot;
- (iv) Littlehampton Depot;
- (v) Selhurst Depot;
- (vi) Stewarts Lane Depot;
- (vii) Streatham Hill Depot; and

(c) any other lease of a depot in relation to which the Franchisee becomes the Facility Owner at any time during the Franchise Period;

“Depot Proposal for Change” has the meaning given to the term “Proposal for Change” under the Depot Access Conditions or any proposal or arrangement which, in the reasonable opinion of the Secretary of State, has a similar effect;

“Designated Employer” has the meaning given to it in the Pension Trust;

“Destination Station” has the meaning given to it in paragraph 2(b) of Appendix 2 (Alternative Transport) to Schedule 4 (Persons with Disabilities and Disability Discrimination);

“Direct Agreement” means any agreement made, or to be made, from time to time between the Secretary of State and the counterparty of a Key Contract in relation to such Key Contract, including any agreement entered into by the Secretary of State under Schedule 14.3 (Key Contracts);

“Disabled People's Protection Policy” means the Franchisee's policy for the protection of persons with disabilities which the Franchisee is required to establish and review from time to time in accordance with the conditions of its Licences in respect of the operation of railway passenger services and/or stations;

“Disabled Person” is a reference to a person who has a disability as defined in the EA;

“Disaster” means, other than those specified in paragraphs 1(a) or 1(b) of Schedule 10.4 (Force Majeure Events), any unplanned interruption or event which significantly prevents or impairs the ability of the Franchisee to provide the Franchise Services (in whole or in part) or the ability of the Franchisee to operate systems or equipment

relevant to the provision of the Franchise Services (in whole or in part);

“Discount Card”

has the meaning given to it in the Ticketing and Settlement Agreement;

“Discount Fare Scheme”

means:

- (a) each of the following discount fare schemes:
 - (i) ATOC Disabled Persons Railcard Scheme dated 23 July 1993 between the participants therein;
 - (ii) ATOC Young Persons Railcard Scheme dated 23 July 1993 between the participants therein; and
 - (iii) ATOC Senior Railcard Scheme dated 23 July 1993 between the participants therein; or
- (b) any other discount fare scheme approved from time to time by the Secretary of State for the purposes of Section 28 of the Act,

in each case until such time as it may cease to be approved by the Secretary of State for the purposes of Section 28 of the Act;

“Disputed Cancellation”

means a Passenger Service:

- (a) which is included in the Enforcement Plan of the Day and which is cancelled; or
- (b) which is included in the Enforcement Plan of the Day and which operates less than 50 per cent. of its scheduled mileage (as prescribed in the Enforcement Plan of the Day),

in either case, in circumstances where attribution of responsibility for the same is, at the relevant time, in dispute between Network Rail and the Franchisee pursuant to the Track Access Agreement;

“Disputed Partial Cancellation”

means a Passenger Service which is included in the Enforcement Plan of the Day and which:

- (a) misses a stop;
- (b) completes 50 per cent. or more, but less than 100 per cent. of its scheduled journey as prescribed in the Enforcement Plan of the Day; or
- (c) arrives at its final destination scheduled in the Enforcement Plan of the Day more than 120 minutes late,

in circumstances where attribution of responsibility for the same is, at the relevant time, in dispute between Network Rail and the Franchisee pursuant to the Track Access Agreement;

“Dispute Resolution Rules” means the procedures for the resolution of disputes known as “The Railway Industry Dispute Resolution Rules”, as amended from time to time in accordance with the terms thereof;

“Disputes Secretary” means the person appointed as disputes secretary from time to time in accordance with the Dispute Resolution Rules;

“EA” means the Equality Act 2010;

“EA Claim” has the meaning given to it in paragraph 3.1 of Schedule 4 (Persons with Disabilities and Disability Discrimination);

“EA Requirements” means the duties of a provider of services under Sections 20(3), 20(5) and Sections 20(9)(a) and 20(9)(b) in relation to Section 20(4) of the EA;

“Emergency Events” has the meaning given to it in paragraph 1.2(e) of Schedule 10.4 (Force Majeure);

“EMV” means contactless payment cards that conform to the international standards issued by EMVCo (owned by American Express, Discover, JCB, MasterCard, UnionPay and Visa) which manages, maintains and enhances the EMV1 integrated circuit card specifications;

“Enforcement Plan of the Day” means the Plan of the Day excluding any:

- (a) additions to such Plan of the Day of any railway passenger service which are not included in the Timetable;
- (b) any omissions from such Plan of the Day of any Passenger Services

included in the Timetable; and/or

- (c) any rescheduling in such Plan of the Day of any Passenger Services from its scheduling in the Timetable,

in each case:

(i) as proposed by the Franchisee in breach of its obligations in paragraph 4 of Schedule 1.2 (Operating Obligations); or

(ii) as agreed by the Franchisee in breach of its obligations in paragraph 3 of Schedule 1.2 (Operating Obligations);

“Enhanced Compensation” means (at the passenger’s choice) either two free journeys anywhere on the Franchise valid for not less than 12 months or national rail travel vouchers to the value of a Single Fare for a journey between the Stations for which the relevant passenger’s Season Ticket Fare is valid;

“Environmental Data Implementation Plan” has the meaning given in paragraph 19.1(c) of Schedule 13 (Information and Industry Initiatives);

“Environmental Information Regulations” means the Environmental Information Regulations 2004;

“Equivalent Fare” has the meaning given to it in paragraph 6.1 of Schedule 5.7 (Changes to Fares and Fares Regulation);

“Equivalent Flow” has the meaning given to it in paragraph 6.1(b) of Schedule 5.7 (Changes to Fares and Fares Regulation);

“ERTMS” means the European Rail Traffic Management System;

“ERTMS Enabled Network” has the meaning given to such term in paragraph 6.1(a)(iv) of Schedule 6.2 (TSGN Franchise Specific Provisions);

“ERTMS Programme” means the implementation of ERTMS on the routes specified in the Proposed ERTMS Implementation Plan;

“Escrow Documents” has the meaning given to it in paragraphs 1.1 of Schedule 9.2 (Identity of the Financial Model etc.);

“Estimated Profit Stream”

means estimated total operating profit of the Franchisee from the date that the Change of Control (pursuant to paragraph 2.3 of Schedule 10.3 (Events of Default and Termination Sum) is to occur until the Expiry Date as reasonably determined by the Secretary of State. In reasonably determining the Estimated Profit Stream the Secretary of State shall:

- (a) take into account all relevant circumstances and have due regard to the Financial Model, the profit and loss forecast in the Initial Business Plan and the most recent Business Plan and the assumptions in the Record of Assumptions;
- (b) use the accounting policies and standards set out in the Record of Assumptions and applied through the Financial Model;
- (c) estimate profit:
 - (i) before taking into account:
 - (A) interest, finance income and finance charges (other than finance items recognised in respect of retirement benefits) and dividends and other distributions of profit;
 - (B) any taxation on profits including corporation tax;
 - (C) shares of the profit of any Affiliate of the Franchisee, except dividends received in cash;
 - (D) non cash entries in respect of the Franchise Sections and any other pension schemes to the extent connected with the Franchise, excluding accruals

or prepayments of any normal pension contributions due; and

(ii) after taking into account:

(A) Franchise Payments;

(B) all extraordinary and exceptional items, as defined under GAAP;

(C) the Franchisee's normal pension contributions in relation to the Franchisee Sections and any other pension schemes to the extent connected with the Franchise;

(D) any payments to Affiliates of the Franchisee (including management fees and royalty fees) except to the extent that such payments exceed the amount determined in accordance with the formula set out in paragraph (a)(v) of the definition of "Relevant Profit" in paragraph 7 of Schedule 8.1 (Franchise Payments); and

(E) any sums capitalised in relation to maintenance expenditure on rolling stock or other capital equipment; and

- (d) calculate amounts in real terms as at the date of the Change of Control and apply the prevailing discount rate per annum (in real terms) stated in HM Treasury's "Green Book Appraisal Guidelines" (such rate being as at the date of the Franchise Agreement 3.5 per cent. per annum (in real terms));

"Estimated Revisions"

has the meaning given to it in paragraph 9 of Schedule 9.1 (Financial and Other Consequences of Change);

"Evening Peak"

means, in relation to any Passenger Service, 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;

"Event of Default"

means any of the events set out in paragraph 2 of Schedule 10.3 (Events of Default and Termination Events);

"Excluded Data"

has the meaning given in paragraph 19.1(a) of Schedule 13 (Information and Industry Initiatives);

"Expiry Date"

means the later of

- (a) 01:59 on 19 September 2021; or
- (b) the time and date to which the Franchise Agreement is continued in accordance with paragraph 1.2 of Schedule 18 (Additional Reporting Periods);

"Facilitation Fee"

has the meaning given to it in paragraph 4.2 of Schedule 10.3 (Events of Default and Termination Events);

"Facility Owner"

has the meaning given to the term facility owner in Section 17(6) of the Act;

"Fare"

means:

- (a) the right, exercisable against one or more Train Operators, subject to any applicable rights or restrictions and the payment of the relevant price, to make one or more journeys on the network or to carry on such a journey an item of luggage or an animal (where this right does not arise under the relevant conditions of carriage except on the payment of a fee) and, where

applicable, to obtain goods or services from a person; and

- (b) for the purposes only of Schedules 5.3 (Allocation of Fares to Fares Baskets) to 5.8 (Fares Regulation Information and Monitoring) (inclusive) and the definitions of Commuter Fare, Protected Fare, Return Fare, Single Fare, Protected Weekly Season Ticket, Protected Return Fare and paragraph (b) of the definition of Season Ticket Fare, a Fare as defined under paragraph (a) that is:
- (i) valid for a journey or journeys on the Passenger Services included in the Timetable or other railway passenger services which are required to be included in another relevant Train Operator's passenger timetable by the Secretary of State;
 - (ii) sold under the Travelcard Agreement;
 - (iii) a Cross London Ticket (as defined in the Through Ticketing (Non Travelcard) Agreement); or
 - (iv) sold under the Pay As You Go Agreement utilising TTL Smartmedia as defined in that agreement;

"Fare Year"

means the period from 1 January in any year to 31 December in the same year;

"Fares Basket"

means either the Commuter Fares Basket or the Protected Fares Basket;

"Fares Document"

means any of the Commuter Fares Document and the Protected Fares Document;

"Fares Setting Round"

has the meaning given to it in the Ticketing and Settlement Agreement;

"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 05281077) 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 (including where the successor operator is the current FCC Franchisee appointed under a new franchise agreement) provided that where all or part of any such franchise services are transferred to the Franchisee then the Franchisee shall not be a successor operator for the purposes of this definition;

"Financial Action Plan"

means any action plan produced by the Franchisee pursuant to paragraph 3.3(f) of Schedule 13 (Information and Industry Initiatives), where the level of its financial performance specified in the Management Accounts is worse than forecast by the Franchisee in its current Business Plan;

"Financial Conduct Authority"

means the UK Financial Conduct Authority with company registered number 01920623 or such other regulatory body which may succeed or replace it from time to time;

"Financial Model"

means the Franchisee's financial model in the agreed terms marked **FM** deposited with the Secretary of State on the date of the Franchise Agreement in accordance with Schedule 9.2 (Identity of the Financial Model etc.) as may be subsequently revised in accordance with Schedule 9.2 (Identity of the Financial Model etc.);

"First Profit Share Threshold"

has the meaning given to it in paragraph 7 of Schedule 8.1 (Franchise Payments);

"Flow"

has the meaning given to it in the Ticketing and Settlement Agreement;

"Force Majeure Event"

means any of the events described as such in paragraph 1 of Schedule 10.4 (Force Majeure) where the conditions specified in paragraph 2 of Schedule 10.4 (Force Majeure) are satisfied;

"Forecast Modified Revenue"

means, in relation to any Reporting Period, the items specified in the definition of Modified Revenue, as most recently forecast for that Reporting Period pursuant to paragraph 3.3 of Schedule 13 (Information and Industry Initiatives);

"Forecast Operating Costs"

means, in relation to any Reporting Period, the items specified in the definition of Actual Operating Costs, as most recently forecast for that Reporting Period pursuant to paragraph

3.3 of Schedule 13 (Information and Industry Initiatives);

"Forecast Passenger Demand"

means the forecast by the Franchisee prepared pursuant to paragraph 5.2 of Schedule 1.1 (Service Development) of:

- (a) the number of passengers travelling in each class of accommodation:
 - (i) on each Passenger Service;
 - (ii) on each Route; and/or
 - (iii) at any station or between any stations; and
- (b) the times of day, week or year at which passengers travel,

for the period in respect of which the next Timetable is to apply;

"Franchise"

means the rights tendered by the Secretary of State in September 2013 to operate railway passenger services over the routes prescribed in paragraph 2.2 of Schedule 1.6 (Franchise Services);

"Franchise Agreement"

means this Agreement and the Conditions Precedent Agreement which together constitute a single agreement and is a "franchise agreement" for the purposes of the Act;

"Franchise Assets"

means the property, rights and liabilities designated as such pursuant to paragraph 1 of Schedule 14.4 (Designation of Franchise Assets) but excluding such property, rights or liabilities as shall, in accordance with the terms of the Franchise Agreement, cease to be so designated;

"Franchise Documents"

means:

- (a) the Franchise Agreement, Funding Deed, Conditions Precedent Agreement and any other agreements signed as part of the award of the Franchise; and
- (b) any agreement entered into or provided to the Secretary of State in accordance with the Conditions Precedent Agreement;

"Franchise Employee"

means:

- (a) any employee of the Franchisee from time to time; and
- (b) any other person who is an employee of any of its Affiliates or is an employee of any party to whom the Franchise Services or services which are in support of or ancillary to the Franchise Services have been subcontracted (at any tier) or delegated by the Franchisee; and
- (c) in the case of (a) or (b), whose contract of employment would (subject to the exercise of such person's right to object to the transfer) be transferred to a Successor Operator following the expiry of the Franchise Period by virtue of the operation of Law (including the Transfer of Undertakings (Protection of Employment) Regulations 2006) or in respect of whom liabilities arising from a contract of employment or employment relationship may be so transferred;

"Franchise Letting Process Agreement"

means the agreement so entitled dated [●]³ between the Secretary of State and the Franchisee entered into by the Franchisee as part of its proposal to secure the provision and operation of the Franchise Services;

"Franchise Manager"

means a person appointed from time to time by the Secretary of State to fulfil certain duties including to manage the Franchise Agreement on behalf of the Secretary of State and to monitor the Franchisee's performance of its obligations under the Franchise Agreement;

"Franchise Payment"

means, in relation to any Reporting Period, the amount determined in accordance with paragraph 1.1 of Schedule 8.1 (Franchise Payments);

"Franchise Performance Meeting"

means a meeting between the Secretary of State and the Franchisee to be held in accordance with paragraph 4 of Schedule 11 (Agreement Management Provisions);

"Franchise Period"

means the period commencing on the Start Date and ending on the Expiry Date or, if earlier, the date of termination of the Franchise

³ Bidder to populate.

Agreement pursuant to Clauses 4.2(b) or 4.3(b) of the Conditions Precedent Agreement or Schedule 10 (Remedies, Termination and Expiry);

“Franchise Sections”

has the meaning given to it in paragraph 1 of Schedule 16 (Pensions);

“Franchise Services”

means such of the Passenger Services, the Light Maintenance Services, the Station Services and the Ancillary Services as the Franchisee may provide or operate from time to time, including any of such services as the Franchisee may delegate or subcontract or otherwise secure through any other person from time to time in accordance with the Franchise Agreement;

“Franchise Term”

means the period commencing on the Start Date and expiring on the Expiry Date;

“Franchisee Access Station”

means any station at which the Passenger Services call (other than any Station);

“Franchisee Accounting Year”

means any period of 12 months during the Franchise Period, beginning on [*insert day and month*]⁴ and ending on [*insert day and month*]⁵, except that the first and last Franchisee Accounting Years may be for a period of less than 12 months and the first Franchisee Accounting Year shall begin on the Start Date and the last Franchisee Accounting Year shall end on the last day of the Franchise Period;

“Franchisee Year”

means any period of 12 months during the Franchise Period, beginning on 1 April and ending on 31 March, except that the first and last Franchisee Years may be for a period of less than 12 months and the first Franchisee Year shall begin on the Start Date and the last Franchisee Year shall end on the last day of the Franchise Period;

“Freedom of Information Act”

means the Freedom of Information Act 2000;

“Funding Deed”

means the deed made between the Secretary for State, the Franchisee and the Parent dated the date of the Franchise Agreement specifying arrangements relating to the funding for the Franchisee by the Parent and giving rights to the Secretary of State in relation to such

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	funding;
"Further Electrostar Units"	means the three four car class 377/2 units as particularly described under the Further Electrostar Units Sub Lease;
"Further Electrostar Units Sub Lease"	a sublease for the Further Electrostar Units entered into between Southern Railway Limited and First Capital Connect Limited and dated 2 December 2011;
"FY Revenue Balancing Amount"	means an amount determined pursuant to paragraph 5 of Schedule 8.1(Franchise Payments);
"FY Revenue Balancing Date"	means: <ul style="list-style-type: none"> (a) in the case of an FY Revenue Balancing Amount determined pursuant to paragraph 5 of Schedule 8.1(Franchise Payments) the first Payment Date falling no less than seven days after that determination; or (b) in the case of any FY Revenue Balancing Amount falling due in respect of the final Franchisee Year and which has not been made during the Franchise Period, the date determined in accordance with paragraph 6 of Schedule 8.1(Franchise Payments);
"GAAP"	means generally accepted accounting principles in the United Kingdom, as derived from and including the accounting requirements of the Companies Act 2006, 'Statements of Standard Accounting Practice', 'Financial Reporting Standards', abstracts issued by the Urgent Issues Task Force of the Accounting Standards Board and, where appropriate, International Financial Reporting Standards and the listing rules of the Financial Conduct Authority, in each case, as at the date of the Franchise Agreement;
"Gross Revenue"	means, in relation to any period and any Fare, the gross revenue to the Franchisee (or any relevant predecessor of the Franchisee) attributable to such Fare over the relevant period, excluding any applicable Value Added Tax, costs, commissions or other expenses which may be paid or incurred in connection with such Fare;
"GSM-R"	means the Global System for Mobile

communications – Railways;

"Handover Package"	means a package containing the information and objects specified in the Appendix (Form of Handover Package) to Schedule 15.3 (Form of Handover Package) and such other information and objects as the Secretary of State may reasonably specify from time to time;
"HLOS Franchisee Operating Lease"	has the meaning given to such term in paragraph 4.7(a)(ii) of Schedule 6.4 (Integration of the Southern Franchise Services);
"HLOS Phase 2 Core Units"	means the 29 x 4 car units to be procured by the Southern Franchisee pursuant to the HLOS Phase 2 MSA;
"HLOS Phase 2 Financier"	has the meaning given to such term in paragraph 4.7(a) of Schedule 6.4 (Integration of the Southern Franchise Services);
"HLOS Phase 2 Financing Procurement Process"	has the meaning given to such term in paragraph 4.7(a) of Schedule 6.4 (Integration of the Southern Franchise Services);
"HLOS Phase 2 MSA"	means the manufacture and supply agreement dated 30 July 2013 and entered into by Bombardier Transportation UK Limited and Southern Railway Limited;
"HLOS Phase 2 MSA Associated Documents"	means: <ul style="list-style-type: none">(a) any escrow agreement entered into by the Southern Franchisee pursuant to clause 27 of the HLOS Phase 2 MSA in respect of the HLOS Phase 2 Core Units;(b) each guarantee in the form set out in Schedule 3 of the HLOS Phase 2 MSA granted by Bombardier Inc. in favour of the Southern Franchisee (either in its capacity as operator or as financier under the HLOS Phase 2 MSA) and any confirmation thereof by Bombardier Inc.; 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 Purchased Equipment"	means the HLOS Phase 2 Core Units and the HLOS Phase 2 Spares and Special Tools;
"HLOS Phase 2 Spares and	means the spares and special tools purchased

Special Tools"	by the Southern Franchisee pursuant to the HLOS Phase 2 MSA or the HLOS Phase 2 Spares Supply Agreement;
"HLOS Phase 2 Spares Supply Agreement"	means the spares supply agreement entered into on 30 July 2013 between the Southern Railway Limited and Bombardier Transportation UK Limited;
"HLOS Southern Operating Lease"	means the lease entered into between the relevant rolling stock provider and the Southern Franchisee as such lease is transferred to the Franchisee on or immediately prior to the Combined Effective Date pursuant to a novation under paragraph 4.5 of Schedule 6.4 (Integration of the Southern Franchise Services) or under the Combined Effective Date Transfer Scheme; and
"Hot Standby"	<p>means any rolling stock vehicle specified in the Train Plan which:</p> <ul style="list-style-type: none"> (a) is operationally ready to provide the Passenger Services in the Timetable; (b) is not already assigned to the delivery of any Passenger Service in the Timetable; and (c) will only be used to deliver such Passenger Services if: <ul style="list-style-type: none"> (i) a rolling stock vehicle scheduled to deliver such Passenger Services is unable to so deliver; and (ii) Actual Passenger Demand could only be met by the deployment in service of such rolling stock vehicle;
"Incremental Output Statement Charge"	means the charge to which that description is commonly given, first introduced into Relevant Agreements in April 2001;
"Independent PEM Audit"	has the meaning given to such term in paragraph 2.7 to Schedule 7.2 (PEM Regime);
"Independent Station Access Conditions"	has the meaning given to it in the Access Agreement to which it relates;
"Independent Station"	has the meaning given to it in paragraph 2.6 of Schedule 8.4 (Track Access Adjustments and Station Charge Adjustments);
"Individual Station Charge"	has the meaning given to it in paragraph 2 of

Adjustment"	Schedule 8.4 (Track Access Adjustments and Station Charge Adjustments);
"Industrial Action"	has the meaning given to it in paragraph 1.2(f) of Schedule 10.4 (Force Majeure);
"Industry Schemes"	has meaning given to it in paragraph 10 of Schedule 13 (Information and Industry Initiatives);
"Initial Business Plan"	means the business plan to be provided by the Franchisee to the Secretary of State as described in paragraph 2.1 of Schedule 13 (Information and Industry Initiatives);
"Initial Dataset"	has the meaning given in paragraph 19.1 of Schedule 13 (Information and Industry Initiatives);
"Initial Period"	has the meaning given to it in paragraph 7.5 of Schedule 9.1 (Financial and Other Consequences of Change);
"Initial Permanent Fare"	has the meaning given to it in the Ticketing and Settlement Agreement;
"Integrated Transport Schemes"	means those schemes which relate to the integration of any form of transport with the Franchise Services;
"Intellectual Property Rights"	means any patent, know-how, trade mark or name, service mark, design right (in each case whether registered or unregistered), copyright, rights in passing off, database right, rights in commercial or technical information, any other rights in any invention, discovery or process and any other intellectual property rights, whether registered or unregistered and including applications for the grant of any such rights and all rights or forms of protection having equivalent or similar effect in each case in the United Kingdom and anywhere else in the world;
"Interest Rate"	means a rate equivalent to two per cent. per annum above the base lending rate published by Royal Bank of Scotland plc (or such other bank as the Secretary of State may, after consultation with the Franchisee, determine from time to time) during any period in which an amount payable under the Franchise Agreement remains unpaid;
"Inter-Operator Schemes"	means: <ul style="list-style-type: none"> (a) each of the following schemes which relate to arrangements between the Franchisee and other participants in

the railway industry:

- (i) ATOC Staff Travel Scheme dated 23 July 1993 between the participants named therein;
- (ii) Ticketing and Settlement Agreement;
- (iii) ATOC LRT Scheme dated 23 July 1993 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) between London Regional transport and the parties named therein;
- (vi) National Rail Enquiry Scheme dated 11 June 1996 between the participants named therein; and
- (vii) the Pay As You Go Agreement; and

(b) any other scheme, agreement and/or contract of a similar or equivalent nature as may from time to time during the Franchise Period amend, replace or substitute, in whole or in part, any of such schemes, agreements and/or contracts; and

(c) any Discount Fare Scheme;

“Investment Asset”

means the Franchise Assets designated as such pursuant to paragraph 2.2 of Schedule 14.4 (Designation of Franchise Assets);

“Investment Asset Request Date”

means each anniversary of the Start Date provided that the final Investment Asset Request Date shall be the date 13 months prior to the end of the Franchise Term and there shall not be an Investment Asset Request Date on the anniversary of the Start Date where this would occur within 12 months of such final Investment Asset Request Date;

"Invitation to Tender"	means the Invitation to Tender issued by the Secretary of State in September 2013 as part of the procurement process pursuant to which the Franchise Agreement was entered into;
"IOP"	means ITSO on Prestige;
"IOP Agreement"	means an agreement between the Secretary of State and Transport for London for the acceptance of ITSO Certified Smartmedia;
"IOP London Products"	means ITSO products equivalent to products currently accepted, retailed or fulfilled under the Travelcard Agreement and the Through Ticketing (Non-Travelcard) Agreement;
"ITSO"	means (as they context may require) both: <ul style="list-style-type: none"> (a) the non profit distributing organisation run by its members for the benefit of members and users of smartcards, supported by the Department for Transport; and (b) the common specification it has created to enable the use of interoperable smartcards in transport and other areas;
"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 have been fully certified by ITSO;
"Joint Performance Improvement Plan"	has the meaning given to it in the Network Code;
"Key Contacts List"	means the list which contains the name, address, home, office and mobile telephone numbers, and a brief description of the person's role and responsibilities in the business in respect of all directors (statutory or otherwise) and the managers with responsibility for a department/function within the Franchisee's business (and in particular managers in the operations, commercial, personnel and public affairs departments (or in each case their nearest equivalents));
"Key Contract"	means: <ul style="list-style-type: none"> (a) each agreement and contract listed in the Appendix (List of Key Contracts) to Schedule 14.3 (Key Contracts) as at the date of the Franchise Agreement;

and

- (b) any other agreement, contract, licence or other arrangement to which the Franchisee is a party or under which the Franchisee is the beneficiary from time to time which is designated as such pursuant to Schedule 14.3 (Key Contracts),

but excluding any such agreement, contract, licence or other arrangement which ceases, in accordance with the terms of the Franchise Agreement, to be designated as a Key Contract;

“Key Personnel”

means those persons identified by the Franchisee in accordance with paragraph 2.1 of Schedule 11 (Agreement Management Provisions);

“Law”

includes any enactment, subordinate legislation, rule, regulation, order, directive or other provision, including those of the European Community, and any judicial or administrative interpretation or application thereof, which has, in each case, the force of law in the United Kingdom or any part of it (including the Act, the Transport Act, the Transport Safety Act 2003 and the Railways Act 2005);

“Lead Operator”

has the meaning given to it in the Ticketing and Settlement Agreement;

“Legislation”

means any enactment or subordinate legislation, rule, regulation, order, directive or other provision including those of the European Community, which has, in each case, the force of Law in the United Kingdom or any part of it, but excluding any order under Section 1 of the Transport and Works Act 1992;

“Licences”

means such licences and/or statements of national regulatory provisions granted or to be granted under applicable law as the Franchisee may be required from time to time to hold under the Act or under the Railway (Licensing of Railway Undertakings) Regulations 2005 in order to provide or operate the Franchise Services;

“Light Maintenance Service”

means any service specified in paragraph 4 of Schedule 1.6 (Franchise Services) which may be provided by the Franchisee at the Depots and Stations;

“Local Authority”

means:

- (a) in England, a county council, a district council, a unitary authority, a passenger transport executive, a London borough council, the common council of the City of London, or a council which is established under the Local Government Act 1992 and which is either an authority responsible for expenditure on public passenger transport services within the meaning of Section 88 of the Transport Act 1985 or a local authority for the purposes of Section 93 of the Transport Act 1985;
- (b) in Wales, a county council, a district council or a council which is established under the Local Government Act 1972 or the Local Government (Wales) Act 1994;
- (c) in Scotland, the Strathclyde Passenger Transport Executive, or a district council or a unitary authority which is established under the Local Government (Scotland) Act 1973 or the Local Government, etc. (Scotland) Act 1994;
- (d) in London, the Mayor of London and Transport for London established under the Greater London Authority Act 1999;
- (e) any other body or council replacing any of the above from time to time; and
- (f) any other body or instrument of local or regional government specified by the Secretary of State from time to time;

“Lock-up Period”

has the meaning given to it in paragraph 3.2 of Schedule 12 (Financial Obligations and Covenants);

“London Peak Station”

means any of the following stations at which the Passenger Services call:

- (a) Kensington (Olympia);
- (b) London Blackfriars;

- (c) London Bridge;
- (d) London Kings Cross;
- (e) London St Pancras International;
- (f) London Victoria; or
- (g) Moorgate;

“London Station”

means any station served by the Railway Passenger Services in the Zones and any Zone to or from which a passenger may travel from or to such station;

“LSER Franchisee”

means the franchisee under the franchise agreement dated 29 November 2005 (as amended from time to time) and made between the Secretary of State and London & South Eastern Railway Limited (Company Number 04860660) and where there are references to the successor operator to the LSER Franchisee that reference shall include any successor operator directly or indirectly of all or any part of the franchise services operated by the LSER Franchisee (including where the successor operator is the current LSER franchisee appointed under a new franchise agreement) provided that where all or part of any such franchise services are transferred to the Franchisee then the Franchisee shall not be a successor operator for the purposes of this definition;

“LSER Thameslink Trading Agreements ”

means each and all of the following agreements:

- (a) the operating hire agreement dated 20 March 2009 and entered into between First Capital Connect Limited and London & South Eastern Railway Limited in respect of certain Class 377 Units;
- (b) the operating hire agreement dated 14 July 2008 and entered into between First Capital Connect Limited and London & South Eastern Railway Limited in respect of certain Class 319 Units;
- (c) the train crew trading agreement dated 14 July 2008 and entered into between First Capital Connect Limited and London & South Eastern Railway Limited under which First Capital Connect Limited provides train crew to

London & South Eastern Railway Limited;

- (d) the train crew trading agreement dated 14 July 2008 and entered into between First Capital Connect Limited and London & South Eastern Railway Limited under which London & South Eastern Railway Limited provides train crew to First Capital Connect Limited;
- (e) a training agreement dated 23 December 2008 and entered into between First Capital Connect Limited and London & South Eastern Railway Limited under which First Capital Connect Limited provides driver training to the Franchisee on the Class 319 dual voltage traction,

in each case, as transferred to the Franchisee pursuant to the Start Date Transfer Scheme;

“Maintenance Contract”

means any contract or arrangement to which the Franchisee is a party, which includes the carrying out for the Franchisee of any maintenance work (including light maintenance services) or service provision in respect of rolling stock vehicles used by the Franchisee in the provision of the Passenger Services or for the enforcement of warranties or other rights against a manufacturer in respect of any such rolling stock vehicles;

“Major Flow Operator”

has the meaning given to it in the Ticketing and Settlement Agreement;

“Managed Station”

means:

- (a) with effect from the Start Date:
 - (i) London Bridge;
 - (ii) London King’s Cross; and
 - (iii) London St Pancras International (Low Level); and
- (b) in addition with effect from the Combined Effective Date:
 - (i) London Charing Cross; and
 - (ii) London Victoria,

or any other station used in connection with

the provision of the Franchise Services where Network Rail becomes the Facility Owner during the Franchise Period;

“Managed Station Area”

means the premises comprising part or parts of a Managed Station to be occupied by the Franchisee on or after the Start Date or the Combined Effective Date (as the case may be) and to be used for or in connection with the provision of the Franchise Services;

“Management Accounts”

means, in relation to any Reporting Period, the Franchisee's management accounts which:

- (a) comply with paragraph 3.10 of Schedule 13 (Information and Industry Initiatives); and
- (b) are required to be delivered to the Secretary of State by the Franchisee in accordance with paragraphs 3.2 and 3.3 of Schedule 13 (Information and Industry Initiatives);

“Mandatory Modification”

means a modification or addition to any rolling stock vehicle which is required to be made under any applicable Law or any directive of the Rail Safety and Standards Board or any government authority;

“Manufacturer”

has the meaning given to such term under the HLOS Phase 2 MSA;

“Marketing Plan”

means the marketing plan of the Franchisee in the agreed terms marked **MP** and which includes the Franchisee's planned activities and expenditure in respect of:

- (a) the advertising and promotion of the Passenger Services for the purposes of generating growth in revenue and passenger travel;
- (b) the building and promotion of its brand;
- (c) advertising and promotion of the benefits of the Thameslink Programme (including the advertising and promotion of the introduction and benefits of the new Class 700 rolling stock and the additional capacity and performance improvements that will be introduced as a result of the Thameslink Programme);
- (d) the provision of customer information,

publication of Customer Reports and public relations regarding the management of disruption and the timetable changes during the Thameslink Programme in a manner that is consistent with the relevant customer information and public relations outputs of Network Rail (and other relevant parties) and co-ordinated with it recognising that Network Rail has the lead role in matters relating to the Thameslink Programme; and

as such Marketing Plan is amended or revised in accordance with the provisions of paragraph 4 of Schedule 6.2 (TSGN Franchise Specific Provisions);

“Marks”

means such trademarks as the Franchisee may apply to any Primary Franchise Asset or other asset used by it under a Key Contract, which are applied on the expiry of the Franchise Period and are not the subject of a Brand Licence;

“MDCTA”

mean the Master Definitions and Common Terms Agreement entered into between the Secretary of State, Cross London Trains Limited (registered number 078130303) Siemens PLC (registered number 727817 and the FCC Franchisee and dated 27 June 2013;

“Minor Works”

has the meaning given to it in paragraph 2.7(a) of Schedule 4 (Persons with Disabilities and Disability Discrimination);

“Minor Works Budget”

means:

- (a) in respect of the period commencing from the Start Date until the end of the first Franchisee Year (being 31 March 2015) an amount determined as follows:

$$£300,000 \times \frac{n_1}{365}$$

where:

n_1 is the number of days from the Start Date until the end of the first Franchisee Year (being 31 March 2015);

- (b) in respect of the period commencing from the second Franchisee Year until

the end of that Franchisee Year (being 31 March 2016) an amount determined as follows:

$$£300,000 + \left(£300,000 \times \frac{n_2}{366}\right) \times RPI$$

where:

n_2 is the number of days from the Combined Effective Date until the end of the second Franchisee Year (being 31 March 2016); and

RPI has the meaning given to it in Schedule 8.2 (Annual Franchise Payments); and

(c) in respect of the period commencing from the third Franchisee Year until the end of the Franchise Period, £600,000 for each such Franchisee Year, save that:

(i) where the last Franchisee Year is shorter than 12 months, the amount shall be reduced pro rata; and

(ii) for each Franchisee Year in that period, the amount shall be subject to adjustment as follows:

$$£600,000 \times RPI$$

RPI has the meaning given to it in Schedule 8.2 (Annual Franchise Payments);

“Minor Works' Programme”

means the Franchisee's programme of Minor Works at Stations to improve accessibility of the Stations to persons with disabilities, developed prior to the start of each Franchisee Year pursuant to paragraph 2.7(b) of Schedule 4 (Persons with Disabilities and Disability Discrimination);

“Minutes Delay”

means the minutes of delay to the Passenger Services that are attributed to the Franchisee or Network Rail (as the case may be) pursuant to the Track Access Agreement and disregarding any minutes of delay that are imputed to Passenger Services that were cancelled;

“Model Changes”

has the meaning given in paragraph 4.3 of Schedule 9.1 (Financial and Other Consequences of Change);

“Modified Revenue”

means:

(a) the sum of:

(i) the Franchisee's total revenue for the period being reviewed as stated in its profit and loss account:

(A) including any amounts receivable from the Secretary of State or Network Rail, any Ancillary Revenue and any interest; but

(B) excluding the proportion of income recognised in the profit and loss account in relation to grants received in respect of capital expenditure; and

(ii) the opening cash balance for the period being reviewed plus any loans drawn down in that period, excluding:

(A) any cash held for the exclusive purpose of the provision of the Performance Bond;

(B) Revenue; and

(C) the amount equivalent to:

(1) any cash that is held pursuant to any restrictive terms under any agreement and that, consequently, cannot be used for general

operating purposes;

- (2) any cash capable of being drawn down but not actually received,

including, in both cases, under any loan or funding agreement or arrangements (including the Funding Deed) entered into with an Affiliate of the Franchisee; and

- (b) either:
- (i) plus any reduction in total debtors over that period; or
 - (ii) less any increase in total debtors over that period,

where total debtors exclude any bad debts provision or write off and any capital-related debtors;

"Monthly Season Ticket" means a Season Ticket Fare which is valid in Standard Class Accommodation from (and including) the day it first comes into effect until (but excluding) the day which falls one month after such day;

"Morning Peak" means, in relation to any Passenger Service, the period between 0700 and 0959 (inclusive) during a Weekday or such other continuous three hour period as the Secretary of State may specify from time to time;

"National Rail Enquiry Scheme" means the telephone information scheme run by ATOC, providing information to callers regarding rail journeys throughout the country;

"National Rail Timetable" means the passenger timetable published by Network Rail (currently twice per annum) specifying the timings and stopping patterns of all passenger railway services in Great Britain;

"network agreements" has the meaning given to it in paragraph 3.2 of the Appendix (Conditions Precedent) to the Conditions Precedent Agreement;

"Network Change" has the meaning given to it in the Network

Code;

“Network Code”

means the document known as the Network Code and formerly known as the Railtrack Track Access Conditions 1995 (as subsequently replaced or amended from time to time) or any equivalent code or agreement;

“Network Rail”

means in respect of:

- (a) the network or any relevant facility:
 - (i) Network Rail Infrastructure Limited, a company registered in England with registered number 02904587 whose registered office is at Kings Place, 90 York Way, London N1 9AG; and
 - (ii) any successor in title to the network or any relevant railway facility; or
- (b) any new or other sections of network or any relevant new or other railway facilities, the owner (if different);

“Network Rail Cancellation”

means a Passenger Service:

- (a) which is included in the Enforcement Plan of the Day and which is cancelled; or
- (b) which is included in the Enforcement Plan of the Day and which operates less than 50 per cent. of its scheduled mileage (as prescribed in the Enforcement Plan of the Day),

in either case in circumstances where responsibility for the same is attributed to Network Rail pursuant to the Track Access Agreement;

“Network Rail Partial Cancellation”

means a Passenger Service which is included in the Enforcement Plan of the Day and which:

- (a) misses a stop;
- (b) completes 50 per cent. or more, but less than 100 per cent. of its scheduled journey as prescribed in the Enforcement Plan of the Day; or
- (c) arrives at its final destination scheduled in the Enforcement Plan of

the Day more than 120 minutes late,

in circumstances where responsibility for the same is attributed to Network Rail pursuant to the Track Access Agreement;

“New Insurance Arrangements”

shall have the meaning given to it in paragraph 2.2(b) of Schedule 2.2 (Security of Access Agreements, Rolling Stock Leases, Station and Depot Leases);

“New Results”

means, in relation to any Change, the following as restated in accordance with Schedule 9.1 (Financial and Other Consequences of Change) following a Run of the Financial Model in relation to that Change: the restated values of “FXD”, “VCRPI”, “VCAWE”, “PRPI” and “ARRPI” to be specified for each Franchisee Year in the Appendix (Figures for Calculation of Annual Franchise Payments) to Schedule 8.2 (Annual Franchise Payments);

“New Station”

means:

- (a) a station not served by railway passenger services as at February 2003, but which has since that time been, or is subsequently, served by railway passenger services which have been, or are subsequently to be, included in the Timetable or in another relevant Train Operator's timetable; and/or
- (b) if the Secretary of State requires, a station, other than a Station, at which, with the consent of the Secretary of State (whether by amendment to the Franchise Agreement or otherwise) railway passenger services operated by the Franchisee call;

“No Breach Reporting Period”

has the meaning given to such term in paragraph 2.1(a) of Schedule 7.1 (Performance Benchmarks);

“Non-Fares Basket Fare”

means a Fare that is designated as such by the Secretary of State pursuant to paragraph 2.1 of Schedule 5.3 (Allocation of Fares to Fares Baskets) and which has not been de-designated as such pursuant to paragraph 1.1 of Schedule 5.7 (Changes to Fares and Fares Regulation);

“NPS Benchmarks”

mean any of the NPS Benchmark Level and NPS Floor Level;

"NPS Benchmark Level"	means, in relation to a Calculation Year, the benchmark relating to each NPS Indicator for that Calculation Year as set out in Column 2 of the table in Appendix 1 to Schedule 7.2 (PEM Regime);
"NPS Floor Level"	means, in relation to a Calculation Year the benchmark relating to each NPS Indicator for that Calculation Year as set out in Column 3 of the table in Appendix 1 to Schedule 7.2 (PEM Regime);
"NPS Indicator"	means each of the indicators set out in Column 1 of the table in Appendix 1 to Schedule 7.2 (PEM Regime);
"NPS Survey"	means a passenger satisfaction survey in respect of the Franchise Services to be carried out by Passengers' Council as described in paragraph 4 of Schedule 7.2 (PEM Regime);
"Off-Peak"	means, in relation to any Passenger Service, the period of time outside of the Peak;
"Off-Peak Passenger Services"	means Passenger Services other than Peak Passenger Services;
"Old Results"	means in relation to any Change, the following as produced in accordance with Schedule 9.1 (Financial and Other Consequences of Change) by or following the Run of the Financial Model in respect of the immediately preceding Change (or, in relation to the first Change only, the following as at the date hereof): the values of "FXD", "VCRPI", "VCAWE", "PRPI" and "ARRPI" to be specified for each Franchisee Year in the Appendix (Figures for Calculation of Annual Franchise Payments) to Schedule 8.2 (Annual Franchise Payments);
"Operating Assets"	has the meaning given to it in paragraph 1.1 of Schedule 14.2 (Maintenance of Operating Assets);
"Operational Model"	means the following models in the agreed terms marked OM : <ul style="list-style-type: none"> (a) the revenue model; (b) the performance model; (c) all cost models; and (d) any other relevant models that have generated input to the Financial Model;

"ORR"	means the Office of Rail Regulation established by Section 15 of the Railways and Transport Safety Act 2003 and having duties and obligations as set out in the Act;
"Outstanding Contract Price"	has the meaning given to such term in paragraph 4.6(a)(ii) of Schedule 6.4 (Integration of Southern Franchise Services);
"Parent"	means ⁶ <i>[insert details of the ultimate parent company of the Franchisee]</i> ;
"Partial Cancellation"	means a Passenger Service which is included in the Enforcement Plan of the Day and which Passenger Service: <ul style="list-style-type: none"> (a) misses a stop; (b) completes 50 per cent. or more, but less than 100 per cent. of its scheduled journey as prescribed in the Enforcement Plan of the Day; or (c) arrives at its final destination scheduled in the Enforcement Plan of the Day more than 120 minutes late, in each case, for reasons which are attributed to the Franchisee pursuant to its Track Access Agreement;
"Participating Employer"	has the meaning given to it in the Pension Trust;
"Pass Rate"	means: <ul style="list-style-type: none"> (a) in respect of a Reporting Period, the pass rate for each QuEST Service Schedule calculated in accordance with paragraph 3.1 of Schedule 7.2 (PEM Regime); and (b) in respect of a Calculation Year the pass rate for each QuEST Service Schedule calculated in accordance with paragraph 3.2 of Schedule 7.2 (PEM Regime);
"Passenger Carrying Capacity"	means, in relation to a Passenger Service: <ul style="list-style-type: none"> (a) the capacity of the rolling stock vehicles (as stated in Schedule 1.7 (The Train Fleet) or determined by the Secretary of State in accordance with paragraph 2.4 of Schedule 1.7 (The

⁶ Bidder to populate.

Train Fleet)) from which the Passenger Service is formed; or

- (b) for the purposes of Schedule 7.1 (Performance Benchmarks) only, the number of vehicles specified for such Passenger Service in the Train Plan;

“Passenger Change Date” means a date upon which significant changes may be made to the Timetable in accordance with or by virtue of the Network Code;

“Passenger Journey” means travel by a passenger from the station where such passenger joins the Passenger Services to the station where such passenger exits the Passenger Services as derived from ‘Lennon’ or such other industry systems as the Secretary of State may from time to time reasonably determine;

“Passenger Services” means the Franchisee's railway passenger services as specified in any Timetable and/or Plan of the Day including those railway passenger services which the Franchisee may delegate or subcontract or otherwise secure through any other person from time to time in accordance with the Franchise Agreement;

“Passenger's Charter” means:

- (a) for the period commencing from the Start Date until the Combined Effective Date, the Franchisee's service commitments to its passengers in the agreed terms marked **PC1**; and
- (b) for the period commencing from the Combined Effective Date until the end of the Franchise Period, the Franchisee's service commitments to its passengers in the agreed terms marked **PC2**,

as each such document is amended or replaced from time to time with the prior written consent of the Secretary of State in accordance with paragraph 4 of Schedule 1.4 (Passenger Facing Obligations);

“Passengers’ Council” means the passengers’ council established under Section 19 of the Railways Act 2005;

“Pay As You Go Agreement” means an agreement dated 16 October 2009 between Transport Trading Limited and train operators operating in London enabling joint ticketing and the acceptance of each other's tickets using smartmedia technology under the

name "Pay as You Go";

"PAYG Peak Fare"

means a Fare which is a Permanent Fare and which entitles the purchaser to make a single journey under the Pay As You Go Agreement in Standard Class Accommodation between and within the PAYG Zones for which the fare is valid, at any time;

"PAYG Off-Peak Fare"

means a Fare which is a Permanent Fare and which entitles the purchaser to make a single journey under the Pay As You Go Agreement in Standard Class Accommodation between and within the PAYG Zones for which the fare is valid, at any time on Saturdays and Sundays and at such times as the Franchisee may designate on Mondays to Fridays (where such Fare need not be valid between 6.30am and 9.30am or between 4.00pm and 7.00pm but must be valid at all other times) and which may take into account the different directions of travel;

"PAYG Zone"

shall have the same meaning as "Zone" with the addition of the following stations:

Rickmansworth;

Carpenders Park;

Chorleywood;

Chalfont and Latimer;

Amersham;

Bushey;

Watford Junction; and

Watford High Street;

"Payment Date"

means the date for the payment of Franchise Payments in accordance with paragraph 2.3 of Schedule 8.1 (Franchise Payments);

"Peak"

means the Morning Peak and the Evening Peak;

"Peak Passenger Service"

means any Passenger Service that:

- (a) arrives at a London Peak Station during the Morning Peak;
- (b) departs from a London Peak Station during the Evening Peak;

- (c) arrives at Brighton station during the Morning Peak from the London Road direction or the Hove direction (excluding any Passenger Services that are scheduled to call only at Hove and Brighton stations); or
- (d) departs from Brighton station during the Evening Peak in the London Road direction or the Hove direction (excluding any Passenger Services that are scheduled to call only at Hove and Brighton stations),

provided that:

- (i) a Passenger Service falling within sub paragraph (a) above that arrives at more than one London Peak Station during the Morning Peak will not be regarded as a Peak Passenger Service if its first call at a London Peak Station is before the start of the Morning Peak; and
- (ii) a Passenger Service falling within sub paragraph (b) above that departs from more than one London Peak Station during the Evening Peak will not be regarded as a Peak Passenger Service if its last departure from a London Peak Station is after the end of the Evening Peak,

and (subject to the above) so that a Peak Passenger Service arriving at more than one London Peak Station in the Morning Peak or departing from more than one London Peak Station in the Evening Peak shall only be counted as a single Peak Passenger Service;

“Peak Short Formation Benchmark”

means any of the performance levels in respect of the capacity operated in delivering the Peak Passenger Services as set out in the Peak Short Formation Benchmark Table;

“Peak Short Formation Benchmark Table”

means the table set out in Part 1 of Appendix 2 (Peak Short Formation Benchmark Table) of

	Schedule 7.1 (Performance Benchmarks);
"PEM"	has the meaning given to it in paragraph 5 of Schedule 7.2 (PEM Regime);
"PEM Benchmarks"	mean any of the PEM Benchmark Level, PEM Ceiling Level and PEM Floor Level;
"PEM Benchmark Level "	means, in relation to each Calculation Year, the performance level specified as such for that Calculation Year in the first row of the table in Appendix 3 of Schedule 7.2 (PEM Regime);
"PEM Ceiling Level "	means, in relation to each Calculation Year, the performance level specified as such for that Calculation Year in the third row of the table in Appendix 3 of Schedule 7.2 (PEM Regime);
"PEM Floor Level"	means, in relation to each Calculation Year, the performance level specified as such for that Calculation Year in the second row of the table in Appendix 3 of Schedule 7.2 (PEM Regime);
"PEM Payment"	means any payment payable by the Secretary of State to the Franchisee or the Franchisee to the Secretary of State as such payment is calculated pursuant to paragraph 5 of Schedule 7.2 (PEM Regime);
"Penalty Fare"	means the imposition of a penalty upon any person making a journey on the Passenger Services without a ticket which is valid for such journey;
"Penalty Fares Scheme"	means the schemes contained in the document in the agreed form marked " PFS ";
"Pension Trust"	means the pension trust governing the Railways Pension Scheme;
"Pensions Committee"	has the meaning given to it in the Railways Pension Scheme;
"Percentage Allocation"	has the meaning given to such term under the Ticketing and Settlement Agreement;
"Performance Bond"	means the performance bond to be provided to the Secretary of State in the form set out in Appendix 1 (Form of Performance Bond) to Schedule 12 (Financial Obligations and Covenants), as replaced or amended from time to time in accordance with Schedule 12 (Financial Obligations and Covenants);
"Performance Calculation Year"	means: <ul style="list-style-type: none"> (a) the period of 13 Reporting Periods

starting on the Start Date (that day inclusive); or

- (b) each subsequent and non-overlapping period of 13 Reporting Periods during the Franchise Period commencing the day after the last day of the preceding Performance Calculation Year,

provided that the last such period may be shorter than 13 Reporting Periods and shall end on the last day of the Franchise Period;

“Performance Sum Adjustment Date”

means:

- (c) in the case of each Cancellations Performance Sum, TOC Minute Delay Performance Sum or Short Formation Performance Sum determined pursuant to paragraphs 3.2, 3.3 or 3.4 (respectively) of Schedule 7.1 (Performance Benchmarks), the first Payment Date falling no less than seven days after that determination; or

- (d) in the case of a Cancellations Performance Sum, TOC Minute Delay Performance Sum or Short Formation Performance Sum falling due in respect of the final Franchisee Year and which has not been made during the Franchisee Period the date determined in accordance with paragraph 3.6 of Schedule 7.1 (Performance Benchmarks);

“Period of Sustained Poor Performance”

means any Reporting Period during which passengers are entitled to claim compensation under the Passenger’s Charter following a delay to their journey of more than 30 minutes in respect of more than 12 days;

“Permanent Fare”

has the meaning given to it in the Ticketing and Settlement Agreement;

“Permitted Aggregate Increase”

has the meaning given to it in paragraph 4.2 of Schedule 5.4 (Regulation of Fares Basket Values);

“Permitted Individual Increase”

has the meaning given to it in paragraph 2.2 of Schedule 5.5 (Regulation of Individual Fares);

“Personal Data”

has the same meaning as in the Data Protection Act and includes Sensitive Personal Data as defined therein;

“Personal Data Legislation” has the meaning given to it in paragraph 5 of Schedule 1.5 (Information about Passengers);

“Placed in Escrow” means:

- (a) in respect of the Financial Model, delivery of the Financial Model:
 - (i) dated the date of the Franchise Agreement; and
 - (ii) adjusted to the extent necessary to reflect any time elapsed between the actual Start Date or actual Combined Effective Date (as appropriate) and the date assumed to be the Start Date or the Combined Effective Date in the Initial Business Plan; and
 - (iii) where Schedules 9.1 (Financial and Other Consequences of Change) and 9.2 (Identity of Financial Model etc.) apply, audited following a Run of the Financial Model and updated with any Revised Inputs; and
- (b) in respect of the Operational Model, delivery of:
 - (i) the Operational Model dated the date of the Franchise Agreement;
 - (ii) the Operational Model adjusted to the extent necessary to reflect any time elapsed between the actual Start Date or the actual Combined Effective Date (as appropriate) and the date assumed to be the Start Date or the Combined Effective Date (as appropriate) in the Initial Business Plan; and
 - (iii) where Schedules 9.1 (Financial and Other Consequences of Change) and 9.2 (Identity of Financial Model etc.) apply, the inputs to the Financial Model

derived therefrom following an audit of a Run of the Financial Model; and

(c) in respect of the Record of Assumptions, delivery thereof,

each in accordance with Schedule 9.2 (Identity of the Financial Model etc.);

“Plan of the Day”

means, in relation to each day during the Franchise Term, the Passenger Services scheduled to be operated on that day through specification in the Timetable or as notified to the Franchisee by Network Rail from time to time prior to 2200 on the previous day;

“Power of Attorney”

means the power of attorney granted by the Franchisee in favour of the Secretary of State in the agreed terms marked **POA**;

“PR2013”

means the 2013 periodic review carried out by the ORR in respect of the period 1 April 2014 to 31 March 2019;

“Preceding 13 Reporting Periods”

has the meaning given to it in paragraph 2.1(c) of Schedule 12 (Financial Obligations and Covenants);

“Preceding Year Ticket Price”

has the meaning given to it in paragraph 2.1 of Schedule 5.5 (Regulation of Individual Fares);

“Previous Franchise Agreement”

means:

(a) any franchise agreement under which services equivalent to the TGN Franchise Services (or a material proportion thereof) were provided by a Train Operator on or about the day prior to the Start Date; and/or

(b) any franchise agreement under which services equivalent to the Southern Franchise Services (or a material proportion thereof) were provided by a Train Operator on or about the day prior to the Combined Effective Date;

“Price”

means, in respect of any Fare, the price of such Fare before the deduction of any applicable discount to which a purchaser may be entitled, as notified to RSP in accordance with Schedule 5 to the Ticketing and Settlement Agreement;

“Primary Franchise Assets”

means:

- (a) the property, rights and liabilities of the Franchisee listed in the Appendix (List of Primary Franchise Assets) to Schedule 14.4 (Designation of Franchise Assets); and
- (b) any other property, rights and liabilities of the Franchisee which is or are designated as such pursuant to Schedule 14.4 (Designation of Franchise Assets),

but excluding such property, rights or liabilities as may, in accordance with the terms of the Franchise Agreement, cease to be so designated;

“Prior Train Operator” has the meaning given to it in paragraph 2.5 of Schedule 2.2 (Security of Access Agreements, Rolling Stock Leases, Station and Depot Leases);

“Process” has the same meaning as in the Data Protection Act 1998;

“profit” means profit before corporation tax, determined in accordance with GAAP;

“Projected Revenue” means the revenue in any Fare Year which is projected to be attributable to any Fare, determined in accordance with paragraph 3 of Schedule 5.4 (Regulation of Fares Basket Values);

“Property Lease” means any Depot Lease, any lease in respect of a Managed Station Area, any lease in respect of Shared Facilities or Station Lease and any agreement or lease of a similar or equivalent nature (whether in respect of any such facility or otherwise) which the Franchisee may enter into with a person who has an interest in a network or a railway facility which is to be used for or in connection with the provision or operation of the Franchise Services;

“Proposed ERTMS Implementation Plan” means Network Rail’s plans for the implementation of the ERTMS Programme as more particularly described in the document in agreed terms marked **ERTMSP**;

“Protected Employees” has the meaning given to it in the Railways Pension (Protection and Designation of Schemes) Order 1994;

“Protected Fare” means a Protected Return Fare or a Protected

Weekly Season Ticket;

“Protected Fares Basket”

means the grouping of Protected Fares:

- (a) determined by the Secretary of State pursuant to Schedule 5.3 (Allocation of Fares to Fares Baskets);
- (b) for the purposes of regulating their aggregate Prices or Child Prices, as the case may be, in accordance with Schedule 5.4 (Regulation of Fares Basket Values);
- (c) amended by the Secretary of State from time to time in accordance with Schedule 5.7 (Changes to Fares and Fares Regulation); and
- (d) set out in the Protected Fares Document;

“Protected Fares Document” means:

- (a) for the period commencing from the Start Date until the Combined Effective Date, the document in the agreed terms marked **PFD1**; and
- (b) for the period commencing from the Combined Effective Date until the end of the Franchise Period, the document in the agreed terms marked **PFD2**,

in each case, as the same may be amended from time to time in accordance with Schedule 5.7 (Changes to Fares and Fares Regulation);

“Protected Proposal”

has the meaning given to it in paragraph 1.9 of Schedule 9.5 (Variations to the Franchise Agreement and Incentivising Beneficial Changes);

“Protected Return Fare”

means in respect of a Fare for a Flow:

- (a) for which there was a Saver Return Fare in February 2003, a Return Fare for each such Flow in respect of which the Franchisee is entitled or obliged from time to time to set the Price or Child Price under the Ticketing and Settlement Agreement, subject to the following additional rights and restrictions:
 - (i) it shall be valid for no less

than one month;

(ii) it shall be valid all day on a Saturday or Sunday and from no later than 1030 on any other day;

(iii) it need not be valid for any journey:

(A) beginning between 1500 and 1900 on any day other than a Saturday or Sunday;

(B) where such journey begins from a London Station or any station between any London Station and Reading station, Watford station, Luton station, or Stevenage station (inclusively); and

(C) which is in a direction away from London; or

(b) for which there was no Saver Return Fare in February 2003, a Return Fare for each such Flow in respect of which the Franchisee is entitled or obliged from time to time to set the Price or Child Price under the Ticketing and Settlement Agreement,

except in each case to the extent that a Return Fare for any such Flow is a Commuter Fare;

“Protected Weekly Season Ticket”

means a Weekly Season Ticket for any Flow for which there was a weekly season ticket in the fares manuals and systems of the RSP in February 2003 and in respect of which the Franchisee is entitled or obliged, from time to time, to set the Price or Child Price of under the Ticketing and Settlement Agreement except to the extent that a Weekly Season Ticket for any such Flow is a Commuter Fare;

“Public Sector Operator”

means any person (other than a franchisee or franchise operator in relation to the services provided or operated under its franchise

agreement) who provides railway passenger services or operates any station or light maintenance depot pursuant to or under Section 30 of the Act or Section 6 of the Railways Act 2005;

“Qualifying Change”

means a Change which:

- (a) following a Run of the Financial Model in accordance with Schedule 9 (Changes and Variations) results in adjustments in Franchise Payments over the remaining life of the Franchise Agreement that have a net present value as at the date of the Change in excess of the Threshold Amount for the Franchisee Year during which the relevant Change arises. For the purposes of ascertaining a net present value of the amount of any adjustment in any Franchise Payment, the amount of the adjustment shall be discounted at the prevailing discount rate per annum (in real terms) stated in HM Treasury’s “Green Book Appraisal Guidelines”, counting back from the date of receipt of that adjusted Franchise Payment to the date of the Change. As at the date of the Franchise Agreement that rate is 3.5%; or
- (b) the Franchise Agreement expressly provides shall be a Qualifying Change.

“Quarterly Season Ticket”

means a Season Ticket Fare which is valid in Standard Class Accommodation from (and including) the day it first comes into effect until (but excluding) the day which falls three months after such day;

“QuEST Benchmark”

mean any of the QuEST Benchmark Level and QuEST Floor Level;

“QuEST Benchmark Level”

means, in relation to each Calculation Year, the performance level for that Calculation Year as specified in the first row of the table in paragraph 2 of each QuEST Service Schedule;

“QuEST CCTV Services Inspection”

means an inspection of the QuEST CCTV Services in accordance with the requirements of Schedule 7.2 (PEM Regime);

“QuEST CCTV Services”

means the services and specification set out in the QuEST Service Schedules 19 and 30;

“QuEST Floor Level”

means, in relation to each Calculation Year, the

	performance level for that Calculation Year as specified in the third row of the table in paragraph 2 of each QuEST Service Schedule;
"QuEST Inspections"	has the meaning given to such term in paragraph 2.4 of Schedule 7.2 (PEM Regime);
"QuEST Register"	means the register of the facilities and services which exist at a Station or on a QuEST Train, which register is to be used for carrying out QuEST Inspections, Independent PEM Audits, SoS Audits or SoS Quest Inspections, as such register is required pursuant to paragraph 2.3 of Schedule 7.2 (PEM Regime);
"QuEST Service Schedules"	means each of the service schedules contained in the document in the agreed form marked "QuSS" ;
"QuEST Service Specification"	means the specification set out in paragraph 1 of a QuEST Service Schedule;
"QuEST Station Services Inspection"	means an inspection of the QuEST Station Services at a Station in accordance with the requirements of Schedule 7.2 (PEM Regime);
"QuEST Station Services"	means the services and specification set out in the QuEST Service Schedules 1 to 18;
"QuEST Train"	means a train engaged in the provision of Passenger Services;
"QuEST Train Services Inspection"	means an inspection of the QuEST Train Services on a vehicle comprised within a QuEST Train in accordance with the requirements of Schedule 7.2 (PEM Regime);
"QuEST Train Services"	means the services and specification set out in the QuEST Service Schedules 20 to 29;
"Railcards"	has the meaning given to it under the Ticketing and Settlement Agreement;
"Rail Products"	has the meaning given to such term under the Ticketing and Settlement Agreement;
"Rail Safety and Standards Board"	means Rail Safety and Standards Board Limited a company registered in England with registered number 04655675 whose registered office is at Block 2, Angel Square, 1 Torrens Street, London EC1V 1NY;
"Railway Group"	means the committee responsible for cross industry co-ordination in respect of rail safety legislation and industry safety standards chaired by the Rail Safety and Standards

	Board;
"Railway Group Standards"	has the meaning given to it in the Network Code;
"Railway Operational Code"	has the meaning given to it in Condition H of the Network Code;
"Railway Passenger Services"	means, for the purposes of Schedule 5 (Fares) only, services for the carriage of passengers by railway which are provided by a person who is bound by the Ticketing and Settlement Agreement, or any part of it, and including the Franchisee and any other Train Operator from time to time;
"Railways Pension Scheme"	means the pension scheme established by the Railways Pension Scheme Order 1994 (No. 1433);
"Reconciliation Amount"	has the meaning given to it in paragraph 9.9 of Schedule 9.1 (Financial and Other Consequences of Change);
"Record of Assumptions"	<p>means a document in the agreed terms marked ROA prepared by the Franchisee (and/or, where Schedule 9.1 (Financial and Other Consequences of Change) applies) applies, as may be revised in accordance with Schedule 9 (Changes and Variations)) and Placed in Escrow providing:</p> <ul style="list-style-type: none"> (a) detailed assumptions, explanations of assumptions and parameters underlying the Financial Model; (b) details of how Franchise Payments have been calculated (including by reference to a defined annual profit margin); (c) a description of the functionality, operation and structure of the Financial Model; and (d) a description of each input cell, its requirements and its inter-relationship with the Financial Model;
"Reference Fare"	has the meaning given to it in paragraph 6.1(a) of Schedule 5.7 (Changes to Fares and Fares Regulation);
"Reference Flow"	has the meaning given to it in paragraph 6.1(a) of Schedule 5.7 (Changes to Fares and Fares Regulation);

"Reference Revenue"	means the aggregate Gross Revenue recorded by RSP as attributable to sales of all Commuter Fares or Protected Fares for the period of 12 months which ended 31 March 2010 or such other reference period as the Secretary of State may require pursuant to paragraph 3.1(a) of Schedule 5.7 (Changes to Fares and Fares Regulation);
"Regulated Child Price"	means the Child Price that is permitted to be charged by the Franchisee in respect of any Fare in any Fare Year, determined in accordance with paragraph 2.1 of Schedule 5.5 (Regulation of Individual Fares);
"Regulated Price"	means the Price that is permitted to be charged by the Franchisee in respect of any Fare in any Fare Year, determined in accordance with paragraph 2.1 of Schedule 5.5 (Regulation of Individual Fares);
"Regulated Value"	means the Value of any Fares Basket that is permitted in any Fare Year, determined in accordance with paragraph 4.1 of Schedule 5.4 (Regulation of Fares Basket Values);
"Relevant Agreement"	<p>means any Property Lease or Access Agreement in relation to any stations or network which may be used from time to time by the Franchisee in connection with the Franchise Services, as replaced or amended from time to time. If and to the extent that:</p> <ul style="list-style-type: none"> (a) following the effective date of any Charge Variation, the Franchisee enters into any Replacement Agreement; (b) the effect of that Charge Variation is reflected in the terms of the Replacement Agreement; and (c) the Secretary of State has consented to such Replacement Agreement being entered into and constituting a Replacement Agreement for the purposes of this definition, <p>then the Replacement Agreement shall be deemed to be a Relevant Agreement;</p>
"Relevant Delay"	has the meaning given to it in paragraph 2.5 of Schedule 2.2 (Security of Access Agreements, Rolling Stock Leases, Station and Depot Leases);

"Relevant Profit"	has the meaning given to it in paragraph 7 of Schedule 8.1 (Franchise Payments);
"relevant Reporting Period"	has, for the purposes of paragraph 5.3 of Schedule 12 (Financial Obligations and Covenants) only, the meaning given to it in that paragraph;
"Relevant Rolling Stock"	has the meaning given to it in paragraph 2.5 of Schedule 2.2 (Security of Access Agreements, Rolling Stock Leases, Station and Depot Leases);
"Relevant Term"	has the meaning given to it in paragraph 1.2(a) of Schedule 10.1 (Remedial Plans and Remedial Agreements);
"Remedial Agreement"	has the meaning given to it in paragraph 1.5 of Schedule 10.1 (Remedial Plans and Remedial Agreements);
"Remedial Plan"	has the meaning given to it in paragraph 1.2(b) of Schedule 10.1 (Remedial Plans and Remedial Agreements);
"Remedial Plan Notice"	has the meaning given to it in paragraph 1.1 of Schedule 10.1 (Remedial Plans and Remedial Agreements);
"Replacement Agreement"	means an agreement entered into as a replacement for any Relevant Agreement;
"Replacement Copy"	has the meaning given to it in paragraph 2.2(b) of Schedule 9.2 (Identity of the Financial Model etc.);
"Reporting Period"	means: <ul style="list-style-type: none"> (a) for the purposes of the Season Ticket Bond, any consecutive seven-day period or any other period, each within a Reporting Period (as defined in paragraph (b)) agreed in accordance with paragraph 5.12 of Schedule 12 (Financial Obligations and Covenants); or (b) for all other purposes, a period of 28 days, provided that: <ul style="list-style-type: none"> (i) the first such period during the Franchise Period shall exclude any days up to but not including the Start Date; (ii) the first and last such period in any Reporting Year may

be varied by up to seven days by notice from the Secretary of State to the Franchisee;

(iii) each such period shall start on the day following the last day of the preceding such period; and

(iv) the last such period during the Franchise Period shall end at the end of the Franchise Period;

“Reporting Year”

means a period normally commencing on 1 April in each calendar year, comprising 13 consecutive Reporting Periods;

“Request for Information”

means a request for information or an apparent request under the Freedom of Information Act or the Environmental Information Regulations;

“Retail Prices Index”

means the retail prices index for the whole economy of the United Kingdom and for all items as published from time to time by the Office for National Statistics as “**RPI**” or, if such index shall cease to be published or there is, in the reasonable opinion of the Secretary of State, a material change in the basis of the index or if, at any relevant time, there is a delay in the publication of the index, such other retail prices index as the Secretary of State may, after consultation with the Franchisee, determine to be appropriate in the circumstances;

“Return Fare”

means a Fare which entitles the purchaser to make, without further restrictions as to the time of day for which the Fare is valid, a journey in each direction in Standard Class Accommodation between the stations and/or the zones for which such Fare is valid and which expires no earlier than 0200 on the day after the day of the outward journey or, if later, the time the relevant return journey may be completed if commenced before 0200;

“Revenue”

means all revenue other than Ancillary Revenue derived by the Franchisee from whatever source including from:

(a) the sale of tickets of any type for the carriage of passenger by railway (including revenue allocated to the Franchisee through the Ticketing and

Settlement Agreement or otherwise);

- (b) the sale of any Discount Cards or Railcards;
- (c) a Penalty Fare;
- (d) a concessionary scheme, multi-modal scheme or integrated transport scheme,

provided that:

- (i) Revenue shall exclude any amounts received from the Secretary of State under this Franchise Agreement; and
- (ii) any commission payable in respect of the sale of a Fare shall not be netted off against Revenue and shall be borne by the Franchisee as a cost relating to the operation of the Franchise; and
- (iii) any Delay Repay Compensation paid by the Franchisee shall not be classified as Revenue but shall be treated as an adjustment to Revenue as specified in paragraphs 4 and 5 of Schedule 8.1 (Franchise Payments);

"Review Date"

means:

- (a) 31 July 2014; or
- (b) such later date as may be notified to the Franchisee by the Secretary of State pursuant to clause 4.2 or clause 4.3 of the Conditions Precedent Agreement;

"Revised Inputs"

has the meaning given to it in paragraph 4.2 of Schedule 9.1 (Financial and Other Consequences of Change);

"Rolling Stock Lease"

means any agreement for the leasing of rolling stock vehicles to which the Franchisee is a party as at the Start Date or the Combined Effective Date (as the case may be) and any agreement of a similar or equivalent nature

(including, any agreement or arrangement for the subleasing, hiring, licensing or other use of rolling stock vehicles) to which the Franchisee is a party from time to time during the Franchise Term whether in addition to, or replacement or substitution for, in whole or in part, any such agreement;

“Rolling Stock Related Contract”

means any Rolling Stock Lease, Maintenance Contract or Technical Support Contract;

“Rolling Stock Unit”

means the smallest number of rolling stock vehicles which are normally comprised in a train used by the Franchisee in the provision of the Passenger Services;

“Route”

means any route specified in the Timetable over which the Franchisee has permission to operate the Passenger Services pursuant to any Track Access Agreement;

“Route Efficiency Benefit Share Mechanism” or “REBS”

means the route-level efficiency benefit sharing mechanism introduced by the ORR in its determination for the control period commencing on 1 April 2014 or any similar arrangement under which the benefits of any outperformance (or downsides of failure to achieve efficiency targets) are to be shared between Network Rail and train operators at route level;

“RP Revenue Balancing Amount”

means in relation to any Reporting Period the adjustment to Franchise Payments determined pursuant to paragraph 4 of Schedule 8.1(Franchise Payments);

“RP Revenue Balancing Date”

means:

- (a) in the case of an RP Revenue Balancing Amount as determined pursuant to paragraph 4 of Schedule 8.1 (Franchise Payments) the first Payment Date falling no less than seven days after each such determination; or
- (b) in the case of any RP Revenue Balancing Amount falling due in respect of the final Franchisee Year and which has not been made during the Franchise Period, the date determined in accordance with paragraph 6 of Schedule 8.1(Franchise Payments);

“RSP”

means Rail Settlement Plan Limited;

“Run of the Financial Model”	means an operation of the Financial Model with the Revised Inputs and which complies with the requirements of Schedule 9.1 (Financial and Other Consequences of Change);
“Safety Authorisation”	means the authorisation issued by the ORR under the Safety Regulations authorising the Franchisee’s safety management system (as defined in those regulations) and the provisions adopted by the Franchisee to meet the requirements that are necessary to ensure safe design, maintenance and operation of the relevant infrastructure on the Routes;
“Safety Certificate”	means the certificate issued by the ORR under the Safety Regulations, certifying its acceptance of the Franchisee’s safety management system (as defined in those regulations) and the provisions adopted by the Franchisee to meet the requirements that are necessary to ensure safe operation on the Routes;
“Safety Regulations”	means The Railways and Other Guided Transport Systems (Safety) Regulations 2006;
“Saver Return Fare”	means a return fare which is shown as a saver fare in the fares manuals and systems of the RSP as at the date of such manuals;
“Season Ticket Bond”	means the season ticket bond to be provided to the Secretary of State in respect of the Franchisee’s liabilities under certain Fares and Season Ticket Fares in the form set out in Appendix 2 (Form of the Season Ticket Bond) to Schedule 12 (Financial Obligations and Covenants) and such other bond as may replace it from time to time under Schedule 12 (Financial Obligations and Covenants);
“Season Ticket Fare”	means: <ul style="list-style-type: none"> (a) for the purposes of Schedule 12 (Financial Obligations and Covenants) and the definition of Season Ticket Bond only, a Fare which entitles the purchaser to make an unlimited number of journeys in any direction during the period for which, and between the stations and/or the zones for which, such Fare is valid; and (b) for all other purposes, a Fare which entitles the purchaser to make, without further restriction except as to class of accommodation, an unlimited number of journeys in any direction

during the period for which, and between the stations and/or the zones for which, such Fare is valid;

"Second Profit Share Threshold"	has the meaning given to it in paragraph 7 of Schedule 8.1 (Franchise Payments);
"Secretary of State Risk Assumptions"	means those assumptions set out in Schedule 9.3 (Secretary of State Risk Assumptions);
"Security Breach"	has the meaning given to it in paragraph 5.3(c)(i) of Schedule 1.5 (Information about Passengers);
"Security Interest"	means any mortgage, pledge, lien, hypothecation, security interest or other charge or encumbrance or any other agreement or arrangement having substantially the same economic effect;
"SEFT Programme"	means the programme for the roll out of smartcards in the South East of England including the procurement, installation and integration of certain equipment required for the purposes of facilitating the use of ITSO Certified Smartmedia in relation to the provision of the Franchise Services;
"SEFT Programme Board"	means the body established by the memorandum of understanding between the Secretary of State, ATOC and Transport for London to oversee and steer the roll out of smart cards in the South East of England;
"Service Group"	has the meaning given to it in the Passenger's Charter when used in relation to the Passenger's Charter, and when used in the Franchise Agreement it has the meaning given to it in the Track Access Agreement, or as specified by the Secretary of State from time to time;
"Service Recovery Plan"	means, in the event of a prevention or restriction of access to the track or a section of the track (howsoever caused) which results in any Cancellation, Partial Cancellation, and/or any Passenger Service being operated with less Passenger Carrying Capacity than the Passenger Carrying Capacity specified for such Passenger Service in the Train Plan, a plan implemented by the Franchisee: (a) to minimise the disruption arising from such prevention or restriction of access by operating, during such period of disruption, the best possible level of service given such disruption, including

by:

- (i) keeping service intervals to reasonable durations;
- (ii) keeping extended journey times to reasonable durations; and
- (iii) managing any resulting overcrowding;

(b) to:

- (i) return the level of service to that level specified in the Timetable as soon as reasonably practicable; and
- (ii) prior to the attainment of the level of service specified in paragraph (b)(i), operate any reduced level of service agreed with Network Rail for the purpose of minimising such disruption pursuant to paragraph (a);

(c) in accordance with the principles of service recovery set out in the ATOC "Approved Code of Practice: Contingency Planning for Train Service Recovery - Service Recovery 2009" or any document of a similar or equivalent nature; and

(d) where the particulars of such plan in relation to the requirements of paragraphs (a) and (b) have been:

- (i) agreed at an initial and, where required, subsequent telephone conference between the Franchisee, Network Rail and any other affected Train Operator; and
- (ii) on each occasion, recorded in an official control log by the relevant Region Control Manager of Network Rail,

and prevention or restriction of access to the track or a section of the track shall have the meaning given to that term in paragraph 1(a)(i) of Schedule 10.4 (Force Majeure);

“Settlement Proposal”	has the meaning given to it in paragraph 3.2 of Schedule 4 (Persons with Disabilities and Disability Discrimination);
“Shared Cost Arrangement”	has the meaning given to it in the Railways Pension Scheme;
“Shared Facilities”	means those facilities in respect of which the Franchisee and Network Rail carry out their respective activities concurrently;
“Short Formation Performance Sum”	means the amount of an adjustment to a Franchise Payment to be determined in accordance with paragraph 3.3 of Schedule 7.1 (Performance Benchmarks);
“Significant Alterations”	<p>shall, in relation to any proposed new or amended Timetable, include alterations from the then current Timetable which result in, or are likely to result in:</p> <ul style="list-style-type: none"> (a) the addition or removal of railway passenger services; (b) changes to stopping patterns or destinations or origin; (c) changes of timings for first/last trains by more than ten minutes; (d) changes to clockface (or near clockface) service patterns (meaning the provision of railway passenger services at a specified time or times relative to the hour); and/or (e) significant changes to journey times and/or key connections at the Station or at other stations at which relevant railway passenger services call;
“Single Fare”	means a Fare which entitles the purchaser to make, without further restrictions as to the time of day for which the Fare is valid, on any one day, one journey in Standard Class Accommodation between the stations and/or the zones for which the Fare is valid;
“Small and Medium-sized Enterprises (“SMEs”)	<p>means any individual micro, small or medium sized enterprise meeting the requirements set out in EU Recommendation 2003/36 and broadly falling into one of three categories, based on a combination of:</p> <ul style="list-style-type: none"> (a) the number of employees; and (b) either its turnover or its balance sheet

total.

The three categories are:

Company category	Employees	Turnover or	Balance sheet total
Medium	<250	≤ €50m	≤ €43m
Small	<50	≤ €10m	≤ €10m
Micro	<10	≤ €2m	≤ €2m

“SoS Audits”

has the meaning given to such term in paragraph 2.10 of Schedule 7.2 (PEM Regime);

“SoS Quest Inspections”

has the meaning given to such term in paragraph 2.17 of Schedule 7.2 (PEM Regime);

“Southern Franchise Services”

means such of the railway passenger services, station services, light maintenance services and ancillary services as provided from time by time by the Southern Franchisee (or any successor to the Southern Franchisee) immediately prior to the Combined Effective Date;

“Southern Franchisee”

means the franchisee under the franchise agreement dated 8 June 2009 (as amended from time to time) and made between the Secretary of State and Southern Railway Limited (Company Number 06574965) and where there are references to the successor operator to the Southern Franchisee that reference shall include any successor operator directly or indirectly of all or any part of the franchise services operated by the Southern Franchisee (including where the successor operator is the current Southern Franchisee appointed under a new franchise agreement) provided that where all or part of any such franchise services are transferred to the Franchisee then the Franchisee shall not be a successor operator for the purposes of this definition;

“Southern SEFT Deed”

has the meaning given to in paragraph 2.2 of Schedule 5.9 (ITSO Certified Smartmedia);

“Southern Services”

means such railway passenger services and station services as were provided or operated from time by time by the Southern Franchisee (or any successor to the Southern Franchisee) immediately prior to the Combined Effective Date;

“Southern Trading Agreements”

means each and all of the following agreements:

- (a) the sublease dated 8 March 2002 and entered into between Southern Railway Limited and First Capital Connect Limited in respect of the Class 377 Lot 10A units as subsequently amended to include the Additional Electrostar Units;
- (b) the sublease dated 5 March 2008 and entered into between Southern Railway Limited and First Capital Connect Limited in respect of the Class 377 Lot 10B units; and
- (c) the Further Electrostar Units Sub Lease,

in each case, as transferred to the Franchisee pursuant to the Start Date Transfer Scheme;

“South East Flexible Ticketing Programme”

means the government-funded scheme to introduce smart cards for passengers travelling by rail in the south east of England;

“Spares”

means parts and components of rolling stock vehicles which are available for the purpose of carrying out maintenance services on rolling stock vehicles;

“Specifically Included Change of Law”

has the meaning given to it in the definition of Change of Law;

“Specimen Scheme”

means the Committed Obligations set out in paragraphs [list]⁷ of Part 1 of Schedule 6.1 (Committed Obligations and Related Provisions);

“Specimen Scheme Output”

means, for each Specimen Scheme, the output intended to be achieved by that Specimen Scheme, as set out in the relevant paragraph of Part 1 (List of Committed Obligations) of Schedule 6.1 (Committed Obligations and Related Provisions);

“SPP Compensation Amounts”

has the meaning given to such term in paragraph 7.3(c) of Schedule 6.2 (TSGN Franchise Specific Provisions);

“Stakeholder”

means the Passengers’ Council and any relevant Local Authority and organisations who can reasonably be considered to have a legitimate and proper interest in the Passenger Services including Community Rail Partnerships representing Community Rail Routes

⁷ Bidder to populate.

designated as such by the Secretary of State;

“Standard Class Accommodation”

means, in respect of any train or service, accommodation which is available to the purchaser of any Fare which, taking into account any rights or restrictions relating to that Fare (other than restrictions relating to accommodation on that train or service), entitles such purchaser to make a journey on that train or service (provided that any accommodation on such train which may have been reserved by such purchaser shall be deemed to have been made so available if, had it not been so reserved, it would have been available for use by such purchaser);

“Start Date”

means the time and date stated in the Certificate of Commencement as being the time at and date on which the Franchisee is to commence operating the Franchise Services, which shall either be:

- (a) 0200 on 14 September 2014; or
- (b) such later time and date as may be notified to the Franchisee by the Secretary of State pursuant to Clause 4.2 or Clause 4.3 of the Conditions Precedent Agreement;

“Start Date Transfer Scheme”

has the meaning given to it in clause 5.1 of the Conditions Precedent Agreement;

“Station”

means:

- (a) any station in respect of which the Franchisee has entered into a Station Lease; or
- (b) any New Station at which the Franchisee becomes the Facility Owner;

“Station Access Conditions”

means the document entitled “National Station Access Conditions 1996 (England and Wales)”;

“Station Charge Adjustment”

means any adjustment to payments under an Access Agreement determined in accordance with paragraph 2 of Schedule 8.4 (Track Access Adjustments and Station Charge Adjustments);

“Station/Depot Change Compensation Amounts”

has the meaning given to such term in paragraph 6.4 of Schedule 2.2 (Security of Access Agreements, Rolling Stock Leases, Station and Depot Leases);

"Station Lease"	means:
	(a) any lease of a station that the Franchisee is a party to as at the Start Date or the Combined Effective Date (as the case may be); or
	(b) a lease of any other station to which the Franchisee becomes the Facility Owner at any time during the Franchise Period;
"Station Proposal for Change"	has the meaning given to the term "Proposal for Change" under the Station Access Conditions or any proposal or arrangement which, in the reasonable opinion of the Secretary of State, has a similar effect;
"Station Service"	means any service specified in paragraph 3 of Schedule 1.6 (Franchise Services) which may be provided by the Franchisee at the Stations;
"Station Sublease"	means a lease or sub lease of premises comprising part or parts of a Station exclusively occupied by another Train Operator;
"Stored Credit Balance"	means any monetary amount held by the Franchisee which a passenger can apply at a future date to the purchase of a Fare (and stored in any medium);
"Subsidiary Change Date"	has the meaning given to it in Part D of the Network Code;
"Suburban Station"	means any station which is not a London Station and which is listed below or which is closer to London than (and on the same line as) the following stations: Shoeburyness, Southend Victoria, Southminster, Marks Tey (excluding Sudbury branch), Audley End (but not including Stansted Airport), Ashwell & Morden, Arlesey, Harlington, Bletchley (excluding Bedford branch), Aylesbury, Haddenham & Thame Parkway, Twyford (including Henley branch), Earley, Fleet, Alton, Whitley, Christ's Hospital, Brighton (excluding Coastway), Windsor & Eton Riverside, East Grinstead, Crowborough, Wadhurst, Paddock Wood (including the line between Strood and Paddock Wood), Maidstone East, Canterbury East, Margate;
"Successor Operator"	means a Train Operator succeeding or intended by the Secretary of State to succeed (and whose identity is notified to the Franchisee by

the Secretary of State) the Franchisee in the provision or operation of all or any of the Franchise Services including, where the context so admits, the Franchisee where it is to continue to provide or operate the Franchise Services following termination of the Franchise Agreement;

“Successor Operator Timetable”

has the meaning given to it in paragraph 8(a) of Schedule 14.1 (Maintenance of Franchise);

“Supplemental Agreement”

means a supplemental agreement between the Franchisee and a Successor Operator to be entered into pursuant to a Transfer Scheme, being substantially in the form of Appendix 2 (Form of Supplemental Agreement) to Schedule 15.4 (Provisions Applying on and after Termination), but subject to such amendments as the Secretary of State may reasonably make thereto as a result of any change of circumstances (including any Change of Law) affecting such supplemental agreement between the date of the Franchise Agreement and the date on which the relevant Transfer Scheme is made and subject further to paragraph 3.2 of Schedule 15.4 (Provisions Applying on and after Termination);

“Target Passenger Demand”

means the higher of Actual Passenger Demand and Forecast Passenger Demand or any other level of passenger demand specified by the Secretary of State not being greater than the higher of Actual Passenger Demand or Forecast Passenger Demand;

“Target Performance Level”

means, in relation to a Benchmark for any Reporting Period, the number set out in column 3 of the Benchmark Table relating to that Benchmark and in the row of that table for that Reporting Period;

“Target Ticketless Travel Benchmark”

means, in relation to a Ticketless Travel Survey Period, the benchmark for that Performance Calculation Year as specified in column 2 of the table in Part 2 of the Appendix to Schedule 6.2 (TSGN Franchise Specific Provisions);

“Taxation”

means any kind of tax, duty, levy or other charge whether or not similar to any in force at the date of the Franchise Agreement and whether imposed by a local, governmental or other competent authority in the United Kingdom or elsewhere;

“Technical Support Contract”

means a contract for technical support to which the Franchisee is a party, relating to the rolling stock vehicles used in the provision of the

	Passenger Services;
"Tendering/Reletting Process"	has the meaning given to it in paragraph 2.1(b) of Schedule 15.1 (Reletting Provisions);
"Termination Event"	has the meaning given to it in paragraph 3 of Schedule 10.3 (Events of Default and Termination Events);
"Termination Notice"	means a notice from the Secretary of State to the Franchisee terminating the Franchise Agreement following an Event of Default or a Termination Event in accordance with Schedule 10.2 (Termination and Expiry);
"TGN Franchise Services"	TGN Franchise Services means such of the: <ul style="list-style-type: none"> (a) railway passenger services, station services, light maintenance services and ancillary services as provided from time by time by the FCC Franchisee (or any successor to the FCC Franchisee) immediately prior to the Start Date; and (b) railway passenger services and the Transfer Stations that are to transfer to the Franchisee from the LSER Franchisee on or around the Passenger Change Date occurring in December 2014;
"TGN SEFT Deed"	has the meaning given to it in paragraph 2.1 of Schedule 5.9 (ITSO Certified Smartmedia);
"TGN Services"	means the railway passenger services and station services comprised in the TGN Franchise Services;
"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 for the operation of up to 12-car trains and up to 24 trains per hour between Midland Mainline/Great Northern and London Bridge/Elephant & Castle or such other capacity derived from the specification as is agreed by the Secretary of State. Network Rail and all relevant stakeholders;
"Threshold Amount"	means, for any Franchisee Year, an amount, whether positive or negative, which is determined in accordance with the following formula:

$$TA = FAT \times RPI$$

where:

TA is the Threshold Amount for any Franchisee Year;

FAT is the amount for the relevant Franchisee Year specified in column 2 of the table in Schedule 9.4 (Component of FAT: Definition of Threshold Amount); and

RPI is ascertained as follows:

$$\frac{CRPI}{ORPI}$$

where:

CRPI means the Retail Prices Index published in the January immediately preceding the commencement of that Franchisee Year; and

ORPI means the Retail Prices Index for January 2014,

provided that, for the first Franchisee Year RPI shall be one;

“Through Ticketing (Non-Travelcard) Agreement”

means the agreement of that name referred to in paragraph (a)(v) of the definition of Inter-Operator Schemes;

“Ticketing and Settlement Agreement”

means the Ticketing and Settlement Agreement dated 23 July 1995 between RSP, the Franchisee and the other Train Operators named therein, as amended from time to time with the approval of the Secretary of State;

“Ticketless Travel Benchmark”

means any of the Target Ticketless Travel Benchmark or the Breach Ticketless Travel Benchmark;

“Ticketless Travel Payment Adjustment”

means a payment adjustment made to Franchise Payments as determined in accordance with paragraph 2.2 of Schedule 6.2 (TSGN Franchise Specific Provisions);

“Ticketless Travel Payment Adjustment Date”

means:

- (a) in the case of any Ticketless Travel Payment Adjustment determined pursuant to paragraph 2.2 of Schedule 6.2 (TSGN Franchise Specific Provisions), the first Payment Date

falling no less than seven days after the relevant determination; and

- (b) in the case of any Ticketless Travel Payment Adjustment falling due in respect of the final Performance Calculation Year and which has not been made during the Franchise Period, the date that is 30 days from the date on which the Secretary of State notifies the Franchisee of the amount of such Ticketless Travel Payment Adjustment;

“Ticketless Travel Rate”

means, for any Ticketless Travel Survey Period, that proportion (expressed as a percentage to three decimal places) of passengers estimated by the Ticketless Travel Survey for that Ticketless Travel Survey Period to be travelling on the Passenger Services without a valid ticket or other valid permission to travel;

“Ticketless Travel Survey”

means the survey carried out by or on behalf of the Secretary of State in each Ticketless Travel Survey Period to determine the Ticketless Travel Rate for such period;

“Ticketless Travel Survey Methodology”

means the document in the agreed terms marked **TISM**;

“Ticketless Travel Survey Period”

means such day or days as are determined by the Secretary of State falling within each of the following periods:

- (a) the first to the third Reporting Period (inclusive) to fall in any Performance Calculation Year;
- (b) the fourth to the sixth Reporting Period (inclusive) to fall in any Performance Calculation Year;
- (c) the seventh to the ninth Reporting Period (inclusive) to fall in any Performance Calculation Year; and
- (d) the tenth to the thirteenth Reporting Period (inclusive) to fall in any Performance Calculation Year;

“Timetable”

means the timetable which reflects the working timetable issued by Network Rail at the conclusion of its timetable development process, containing the departure and arrival times of:

- (a) all Passenger Services which call at

Stations and Franchisee Access Stations; and

- (b) principal Connections at those stations and other stations;

“Timetable Development Rights”

means all or any of the rights of the Franchisee under any Track Access Agreement to:

- (a) operate Passenger Services and ancillary movements by virtue of that Track Access Agreement;
- (b) deliver any required notification and/or declaration to Network Rail in respect of its intention to exercise any rights;
- (c) make or refrain from making any bids for Train Slots, in each case before any relevant priority dates provided for in, and in accordance with, the Network Code;
- (d) surrender any Train Slots allocated to the Franchisee by Network Rail in accordance with the Network Code;
- (e) object to, make representations, appeal or withhold consent in respect of any actual or proposed act or omission by Network Rail; and
- (f) seek from Network Rail additional benefits as a condition to granting any consent to any actual or proposed act or omission by Network Rail;

“Timetabling and Train Planning Compliance Investigation”

has the meaning set out in paragraph 2.1 of Schedule 1.2 (Operating Obligations);

“TLP Milestone Incentive Payment”

has the meaning given to such term in Schedule 6.3 (TLP/TRSP Related Provisions);

“TOC Minute Delay Benchmark”

means any of the performance levels in respect of Minutes Delay attributable to the Franchisee set out in the TOC Minute Delay Benchmark Table;

“TOC Minute Delay Benchmark Table”

means the table set out in Part 1 of Appendix 3 (TOC Minute Delay Benchmark Table) to Schedule 7.1 (Performance Benchmarks);

“TOC Minute Delay Performance Sum”

means the amount of an adjustment to a Franchise Payment to be determined in accordance with paragraph 3.4 of Schedule 7.1 (Performance Benchmarks);

“Total Actual Operating Costs”

means the sum of the Actual Operating Costs for the relevant Reporting Period and each of the 12 preceding Reporting Periods during the Franchise Term (or the sum of the Actual Operating Costs for the relevant Reporting Period and all of the Reporting Periods that have elapsed since the Start Date where insufficient Reporting Periods have elapsed to enable the former calculation to be made);

“Total Forecast Modified Revenue”

means the sum of the Forecast Modified Revenue for each of the 13 Reporting Periods following the relevant Reporting Period (or, where there are less than 13 Reporting Periods remaining in the Franchise Term, the remaining Reporting Periods);

“Total Forecast Operating Cost”

means the sum of the Forecast Operating Cost for each of the 13 Reporting Periods following the relevant Reporting Period (or, where there are less than 13 Reporting Periods remaining in the Franchise Term, the remaining Reporting Periods);

“Total Modified Revenue”

means the sum of the Modified Revenue for the relevant Reporting Period and each of the 12 preceding Reporting Periods during the Franchise Term (or the sum of the Modified Revenue for the relevant Reporting Period and all of the Reporting Periods that have elapsed since the Start Date where insufficient Reporting Periods have elapsed to enable the former calculation to be made);

“Track Access Adjustment”

means any adjustment to payments under a Track Access Agreement determined in accordance with paragraph 1 of Schedule 8.4 (Track Access Adjustments and Station Charge Adjustments);

“Track Access Agreement”

means each Access Agreement between Network Rail and the Franchisee which permits the Franchisee to provide the Passenger Services on track operated by Network Rail;

“Train Fleet”

means:

- (a) the rolling stock vehicles described in or required by Schedule 1.7 (The Train Fleet); and
- (b) any other rolling stock vehicles the Secretary of State consents to in accordance with paragraph 2 of Schedule 1.7 (The Train Fleet) from time to time;

“Train Mileage”	means, in relation to any period, the aggregate train mileage covered during such period by each train used in the provision of the Passenger Services (excluding, any train mileage covered as a result of positioning or other movements of rolling stock vehicles outside the Timetable) and “Train Miles” shall be construed accordingly;
“Train Operator”	means a franchisee or franchise operator, either of which operate railway passenger services pursuant to a franchise agreement or a Public Sector Operator;
“Train Plan”	means the plan and/or diagram of the Franchisee for the operation of trains and train formations under the Timetable set out in the document in the agreed terms marked TP and any other Train Plan developed in accordance with Schedule 1.1 (Service Development) except that when used in Schedule 7.1 (Performance Benchmarks), it shall have the meaning given to it in paragraph 2.14 of Schedule 7.1 (Performance Benchmarks);
“Train Service Requirement”	means the train service requirement more particularly described in paragraph 1 of Schedule 1.1 (Service Development) as such train service requirement may subsequently be amended or replaced in accordance with Schedule 1.1 (Service Development);
“Train Slots”	shall have the meaning given to it in the Network Code;
“Transfer Scheme”	means a transfer scheme made by the Secretary of State under Section 12 and Schedule 2 of the Railways Act 2005 (or equivalent statutory provision) pursuant to paragraph 3.1 of Schedule 15.4 (Provisions Applying on and after Termination), being substantially in the form of Appendix 1 (Form of Transfer Scheme) to Schedule 15.4, but subject to such amendments as the Secretary of State may make thereto as a result of any change of Law affecting such transfer scheme or other change of circumstances between the date of the Franchise Agreement and the date on which such scheme is made;
“Transfer Scheme Certificate”	has the meaning given to such term under the MDCTA;
“Transfer Stations”	has the meaning given to such term in paragraph 8.3(b) of Schedule 6.2 (TSGN Franchise Specific Provisions);

“Transport Act”	means the Transport Act 2000;
“Transport Direct”	means the website offering free information for door to door travel for both public transport and car journeys around Great Britain;
“Transport for London” or “TfL”	means Transport for London as established under the Greater London Authority Act 1999;
“Transport Trading Limited” or “TTL”	means Transport Trading Limited (registered number 03914810) a wholly owned subsidiary of Transport for London;
“Travelcard Agreement”	means the agreement of that name referred to in paragraph (a)(iv) of the definition of Inter-Operator Schemes;
“Traveline”	means the telephone enquiry service providing information on all public transport across the United Kingdom;
“TRSP Documents”	means: <ul style="list-style-type: none"> (a) the MDCTA; (b) the TRSP MSA (c) the Train Services Agreement between Siemens PLC (registered number 727817), the FCC Franchisee and Cross London Trains Limited (registered number 07813033); (d) the rolling stock Lease between Cross London Trains Limited (registered number 07813033) and the FCC Franchisee; (e) the DAFLs; (f) the Payment Deeds in respect of the ‘Three Bridges Depot’ and ‘Hornsey Depot’ between the Secretary of State, Siemens PLC (registered number 727817) and the FCC Franchisee; (g) the Deeds of Undertakings in respect of the ‘Three Bridges Depot’ and ‘Hornsey Depot’ between the Secretary of State, Siemens PLC (registered number 727817) and the FCC Franchisee; (h) the Connection Agreements in respect of the ‘Three Bridges Depot’ and ‘Hornsey Depot’ between Network Rail

Siemens PLC (registered number 727817) and the FCC Franchisee;

- (i) the Connection Agreement in respect of Tilgate Sidings and Three Bridges Depot between (1) Network Rail (2) Siemens PLC (registered number 727817), the FCC Franchisee and Southern Track Renewal Company Limited;
- (j) the Umbrella Agreement;
- (k) the Conditions Precedent Agreement as such term is defined in the MDCTA;
- (l) the Eversholt NDA as such term is defined in the MDCTA;
- (m) the EU Collateral Agreement as such term is defined in the MDCTA;
- (n) the Technical Support and Spares Supply Agreement as such term is defined in the MDCTA;
- (o) the Maintenance Direct Agreement as such term is defined in the MDCTA;
- (p) the Lenders Direct Agreement as defined in the MDCTA;
- (q) the Operator Bond as defined in the MDCTA;
- (r) the TSA Bond as defined in the MDCTA;
- (s) the TSA Guarantee as such term is defined in the MDCTA;
- (t) the Operator Guarantee as such term is defined in the MDCTA;
- (u) the Software Escrow Agreement as such term is defined in the MDCTA;
- (v) the Hornsey Deed of Surrender (Existing Depot) between Network Rail and the FCC Franchisee;
- (w) the Licences to Underlet the 'Three Bridges Depot' and 'Hornsey Depot' to be entered into between Network Rail, Siemens PLC (registered number 727817) and the FCC Franchisee;

- (x) the Underleases (incorporating the Depot Access Conditions and the Annexes) of the 'Three Bridges Depot' and 'Hornsey Depot' to be entered into between Siemens PLC (registered number 727817) and the FCC Franchisee;
- (y) the 'Three Bridges' and 'Hornsey' side letters from Network Rail addressed to the FCC Franchisee and relating to the preservation of the assessment of business rates for the Three Bridges and Hornsey depots under Network Rail's cumulo assessment;
- (z) the Deed of Indemnity in relation to the 'FX Hedges' by TMM (as such term is defined in the TRSP MSA) for 'Foreign Currency Costs' in respect of the TRSP MSA; and
- (aa) the Deed of Indemnity in relation to the 'Depot Rate Fixing' between Siemens PLC and Siemens Financial Services Limited in respect of the depot lease receivables,

together with any other agreement which may be required to be entered into by the Franchisee pursuant to any of the other documents above;

"TRSP MSA" means the Manufacture and Supply Agreement between Siemens PLC (registered number 727817), Cross London Trains Limited (registered number 07813033) and the FCC Franchisee dated 27 June 2013;

"Trustee" has the meaning given to it in paragraph 3.1 of Schedule 16 (Pensions);

"TSI" means any Technical Standard for Interoperability with which the Franchisee is required to comply pursuant to Directives EU 96/48 and EU 2001/16 and related legislation;

"TSR (TDR) Amendment" has the meaning given in paragraph 5.7 of Schedule 1.1 (Service Development);

"Turnaround Time" means the time specified in the Train Plan between the completion of a Passenger Service in accordance with the Timetable and the commencement of the next Passenger Service in accordance with the Timetable on the same day using some or all of the same rolling stock

	vehicles;
“Turnover”	means, in relation to any period, the aggregate revenue (excluding any applicable Value Added Tax) accruing to the Franchisee from the operation of the Franchisee and the receipt of Franchise Payments during such period;
“Umbrella Agreement”	has the meaning given to it under the MDCTA;
“Updated Business Plan”	means the revised business plan to be provided prior to the start of each Franchisee Year (other than the first Franchisee Year) in accordance with paragraph 2.2 of Schedule 13 (Information and Industry Initiatives);
“Unregulated Fare”	means any Fare that is not a Commuter Fare or a Protected Fare;
“Value”	means at any time the aggregate of the Projected Revenue of each Fare in a Fares Basket at that time;
“Value Added Tax”	means value added tax as provided for in the Value Added Tax Act 1994;
“Variation”	means a variation to the terms of the Franchise Agreement pursuant to paragraph 1 of Schedule 9.5 (Variations to the Franchise Agreement and Incentivising Beneficial Changes);
“Weekday”	means any day other than a Saturday, a Sunday or a Bank Holiday save that when used in paragraph 6 of Schedule 6.3 (TLP/TRSP Related Provisions) a Weekday shall not include any day falling between 27 December and 31 December (both days inclusive) in any calendar year;
“Weekly Season Ticket”	means a Season Ticket Fare which is valid in Standard Class Accommodation from (and including) the day it first comes into effect until (but excluding) the day which falls seven days after such day;
“Yield Management Data”	means data collected by or on behalf of the Franchisee for the purpose of or in connection with managing or setting the prices at which any tickets for travel on the Passenger Services are sold and/or any quotas and/or restrictions applying to such tickets including: <ul style="list-style-type: none"> (a) the number of passengers travelling upon any particular Passenger Service; (b) the ticket types held by such

passengers;

(c) the prices paid by such passengers for such tickets; and

(d) the dates and/or times between which such tickets were made available to purchase at such prices;

“Yield Management System” means any system (whether a Computer System or otherwise) for the collection of Yield Management Data and/or onto which Yield Management Data is input, processed and/or held as such system may be amended or altered from time to time; and

“Zone” means a zone set out in the map in Schedule 2 of the Travelcard Agreement on the date such agreement came into effect or as amended by agreement with the Secretary of State.

3. **COMMENCEMENT**

3.1 The clauses of this Franchise Agreement and the following Schedules of this Agreement shall take effect and be binding upon each of the Secretary of State and the Franchisee immediately upon signature of this Franchise Agreement:

- (a) paragraph 2 of Schedule 2.2 (Security of Access Agreements, Rolling Stock Leases, Station and Depot Leases);
- (b) paragraph 2 of Schedule 2.3 (Third Party Delivery of Passenger Services and Other Franchisees);
- (c) paragraph 4.3 of Schedule 4 (Persons with Disabilities and Disability Discrimination);
- (d) Schedule 5.1 (Purpose, Structure and Construction);
- (e) Schedule 5.3 (Allocation of Fares to Fares Baskets);
- (f) Schedule 5.7 (Changes to Fares and Fares Regulation);
- (g) Schedule 9 (Changes and Variations);
- (h) Schedule 10 (Remedies, Termination and Expiry);
- (i) paragraph 2 of Schedule 11 (Agreement Management Provisions);
- (j) paragraph 4 of Schedule 12 (Financial Obligations and Covenants);
- (k) paragraphs 1, 5, 6, 7 and 8 of Schedule 13 (Information and Industry Initiatives);
- (l) Schedule 14.3 (Key Contracts);

- (m) Schedule 17 (Confidentiality and Freedom of Information); and
- (n) Schedule 19 (Other Provisions) [DfT to Amend to include others].

3.2 The other provisions of the Franchise Agreement 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.

4. **TERM**

The Franchise Agreement shall terminate on the Expiry Date or on the date of any earlier termination pursuant to Clauses 4.2(b) or 4.3(b) of the Conditions Precedent Agreement or pursuant to Schedule 10 (Remedies, Termination and Expiry).

5. **GENERAL OBLIGATIONS**

5.1 The Franchisee shall perform its obligations under the Franchise 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 who bears farebox revenue risk in relation to the operation of its franchise.

5.2 Any obligation on the part of the Franchisee to use all reasonable endeavours shall:

- (a) extend to consequent obligations adequately to plan and resource its activities, and to implement those plans and resources, with all due efficiency, economy; and
- (b) include a requirement to act in such a manner as a skilled and experienced Train Operator bearing farebox revenue risk in relation to its franchise and seeking to maximise its profit consistent with its other obligations under its franchise agreement would reasonably be expected to act.

5.3 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 the Franchise Agreement.

5.4 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 the Franchise Agreement.

6. **COMPLIANCE WITH LAWS**

The Franchisee shall at all times during the Franchise Term perform the Franchise Services and all its other obligations under the Franchise Agreement in accordance with all applicable Laws.

7. **ENTIRE AGREEMENT**

7.1 This Agreement and the Conditions Precedent Agreement contain the entire agreement between the parties in relation to the subject matter of the Franchise Agreement and supersede all prior agreements and arrangements between the parties other than any confidentiality agreements or undertakings which the Franchisee may have entered into with the Secretary of State in connection with

his proposal to secure the provision of the Passenger Services under the Franchise Agreement.

7.2 The Franchisee hereby acknowledges that it is not entering into this Agreement and the Conditions Precedent Agreement 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 the Franchise Agreement; or
- (b) embodied in any warranties, representations or undertakings contained in the long form report provided by the Department for Transport in respect of [DfT to insert title and date for the FCC/Southern/LSER long form reports].

7.3 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 the Franchise Agreement, the process leading to the entering into of the Franchise Agreement, or the Franchise Services (including any Invitation to Tender issued in connection therewith).

7.4 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 and the Conditions Precedent Agreement on the basis of any warranty, representation (whether negligent or otherwise, and whether made prior to and/or in this Agreement or the Conditions Precedent Agreement) or undertaking howsoever or to whomsoever made unless and to the extent that such warranty, representation or undertaking was made fraudulently.

8. **GOVERNING LAW**

The Franchise Agreement (and any non-contractual obligations arising out of or in connection with it) shall be governed by and construed in accordance with the laws of England and Wales and the parties irrevocably agree that the courts of England and Wales are to have exclusive jurisdiction to settle any disputes which may arise out of or in connection with the Franchise Agreement, except as expressly set out in the Franchise Agreement.

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

SEAL REF No.

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)
[FRANCHISEE])
)

Director:

Director/Secretary:

SCHEDULE 1

Passenger Service Obligations

Schedule 1.1:	Service Development
Schedule 1.2:	Operating Obligations
Schedule 1.3:	Not Used
Schedule 1.4:	Passenger Facing Obligations
Schedule 1.5:	Information about Passengers
Schedule 1.6:	Franchise Services
Schedule 1.7:	Train Fleet

DRAFT

SCHEDULE 1.1

Service Development

1. Train Service Requirement - Purpose And Responsibility

- 1.1 A Train Service Requirement is a minimum specification of Passenger Services and capacity to be provided by the Franchisee.
- 1.2 The Train Service Requirement as at the date of the Franchise Agreement is comprised in the following, all in agreed terms marked as follows:
- (a) **TSR1** being the Train Service Requirement applicable from the Start Date until 20 December 2014;
 - (b) **TSR2** being the Train Service Requirement applicable from 21 December 2014 until the Combined Effective Date;
 - (c) **TSR3** being the Train Service Requirement applicable from the Combined Effective Date until the Passenger Change Date in December 2015;
 - (d) **TSR4** being the Train Service Requirement applicable from the Passenger Change Date in December 2015 until 1 January 2018;
 - (e) **TSR5** being the Train Service Requirement applicable from 2 January 2018 until the Subsidiary Change Date in May 2018;
 - (f) **TSR6** being the Train Service Requirement applicable from the Subsidiary Change Date in May 2018 until the Passenger Change Date in December 2018;
 - (g) **TSR7** being the Train Service Requirement applicable from the Passenger Change Date in December 2018 until the end of the Franchise Term,

and for the purposes of this Schedule 1.1, such Train Service Requirement shall remain in force unless and until amended or replaced pursuant to this Schedule 1.1. The Train Service Requirement does not in any way limit the Franchisee's obligations pursuant to paragraph 7 of this Schedule 1.1. The Secretary of State and the Franchisee agree that the replacements of:

- (i) TSR1 by TSR2; or
- (ii) TSR2 by TSR3; or
- (iii) TSR3 by TSR4; or
- (iv) TSR4 by TSR5; or
- (v) TSR5 by TSR6; or
- (vi) TSR6 by TSR7,

at the time and for the period specified in this paragraph 1.1 shall not constitute a Change for the purposes of paragraph (e) of the definition of Change unless from the relevant date from which such Train Service Requirement is to apply

the Secretary of State issues a replacement Train Service Requirement which is different from such Train Service Requirement (the "**Alternative TSR**") in which case a Change shall occur provided that such Change shall only apply in respect of the differences between the Alternative TSR and the relevant Train Service Requirement which would otherwise be in force. The Secretary of State shall issue an Alternative TSR if the Timetable as inherited from a Train Operator under a Previous Franchise Agreement and to be operated by the Franchisee during the period from the Start Date until the Passenger Change Date in December 2015 is materially inconsistent with TSR 1, TSR 2 or TSR 3, in each case, in relation to the period during which such TSR 1, TSR2 or TSR 3 (as the case may be) is to apply (as specified in paragraphs 1.2(a), 1.2(b) and 1.2(c) (respectively)).

1.3 A Train Service Requirement may be expressed in whole or in part at any level of generality or to any level of detail the Secretary of State considers appropriate.

2. **Train Plan**

2.1 A Train Plan is the plan or diagram of the Franchisee for the operation of trains and train formations under the Timetable.

2.2 The Franchisee shall submit to the Secretary of State a Train Plan in respect of each Timetable in accordance with this Schedule 1.1.

2.3 In preparing any Train Plan, the Franchisee shall do so by reference to the timetable that it envisages operating in order to comply with the Train Service Requirement and paragraph 7 of this Schedule 1.1.

2.4 The Train Plan for the Timetable as at the Start Date is in the agreed terms marked **TP**.

2.5 Each Train Plan is to set out for each railway passenger service in the Timetable to which it relates:

- (a) its start point and departure time;
- (b) its terminating point and arrival time;
- (c) the number and class of rolling stock vehicles allocated to each such railway passenger service;
- (d) the Passenger Carrying Capacity that each such railway passenger service, as formed, is to have; and
- (e) its Forecast Passenger Demand and, where this has been requested by the Secretary of State and is capable of calculation, the Actual Passenger Demand.

2.6 A Train Plan shall be in any format that the Secretary of State may reasonably specify for this purpose.

3. **Not Used**

4. **Consultation on Significant Alterations to the Timetable**

4.1 Notwithstanding any consultation the Secretary of State might separately undertake in respect of any amended or new draft Train Service Requirement issued pursuant to paragraph 8, the Franchisee shall where:

- (a) it intends that any future Timetable shall contain Significant Alterations compared to the Timetable then in force; and
- (b) such Significant Alterations are likely to have, in the reasonable opinion of the Franchisee, a materially adverse effect on:
 - (i) the ability of passengers using any station served by the Passenger Services to make journeys relating to work or education at reasonably convenient times; and/or
 - (ii) the trading prospects of commercial enterprises located in any community in which a station served by the Passenger Services is located in consequence of it being more difficult for customers or employees to access such commercial enterprises through travel on the Passenger Services,

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

4.2 Accordingly the Franchisee shall where the circumstances described in paragraph 4.1 apply:

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

- (f) ensure that the published report is promptly provided to the Secretary of State and all respondents who submitted written responses to the consultation and published in a widely accessible form; and
- (g) ensure that the relevant Timetable Development Rights to implement the proposed Timetable change are not exercised prior to the publication of the report and to exercise such Timetable Development Rights in the manner indicated in the report.

5. **Timetable Development Rights**

- 5.1 The Franchisee shall use all reasonable endeavours to amend and/or enter into such Access Agreements as may be necessary or desirable from time to time to obtain the timetable development rights that it requires to secure a Timetable that enables it to operate railway passenger services that comply with the Train Service Requirement and otherwise comply with its obligations under the Franchise Agreement (including under paragraph 7 of this Schedule).
- 5.2 Prior to exercising any Timetable Development Rights to secure a Timetable the Franchisee shall make an informed estimate of Forecast Passenger Demand and in doing so shall make reasonable assumptions based on available evidence and making proper use of recognised railway industry systems and forecasting tools as these may develop over the Franchise Period, with the estimate being in such format and to such level of disaggregation as the Secretary of State may reasonably require.
- 5.3 The Franchisee shall exercise its Timetable Development Rights so as to secure a Timetable that enables it to operate railway passenger services that comply with the Train Service Requirement, paragraph 5.11 and paragraph 7 of this Schedule 1.1 in accordance with its obligations under paragraph 10.
- 5.4 Where the Franchisee proposes to exercise its Timetable Development Rights so that the Timetable in force after the relevant Passenger Change Date contains Significant Alterations to that in force prior to such Passenger Change Date the Franchisee shall, without prejudice to its obligation to consult pursuant to paragraph 4, act reasonably with the intention of obtaining a Timetable which enables paragraphs 7.1(a) and 7.1(b) of this Schedule 1.1 to be achieved in relation to each Passenger Service in the Timetable to the greatest extent reasonably practicable. It is agreed that in acting reasonably the Franchisee shall take full and proper account of its calculation of Forecast Passenger Demand made pursuant to paragraph 5.2.
- 5.5 Unless the Secretary of State otherwise directs, the Franchisee shall, for the purposes of securing a Timetable that complies with the Train Service Requirement, paragraph 5.11 and paragraph 7 of this Schedule, exercise its rights under the Track Access Agreement (including the Network Code) to object, to make representations and to withhold consent in respect of any actual or proposed act or omission by Network Rail in relation to such agreement in respect of its Timetable Development Rights.
- 5.6 Subject to the Franchisee complying with its obligations under paragraph 5.5, it shall not be liable for any failure to secure a Timetable that enables the Franchisee to operate railway passenger services that comply with the Train Service Requirement, paragraph 5.11 and paragraph 7 of this Schedule, to the extent that such failure is caused by:

- (a) the Franchisee's Timetable Development Rights being inadequate to enable it to secure the requisite Train Slots, provided that the Franchisee has exercised and, unless otherwise agreed by the Secretary of State, is continuing to exercise all reasonable endeavours to obtain the requisite timetable development rights in accordance with paragraph 5.1;
- (b) Network Rail exercising its flexing rights from time to time under the Track Access Agreement or the Network Code in respect of such Train Slots;
- (c) Network Rail exercising its other rights from time to time under the Track Access Agreement or the Network Code; or
- (d) the exercise by the ORR of its powers pursuant to Section 22C of the Act.

5.7

- (a) If and to the extent that the Franchisee is not able to secure a Timetable enabling it to operate railway passenger services that comply with the Train Service Requirement as a result of it not being able to obtain the timetable development rights that it requires for that purpose, then the Secretary of State shall (subject to paragraphs 5.7(b) and 5.7 (c) below) issue to the Franchisee such amendments to the Train Service Requirement ("**TSR (TDR) Amendment**") as the Secretary of State considers necessary such that the Franchisee is able to secure a Timetable in compliance with the Train Service Requirement as amended by the TSR (TDR) Amendments by exercise of the Timetable Development Rights that the Franchisee does have.
- (b) The Secretary of State shall have an unfettered discretion as to whether or not to issue a TSR (TDR) Amendment in circumstances where the Franchisee:
 - (i) has failed to exercise all reasonable endeavours to obtain the requisite timetable development rights in accordance with paragraph 5.1; and
 - (ii) is not relieved by paragraph 5.6 from liability for such failure to secure a Timetable that enables the Franchisee to operate railway passenger services that comply with the Train Service Requirement.
- (c) Where the Secretary of State reasonably considers that the failure to secure a Timetable that enables the Franchisee to operate the Train Service Requirement is partly due to the default of the Franchisee in not properly complying with its obligations under the Franchise Agreement in relation to securing timetable development rights any TSR (TDR) Amendment shall not relieve the Franchisee of the obligation to comply with the Train Service Requirement to the extent that the Secretary of State determines that the failure is due to such default of the Franchisee and the Franchisee may be in contravention of the Franchise Agreement accordingly.

5.8 Following issue of any TSR (TDR) Amendment pursuant to paragraph 5.7 the Franchisee shall, unless otherwise agreed by the Secretary of State, continue to use all reasonable endeavours to amend and/or enter into such Access Agreements as may be necessary or desirable from time to time to obtain the

timetable development rights that it requires to secure a Timetable that enables it to operate railway passenger services that comply with the Train Service Requirement without such TSR (TDR) Amendment.

5.9 Any TSR (TDR) Amendment issued pursuant to paragraph 5.7 shall:

- (a) unless otherwise required by the Secretary of State, cease to have effect on the date (if any) on which the first Timetable comes into effect after the Franchisee has obtained the Timetable Development Rights that it requires to secure a Timetable that enables it to operate railway passenger services that comply with the Train Service Requirement without any such TSR (TDR) Amendment; and
- (b) amount to a Change unless the TSR (TDR) Amendment has been issued in consequence of Network Rail exercising the rights referred to in paragraphs 5.6(b) and 5.6(c) in which case there shall be no Change.

5.10 With effect from the date on which any TSR (TDR) Amendment ceases to have effect in accordance with paragraph 5.9:

- (a) the Train Service Requirement without such TSR (TDR) Amendment shall thereafter apply; and
- (b) there shall be a further Change (which for these purposes shall be deemed to be a Qualifying Change) to the extent necessary so as, with effect from such date, to disapply the effect of the Change referred to in paragraph 5.9(b) in respect of such TSR (TDR) Amendment.

5.11 The Franchisee shall exercise its Timetable Development Rights so as to ensure, so far as reasonably practicable that:

- (a) the stopping patterns of Passenger Services are placed at approximately evenly-spaced intervals, taking into account the reasonable needs of passengers; and
- (b) journey times between stations are minimised.

6. **Certification and Notification by Franchisee of Exercising Timetable Development Rights**

6.1 Before exercising any Timetable Development Right to bid for Train Slots, the Franchisee shall provide a certificate addressed to the Secretary of State and signed by a statutory director of the Franchisee confirming that its proposed exercise of that Timetable Development Right will be compliant with its obligation specified in paragraph 5.3.

6.2 If requested by the Secretary of State, the Franchisee agrees to demonstrate to the reasonable satisfaction of the Secretary of State that the Franchisee's certificate referred to in paragraph 6.1 is a true and accurate confirmation of compliance with its obligation specified in paragraph 5.3.

6.3 The Franchisee shall:

- (a) keep the Secretary of State fully informed of any discussions with Network Rail in relation to the matters referred to in this Schedule 1.1 which may, in the reasonable opinion of the Franchisee, have a material bearing on the ability of the Franchisee to deliver the Train Service

Requirement or meet the requirements of paragraph 5.11 or paragraph 7 of this Schedule 1.1 through the Timetable and shall, if required to do so by the Secretary of State, supply copies of any related correspondence to the Secretary of State; and

- (b) update any notification under this paragraph 6.3 and/or certification under paragraph 6.1 as soon as reasonably practicable, if at any time it elects or is required to modify any aspect of its exercise of its Timetable Development Rights following Network Rail's proposed or actual rejection or modification of its bid or any part of it or for any other reason.

7. Planning to meet Target Passenger Demand

7.1 Capacity and Timetable Planning

The Franchisee shall, in preparing its Timetable and Train Plan, unless the Secretary of State otherwise agrees, provide for at least the capacity requirements specified in the applicable Train Service Requirement and use all reasonable endeavours to:

- (a) provide for Passenger Carrying Capacity on each Passenger Service that meets as a minimum the Target Passenger Demand for that Passenger Service; and
- (b) provide passengers with a reasonable expectation of a seat:
 - (i) on boarding in respect of any Off-Peak Passenger Service; and
 - (ii) 20 minutes after boarding (or such other time period as the Secretary of State may stipulate) in respect of any Peak Passenger Service.

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

If at the time it prepares its Timetable and/or Train Plan, having exercised all reasonable endeavours, the Franchisee is unable to prepare a Timetable and/or Train Plan having the Passenger Carrying Capacity and/or meeting the reasonable expectations referred to in paragraph 7.1, then the Timetable and/or the Train Plan shall specify the best allocation of Passenger Services and rolling stock vehicles to Passenger Services that is reasonably practicable with a view to:

- (a) minimising, so far as is possible the amount by which Target Passenger Demand exceeds the provision of Passenger Carrying Capacity on the affected Passenger Services;
- (b) ensuring, so far as is possible, that such excess is not unduly concentrated on any particular Route or Passenger Service; and
- (c) minimising, so far as is possible, the extent to which passengers are required to stand:
 - (i) on boarding in the case of any Off-Peak Passenger Service; and

- (ii) 20 minutes after boarding (or such other time period as the Secretary of State may stipulate) in respect of any Peak Passenger Service.

7.3

- (a) Subject to paragraph 7.3(b), the Franchisee shall in preparing its Timetable and its Train Plan take full and proper account of its calculation of Forecast Passenger Demand and use all reasonable endeavours to ensure that the Train Fleet is deployed in an optimal manner for the purposes of complying with its obligations under sub paragraphs 7.1 and 7.2 above.
- (b) The Franchisee shall in preparing its Timetable and Train Plan deploy the entire Train Fleet (excluding reasonable planning requirements for the allocation of Hot Standbys or other rolling stock vehicles to be out of service due to maintenance requirements, Mandatory Modifications or any other reason agreed with the Secretary of State (such agreement not to be unreasonably withheld or delayed)) in delivering the Passenger Services:
 - (i) during each Peak; and
 - (ii) at such times during each Off Peak where such deployment of the entire Train Fleet is reasonably required to meet the Franchisee's obligations pursuant to sub paragraphs 7.1 and 7.2 above.

7.4 The Franchisee shall submit its proposed Train Plan to the Secretary of State as soon as reasonably practicable after Network Rail has published the working timetable on which the Timetable is to be based.

7.5 Without prejudice to the provisions of paragraph 2 of Schedule 1.2 (Operating Obligations) the Secretary of State may notify the Franchisee of:

- (a) any respect in which he considers that the Train Plan does not comply with the requirements of this Schedule 1.1; and
 - (b) any revisions that he requires to address such non-compliance,
- and the Franchisee shall revise the Train Plan in accordance with the Secretary of State's requirements.

7.6 If the Franchisee considers that any of the revisions that the Secretary of State requires pursuant to paragraph 7.5(b) are not required for the Train Plan to comply with this Schedule 1.1 then:

- (a) it shall nevertheless make such revisions;
- (b) it may subsequently refer the question as to whether such revisions were so required for resolution in accordance with such dispute resolution procedure as the parties may agree or, in the absence of agreement, in accordance with the Dispute Resolution Rules; and
- (c) following determination of any such dispute, the Secretary of State and the Franchisee shall take such steps as are required to give effect to such determination (including, where relevant, by making such amendments to

the Train Plan as are necessary to give effect to such determination). The Franchisee shall provide the certification required by paragraph 7.7 in respect of any such amended Train Plan.

7.7 The Franchisee shall submit its final Train Plan to the Secretary of State prior to the commencement of the Timetable to which it relates. Subject to paragraph 7.8 any such Train Plan shall be certified by a statutory director of the Franchisee as being true and accurate and including the minimum capacity specified in the applicable Train Service Requirement.

7.8 Where there is a dispute that is referred to determination in accordance with paragraph 7.6(b) and any such dispute has not been resolved by the time upon which the Franchisee is required to provide the certification referred to in paragraph 7.7, then any such certification shall record the fact of such dispute and confirm that the Franchisee is implementing the Train Plan as revised by the Secretary of State pursuant to paragraph 7.5.

8. **Capacity Mitigation Plan Franchisee Informed Opinion and new or amended Train Service Requirement**

8.1

(a) Without prejudice to the obligation of the Franchisee to include in the Train Plan the capacity specified in the applicable Train Service Requirement, if at any time the Franchisee is unable to prepare a Timetable and/or a Train Plan which meets the requirements of paragraph 7.1 (regardless of whether the Franchisee has used all reasonable endeavours to do so), the Secretary of State may serve a notice on the Franchisee requiring it to produce a plan to a reasonable specification provided with the notice to remedy or mitigate such inability ("**Capacity Mitigation Plan**"). Such specification may, without limitation, include measures to be implemented by the Franchisee to:

(i) remedy the circumstances leading to the Franchisee being unable to prepare a Timetable and/or a Train Plan which meets the requirements of paragraph 7.1; and/or

(ii) minimise, so far as is possible, the amount by which Target Passenger Demand exceeds the provision of Passenger Carrying Capacity on the affected Passenger Services;

(iii) ensure, so far as is possible, that such excess is not unduly concentrated on any particular Route or Passenger Service; and

(iv) minimise, so far as is possible, the extent to which passengers are required to stand:

(a) on boarding in the case of any Off-Peak Passenger Service; and

(b) 20 minutes after boarding (or such other time period as the Secretary of State may stipulate) in respect of any Peak Passenger Service,

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

Passenger Demand. Where the Secretary of State reasonably believes that future circumstances may lead to the Franchisee being unable to prepare a Timetable and/or a Train Plan which meets the requirements of paragraph 7.1 at any time within the next four years (including after the end of the Franchise Term) he shall have the right to serve notice on the Franchisee specifying those future circumstances and the date that the Franchisee should assume that they will arise from and requiring it to produce a Capacity Mitigation Plan to remedy or mitigate such future circumstances on the basis of assumptions provided by the Secretary of State.

- (b) The Capacity Mitigation Plan shall (unless the Secretary of State specifies to the contrary) include the Franchisee's informed estimate of Forecast Passenger Demand, in such format and to such level of disaggregation as the Secretary of State may reasonably require. Without limitation such specification may require the Franchisee to present options to address relevant issues through:
 - (i) alterations to the Train Service Requirement;
 - (ii) modification of rolling stock or the acquisition of additional or replacement rolling stock;
 - (iii) alterations to Fares; and/or
 - (iv) alterations or enhancements to any track, signalling, station, depot or other relevant railway infrastructure.
- (c) The Capacity Mitigation Plan shall provide a comprehensive analysis backed by relevant data and assumptions of:
 - (i) all cost and revenue and other financial implications of options contained within it including the potential implications for Franchise Payments;
 - (ii) the implications (if any) for the Benchmarks and Annual Benchmarks; and
 - (iii) the likely impact of options within it for existing and future passenger journeys and journey opportunities.
- (d) The Franchisee shall meet with the Secretary of State to discuss the Capacity Mitigation Plan and provide such further information or analysis and further iterations of the Capacity Mitigation Plan as the Secretary of State shall reasonably require.

8.2 Prior to issuing any amended or new Train Service Requirement the Secretary of State shall provide to the Franchisee his draft of any proposed amended or new Train Service Requirement stating the date upon which he proposes that such amended or new Train Service Requirement should take effect along with the Secretary of State's view as to the changes (if any) that he proposes to make to the Benchmarks and Annual Benchmarks. On receipt of any such draft of a proposed amended or new Train Service Requirement the Franchisee shall provide to the Secretary of State if so requested its informed opinion:

- (a) with supporting reasons as to the impact of the proposed amended or new Train Service Requirement on the delivery of an optimal range of

railway passenger services patterns relative to Target Passenger Demand and compliance with paragraph 7.1 of this Schedule 1.1;

- (b) with supporting reasons as to the changes to resources and adjustment to Franchise Payments (if any) which would be required in consequence of the proposed amended or new Train Service Requirement;
 - (c) with supporting reasons as to changes (if any) to the Benchmarks and Annual Benchmarks;
 - (d) of the process to be required to implement the proposed amendment to the Train Service Requirement together with a plan for the implementation of the amendment to the Train Service Requirement (including all steps required to ensure that the Franchisee can deliver a Timetable compliant with such amended or new Train Service Requirement) prepared in accordance with procedural arrangements specified by the Secretary of State pursuant to paragraph 9; and
 - (e) with supporting reasons of the likely impact of the proposed amended or new Train Service Requirement on existing and future passenger journeys and journey opportunities.
- 8.3 There may be iterations of drafts of the proposed amended or new Train Service Requirement and the Franchisee shall to the extent required by the Secretary of State have the obligations described in this paragraph 8 in respect of all such iterations.
- 8.4 Processes contained in this paragraph 8 shall take place in accordance with procedural arrangements and timescales stipulated by the Secretary of State pursuant to paragraph 9.2.
- 8.5 The Secretary of State may, in accordance with any stipulation made under paragraph 9.2, issue to the Franchisee any amended or new Train Service Requirement that he requires the Franchisee to operate and notice of the changes (if any) to the Benchmarks and Annual Benchmarks. Such amended or new Train Service Requirement will be issued prior to the commencement of the timetable development process of Network Rail for the Timetable in respect of which it is proposed to implement the change to Passenger Services arising from the amended or new Train Service Requirement. In the absence of the Secretary of State issuing any amended or new Train Service Requirement the existing Train Service Requirement will remain in full force and effect. The degree of variation from any Train Service Requirement specified when the Franchise Agreement was entered into in respect of any particular period and brought about by any amended or new Train Service Requirement issued pursuant to this paragraph 8.5 shall (where relevant) be of a magnitude no greater than that contemplated in the Invitation to Tender.
- 8.6 At the same time as the Secretary of State provides the Franchisee with a draft of any proposed amended or new Train Service Requirement pursuant to paragraph 8.2, the Secretary of State shall also provide to the Franchisee his opinion of any changes (if any) that are required to the Benchmarks and Annual Benchmarks.

9. Procedure

- 9.1 The Franchisee agrees that the effective operation of the provisions of this Schedule 1.1, and of provisions addressing the same or similar matters in other

franchise agreements, will require certain procedural arrangements and timescales to be followed to a common timescale by the Secretary of State, the Franchisee and others.

- 9.2 The Franchisee agrees that the Secretary of State may stipulate any reasonable procedural arrangements and timescales that are to be followed by the Secretary of State and the Franchisee for these purposes (which shall be consistent with any relevant standard railway industry processes for timetable development) and that the Secretary of State may amend any such stipulation from time to time.
- 9.3 The Secretary of State agrees to consult the Franchisee as far as reasonably practicable prior to stipulating or amending any such procedural arrangements and timescales in accordance with paragraph 9.2.
- 9.4 Any stipulation by the Secretary of State pursuant to paragraph 9.2:
- (a) shall be at the reasonable discretion of the Secretary of State;
 - (b) may contain procedural arrangements and timescales to be followed by the Franchisee in relation to other changes to the Franchise Services (pursuant to paragraph 1 of Schedule 9.5 (Variations to the Franchise Agreement and Incentivising Beneficial Changes)) in conjunction with the Train Service Requirement; and
 - (c) may provide for iterations of drafts of any amended or new Train Service Requirement, Train Plan or Timetable.
- 9.5 Any procedural arrangements and timescales stipulated by the Secretary of State pursuant to paragraph 9.2 shall have contractual effect between the Franchisee and the Secretary of State in accordance with the terms of such stipulation.

10. **Obligations in relation to other Train Operators**

Subject to the terms of the Licences and any applicable Law, the Franchisee shall co-operate with other Train Operators in respect of their timetable development rights where such other Train Operators provide railway passenger services meeting common or displaced passenger demand, with a view to ensuring that:

- (a) the levels of overcrowding over the Routes or other relevant routes are minimised and not unduly concentrated on particular railway passenger services, Routes or other relevant routes;
- (b) the stopping patterns of such railway passenger services are placed at approximately evenly-spaced intervals throughout each relevant hour, taking into account the reasonable needs of passengers and the different types of railway passenger services provided by other Train Operators and the Franchisee; and
- (c) a reasonable pattern of railway passenger service is provided on the relevant route(s) to enable passengers to make Connections (particularly where low frequency railway passenger services are operated or last trains are involved, taking account of seasonal fluctuations in passenger demand and the time needed to make any such Connection).

11. **Provisions relating to Access Agreements and Property Leases**

11.1 Where the Secretary of State considers it requisite for the purposes of better securing the delivery of railway passenger services under the Franchise Agreement, or any other franchise agreement, or for the better achievement by him of any of his duties, functions and powers in relation to railways, the Secretary of State may require the Franchisee:

- (a) to exercise or refrain from exercising any or all of its rights under any Access Agreement or any Property Lease, or any related rights under such other agreements as the Secretary of State may specify; and/or
- (b) subject to the consent of the counterparty thereto, to assign, novate or surrender its rights under any Access Agreement or Property Lease.

11.2 Except to the extent that the Secretary of State otherwise indicates from time to time, the Franchisee shall notify the Secretary of State of its intention to enter into or amend any Access Agreement:

- (a) where the approval of the ORR is required under the Act, not less than 10 business days before the submission to the ORR; and
- (b) where no such approval is required, not less than 10 business days prior to entering into such amendment or Access Agreement.

11.3 The Franchisee shall comply with its obligations under any Access Agreement or any Property Lease to which it is a party from time to time:

- (a) to notify or consult with the Secretary of State on any matter or proposal relating to that Access Agreement or Property Lease; and
- (b) which are contingent on a particular course of action being taken by the Secretary of State or which are otherwise expressly included in that Access Agreement or Property Lease for the benefit of the Secretary of State.

11.4 If and to the extent that:

- (a) the Secretary of State exercises his rights pursuant to paragraph 11.1;
- (b) the Franchisee's compliance with the Secretary of State's requirements pursuant to paragraph 11.1 would lead to the unavoidable consequence of the Franchisee contravening any other terms of the Franchise Agreement or the occurrence of an Event of Default; and
- (c) the Franchisee duly complies with such requirements,

no such contravention of the Franchise Agreement or Event of Default shall have occurred.

12. **Not Used**

13. **The Timetable and the Working Timetable**

13.1 Any specification of railway passenger services in a Train Service Requirement shall (unless the Secretary of State states to the contrary) be regarded as relating to how those services are to be provided for in the National Rail

Timetable that Network Rail publishes for passengers, and not how they are to be provided for in the working timetable that Network Rail issues to industry parties at the conclusion of its timetable development process.

- 13.2 Accordingly, the Franchisee's obligations specified in paragraph 5.3 shall be construed as an obligation to secure the requisite Train Slots in the working timetable to be issued by Network Rail at the conclusion of its timetable development process that will permit the Franchisee to operate railway passenger services that comply with the Train Service Requirement provided for in the relevant Timetable.
- 13.3 The Franchisee shall ensure, for each period between two consecutive Passenger Change Dates during the Franchise Term, that the Timetable for such period is, in its reasonable opinion, not materially different from the relevant working timetable issued by Network Rail at the conclusion of its timetable development process.

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SCHEDULE 1.2

Operating Obligations

1. Daily Operating Obligations

- 1.1 The Franchisee agrees to use all reasonable endeavours to operate on each day of the Franchise Term each of its Passenger Services as are set out in the Plan of the Day for that day and with at least the Passenger Carrying Capacity specified in the Train Plan for that Passenger Service. The Franchisee shall notify the Secretary of State as soon as reasonably practicable if it has on any day of the Franchise Term failed to operate to a material extent each of its Passenger Services as are set out in the Plan of the Day for that day and with at least the Passenger Carrying Capacity specified in the Train Plan for that Passenger Service.
- 1.2 The Franchisee shall ensure that its performance in each Reporting Period, calculated as a moving annual average in accordance with Schedule 7.1 (Performance Benchmarks), does not exceed (that is, is neither equal to or worse than) each Breach Performance Level in respect of that Reporting Period. Except in respect of any Reporting Period falling within the No Breach Reporting Period, it shall be a contravention by the Franchisee of the terms of the Franchise Agreement if its performance exceeds (that is, is equal to or worse than) any Breach Performance Level in any Reporting Period.

2. Capacity Compliance

- 2.1 If the Secretary of State considers that the Franchisee may have breached any of its obligations under paragraphs 5.1, 5.3, 5.4, 5.5 or 7 of Schedule 1.1 (Service Development) or paragraph 1.1 of this Schedule 1.2, he shall (in addition to his right to obtain further information pursuant to paragraph 1.1 of Schedule 1.5 (Information about Passengers) and without prejudice to any other rights of the Secretary of State under the Franchise Agreement or otherwise) have the right, by serving notice on the Franchisee, to instigate an investigation of the Franchisee's compliance with its obligations under paragraphs 5.1, 5.3, 5.4, 5.5 or 7 of Schedule 1.1 (Service Development) and paragraph 1.1 of this Schedule 1.2 ("**Timetabling and Train Planning Compliance Investigation**").

Following the service of such a notice the Franchisee shall:

- (a) provide such information as the Secretary of State may reasonably require for the purposes of determining if the Franchisee has complied with its obligations under paragraphs 5.1, 5.3, 5.4, 5.5 or 7 of Schedule 1.1 (Service Development) and paragraph 1.1 of this Schedule 1.2 including:
- (i) evidence of the steps taken by the Franchisee to amend and/or enter into Access Agreements, exercise Timetable Development Rights and exercise its rights under the Track Access Agreement to object, to make representations and to withhold consent in respect of any actual or proposed act or omission by Network Rail in relation to such agreement in respect of its Timetable Development Rights;

- (ii) evidence of the extent to which the Franchisee has operated on each day of the relevant Reporting Period each of its Passenger Services as are set out in the Plan of the Day for that day and with at least the Passenger Carrying Capacity specified in the Train Plan for that Passenger Service;
 - (iii) Forecast Passenger Demand and the way that it was calculated including all evidence taken into account and assumptions used (including any divergences from then existing industry modelling standards and the reasons for such divergences); and
 - (iv) the alternative solutions considered by the Franchisee before finalising the Timetable and Train Plan and the reasons why any such alternative solutions were not adopted; and
- (b) permit the Secretary of State to carry out an audit of the extent to which the Timetable and Train Plan enables the Franchisee to operate railway passenger services that comply with the Train Service Requirement and paragraph 7 of Schedule 1.1 (Service Development) and fully co-operate with and provide all information needed to facilitate such audit.

2.2

- (a) The Franchisee shall be in contravention of the Franchise Agreement if following the completion by the Secretary of State of the Timetabling and Train Planning Compliance Investigation he concludes that the Franchisee breached any of its obligations under paragraphs 5.1, 5.3, 5.4, 5.5 or 7 of Schedule 1.1 (Service Development) and paragraph 1.1 of this Schedule 1.2 including where the Franchisee:
- (i) failed to act reasonably in calculating Forecast Passenger Demand because it unreasonably assumed that there would be differences between Forecast Passenger Demand and Actual Passenger Demand at the time that the Forecast Passenger Demand calculation was made; or
 - (ii) made unreasonable assumptions about the timetables likely to be operated by other Train Operators serving some or all of the same stations as the Franchisee.
- (b) Where the Secretary of State does conclude pursuant to paragraph 2.2(a) that the Franchisee has breached any relevant obligation the Franchisee shall pay to the Secretary of State the costs incurred by him in undertaking any Timetabling and Train Planning Compliance Investigation (including any audit pursuant to paragraph 2.1(b)).

2.3 The Secretary of State shall notify the Franchisee if he concludes pursuant to paragraph 2 that the Franchisee is in contravention of the Franchise Agreement and he may at his discretion, and entirely without prejudice to his other rights consequent upon the relevant contravention, serve a Remedial Plan Notice pursuant to paragraph 1.1 of Schedule 10.1 (Remedial Plans and Remedial Agreements).

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

3.1 The Franchisee shall notify the Secretary of State promptly after being notified by Network Rail that Network Rail has decided or proposes to:

- (a) omit from the Plan of the Day Passenger Services that are included in the Timetable; or
- (b) reschedule in the Plan of the Day Passenger Services from their scheduling in the Timetable.

3.2 To the extent that any such decision or proposal may, in the reasonable opinion of the Franchisee, materially (having regard to both duration and scale) prejudice the Franchisee's ability to deliver the Timetable with the Passenger Carrying Capacity stipulated in the Train Plan the Franchisee shall explain in such notification the way in which, in its reasonable opinion, such omission or rescheduling may materially prejudice the Franchisee's ability to deliver the Timetable with the Passenger Carrying Capacity stipulated in the Train Plan.

3.3 The Franchisee agrees to supply to the Secretary of State from time to time, in the format required by the Secretary of State, such details of any actual or proposed omission or rescheduling of Passenger Services by Network Rail as the Secretary of State may reasonably require, including details of the steps which the Franchisee proposes to take pursuant to paragraph 3.4.

3.4 Where the actual or proposed omission or rescheduling of Passenger Services is one which may, in the reasonable opinion of the Secretary of State or the Franchisee, materially prejudice the Franchisee's ability to deliver the Timetable with the Passenger Carrying Capacity stipulated in the Train Plan, the Franchisee agrees (unless the Secretary of State specifically agrees otherwise) to exercise its rights under the Track Access Agreement (including the Network Code) to:

- (a) object (including submitting its objection to any relevant dispute resolution arrangements or procedures and appealing against any award or determination under such arrangements or procedures, including to the ORR);
- (b) make representations; and
- (c) withhold consent,

in respect of any actual or proposed omission or rescheduling of Passenger Services by Network Rail. If the Secretary of State does not consider that the Franchisee has taken sufficient steps under this paragraph 3.4, he may require the Franchisee to exercise its rights referred to in this paragraph 3.4 in such manner as he reasonably considers appropriate in the circumstances.

3.5 The provisions of this paragraph 3 shall apply to any actual or proposed omission or rescheduling of Passenger Services that originates from any person other than Network Rail, as those provisions apply to Network Rail.

4. **Timetable changes proposed by the Franchisee**

4.1 The Franchisee agrees, subject to paragraph 4.2, not to propose to Network Rail:

- (a) the addition to the Plan of the Day of any railway passenger services which are not included in the Timetable;

- (b) the omission from the Plan of the Day of any Passenger Services included in the Timetable; or
- (c) the rescheduling in the Plan of the Day of any Passenger Services from their scheduling in the Timetable,

without the Secretary of State's prior consent. The Franchisee shall at the end of each Reporting Period provide a certificate addressed to the Secretary of State and signed by a statutory director of the Franchisee confirming the Franchisee's compliance with the provisions of this paragraph 4.1. It shall be contravention of the Franchise Agreement if any certificate provided by the Franchisee pursuant to this paragraph 4.1 is, in any material respect, untrue, inaccurate or misleading.

4.2 The Franchisee shall use all reasonable endeavours to operate adequate railway passenger services to or from any special events which are not already provided for in the Plan of the Day to meet the passenger demand that is reasonably likely to arise from such special events and from the operation of such railway passenger services including through additions to and omissions from the Plan of the Day or rescheduling in the Plan of the Day where appropriate.

5. Timetable changes requested by the Secretary of State

The Franchisee agrees, as and when requested by the Secretary of State, to use all reasonable endeavours to seek and to obtain:

- (a) the addition to the Plan of the Day of any railway passenger services that are not included in the Timetable;
- (b) the omission from the Plan of the Day of any Passenger Services that are included in the Timetable; and/or
- (c) the rescheduling in the Plan of the Day of any Passenger Services from their scheduling in the Timetable.

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

6.1 In the event of any planned or unplanned disruption to railway passenger services operated on the Routes, or on other parts of the network which are reasonably local to the Routes, the Franchisee shall:

- (a) without prejudice to any other provision of this Schedule 1.2, notify the Secretary of State promptly where such disruption would materially (having regard to both duration and scale) prejudice the Franchisee's ability to deliver the Timetable or deliver the Timetable in accordance with the Train Plan;
- (b) co-operate with Network Rail and other Train Operators to act in the overall interests of passengers using such railway passenger services, including using all reasonable endeavours to ensure that such disruption is not concentrated on a particular part of the network, except where such concentration either:
 - (i) would be in the overall interests of passengers using such Passenger Services or railway passenger services and would

not result in disproportionate inconvenience to any group of passengers; or

(ii) is reasonably necessary as a result of the cause or the location of the disruption; and

(c) use all reasonable endeavours to provide or secure the provision of alternative transport arrangements in accordance with paragraph 6.2.

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

(a) ensure that such alternative transport arrangements are of reasonable quality, of a reasonably similar frequency to the Passenger Services included in the Timetable which such arrangements replace and reasonably fit for the purpose of the journey to be undertaken;

(b) transport passengers to, or as near as reasonably practicable to, the end of their intended journey on such Passenger Services, having particular regard to the needs of any disabled persons and, where appropriate, making additional arrangements for such disabled persons to complete their intended journey;

(c) provide adequate and prominent publicity of such alternative transport arrangements in advance, subject, in the case of unplanned disruption, to the Franchisee having sufficient notice of such disruption to enable it to provide such publicity;

(d) provide sufficient alternative transport capacity for the reasonably foreseeable demand for the disrupted Passenger Services; and

(e) ensure, if any planned disruption overruns, that there is a reasonable contingency arrangement for such alternative transport arrangements to continue for the duration of such overrun.

7. **Obligation to use all reasonable endeavours**

7.1 Any obligation in this Schedule 1.2 on the part of the Franchisee to use all reasonable endeavours to operate railway passenger services shall include an obligation to:

(a) ensure (so far as it is able to do so) the provision of the Passenger Services as set out in the Plan of the Day in accordance with the Train Plan in ordinary operating conditions;

(b) take reasonable measures to avoid and/or reduce the impact of any disruption to the Franchise Services having regard to all the circumstances, including the reasonably foreseeable risks arising from the matters referred to in paragraph 7.2; and

(c) actively manage the performance by Network Rail of its contractual relationship with the Franchisee (and provide appropriate management resources for this purpose) so as to secure the best performance reasonably obtainable from Network Rail by these means (including

taking the steps referred to in paragraph 7.4), having regard to all the circumstances.

7.2 The matters to which the Franchisee is to have regard pursuant to paragraph 7.1(b) shall include:

- (a) variations in weather and operating conditions (including Network Rail's infrastructure not being available for any reason), which may in either case include seasonal variations;
- (b) default by, or restrictions imposed by, suppliers to the Franchisee;
- (c) shortages of appropriately skilled or qualified Franchise Employees;
- (d) disputes with Franchise Employees;
- (e) the availability of the Train Fleet, having regard to maintenance requirements and any Mandatory Modifications;
- (f) establishing reasonable Turnaround Time allowances for enabling or disabling (as appropriate) any part of a train, the rostering of any train crew and the servicing or cleaning of any rolling stock vehicles; and
- (g) failures of rolling stock vehicles in service and contingency arrangements (including Hot Standbys and rescue traction).

7.3 For the purpose of taking measures in respect of any disruption to the Franchise Services in accordance with paragraph 7.1(b) and assessing the extent of any risk referred to in paragraph 7.1(b) and any such risk's reasonable foreseeability, regard shall be had both:

- (a) to the historical levels of incidence of disruption in the operation of:
 - (i) the Franchise Services;
 - (ii) similar services both by the Franchisee and/or its predecessors; and
 - (iii) other services of a type similar to the Franchise Services; and
- (b) to potential changes in circumstances which may affect those levels.

7.4 The steps to which paragraph 7.1(c) refers include:

- (a) co-operating with Network Rail in the development, agreement and implementation of:
 - (i) Joint Performance Improvement Plans; and
 - (ii) recovery plans in response to failures to achieve the performance levels specified in any Joint Performance Improvement Plans;
- (b) co-operating with Network Rail in adopting the principles set out in any Service Recovery Plans agreed between Network Rail and the Franchisee from time to time;

- (c) undertaking a weekly review of:
 - (i) the ten most common causes of delay to the Passenger Services; and
 - (ii) the ten causes of delay to the Passenger Services with the longest duration (to the extent not already reviewed in accordance with paragraph 7.4(c)(i)),

which have occurred during that week and which have been caused by the Franchisee, any other Train Operator or Network Rail;

- (d) undertaking with Network Rail a review of the time taken to recover the Passenger Services following the occurrence of any of the events specified in paragraphs 7.4(c)(i) and 7.4(c)(ii) and seeking to identify and implement actions that reduce the delay effect of such events;
- (e) setting up and holding regular and effective performance review meetings with Network Rail, evidenced by meeting minutes and the closure of actions agreed between the parties;
- (f) regularly monitoring (at least every Reporting Period) the delivery of local output commitments made by Network Rail and using reasonable endeavours to specify and develop such local output commitments;
- (g) as and when required by Network Rail, co-operating with Network Rail in improving the accuracy of future timetables by providing access to trains, other facilities and/or information;
- (h) co-operating with Network Rail in other delay management initiatives, including the use of virtual general managers and, where appropriate, the establishment of integrated control centres;
- (i) regularly reviewing (at least every Reporting Period) the imposition and clearance of temporary speed restrictions;
- (j) regularly reviewing (at least every Reporting Period) the timely and efficient handover and hand-back of possessions; and
- (k) where appropriate and where Network Rail fails to perform its obligations under the Track Access Agreement, enforcing the Franchisee's rights under such Track Access Agreement.

7.5 The Franchisee undertakes to reasonably co-operate with Network Rail with regard to Network Rail's management of the network, including in relation to the establishment of up to date Timetable Planning Rules (as such term is defined under the Network Code).

7.6 To the extent not already provided for in the Franchise Agreement, the Franchisee shall use all reasonable endeavours to ensure the performance by Network Rail of its obligations under any relevant agreement including, where appropriate or where requested by the Secretary of State, enforcing its rights against Network Rail under any such agreement.

7.7 When and to the extent reasonably requested by the Secretary of State, the Franchisee shall provide to the Secretary of State evidence of the steps taken by it in order to comply with its obligations under this paragraph 7.

SCHEDULE 1.3

Not Used

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SCHEDULE 1.4

Passenger Facing Obligations

1. Publishing the Timetable

1.1 The First Timetable

The Franchisee shall publish on the Start Date (and subsequently on the Combined Effective Date):

- (a) the Timetable:
 - (i) at each staffed Station, by making the relevant information available upon request and free of charge in one or more booklets or in other similar form;
 - (ii) at each Station, by displaying the relevant information on information displays;
 - (iii) at each Franchisee Access Station, by providing to the operator of each such station the departure and arrival times of the Passenger Services that call at each such station and the principal Connections to any other transport services relevant to each such station in the same forms as are specified in paragraphs 1.1(a)(i) and (a)(ii); and
 - (iv) on the Franchisee's website; and
- (b) the timetables of other Train Operators at Stations, in accordance with paragraph 1.4.

1.2 Timetable Revisions and Alterations

The Franchisee shall publish updates or replacements to the Timetable at the locations specified in paragraph 1.1 to the extent necessary to reflect any changes which come into effect on a Passenger Change Date:

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

1.3 In addition, the Franchisee shall:

- (a) subject to paragraph 1.4, display posters at each Station advising passengers of all significant alterations between any two Passenger

Change Dates to railway passenger services calling at that Station, no later than four weeks in advance of the date on which the alterations come into effect; and

- (b) provide posters to the operators of Franchisee Access Stations, advising passengers of all significant alterations between any two Passenger Change Dates to the Passenger Services which call at such Franchisee Access Stations, in sufficient time for such information to be published by such operators within the time limit provided for in paragraph 1.3(a).

1.4 **Other Train Operators' Timetables**

The Franchisee shall also comply with the requirements of paragraphs 1.1 to 1.3 inclusive by making available booklets and displaying information in information displays and otherwise displaying posters in respect of any other Train Operator's timetable at each Station where the railway passenger services of such other Train Operator are scheduled to call:

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

1.5 **National Rail Timetable and National Rail Enquiry Scheme**

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

1.6 The Franchisee shall use all reasonable endeavours to procure that information in relation to:

- (a) the Timetable; and
- (b) any significant alterations to the Timetable to take effect between any two Passenger Change Dates,

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

2. **Late Timetable Changes**

2.1 Save in respect of significant alterations, for which the provisions of paragraphs 1.3 and 1.6 shall apply, the Franchisee shall inform passengers, so far as possible on not less than seven days' prior notice, if it will be unable to operate its trains in accordance with the Timetable. Such information shall include any revised Timetable or travelling arrangements.

2.2 Such information shall be provided by:

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

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

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

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

3. **Fares Selling Restrictions**

3.1 **Obligation to Sell**

- (a) The Franchisee shall sell to any person wishing to travel on the Passenger Services, on any other railway passenger services or both, the Fare he requires and which the Franchisee is entitled to sell under the Ticketing and Settlement Agreement.

3.2 **Restrictions on Sales**

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

- (a) shall be entitled, without further charge, to such rights of access and egress and other similar rights at the commencement and end of the relevant intended journey or journeys as may be reasonably necessary for such purchaser to travel on the Passenger Services;
- (b) shall not be required to incur any cost or take any action beyond the payment of an amount equal to the Price or Child Price (as the case may be) of such Commuter Fare or Protected Fare (as the case may be) and, in relation to the issue of a Season Ticket Fare, the completion of such identity card as the Franchisee may reasonably require; and
- (c) shall not be required to pay an amount in respect of a seat reservation or other similar right which it may be compulsory for such purchaser to have in order to make a journey with such Commuter Fare or Protected Fare (as the case may be) on a Passenger Service.

3.3 The Franchisee shall procure that for any:

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

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

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

- (a) the number of seats in Standard Class Accommodation on such train; and
- (b) the capacity of Standard Class Accommodation of the rolling stock vehicles comprising such train according to the tables set out in Schedule 1.7 (The Train Fleet).

3.5 The Franchisee shall not sell or offer to sell:

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

3.6 The Franchisee shall not sell or offer to sell any Fares at a discount (whether by the issue of Discount Cards or otherwise) or offer a reduction to the price of a Fare except as may otherwise be permitted pursuant to paragraph 3.7.

3.7 Nothing in paragraph 3.6 shall prevent the giving of any discount or reduction to which the purchaser of a Fare may be entitled by virtue of:

- (a) presenting a Discount Card (or any equivalent replacement thereof) issued by the Franchisee or another train operator pursuant to any scheme in force at the Start Date or the Combined Effective Date (as the case may be) or pursuant to the operation of Law or any discount permitted by the Secretary of State; or
- (b) the Passenger's Charter or the passenger's charter of any other train operator; or
- (c) the National Rail Conditions of Carriage (as such term is defined under the Ticketing and Settlement Agreement).

3.8 **Agents of the Franchisee**

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

- (a) for Fares in respect of which the:
 - (i) Prices are regulated under Schedules 5.4 (Regulation of Fares Basket Values) and 5.5 (Regulation of Individual Fares), sell or offer to sell at prices no greater than the Prices set for such Fares from time to time in accordance with Schedule 5.4 (Regulation of Fares Basket Values) and Schedule 5.5 (Regulation of Individual Fares); and
 - (ii) Child Prices are regulated under Schedule 5.4 (Regulation of Fares Basket Values) and Schedule 5.5 (Regulation of Individual Fares), sell or offer to sell at prices no greater than the Child Prices set for such Fares from time to time in accordance with Schedules 5.4 (Regulation of Fares Basket Values) and Schedule 5.5 (Regulation of Individual Fares);
- (b) for Fares in respect of which the Child Price has been set pursuant to paragraph 2.1 of Schedule 5.2 (Franchisee's Obligation to Create Fares), sell or offer to sell such Fares to any person under the age of 16 for an amount which is no greater than the lowest amount that would be paid if that person were the holder of a 16 to 25 Railcard with no minimum fare (as amended or replaced from time to time) and whose purchase was made without condition; and
- (c) for all Fares to comply with the provisions of paragraphs 3.1 to 3.6 to the extent they apply to the selling of Fares by the Franchisee.

3.9 **Additional Ancillary Services**

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

- (a) which are ancillary to the railway passenger service for which such Commuter Fare or Protected Fare (as the case may be) was purchased (including, charges in respect of car parking or catering services); and

- (b) which such purchaser is not obliged to purchase.

3.10 **Sale of Fares for travel on Bank Holidays**

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

3.11 **Percentage Allocations**

- (a) The Franchisee shall appoint and maintain for the duration of the Franchise Term a dedicated resource responsible for the review and management of Percentage Allocations in relation to Rail Products.
- (b) The Franchisee shall ensure that it manages and requests changes (including by disputing Percentage Allocations under the Ticketing and Settlement Agreement) to the Percentage Allocations in relation to Rail Products in such manner as would reasonably be expected from a skilled and experienced Train Operator bearing farebox revenue risk in relation to its franchise and seeking to maximise its profit consistent with its other obligations under its franchise agreement.
- (c) Each Reporting Period the Franchisee shall provide to the Secretary of State written confirmation from a statutory director of the Franchisee of whether the Franchisee has complied with its obligations under this paragraph 3.11. It shall be a contravention of the Franchise Agreement if any such written confirmation from a statutory director of the Franchisee is, in any material respect, untrue, inaccurate and/or misleading.
- (d) Except to the extent that the Secretary of State may consent from time to time the Franchisee shall not take any action or step which may result in its Percentage Allocation in respect of any Rail Product being reduced. The Franchisee shall notify the Secretary of State before taking any such action or step and upon becoming aware of any other person proposing to take any action or step which may have the same effect. The Franchisee shall take such action as the Secretary of State may reasonably request in order to prevent any such reduction, including submitting any dispute to any relevant dispute resolution procedures.

3.12 **Revenue Shortfalls**

If at any time there is a shortfall in the amount of Revenue attributable to any Reporting Period and such shortfall is caused by cash collection, fraud by any Franchise Employee or default in payment by a purchaser of any Fare or accounting losses then the Franchisee shall immediately pay to the Secretary of State from its own funds the amount of any such shortfall.

3.13 **Penalty Fares**

- (a) The Franchisee shall on or before the Start Date introduce and implement a penalty fares scheme in substantially the same form as the document in agreed terms marked **PFS** (the "**Penalty Fares Scheme**"). Any Penalty Fares Scheme introduced pursuant to this paragraph 3.13(a) shall be updated on or before the Combined Effective Date as considered necessary by the Franchisee for the purposes of ensuring that the Penalty Fares Scheme can be utilised in relation to the Southern Franchise

Services. The Franchisee shall be responsible for obtaining any approval required from the Secretary of State under Section 130 of the Act in respect of any Penalty Fares Scheme (including any updates to such scheme) required to be implemented pursuant to this paragraph 3.13(a).

- (b) The Franchisee shall from the Start Date and the remainder of the Franchise Term:
 - (i) Administer, or procure the administration of, the appeals procedure in accordance with the terms of the Penalty Fares Scheme; and
 - (ii) carry out all duties and responsibilities in relation to the administration of the Penalty Fares Scheme and the collection of penalty fares in such manner as would reasonably be expected from a skilled and experienced Train Operator bearing farebox revenue risk in relation to its franchise and seeking to maximise its profit consistent with its other obligations under its franchise agreement.

4. **Passenger's Charter**

4.1 **Content**

The Franchisee shall:

- (a) publish its Passenger's Charter:
 - (i) in substantially the same form as the document in agreed terms marked **PC1** or **PC2** (as appropriate); and
 - (ii) in accordance with the requirements specified in paragraph 4.3;
- (b) review the need for changes to the Passenger's Charter at least every three years, in consultation with the Passengers' Council, and shall submit a draft of any revisions to the Passenger's Charter that it wishes to propose, together with proof of such consultation, to the Secretary of State;
- (c) state the date of publication clearly on the front cover of the Passenger's Charter; and
- (d) ensure that its Passenger's Charter provides for Enhanced Compensation for holders of Season Ticket Fares as a result of a Period of Sustained Poor Performance.

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

4.3 **Publishing the Passenger's Charter**

The Franchisee shall publicise its Passenger's Charter by:

- (a) providing copies to the Secretary of State and the Passengers' Council at least seven days before it comes into effect;

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

save in respect of the Passenger's Charter which is effective on the Start Date or the Combined Effective Date (as the case may be), in which case the Franchisee shall publicise such Passenger's Charter in the manner contemplated by this paragraph 4.3 on and from the Start Date or on and from the Combined Effective Date (as the case may be).

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

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

4.6 **Passenger's Charter Payments and Other Obligations**

The Franchisee shall:

- (a) make all payments and provide all Enhanced Compensation which passengers may reasonably expect to be made or provided from time to time under the terms of the Passenger's Charter (whether or not the Franchisee is legally obliged to do so); and
- (b) use all reasonable endeavours to make passengers aware of their right to claim compensation pursuant to the Passenger's Charter when the circumstances giving rise to that right arise including by making appropriate announcements to passengers on trains and at stations and making compensation claim forms readily available to passengers,

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

4.7 The Franchisee shall use all reasonable endeavours:

- (a) to comply with any other obligations, statements and representations; and
- (b) to meet any other standards or targets of performance,

as are comprised in its Passenger's Charter from time to time.

5. **Cycles**

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

6. **Statutory Notices**

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

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SCHEDULE 1.5

Information about Passengers

1. Passenger Numbers Information

1.1 The Franchisee shall, as and when reasonably requested by the Secretary of State, provide information to the Secretary of State on the extent of the use by passengers of the Passenger Services. In particular and when so requested, the Franchisee shall provide information relating to:

- (a) the number of passengers travelling in each class of accommodation:
 - (i) on each Passenger Service;
 - (ii) on each Route; and/or
 - (iii) at any station or between any stations;
- (b) the times of the day, week or year at which passengers travel; and
- (c) the type of Rolling Stock Unit used in each case,
(together, "**Actual Passenger Demand**").

1.2 The Franchisee shall obtain the information specified in paragraph 1.1:

- (a) on each Passenger Service;
- (b) on each Route; and
- (c) at any station or between any stations,

by using the technology specified in paragraph 1.6. The Franchisee shall ensure that any technology for determining the number of passengers travelling in each class of accommodation that is fitted on the Train Fleet remains operational and in good working order throughout the Franchise Period. The Secretary of State acting reasonably shall have the right to obtain such other information that the Franchisee has which may provide a more detailed or accurate view of the extent of use by passengers of the Passenger Services including information about ingress and egress of passengers at ticket gates at Stations.

1.3 The Franchisee shall provide to the Secretary of State all of the information generated by the technology specified in paragraph 1.6 including the information specified in paragraph 1.1:

- (a) using such systems, in such a format and to such level of disaggregation as the Secretary of State may reasonably require including by directly inputting data into a database maintained by the Secretary of State;
- (b) at a frequency and within timescales that the Secretary of State may reasonably request pursuant to paragraph 1.1;
- (c) to the extent required by the Secretary of State, by providing the Secretary of State with direct remote access to the system used by the

Franchisee to collect such information such that the Secretary of State is able to download such information; and

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

1.4 At the same time as the Franchisee provides any information in accordance with paragraph 1.1, it shall (if the Secretary of State requests it to do so):

- (a) update any Forecast Passenger Demand accordingly in the same format and to the same level of disaggregation as the Secretary of State required pursuant to paragraph 1.3(a); and
- (b) notify the Secretary of State of any such update.

1.5 **Manual Passenger Counts**

- (a) The Secretary of State shall have the right to require the Franchisee to carry out manual counts in relation to some or all of the Passenger Services at such times as may be required and in such manner (including as to levels of accuracy and the number of days) as may be specified from time to time by the Secretary of State.
- (b) The Franchisee shall supply the details of any such counts undertaken to the Secretary of State, as soon as reasonably practicable but within 6 weeks from the date of completion of such counts, in such form as the Secretary of State may stipulate including by directly inputting data into a database maintained by the Secretary of State.
- (c) The Secretary of State shall be entitled to audit such counts (whether by specimen checks at the time of such counts, verification of proper compliance with the manner approved by him or otherwise). In the event that such audit reveals, in the reasonable opinion of the Secretary of State, a material error, or a reasonable likelihood of material error, in such counts, the Secretary of State may require the counts to be repeated or the results adjusted as he considers appropriate, and in these circumstances the Franchisee shall pay to the Secretary of State the costs of any such audits.

1.6 **Technology for Obtaining the Information Referred to in Paragraph 1.2**

- (a) The technology to be used for the purpose of paragraph 1.2 shall be:
 - (i) [specify technology]⁸; and
 - (ii) fitted to at least 30% of each class of rolling stock included in the Train Fleet from time to time; and
 - (iii) deployed by the Franchisee on each Passenger Service (for the entire duration of that Passenger Service) at least twice on each day, twice on a Saturday and twice on a Sunday (or such less frequent requirement as may be stipulated by the

⁸ Bidder to populate.

Secretary of State) in each period of not less than 12 weeks as the Secretary of State may from time to time specify for this purpose. This means that, for example, in relation to any individual Passenger Service, the passenger counting technology must have been deployed on that Passenger Service at least twice on a Monday, at least twice on a Tuesday and so on and so forth during the relevant period.

- (b) The Franchisee shall comply with its obligation under sub paragraph (a) above by no later than the date falling two years from the Start Date.

1.7 The Parties acknowledge that the information supplied under paragraph 1.1 above, may constitute Confidential Information to which Schedule 17 (Confidentiality and Freedom of Information) applies.

1.8 Not Used.

2. **CRM Data**

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

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

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

2.3 Any consent referred to in paragraph 3.2 shall be sought in such manner as shall from time to time be approved by the Secretary of State (such approval not to be unreasonably withheld or delayed) and shall be on terms such as shall permit, in each case in compliance with the Data Protection Act:

- (a) the Franchisee to disclose such CRM Data to any Successor Operator and/or the Secretary of State; and
- (b) any such Successor Operator to process such CRM Data in the manner contemplated by paragraph 3.2.

3. **Yield Management Data**

3.1 The Franchisee shall ensure that any Yield Management Data and Yield Management System are the property of the Franchisee or are licensed to the Franchisee on terms which have been approved by the Secretary of State (such approval not to be unreasonably withheld or delayed).

3.2 If and to the extent that the collection, use and/or processing of any Yield Management Data is subject to the Data Protection Act then

paragraphs 3.1(a), 3.2, 3.3 and 4 of this Schedule 1.5 shall apply in respect of Yield Management Data in the same way as they apply to CRM Data.

4. **Personal Data - General Provisions**

- 4.1 In respect of any Personal Data processed by the Franchisee, including CRM Data, the Franchisee agrees that it shall (i) comply with the Data Protection Act and all other legislation relating to the protection and use of personal information (including the Privacy and Electronic Communications (EC Directive) Regulations 2003) (all such legislation collectively being the ("**Personal Data Legislation**") to the extent that such legislation applies to it and (ii) procure that its agents or sub-contractors shall do the same.
- 4.2 Pursuant to paragraph 4.1, the Franchisee agrees to comply with the Personal Data Legislation in respect of its Processing of CRM Data and in particular, but without limitation, the Franchisee shall:
- (a) ensure that CRM Data is Processed fairly and lawfully (in accordance with part 1 of Schedule 1 of the Data Protection Act);
 - (b) ensure that CRM Data is obtained only for one or more specified and lawful purposes, and shall not be further Processed in any manner incompatible with that purpose or those purposes (in accordance with part 2 of Schedule 1 of the Data Protection Act); and
 - (c) obtain and maintain all appropriate notifications as required under the Data Protection Act.
- 4.3 In accordance with its capacity as Data Controller of CRM Data and in accordance with the ensuing obligations under the Data Protection Act:
- (a) the Franchisee shall procure that any CRM Data Processor which it appoints shall:
 - (i) prior to any disclosure of CRM Data to the CRM Data Processor, enter into written terms between itself and the Franchisee which are equivalent to those contained in this paragraph 4.3; and
 - (ii) Process CRM Data only on behalf of the Franchisee, only for the purpose(s) as defined by the Franchisee and only in accordance with instructions received from the Franchisee from time to time;
 - (b) the Franchisee shall, and shall procure that any CRM Data Processor which it appoints shall, at all times have in place appropriate technical and organisational measures against unauthorised or unlawful processing of CRM Data and against accidental loss or destruction of, or damage to, CRM Data and that such measures shall:
 - (i) reflect the level of harm, damage and/or distress that might be suffered by the Data Subject to whom the CRM Data relates in the event of a breach of the measures as set out herein; and

- (ii) ensure that only authorised personnel have access to CRM Data and that any persons authorised to have access to CRM Data will respect and maintain all due confidentiality;
 - (iii) (in the case of the CRM Data Processor) include compliance with a schedule of minimum security measures pursuant to the written terms between the Franchisee and the CRM Data Processor;
- (c) the Franchisee shall procure that any CRM Data Processor which it appoints shall:
 - (i) promptly notify the Franchisee of any actual or suspected, threatened or 'near miss' incident of accidental or unlawful destruction or accidental loss, alteration, unauthorised or accidental disclosure of or access to the CRM Data or other breach of this paragraph 4.3(c) ("**Security Breach**") and, pursuant to this the Franchisee shall promptly notify the Secretary of State of all Security Breaches by itself or by the CRM Data Processor (the Franchisee hereby acknowledges that whilst the Secretary of State is not Data Controller in respect of the CRM Data, the Secretary of State's legitimate interests given its duties under the Act may be affected in the event of a Security Breach and as such the Secretary of State wishes to be notified of the same);
 - (ii) promptly provide the Franchisee on request with all reasonable information, assistance and co-operation in relation to its use of the CRM Data, including in relation to any audit by the Franchisee or by any person appointed on its behalf to permit an accurate and complete assessment of compliance with this paragraph 5;
- (d) the Franchisee shall, and shall procure that any CRM Data Processor which it appoints shall, at all times take reasonable steps to ensure the reliability of its/their personnel who have access to the CRM Data and ensure they are aware of the obligations of the Franchisee or the CRM Data Processor (as appropriate) in relation to the same;
- (e) the Franchisee shall, and shall procure that any CRM Data Processor which it appoints shall, not cause or permit the CRM Data to be transferred to any location outside the European Economic Area (as defined in the Data Protection Act or otherwise as appropriate) without the prior written permission of:
 - (i) (in the case of the Franchisee) the Secretary of State; or
 - (ii) (in the case of any Data Processor appointed by the Franchisee) the Franchisee provided that the Franchisee shall not give any such consent without the prior written permission of the Secretary of State;

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

SCHEDULE 1.6

Franchise Services

1. Franchise Services

The Franchisee may at all times during the Franchise Term provide and operate the Franchise Services specified in this Schedule 1.6 and the Passenger Services.

2. Restrictions relating to Franchise Services

2.1 The Franchisee shall not directly or indirectly, without the prior written consent of the Secretary of State, carry on any business or activity other than the provision and operation of the Franchise Services.

2.2 The Franchisee shall not without the prior written consent of the Secretary of State operate Passenger Services other than on the following routes (and in the event of disruption, any reasonable diversionary route) and stations:

all routes and stations specified in the Train Service Requirement (as applicable from time to time) including the route between Maidstone East to Ashford International and the intermediate stations thereon.

2.3 The Secretary of State may impose such conditions to his consent as he considers appropriate for the purpose of securing the continuity of the provision of the Franchise Services at the end of the Franchise Term.

2.4 The Franchisee shall not during the Franchise Term, without the consent of the Secretary of State:

- (a) provide or operate any railway passenger services other than the Passenger Services or Charter Services;
- (b) operate any stations or light maintenance depots other than the Stations and Depots; or
- (c) hold shares, participations or any other interest in any other company or body corporate unless such company or body corporate is:
 - (i) Network Rail; or
 - (ii) owned directly or indirectly by another participant in the railway industry and the holding is incidental to the Franchisee's participation in an Inter-Operator Scheme or any other arrangement designed to ensure or facilitate co-operation between such participants or between any such participants and any other person.

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

3. **Station Services**

3.1 The Station Services shall comprise:

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

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

4. **Light Maintenance Services**

4.1 Light Maintenance Services shall comprise:

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

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

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

5. **Ancillary Services**

The Franchisee may carry out the following Ancillary Services:

- (a) the selling, lending or hiring of any goods or rights and the provision of any services (whether for a charge or not) on any train used in the provision of the Passenger Services where such goods or services are sold or provided principally for consumption or use on the relevant train, including the sale of any Fares, meals, light refreshments, newspapers, magazines, books, entertainment materials or phone cards;
- (b) the provision of any service at any station which, if provided on a train used in the provision of the Passenger Services, would fall within paragraph 5(a) or which, if provided at a Station, would fall within paragraph 3 and which, in each case, is made available only or principally to persons at such stations who either are about to travel or have recently travelled on a train used in the provision of the Passenger Services;
- (c) in any Reporting Period, the subleasing, hiring or licensing of up to ten per cent. of the rolling stock vehicles used in the provision of the Passenger Services (such percentage to be determined by reference to the aggregate period of time for which such rolling stock vehicles are sub-let, hired or licensed and the aggregate period of time for which they are used in the provision of the Passenger Services);
- (d) the lending, seconding, hiring or contracting out during any Reporting Period to another person or persons (whether for a charge or not) of:
 - (i) up to 1 per cent. of the number of Franchise Employees as at the Start Date or the Combined Effective Date (as the case may be) for over 90 per cent. of their normal working hours during such Reporting Period (including on a full-time basis); and
 - (ii) 1 per cent. of any other Franchise Employees as at the Start Date or the Combined Effective Date (as the case may be),
provided that this paragraph shall not apply to any employee lent, seconded, hired or contracted out under any of paragraphs 5(a) to (c) inclusive and (e) to (p) inclusive, or engaged in any other activity which is permitted under this Schedule 1.6;
- (e) any heavy maintenance of rolling stock vehicles which does not fall within the Light Maintenance Services, carried out on behalf of any other person at the following Depot(s):
 - (i) with effect from the Start Date:
 - (1) Bedford Cauldwell Depot;
 - (2) Bedford Midland Road Depot; and

- (3) Hornsey Depot; and
- (ii) in addition, with effect from the Combined Effective Date, the following Depot(s):

- (1) Selhurst Train Care Depot; and
- (2) Stewarts Lane Depot,

subject to the number of persons engaged or employed in such activity not exceeding by more than ten per cent. the number so engaged or employed on the Start Date or the Combined Effective Date (as the case may be);

- (f) the selling at any location of any Fare which is valid, in whole or in part, on the Passenger Services and the selling of any other Fare at any location where such Fares may be purchased from the Franchisee on or before the date of the Franchise Agreement or at any other location, provided that the majority of Fares sold at any such other location shall be Fares which are valid, in whole or in part, on the Passenger Services;
- (g) the selling, in conjunction with any Fare, of any other rights which entitle the purchaser thereof to:
 - (i) travel on any other train or light rail service;
 - (ii) travel on any aircraft;
 - (iii) travel on any shipping or ferry service;
 - (iv) travel on any bus; or
 - (v) attend any event or attraction or enter any location;
- (h) the lending, seconding, hiring or contracting out of Franchise Employees to other Train Operators in order to enable such Train Operators to provide services at the Stations to passengers travelling on any such operator's trains;
- (i) the provision of telephone information relating to railway passenger services within Great Britain to passengers;
- (j) the supervision, management and training of train crew of other Train Operators provided such activity is necessarily incidental to the provision of the Passenger Services and could not reasonably be carried out by or through an Affiliate of the Franchisee;
- (k) the subleasing, hiring, licensing, lending, selling of any rolling stock vehicles or other assets of the Franchisee or the lending, hiring or contracting out of any employees of the Franchisee or the provision of any other services to Network Rail or any other Train Operator on an emergency basis;
- (l) the licensing or permitting of any other person (including an Affiliate of the Franchisee) to carry out any activity or business, in connection with the provision of the Franchise Services, or otherwise, on any rolling stock vehicle operated by the Franchisee, at any station served by the

Passenger Services, at any Depot, or otherwise (including the letting, leasing or licensing (on an exclusive basis or otherwise) of any part or all of a Station or Depot to such other person);

- (m) such other activity or business as may be reasonably necessary for the purpose of providing any other Franchise Services or complying with the Franchise Agreement, provided that it could not reasonably be carried out by or through an Affiliate of the Franchisee;
- (n) the subleasing to any other person of the following property which is not comprised in a Station or Depot:
 - (i) [insert details]⁹.
- (o) the provision or operation of Charter Services, subject to the Train Mileage of such Charter Services not exceeding in any Reporting Period two per cent. of the scheduled Train Mileage of Passenger Services provided by the Franchisee in such Reporting Period;
- (p) the provision of consultancy services reasonably ancillary to the provision of the other Franchise Services; and
- (q) any services or activity not falling within paragraphs 3, 4 or 5(a) to (p), subject to the gross value of any such services or activity (excluding any attribution of costs) not exceeding £25,000 per annum in each Franchisee Year, per item and in aggregate, £250,000 per annum in each Franchisee Year provided that in the second and each subsequent Franchisee Year, these amounts will be increased by "RPI", and "RPI" shall have the meaning given to it in Schedule 8.2 (Annual Franchise Payments).

6. **Affiliates of the Franchisee**

Nothing in this Schedule 1.6 shall restrict any Affiliate of the Franchisee from having an interest in or participating in any business or activity.

⁹ Bidder to populate.

SCHEDULE 1.7

The Train Fleet

1. The Composition of the Train Fleet

The Train Fleet consists of:

- 1.1 the rolling stock vehicles set out in Table 1, with the capacity characteristics referred to there, until the lease expiry dates referred to there;
- 1.2 from the dates set out in Table 2 until the lease expiry dates referred to there, the additional rolling stock vehicles referred to against those dates, having (unless otherwise agreed by the Secretary of State):
 - (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 set out 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 referred to in Table 2:
 - (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.
- 1.3 The Passenger Carrying Capacity of any rolling stock vehicles shall be as set out in Tables 1 or 2 or as determined by the Secretary of State in accordance with paragraph 2.4 (as applicable).

2. Changes to the Train Fleet

- 2.1 Subject to paragraph 2.2, the Franchisee shall maintain the composition of the Train Fleet during the Franchise Term, unless the Secretary of State otherwise agrees, such that there are no changes to the Train Fleet, including changes:
 - (a) to the classes or types;
 - (b) to the interior configurations; or

(c) which may reduce the journey time capabilities,
of any rolling stock vehicles specified in the Train Fleet.

2.2 The Franchisee shall procure that the rolling stock vehicles described in the above Tables, with the capacity and other characteristics referred to there, are available for deployment in the provision of the Passenger Services to the extent required by the Timetable and Train Plan during the periods referred to there.

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

2.4 If any change is made to the Train Fleet in accordance with this Schedule 1.7, the Secretary of State may, after consulting the Franchisee, notify the Franchisee of the Passenger Carrying Capacity of any rolling stock vehicles or class of rolling stock vehicles comprising the Train Fleet following such change.

Table 1 (existing vehicles) [Bidder to populate]

Column 1	Column 2	Column 3				Column 4	Column 5
Class of vehicle	Number of vehicles and unit configuration	Capacity of units				Owner/ Lessor	Lease expiry date(s)
		Seats	Standing	Total	Standard Class		

Table 2 (additional vehicles) [Bidder to populate]

Column 1	Column 2	Column 3	Column 4				Column 5	Column 6
Lease start date(s)	Class of vehicle	Number of vehicles and unit configuration	Capacity of units				Owner / Lessor	Lease expiry date(s)
			Seats	Standing	Total	Standard Class		

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SCHEDULE 2

Assets, Leases, Third Parties, Other Franchise Operations and Schemes

- Schedule 2.1: Asset Vesting and Transfer**
- Schedule 2.2: Security of Access Agreements, Rolling Stock Leases,
Station and Depot Leases**
- Schedule 2.3: Third Party Delivery of Passenger Services and Other
Franchisees**
- Schedule 2.4: Other Franchise Operations**
- Schedule 2.5: Transport, Travel and Other Schemes**

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SCHEDULE 2.1

Asset Vesting and Transfer

[Bidder to populate: Bidders to specify whether Part 1 or Part 2 of this Schedule 2.1 applies with the effect that the part which does not apply would be deleted.]

PART 1

1. Vesting of Property Leases¹⁰

1.1 The Franchisee shall not without the prior written consent of the Secretary of State (such consent not to be unreasonably withheld), whether generally or on a case-by-case basis:

- (a) enter into any new Property Lease; or
- (b) effect any amendment to any Property Lease, except to the extent that the Franchisee is required to do so by virtue of any station or depot access conditions to which it is a party.

1.2 In respect of the new Property Leases specified in paragraph 1.3 or any other new Property Lease with Network Rail, the Franchisee shall enter into such Property Leases:

- (a) with the intent that Section 31 of the Act shall apply to such leases; and
- (b) in the agreed terms marked **SL** and **DL** (as appropriate).

1.3 The Franchisee shall enter into the following leases with Network Rail:

- (a) a lease of each Station, on or before the expiry of the Station Lease relating to each such Station (each such lease, once granted, shall be a Station Lease for the purposes of the Franchise Agreement);
- (b) a lease of each Depot, on or before the expiry of the Depot Lease relating to each such Depot (each such lease, once granted, shall be a Depot Lease for the purposes of the Franchise Agreement);
- (c) a supplemental lease relating to any Station or Depot, as soon as practicable following the successful completion of any procedure (including obtaining any requisite approval from the ORR) for including additional land within the demise of such Station or Depot (as the case may be) and each such supplemental lease, once granted, shall be a Station Lease or a Depot Lease (as the case may be) for the purposes of the Franchise Agreement; and
- (d) a lease of any Network Rail owned station or depot, which:
 - (i) the Secretary of State consents to or requires the Franchisee to be a party to; and

¹⁰ If Franchisee to enter into Property Leases during Franchise Term.

- (ii) the Franchisee was not a party to on the date hereof, but which has been contemplated by the Franchise Agreement,

and the Franchisee shall enter into such lease as soon as practicable after its terms and form have been agreed and all applicable preconditions to its granting have been satisfied or waived (including obtaining any requisite approval of the ORR). Any such supplemental lease, once granted, shall be a Station Lease or a Depot Lease (as the case may be) for the purposes of the Franchise Agreement and any such station or depot (as the case may be) shall be a Station or Depot for the purposes of the Franchise Agreement.

- 1.4 The Franchisee shall not be in contravention of paragraph 1.3 if and to the extent that Network Rail refuses to enter into any leases specified therein.
- 1.5 In respect of any assignment or amendment of any Property Lease to which Section 31 of the Act applied on its grant, each of the Secretary of State and the Franchisee acknowledges that it is their intention that Section 31 of the Act shall continue to apply to such assigned or amended lease.

PART 2

1. Property Leases¹¹

- 1.1 The Franchisee shall not without the prior written consent of the Secretary of State (such consent not to be unreasonably withheld), whether generally or on a case-by-case basis:
- (a) enter into any new Property Lease; or
 - (b) effect any amendment to any Property Lease, except to the extent that the Franchisee is required to do so by virtue of any station or depot access conditions to which it is a party.
- 1.2 In respect of any new Property Leases with Network Rail, the Franchisee shall enter into such Property Leases:
- (a) with the intent that Section 31 of the Act shall apply to such leases; and
 - (b) in the agreed terms marked **SL** and **DL** (as appropriate).
- 1.3 In respect of any assignment or amendment of any Property Lease to which Section 31 of the Act applied on its grant, each of the Secretary of State and the Franchisee acknowledge that it is their intention that Section 31 of the Act shall continue to apply to such assigned or amended lease.

¹¹ If Franchisee to enter into new Property Leases on the Start Date.

SCHEDULE 2.2

Security of Access Agreements, Rolling Stock Leases, Station and Depot Leases

1. Novation of Access Agreements during the Franchise Term

1.1 The Franchisee shall, to the extent so requested by the Secretary of State (other than on termination of the Franchise Agreement, for which the provisions of paragraph 1 of Schedule 15.4 (Provisions Applying on and after Termination) apply):

- (a) following receipt of a notice purporting to terminate any Access Agreement to which it is a party, in relation to such Access Agreement; or
- (b) following receipt of a notice purporting to terminate a Station Lease or Depot Lease in whole or in part or on becoming aware of any proceedings or any other steps having or purporting to have similar effect, in relation to any Access Agreement under which it is a Facility Owner by virtue of such Station Lease or Depot Lease,

novate its interest under any such relevant Access Agreement (and any related Collateral Agreement) to the Secretary of State or as he may direct.

1.2 Such obligation to novate shall be subject to the agreement of any counterparty to such Access Agreement or Collateral Agreement and, to the extent applicable, the ORR.

1.3 Such novation shall be on such terms as the Secretary of State may reasonably require, including:

- (a) that the Franchisee shall not be released from any accrued but unperformed obligation, the consequences of any breach of the relevant agreement which is the subject of arbitration or litigation between the parties thereto or any liability in respect of any act or omission under or in relation to the relevant agreement prior to, or as at the date of, any such novation (except to the extent that the Secretary of State or his nominee agrees to assume responsibility for such unperformed obligation, such liability or the consequences of such breach in connection with the relevant novation); and
- (b) that neither the Secretary of State nor his nominee shall be obliged, in connection with the novation, to agree to assume responsibility for any unperformed obligation, liability or consequences of a breach referred to in paragraph 1.3(a),

but shall not, unless the Franchisee otherwise agrees, be on terms which release any counterparty to the relevant agreement from any liability to the Franchisee arising prior to the date of such novation.

1.4 The Franchisee shall, on the occurrence of any of the circumstances specified in paragraph 1.1 in relation to any other Train Operator who is a party to an Access Agreement to which the Franchisee is also party, agree to the novation of the relevant Train Operator's interest under the relevant Access Agreement to the Secretary of State or as he may direct, subject, to the extent applicable, to the

consent of the ORR. The provisions of paragraph 1.3 shall apply to any such novation.

- 1.5 The Franchisee shall notify the Secretary of State on becoming aware of any circumstances which might lead to the Secretary of State being able to require the Franchisee to novate its interest or agree to the novation of another Train Operator's interest under this paragraph 1.

2. **Rolling Stock Related Contracts and insurance arrangements**

- 2.1 The Franchisee shall not:

- (a) execute any Rolling Stock Related Contract;
- (b) exercise any option or other discretion in any Rolling Stock Related Contract that would result in any increased payment or delay in delivery being made by or to the Franchisee or the relevant counterparty or which may result in it being reasonably likely to be unable to comply with the terms of the Franchise Agreement; or
- (c) amend or waive the terms of any Rolling Stock Related Contract,

without, in each case, the prior written consent of the Secretary of State (not to be unreasonably withheld).

- 2.1A The Franchisee shall supply to the Secretary of State a copy of all draft Rolling Stock Related Contracts and, immediately following the execution, all executed Rolling Stock Related Contracts (including any agreement amending any Rolling Stock Related Contract) together with:

- (i) such other information or documentation relating to such Rolling Stock Related Contract and/or the relevant rolling stock as the Secretary of State may request (which may include offer letters (original and final));
- (ii) the terms proposed by any person providing finance in relation to the relevant rolling stock (including cash flows);
- (iii) any agreement (in whatever form) to which the Franchisee (or an Affiliate of the Franchisee) is a party and which relates to the relevant rolling stock;
- (iv) information relating to capital allowances, details of any changes in the terms (including rentals) on which the relevant rolling stock is proposed to be leased compared to the terms on which such rolling stock was previously leased;
- (v) a detailed justification of the Franchisee's proposed maintenance strategy for the relevant rolling stock and/or the Franchisee's analysis of the whole life costs of the relevant rolling stock).

- 2.1B Where the information or documentation so requested by the Secretary of State pursuant to paragraph 2.1A is not held by the Franchisee, the Franchisee shall use reasonable endeavours to obtain the relevant information or documentation from a third party (including any person from whom the Franchisee leases rolling stock).

- 2.2 The Franchisee shall not, without the prior written consent of the Secretary of State:
- (a) amend the terms of any insurance arrangements which relate to rolling stock vehicles used by it in the provision of the Passenger Services to which it is a party on the Start Date; or
 - (b) enter into any new insurance arrangements after the Start Date which relate to rolling stock vehicles used or to be used by it in the provision of the Passenger Services ("**New Insurance Arrangements**").
- 2.3 Not used.
- 2.4 The Franchisee shall, in addition, if it enters into any New Insurance Arrangements, use all reasonable endeavours to ensure that the relevant insurers waive their rights of subrogation against any Train Operator which may have equivalent insurance arrangements providing for a similar waiver of rights of subrogation against the Franchisee, whether on a reciprocal basis or otherwise.
- 2.5 Without limiting paragraph 2.1, where the rolling stock to be leased by the Franchisee under any Rolling Stock Lease is Cascaded Rolling Stock the Secretary of State may:
- (a) as a condition of giving his consent to the Franchisee executing such Rolling Stock Lease, require that such Rolling Stock Lease contains a provision whereby, in the event of a Relevant Delay, the Secretary of State may require that such Cascaded Rolling Stock can continue to be used by the Prior Train Operator during such period as the Secretary of State shall specify. Without limitation this may include the Franchisee subleasing the Cascaded Rolling Stock back to the Prior Train Operator and/or a delay to the date on which the Cascaded Rolling Stock is required to be delivered to the Franchisee under such Rolling Stock Lease; and
 - (b) where the Secretary of State requires such a provision to be included in the relevant Rolling Stock Lease, if a Relevant Delay occurs, require the Franchisee to make the Cascaded Rolling Stock available for use by the Prior Train Operator during such period as the Secretary of State may require.

For the purpose of paragraph 2.5, paragraph 2.6 and paragraph 2.7:

"Cascaded Rolling Stock" means rolling stock proposed to be used by the Franchisee in the provision of the Passenger Services the availability of which is, in the opinion of the Secretary of State, directly or indirectly dependent upon the successful introduction into service of any Relevant Rolling Stock by any other Train Operator;

"Prior Train Operator" means the Train Operator which used or is using the Cascaded Rolling Stock immediately prior to its proposed use by the Franchisee;

"Relevant Delay" means any delay to the successful introduction into service of any Relevant Rolling Stock; and

"Relevant Rolling Stock" means rolling stock to be acquired by another Train Operator which, when acquired, will initiate the "cascade" of rolling stock that

directly or indirectly makes the Cascaded Rolling Stock available for use by the Franchisee.

2.6

- (a) Where the Secretary of State exercises his right pursuant to paragraph 2.5(b) to make Cascaded Rolling Stock available for use by the Prior Train Operator during a specified period there shall be a Change and where this is a Qualifying Change, it shall be assumed that the period that the Prior Train Operator retains any Cascaded Rolling Stock shall not exceed ninety days and the only Revised Inputs shall be in relation to the difference between each of the rolling stock lease costs and variable track usage charge for the Cascaded Rolling Stock and the rolling stock lease costs and variable track usage charge applicable in relation to whatever rolling stock is to be used by the Franchisee in place of the Cascaded Rolling Stock.
- (b) Where there is a Change pursuant to paragraph 2.6(a) and the period that the Prior Train Operator retains any Cascaded Rolling Stock is more than ninety days there shall be a further Change. Where such Change is a Qualifying Change the modifications to the methodology for calculating Revised Inputs provided for in paragraph 2.6(a) shall not apply.
- (c) Where there is a Change pursuant to paragraphs 2.6(a) or 2.6(b) and any such Change is a Qualifying Change there shall be a further Change (which shall be a Qualifying Change irrespective of whether such Change meets the requirements of the definition of Qualifying Change) on the date that the last Cascaded Rolling Stock ceases to be retained by the Prior Train Operator.

2.7

- (a) Where the Secretary of State exercises his right pursuant to paragraph 2.5(b) to make the Cascaded Rolling Stock available for use by the Prior Train Operator during a specified period the Franchisee shall not be liable for any failure to comply with its obligations under the Franchise Agreement to the extent that:
 - (i) such failure to comply arises directly as a result of the Franchisee being unable to use the Cascaded Rolling Stock; and
 - (ii) the Franchisee uses all reasonable endeavours to comply with the relevant obligations notwithstanding the unavailability of the Cascaded Rolling Stock.
- (b) The Franchisee shall notify the Secretary of State as soon as reasonably practicable if it becomes aware of any material risk that a Relevant Delay will occur. If a Relevant Delay does occur the Franchisee shall use all reasonable endeavours to mitigate the impact on the delivery of the Franchise Services of the unavailability of the Cascaded Rolling Stock at the expected time including by identifying and proposing value for money alternative sources of replacement rolling stock.
- (c) If a Relevant Delay has occurred or the Secretary of State believes that there is a material risk that a Relevant Delay will occur he may serve a notice on the Franchisee requiring it to produce a plan to a reasonable

specification provided with the notice to remedy or mitigate the impact of the delayed availability of the Cascaded Rolling Stock ("**Delayed Cascade Mitigation Plan**"). Such specification may include measures to be implemented by the Franchisee to mitigate the direct or indirect impact of the Relevant Delay on the Prior Train Operator or any other affected Train Operator. The Delayed Cascade Mitigation Plan shall provide a comprehensive analysis backed by relevant data and assumptions of:

- (i) all cost and revenue and other financial implications of options contained within it including the potential implications for Franchise Payments;
- (ii) the implications (if any) for the Benchmarks and Annual Benchmarks; and
- (iii) the likely impact of options within it for existing and future passenger journeys and journey opportunities.

The Franchisee shall meet with the Secretary of State to discuss the Delayed Cascade Mitigation Plan and provide such further information or analysis and further iterations of the Delayed Cascade Mitigation Plan as the Secretary of State shall reasonably require.

3. **Assignment of Property Leases during the Franchise Term**

3.1 The Franchisee shall (other than on termination of the Franchise Agreement, for which the provisions of paragraph 4.5 of Schedule 15.4 (Provisions Applying on and after Termination) shall apply) following receipt of a notice purporting to terminate a Property Lease or on becoming aware of any proceedings or any other steps having or purporting to have similar effect, if requested by the Secretary of State, assign its interest under all or any Property Leases to the Secretary of State or as he may direct, subject where applicable to the agreement of any other party to such Property Lease or the ORR.

3.2 Such assignment shall be on such terms as the Secretary of State may reasonably require, including:

- (a) 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 the Property Leases or any liability in respect of any act or omission under or in relation to the Property Lease prior to, or as at the date of, any such assignment (except to the extent that the Secretary of State or his nominee agrees to assume responsibility for such unperformed obligation, such liability or the consequences of such breach in connection with the relevant assignment); and
- (b) that neither the Secretary of State nor his nominee shall be obliged, in connection with such assignment, to agree to assume responsibility for any unperformed obligation, liability or consequences of a breach referred to in paragraph 3.2(a), and the Franchisee shall indemnify the Secretary of State or his nominee, as the case may be, on an after-tax basis against any costs, losses, liabilities or expenses suffered or incurred in relation thereto.

3.3 The Franchisee shall, on the occurrence of any of the circumstances specified in paragraph 3.1 in relation to any other Train Operator who is a party to a

Property Lease to which the Franchisee is also party, agree to the assignment of such Train Operator's interest under the relevant Property Lease to the Secretary of State or as he may direct, subject, where applicable, to the consent of Network Rail. The provisions of paragraph 3.2 shall apply to any such assignment.

- 3.4 The Franchisee shall notify the Secretary of State on becoming aware of any circumstances which might lead to the Secretary of State being able to require the Franchisee to assign its interest or agree to the assignment of another Train Operator's interest under this paragraph 3.

4. **Station and Depot Leases**

- 4.1 The Franchisee shall at all times enforce its rights under any Station Lease or Depot Lease.

- 4.2 The Franchisee shall:

- (a) comply with its obligations; and
 - (b) use all reasonable endeavours to require any counterparty to comply with any such counterparty's obligations,
- under any Station Lease or Depot Lease.

- 4.3 The Franchisee shall not:

- (a) terminate or agree to terminate in whole or in part, or take or omit to take any other action which might result in the termination of any Station Lease or Depot Lease;
- (b) assign all or part of its interest under any Station Lease or Depot Lease; or
- (c) sublet the whole or substantially the whole of the property comprised in any Station Lease or Depot Lease,

except to the extent that the Secretary of State may otherwise agree from time to time (such agreement not to be unreasonably withheld if the Franchisee has made arrangements, reasonably satisfactory to the Secretary of State, for the continued operation of such Station or Depot (as the case may be) for the remainder of the Franchise Term or if consent to the Closure of the relevant Station or Depot has been granted).

5. **Station Subleases**

- 5.1 Unless the Secretary of State agrees otherwise, the Franchisee shall not sublet to any of its Affiliates any part of the property comprised in any Property Lease except on terms that any such subletting:

- (a) (other than any subletting to an Affiliate which is a Train Operator) is terminable without compensation immediately upon the termination of the Franchise Agreement; and
- (b) is excluded from the provisions of Part II of the Landlord and Tenant Act 1954 and the Tenancy of Shops (Scotland) Act 1949.

5.2 If so requested by the Secretary of State, the Franchisee shall:

- (a) extend each Station Sublease on the same terms for such period as the Secretary of State may request (including a period equivalent to the franchise term of the Train Operator who is the lessee under such Station Sublease); and
- (b) if such Station Sublease terminates (which for the purposes of this paragraph 5.2(b) shall include the termination, at or around the time of termination of the Previous Franchise Agreement, of a station sublease in respect of which the Franchisee was the lessor), grant a new Station Sublease on the same terms to such Train Operator and for such period as the Secretary of State may request (including a period equivalent to the franchise term of the Train Operator who is the lessee under such Station Sublease),

subject, where required, to the consent of Network Rail (and, if required, the relevant sub-lessee) and to the duration of the relevant Station Lease.

5.3 The Franchisee shall notify the Secretary of State immediately on it becoming aware of any event which might give the Franchisee a right to forfeit or terminate any Station Sublease. The Franchisee shall notify the Secretary of State if it wishes to forfeit or terminate any such Station Sublease but shall not (without the Secretary of State's prior written consent) effect such forfeiture or termination until the date which occurs three months after the date of such notice.

6. **Station/Depot Change Proposals**

6.1 The Franchisee shall promptly notify the Secretary of State on receipt of any Depot Proposal for Change or Station Proposal for Change (as the case may be) and shall provide with such notification:

- (a) all the documents relating to any Depot Proposal for Change or Station Proposal for Change (as the case may be); and
- (b) a report which sets out the Franchisee's view of the impacts (if any) of any such Depot Proposal for Change or Stations Proposal for Change (as appropriate) on the provision of the Franchise Services (including any impacts on Revenue, Ancillary Revenue and costs) and how the Franchisee proposes to respond to such Depot Proposal for Change or Station Proposal for Change.

6.2 If and to the extent requested by the Secretary of State the Franchisee shall, following consultation with the Secretary of State:

- (a) respond to any Depot Proposal for Change or Station Proposal for Change (as the case may be) as may be directed by the Secretary of State; and
- (b) exercise such rights as it may have under the relevant Property Lease or Access Agreement in such manner and take such action as the Secretary of State may require in relation to any Station Proposal for Change or Depot Proposal for Change (including in relation to any agreement of the amount of any compensation payable whether under condition C3.4 of the Stations Access Conditions or condition C3.2 of the Depot Access Conditions (as appropriate) or otherwise and including submitting any relevant dispute to any relevant dispute resolution procedures). The

Franchisee shall not, without the consent of the Secretary of State, agree or propose to agree a value in relation to any indemnity or other compensation payable in relation to any Station Proposal for Change or Depot Proposal for Change whether under condition C3.4 of the Stations Access Conditions or condition C3.2 of the Depot Access Conditions (as appropriate) or otherwise.

- 6.3 The Franchisee shall ensure that any claim it makes to Network Rail or otherwise pursuant to paragraph 6.2(b) is disaggregated such that any claims relating to loss of Revenue, loss of Ancillary Revenue and increased costs are separately identified in any such claim. The Franchisee shall not amend, agree or propose to amend, the provisions relating to the payment of compensation under the condition C3.4 of the Stations Access Conditions or condition C3.2 of the Depot Access Conditions (as appropriate) (including by agreeing or proposing to agree any commercial agreements or arrangements which will have the effect of excluding the application of the provisions of condition C3.4 of the Stations Access Conditions or condition C3.2 of the Depot Access Conditions (as appropriate) without the consent of the Secretary of State.
- 6.4 The Franchisee shall pay to the Secretary of State by way of adjustments to Franchise Payments any sums received by the Franchisee from Network Rail or any other third party directly or indirectly in relation to a Station Proposal for Change or Depot Proposal for Change (as the case may be) to the extent that such sums relate to compensation for loss of Revenue ("**Station/Depot Change Compensation Amounts**"). Any Station/Depot Change Compensation Amounts received by the Franchisee on or after the Franchise Period shall be paid (as a debt) by the Franchisee to the Secretary of State within 30 days of receipt of any such Station/Depot Change Compensation Amounts.

SCHEDULE 2.3

Third Party Delivery of Passenger Services and Other Franchisees

1. Subcontracting any Passenger Services

- 1.1 Subject to paragraph 1.2, the Franchisee may not subcontract or delegate the provision of the Passenger Services without the prior written consent of the Secretary of State.
- 1.2 The Franchisee may subcontract or delegate the provision of the Passenger Services, provided that:
- (a) the Secretary of State receives prior written notice of any such subcontracting or delegation;
 - (b) the Franchisee continues to be party to all Access Agreements and Property Leases necessary to provide such Passenger Services and to enjoy all relevant access and operational rights thereunder;
 - (c) the Franchisee continues to specify and control the terms and conditions (subject to the requirements of the Inter-Operator Schemes) on which such Passenger Services are to be provided, including the determination of the Price or Child Price (as the case may be) of any Fares;
 - (d) the Train Mileage of the Passenger Services so delegated or subcontracted does not exceed 5 per cent. of the aggregate scheduled Train Mileage of the Franchisee in any Reporting Period; and
 - (e) the Franchisee continues to perform its obligations under Schedule 1.1 (Service Development) in respect of any subcontracted or delegated services.
- 1.3 Any such subcontracting or delegation shall not relieve the Franchisee from any of its obligations under the Franchise Agreement, including its obligations under this paragraph 1 and Schedule 14 (Preservation of Assets).

2. Other Franchisees

- 2.1 If the franchise agreement of another franchisee terminates or a railway administration order is made in respect of another franchisee, the Franchisee shall co-operate with any reasonable request of the Secretary of State to ensure:
- (a) that the services provided or operated by such other franchisee may continue to be provided or operated by any successor Train Operator or the railway administrator; and
 - (b) that the benefit of any arrangements between the Franchisee and such other franchisee which were designated as a key contract under such franchise agreement immediately prior to its termination or to a railway administration order being made will continue to be provided to any successor Train Operator or to the railway administrator.
- 2.2 The benefit of any arrangements of the type referred to in paragraph 2.1(b) shall be provided on substantially the same terms as previously obtained by the

relevant franchisee, subject to paragraph 11 of Schedule 19 (Other Provisions) and paragraph 2.3, provided that the Secretary of State may exclude or modify any terms agreed or amended by such franchisee in the 12 months preceding the date on which such franchisee's franchise agreement was terminated or the date on which the relevant railway administration order was made which were, in the Secretary of State's reasonable opinion, to the material detriment of such franchisee's business. The benefit of such arrangements shall be provided for such period as the Secretary of State may reasonably require to allow the relevant Train Operator or railway administrator to renegotiate such arrangements or make alternative arrangements.

- 2.3 The Franchisee shall notify the Secretary of State of its intention to terminate any contract with any other Train Operator which is designated as a "Key Contract" under that Train Operator's franchise agreement and shall give that Train Operator sufficient notice to enable it to make suitable alternative arrangements for its passengers without causing disruption to the railway passenger services provided by such Train Operator.
- 2.4 If the franchise agreement of another franchisee terminates in contemplation of the entry into or entry into effect of a new franchise agreement with the same franchisee in respect of all or a material part of the relevant railway passenger services, the Franchisee shall waive any event of default or other right it may have to terminate any agreement with such franchisee arising out of such termination, provided that the entry into or entry into effect of such new franchise agreement takes place.
- 2.5 References in this paragraph 2 to a franchisee include references to any franchise operator of that franchisee.

SCHEDULE 2.4

Other Franchise Operations

1. Rolling Stock Testing and Commissioning

1.1 Without prejudice to the provisions set out in Schedule 6.3 (TLP/TRSP Related Provisions) the Franchisee shall, to the extent reasonably requested by the Secretary of State and subject to payment of the Franchisee's reasonable costs by the relevant third party, co-operate with any third party which the Secretary of State may specify (including a Successor Operator, a rolling stock vehicle manufacturer, Network Rail or the Secretary of State) in connection with the testing and commissioning of new rolling stock vehicles or any new equipment to be fitted to rolling stock vehicles (whether such rolling stock vehicles are new or otherwise). Such co-operation shall not unreasonably disrupt the provision and operation of the Franchise Services and may include:

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

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

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

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

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

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

3. Staffing at Stations/Proposals to de-staff Stations

3.1 The Franchisee shall ensure that:

- (a) all day staffing continues to be provided at each High Usage Station where all day staffing was provided immediately prior to the Start Date, the Combined Effective Date or the LSER Station Transfer Date (as the case may be) ("**Fully Staffed High Usage Station**");
- (b) as soon as reasonably practicable from the Start Date, the Combined Effective Date or the LSER Station Transfer Date (as the case may be) (and in any event within 12 months from the Start Date, the Combined Effective Date or the LSER Station Transfer Date (as the case may be)), all day staffing is provided at each High Usage Station which is not a Fully Staffed High Usage Station ("**Other High Usage Station**");
- (c)
 - (i) for each Low Usage Station in respect of which all day staffing was not provided immediately prior to the Start Date, the Combined Effective Date or the LSER Station Transfer Date (as the case may be), it provides, subject to paragraph 3.2 and 3.3, staff presence of the same specification in terms of the times of the day during which staff are present as was provided at such Low Usage Station immediately prior to the Start Date, the Combined Effective Date or the LSER Station Transfer Date (as the case may be); and
 - (ii) *[Bidder to populate: Provisions which reflect bidders proposals for the staffing of Low Usage Stations in respect of which all day staffing was provided immediately prior to the Start Date, the Combined Effective Date or the LSER Station Transfer Date (as the case may be) to be inserted by the Bidders. As required by the ITT Bidders must propose staffing hours that are appropriate in respect of each such Low Usage Station but, in any case, must propose a staff presence at least throughout the hours as are required under Schedule 17 of the Ticketing and Settlement Agreement. The requirements to notify the Secretary of State and secure his consent under paragraph 3.3 would not apply in respect of any implementation of the bidder proposals in this respect, but the requirement to notify the relevant Rail Passengers Council and have regard to its views and representations would still apply. However provisions must make clear that once proposals are implemented then any de-staffing below the proposed level will be subject to the requirements of paragraph 3.2 and 3.3];*
- (d) in deploying staff for the purposes of this paragraph 3.1, it acts as a reasonable efficient and skilled Train Operator. Accordingly the Franchisee shall ensure that staff deployed in the fulfilment of its obligations under this paragraph 3.1 are assigned to duties that mean that they are reasonably deployed on platforms, ticket offices and station concourses so that their availability to provide reasonable assistance and advice to passengers (as needed) is visible to passengers; and

- (e) for the purposes of this paragraph 3:
- (i) **"all day staffing"** means at least one Franchisee Employee being present at a station between the period commencing 5 minutes prior to the scheduled arrival or departure time (as the case may be) of the First Train and five minutes after the actual arrival or departure time (as the case may be) of the Last Train;
 - (ii) **"First Train"** means the first timetabled Passenger Service to arrive at or depart from such Fully Staffed High Usage Station or Other High Usage Station (as the case may be);
 - (iii) **"High Usage Station"** means a station at which the Passenger Services call and where the total aggregate number of entries and exits exceed 1,000,000 (one million) as reported in the document published by the ORR and entitled "Estimates of station usage 2011-12";
 - (iv) **"Last Train"** means the last timetabled Passenger Service to arrive at or depart from such Fully Staffed High Usage Station or Other High Usage Station (as the case may be);
 - (v) **"Low Usage Station"** means a station at which the Passenger Services call and which is not a High Usage Station; and
 - (vi) **"LSER Station Transfer Date"** means the date upon which the Franchisee becomes the Facility Owner in respect of a Transfer Station.

3.2 If the Franchisee proposes to take any step on or after the Start Date, the Combined Effective Date or the LSER Station Transfer Date (as the case may be) which would result in a Station ceasing to be staffed in accordance with the requirements of paragraph 3.1 it shall provide at least eight weeks' written notice of such proposal to the Secretary of State and the relevant Passengers' Council.

3.3 The Franchisee shall:

- (a) obtain the written consent of the Secretary of State (which such consent shall be in addition to and separate from any Secretary of State's approval required in relation to such de-staffing proposals whether pursuant to the Ticketing and Settlement Agreement or otherwise); and
- (b) have regard to the views and representations of the Passengers' Council, before implementing any proposals pursuant to paragraph 3.2.

3.4 The Franchisee acknowledges that its obligations in this paragraph 3 are in addition to and do not limit its obligations to comply with the requirements set out in Chapter 6 and Schedule 17 of the Ticketing and Settlement Agreement in respect of minimum opening times at Regulated Stations (as such term is defined under the Ticketing and Settlement Agreement).

4. **Royal Train**

- 4.1 The Franchisee shall, if and to the extent requested by any person (including Rail Express Systems Limited) and subject to the payment by such person of any reasonable costs of the Franchisee, co-operate in the provision by such person of railway passenger services for Her Majesty Queen Elizabeth II or any successor head of state or members of the family or representatives of either of them.
- 4.2 The provision of railway services for Her Majesty Queen Elizabeth II or any successor head of state or members of the family or representatives of either of them may include:
- (a) running a "sweeper" train in front of the royal train;
 - (b) having spare locomotives on standby as rescue traction; and/or
 - (c) carrying out security requirements or co-operating with other persons in ensuring that security requirements are carried out prior to calling at any station on the Routes.

SCHEDULE 2.5

Transport, Travel and Other Schemes

1. **Not Used**
2. **Not Used**
3. **Not Used**
4. **Discount Fare Schemes**
 - 4.1 If the Secretary of State:
 - (a) effects, or proposes to effect, an amendment to a Discount Fare Scheme;
 - (b) introduces any new Discount Fare Scheme; or
 - (c) ceases to approve a Discount Fare Scheme,for the purposes of Section 28 of the Act, such amendment, intended amendment, introduction or cessation of approval shall be a Change.
 - 4.2 The Secretary of State shall provide a reasonable opportunity to the Franchisee to make representations to him before amending, introducing or ceasing to approve a Discount Fare Scheme pursuant to paragraph 4.1.
 - 4.3 The Franchisee shall supply to the Secretary of State, in respect of any Discount Fare Scheme referred to in paragraph 4.1, such information within such period as the Secretary of State may reasonably require for the purposes of determining the financial effect of any such amendment, intended amendment, introduction or cessation of approval.
5. **Inter-Operator Schemes**
 - 5.1 The Franchisee shall participate in and comply with its obligations under the terms of each of the Inter-Operator Schemes.
 - 5.2 Without limiting paragraphs 5.1 and 5.3, the Franchisee agrees to be bound by Parts IV and V of Chapter 4 of the Ticketing and Settlement Agreement and shall not amend, or agree or propose to amend, the Ticketing and Settlement Agreement without the prior written consent of the Secretary of State.
 - 5.3 The Franchisee shall not amend, or agree or propose to amend, any Inter-Operator Scheme other than in accordance with its terms.
 - 5.4 The Franchisee shall:
 - (a) provide reasonable notice to the Secretary of State of any proposal to amend any Inter-Operator Scheme which it intends to make or of which it receives notification and which, in its opinion, is reasonably likely materially to affect the provision of the Franchise Services; and
 - (b) have regard to the Secretary of State's views in respect of any such proposal.

5.5 If an amendment is effected or proposed to be effected to an Inter-Operator Scheme which requires the consent or approval of the Secretary of State in accordance with the terms thereof, such amendment shall be treated as a Change to the extent and only to the extent that the Franchisee makes a saving as a consequence of such amendment or proposed amendment.

6. Voting on Inter-Operator Scheme Councils

6.1 The Franchisee shall give the Secretary of State reasonable notice of:

- (a) any meeting of:
 - (i) a scheme council of an Inter-Operator Scheme on which the Franchisee is represented; or
 - (ii) a scheme management group of any Inter-Operator Scheme:
 - (A) in which the Franchisee has a permanent position; or
 - (B) where the Franchisee employs a member of such group;
- (b) the resolutions to be voted upon at any such meeting; and
- (c) the Franchisee's voting intentions.

6.2 The Franchisee shall:

- (a) attend such meetings referred to in paragraph 6.1 as the Secretary of State may notify to it from time to time;
- (b) vote at any such meeting in the manner required by the Secretary of State; and
- (c) provide to the Secretary of State copies of the minutes of any such meeting as soon as reasonably practicable after receipt of same.

SCHEDULE 3

Not Used

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SCHEDULE 4

Persons with Disabilities and Disability Discrimination

Schedule 4: Persons with Disabilities and Disability Discrimination

Appendix 1: Minor Works

Appendix 2: Alternative Transport

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SCHEDULE 4

Persons with Disabilities and Disability Discrimination

1. Relationship with other obligations relating to persons with disabilities

1.1 The Franchisee acknowledges that its obligations in this Schedule 4 are in addition to and do not limit its obligations to comply with:

- (a) the EA and any regulations imposed by it;
- (b) any applicable condition(s) in any of its Licences (including in respect of persons with disabilities); and
- (c) any other of the requirements of the Franchise Agreement.

1.2 This Schedule 4 sets out:

- (a) specific arrangements which apply in respect of physical alterations to stations to facilitate accessibility and use by Disabled Persons; and
- (b) specific obligations of the Franchisee directed at meeting the needs of persons with disabilities.

2. Physical Alterations and Accessibility of Stations

2.1 In respect of physical alteration works at stations to facilitate accessibility and use by Disabled Persons, it is acknowledged by the Franchisee that:

- (a) there is limited funding available to the Secretary of State to assist franchisees and/or franchise operators with the carrying out of those works;
- (b) consequently, there is a need for such works to be carried out over a period of time to reflect the availability of funding, and for such works to be prioritised with regard to where there is the greatest need and/or where physical alterations can have the greatest effect; and
- (c) the Secretary of State's national programme of works of physical alterations at stations addresses these issues in a structured way.

2.2 The Franchisee shall:

- (a) co-operate reasonably with and assist the Secretary of State in the development and furtherance by the Secretary of State of the programme described in paragraph 2.1(c) by providing to the Secretary of State:
 - (i) information concerning the usage of Stations (including, where and to the extent reasonably practicable, usage of Stations by Disabled Persons); and
 - (ii) advice as to the most economic way in which accessibility for Disabled Persons could, in the Franchisee's reasonable opinion, be improved at Stations;

- (b) co-operate reasonably with other Train Operators and/or Network Rail to seek to ensure that, where it would be advantageous to do so, having regard to the needs of Disabled Persons, any planned work on the Stations to facilitate accessibility and use by Disabled Persons is, so far as reasonably practicable, co-ordinated with other work to be carried out at the Stations and/or other parts of the network; and
 - (c) use all reasonable endeavours to secure sources of grant funding (other than from itself or an Affiliate) for improving accessibility for Disabled Persons at Stations (in addition to any funding secured through the Secretary of State pursuant to paragraph 2.5), including from Local Authorities, local development agencies and the Lottery Commission. The Franchisee shall notify the Secretary of State of:
 - (i) any such additional funding which it secures; and
 - (ii) the terms on which such additional funding has been granted.
- 2.3 In participating in any multi-modal fares scheme, the Franchisee shall use all reasonable endeavours to secure, through the planning and development of such scheme, improvements in disabled access to the entrances of any relevant station, including within and in the immediate proximity of such station.
- 2.4 If, during the Franchise Term:
- (a) the Franchisee has complied with its obligations in Section 20(4) and Section 20(9), as varied by paragraph 2(3) of Schedule 2, of the EA (to take such steps as are reasonable to provide a reasonable alternative method of making services at a Station accessible to a Disabled Person to avoid a Disabled Person being placed at a substantial disadvantage by a physical feature at a Station) and its obligations in paragraph 2.7 concerning Minor Works; and
 - (b) notwithstanding such compliance, the Franchisee reasonably considers it is still required to carry out or procure physical works of alteration at a Station in order to comply with the EA Requirements in respect of that Station, and, in so carrying out or procuring, would incur expenditure which it would not otherwise have an obligation to incur,
- the Franchisee may seek funding from the Secretary of State in respect of that expenditure.
- 2.5 If the Franchisee seeks funding from the Secretary of State under paragraph 2.4, and demonstrates to the Secretary of State's satisfaction that the criteria in paragraph 2.4 have been satisfied, then the Secretary of State may agree to adjust the amount of Franchise Payments in respect of some or all of the works and/or expenditure. In considering his response to any such request, the Secretary of State will have regard to the availability of funding and the priorities set out in the national programme described in paragraph 2.1(c), together with any other available sources of funding described in paragraph 2.2(c). If and to the extent the Secretary of State agrees to adjust Franchise Payments in accordance with this paragraph 2.5 in any Franchisee Year:
- (a) the Secretary of State shall make such adjustment to the Franchise Payments; and

- (b) the Franchisee shall spend such additional funds:
 - (i) in order to comply with the EA Requirements referred to in paragraph 2.4(b); and
 - (ii) in accordance with any conditions the Secretary of State may notify the Franchisee of.

2.6 If and to the extent the Franchisee is required to pay any increased access charges as a result of additional expenditure required to be incurred by another station Facility Owner for the purpose of complying with the EA Requirements in respect of a Franchisee Access Station, provided that the Franchisee:

- (a) notifies the Secretary of State within seven days of becoming aware of any proposal for the increase in such charges (or the works to which they relate); and
- (b) complies with the Secretary of State's reasonable directions regarding the exercise of any rights the Franchisee may have in respect thereof,

the imposition of the increased access charges shall be a Change.

2.7 The Franchisee shall:

- (a) establish and manage the Minor Works' Budget to fund the carrying out of Minor Works. For the purposes of this paragraph 2.7, Minor Works means small scale physical alterations or additions to improve accessibility of Stations to Disabled Persons, not involving substantial works of construction or reconstruction. The Minor Works:
 - (i) may, but shall not necessarily include, the Minor Works described in Appendix 1 of this Schedule 4;
 - (ii) shall not include any works which Network Rail, the Franchisee or any other person has a separate obligation to carry out, except where:
 - (A) such obligation is an obligation of the Franchisee under the EA; or
 - (B) the inclusion of such works would lead to the acceleration of the timescale for their completion and the Secretary of State gives his consent pursuant to paragraph 2.7(a)(iii);
 - (iii) shall only include works other than those permitted by paragraphs 2.7(a)(i) and (a)(ii) with the prior consent of the Secretary of State; and
 - (iv) must comply with the standards provided for in the Code of Practice, unless otherwise agreed with the prior consent of the Secretary of State;
- (b) as soon as reasonably practicable (and in any event within four months) after the Start Date and thereafter before the start of each Franchisee Year:

- (i) develop a Minor Works' Programme and consult with the Disabled Persons Transport Advisory Committee and relevant Passengers' Council in relation thereto;
 - (ii) in conjunction with its activities in paragraph 2.7(b)(i), and, consistent with its obligations under paragraph 2.2(b), liaise with Network Rail and other Train Operators as necessary with regard to the determination and implementation of each Minor Works' Programme; and
 - (iii) following the consultation and liaison described in paragraphs 2.7(b)(i) and 2.7(b)(ii), obtain the Secretary of State's prior approval (such approval not to be unreasonably withheld) of each Minor Works' Programme;
- (c) carry out or procure the carrying out of the Minor Works' Programme in each Franchisee Year and in doing so, spend at least the amount of the Minor Works' Budget for the relevant Franchisee Year in such Franchisee Year (unless otherwise agreed by the Secretary of State);
 - (d) report progress to the Secretary of State in determining and carrying out the Minor Works' Programme no less than once every three Reporting Periods; and
 - (e) co-operate, as the Secretary of State may reasonably require, with Network Rail or any other person seeking to carry out or procure Minor Works at the Stations or any other stations.

3. **Dealing with Claims Relating to Stations**

- 3.1 If the Franchisee receives notification of a claim under the EA in respect of any alleged non-compliance with the EA Requirements or otherwise in respect of any Station (an "**EA Claim**") then the Franchisee shall:
- (a) notify the Secretary of State within seven days of receiving notification of the EA Claim. The Franchisee shall at the same time notify the Secretary of State of any reasonable alternative methods of making services at the Station accessible to Disabled Persons that it has considered and/or put in place pursuant to Section 20(4) and Section 20(9), as varied by paragraph 2(3) of Schedule 2, of the EA;
 - (b) if required by the Secretary of State, defend the EA Claim or any aspect of the EA Claim (which may include appealing the judgment). The Secretary of State will, subject to paragraph 3.4, pay the Franchisee's reasonable costs of:
 - (i) any defence or appeal required by the Secretary of State; and/or
 - (ii) compliance with the Secretary of State's instructions in accordance with paragraph 3.1(c); and
 - (c) act in accordance with the reasonable instructions of the Secretary of State to defend the EA Claim (or any aspect of it) as required under paragraph 3.1(b) and shall not (without the prior consent of the Secretary of State) settle or enter into any compromise in relation to the EA Claim (or the relevant aspect of it), including by entering into mediation.

- 3.2 If, in the reasonable opinion of the Franchisee, it will be more cost effective to settle the EA Claim rather than act in accordance with the Secretary of State's requirement under paragraph 3.1, it shall produce for the Secretary of State's approval a settlement proposal, setting out the terms of the Franchisee's proposals to make an offer to the Disabled Person making the EA Claim and its reasons for making such offer (the "**Settlement Proposal**").
- 3.3 If the Secretary of State does not accept the Settlement Proposal and still requires the Franchisee to defend the EA Claim (or any aspect of it) then the Franchisee shall defend the EA Claim in accordance with paragraph 3.1.
- 3.4 If the Franchisee is required to defend an EA Claim where it has submitted a Settlement Proposal to the Secretary of State and an award is made in respect of the EA Claim in favour of the person bringing it which is higher than the figure set out in the Settlement Proposal, then, subject to paragraph 3.5, the Secretary of State shall pay to the Franchisee:
- (a) the difference between such an award and the figure set out in the Settlement Proposal; and
 - (b) the further reasonable costs incurred or payable by the Franchisee in defending the EA Claim, to the extent that such costs have not already been paid by the Secretary of State under paragraph 3.1(b).
- 3.5 The Secretary of State shall not have any obligation to make the payments described in paragraphs 3.1(b) or 3.4 where it is determined or, if no declaration or determination by the court on this point has been sought or made, the Secretary of State, in his reasonable opinion, considers that the Franchisee has not taken such steps as it is reasonable, in all the circumstances of the case, for it to take to provide a reasonable alternative method of making services at the Station accessible to Disabled Persons.
4. **Specific additional obligations relating to persons with disabilities**
- 4.1 Not used.
- 4.2 The Franchisee shall establish and implement procedures necessary to:
- (a) record the making of reservations for seating accommodation for and/or the provision of assistance to, persons with disabilities which are made through the Assisted Passenger Reservation System (or whatever system may replace it from time to time for the purposes of the Secretary of State's Guidance on Disabled People's Protection Policies) and where the Franchisee is responsible for making the reservation and/or delivering the seating accommodation or assistance reserved. Any helpline established by the Franchisee for the purposes of making reservations for seating accommodation for and/or the provision of assistance to, persons with disabilities shall be provided free of charge;
 - (b) record whether such seating accommodation and/or assistance is actually provided; and
 - (c) provide such records to the Secretary of State on his request.
- 4.3 Where the Franchisee's Disabled People's Protection Policy:
- (a) has been established before the date of the Franchise Agreement; and

- (b) has not been revised and approved by the Secretary of State to take into account the Secretary of State's most recent published Guidance on Disabled People's Protection Policies as at the date of the Franchise Agreement,

the Franchisee shall within six months of the date of the Franchise Agreement revise its Disabled People's Protection Policy such that it complies with that guidance, and obtain the Secretary of State's approval of the revised version.

- 4.4 The Franchisee shall comply with the requirements set out in Appendix 2 (Alternative Transport) of this Schedule 4 in respect of the provision of alternative means of transportation for persons with disabilities.

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APPENDIX 1 TO SCHEDULE 4

Minor Works

1. Providing additional signage, where it does not currently exist, to allow better way finding around the station by Disabled Persons.
2. Removing:
 - 2.1 thresholds (above 15 millimetres) which do not comply with the Code of Practice; or
 - 2.2 fewer than three steps,
from the entrances to booking halls or platforms to enable those facilities to have step-free access.
3. Providing contrasting manifestations on glazed areas where contrasting manifestations do not currently exist.
4. Providing additional handrails around the station where handrails do not currently exist and where the Franchisee reasonably believes they may be required by a Disabled Person.
5. Providing new accessible stair nosings where stair nosings do not currently exist.
6. Providing new tactile surfaces, including at the top and bottom of flights of steps (but excluding at platform edges) where tactile surfaces do not currently exist.
7. Providing additional seating that is accessible to Disabled Persons, but not replacing existing seating.
8. Providing induction loops for ticket office windows where induction loops do not currently exist.
9. Replacing non-standard fittings with fittings that are compliant with the Code of Practice in existing disabled toilets, which would include replacing non-standard fittings in respect of toilet bowls and sinks, but would not include making major changes to plumbing or to the dimensions of the toilet area.
10. Providing dropped kerbs at drop off/set down points or station car parks to enable access/egress thereto where dropped kerbs do not currently exist.
11. Marking out existing car-parking bays for use by persons with disabilities which comply with the Code of Practice, where such car parking bays do not currently comply.

APPENDIX 2 TO SCHEDULE 4

Alternative Transport

1. References in this Appendix 2 to passengers are references to passengers with disabilities who are wheelchair users or otherwise severely mobility impaired.
2. Subject to paragraph 4, where:
 - (a) a passenger wants to travel on a Passenger Service; and
 - (b) the design of the station at which the passenger's journey on such Passenger Service is to start (the "**Departure Station**") or finish (the "**Destination Station**") prevents the passenger from using that station to access or disembark from that Passenger Service,

the Franchisee shall provide alternative transport for that passenger in accordance with paragraph 3.
3. The Franchisee shall provide alternative transport for the passenger referred to in paragraph 2:
 - (a) from the Departure Station to the next station at which the Passenger Service is scheduled to call and at which it is possible for the passenger to access that Passenger Service;
 - (b) to the Destination Station, from the station closest to such station at which the Passenger Service is scheduled to call and which it is possible for the passenger to use to disembark from that Passenger Service; and/or
 - (c) to or from such other station as the Franchisee may, having regard to the journey and the needs of the passenger, agree,

and, in any case, at no cost additional to the price of the Fare which would otherwise be payable for the passenger's rail journey.
4. The Franchisee's obligations under this Appendix 2 are subject to:
 - (a) reasonable prior notice of the passenger's requirement for alternative transport; and
 - (b) the availability of suitable alternative transport (provided that the Franchisee has used all reasonable endeavours to ensure that it has arrangements in place to meet requirements for the provision of such alternative transport).

SCHEDULE 5

Fares

- Schedule 5.1: Purpose, Structure and Construction**
- Schedule 5.2: Franchisee's Obligation to Create Fares**
- Schedule 5.3: Allocation of Fares to Fares Baskets**
- Schedule 5.4: Regulation of Fares Basket Values**
- Schedule 5.5: Regulation of Individual Fares**
- Schedule 5.6: Exceeding the Regulated Value, Regulated Price or Regulated Child Price**
- Schedule 5.7: Changes to Fares and Fares Regulation**
- Schedule 5.8: Fares Regulation Information and Monitoring**
- Schedule 5.9: ITSO Certified Smartmedia**

SCHEDULE 5.1

Purpose, Structure and Construction

1. Purpose of Schedule 5

Purpose of provisions relating to Creating Fares

- 1.1 The purpose of Schedule 5.2 (Franchisee's Obligation to Create Fares) is to ensure that Commuter Fares and Protected Fares are Created in accordance with the Ticketing and Settlement Agreement and appropriate restrictions are placed on the Franchisee's ability to Create Fares.

Purpose of Fares Regulation

- 1.2 The purpose of Schedules 5.3 (Allocation of Fares to Fares Baskets) to 5.8 (Fares Regulation Information and Monitoring) (inclusive) is to provide for the regulation of Fares by the Secretary of State pursuant to Section 28 of the Act.

- 1.3 For the purpose of regulating Fares, each Fare that is to be regulated shall be allocated in accordance with this Schedule 5 to one of the following Fares Baskets:

- (a) the Commuter Fares Basket; or
- (b) the Protected Fares Basket.

- 1.4 The Secretary of State's regulation of Fares places a limit on the Price or Child Price of each Fare that is allocated by the Secretary of State to a Fares Basket. The limit on the Price or Child Price of each Fare is set by reference to:

- (a) the overall increase of the Prices and the Child Prices of all Fares in a Fares Basket; and
- (b) the individual increase in the Price or the Child Price of each Fare in a Fares Basket.

- 1.5 Subject to the more detailed provisions of Schedules 5.4 (Regulation of Fares Basket Values) and 5.5 (Regulation of Individual Fares):

- (a) the overall increase of the Prices and the Child Prices of all Fares in a Fares Basket may not exceed the Retail Prices Index + one per cent. per annum in respect of each Fare Year; and
- (b) the increase in the Price or the Child Price of any individual Fare in a Fares Basket may not exceed the Retail Prices Index + three per cent. per annum in respect of each Fare Year.

- 1.6 The Secretary of State may alter these limits, and other aspects of the regulation of Fares, in accordance with the more detailed provisions of Schedule 5.7 (Changes to Fares and Fares Regulation).

2. **Structure of Schedule 5**

- 2.1 Schedule 5.2 (Franchisee's Obligation to Create Fares) sets out or refers to the Franchisee's obligations to Create Fares.
- 2.2 Schedule 5.3 (Allocation of Fares to Fares Baskets) sets out the allocation of Fares to Fares Baskets.
- 2.3 Schedule 5.4 (Regulation of Fares Basket Values) sets out the limits applicable to the overall increase in Prices and Child Prices of all Fares in a Fares Basket.
- 2.4 Schedule 5.5 (Regulation of Individual Fares) sets out the limits applicable to the increase in the Price or Child Price of any individual Fare in a Fares Basket.
- 2.5 Schedule 5.6 (Exceeding the Regulated Value, Regulated Price or Regulated Child Price) sets out the consequences of the Franchisee exceeding:
 - (a) the Regulated Value of any Fares Basket; or
 - (b) the Regulated Price or Regulated Child Price of any Fare.
- 2.6 Schedule 5.7 (Changes to Fares and Fares Regulation) sets out the Secretary of State's ability to vary the foregoing provisions.
- 2.7 Schedule 5.8 (Fares Regulation Information and Monitoring) sets out Fares regulation information and monitoring provisions.
- 2.8 Schedule 5.9 (ITSO Certified Smartmedia) sets out the provisions relating to the ITSO Certified Smartmedia.

3. **Construction**

References to "**Fare**"

- 3.1 For the purposes of:
 - (a) Schedule 5.2 (Franchisee's Obligation to Create Fares), Fare shall have the wide meaning given to it in paragraph (a) of that definition; and
 - (b) Schedules 5.3 (Allocation of Fares to Fares Baskets) to 5.8 (Fares Regulation Information and Monitoring) (inclusive), Fare shall have the narrow meaning given to it in paragraph (b) of that definition.
- 3.2 References in this Schedule 5 to a Fare shall, except to the extent the context otherwise requires, be construed as references to the Fare which is or can be Created by the Lead Operator for the Flow to which the Fare relates or, if such Flow is not a Compulsory Inter-available Flow, any Fare which the Franchisee has Created or can Create in respect of that Flow as the Secretary of State may specify.

Fares Documents

3.3 In the event that, in the Secretary of State's reasonable opinion, there is an immaterial inconsistency between the Fares, the maximum Price or Child Price (as the case may be) for any Fare recorded by RSP in 2010 or the 2010 Nominal Ticket Sales:

- (a) described in or determined in accordance with this Schedule 5; and
- (b) described in the relevant Fares Document,

the relevant Fares Document shall prevail.

3.4 In the event that, in the Secretary of State's reasonable opinion, there is a material inconsistency between the Fares, the maximum Price or Child Price (as the case may be) for any Fare recorded by RSP in 2010 or the 2010 Nominal Ticket Sales:

- (a) described in or determined in accordance with this Schedule 5; and
- (b) described in the relevant Fares Document,

this Schedule 5 shall prevail.

Setting of Child Prices

3.5 Any requirement under this Schedule 5 to set a Child Price in respect of a Fare shall be satisfied by the Franchisee Creating either:

- (a) a Fare which is only valid for use by persons under the age of 16; or
- (b) a Fare which is valid for use:
 - (i) by any person at a price; and
 - (ii) by persons under the age of 16 at a discounted price relative to the price set pursuant to paragraph 3.5(b)(i).

New Stations

3.6 Subject to paragraph 3.2, the Secretary of State may include within the definitions of:

- (a) Fares Basket;
- (b) Commuter Fare; and
- (c) Protected Fare,

Fares to or from any New Station, on such basis as he may, after consultation with the Franchisee, reasonably determine and references in this Schedule 5 to Fares Basket, Commuter Fare, Protected Fare and Fares and other relevant definitions shall be construed accordingly. At the request of the Secretary of State, the Bid Fares Policy shall be amended as is required to give effect to any such determination by the Secretary of State.

SCHEDULE 5.2

Franchisee's Obligation to Create Fares

1. Creation of Commuter Fares and Protected Fares

The Franchisee shall ensure that each Commuter Fare and each Protected Fare has been Created in accordance with the Bid Fares Policy (as the same may be amended from time to time in accordance with Schedule 5.8 (Fares Regulation, Information and Monitoring)) and to the extent it is entitled or obliged to do so under the terms of the Ticketing and Settlement Agreement.

2. Restrictions on Creation of Fares

2.1 The Franchisee shall set the Child Price for any Fare that it Creates so that that Fare may be purchased by or for a person under the age of 16 for an amount which is no greater than the lowest amount that would be paid if that person were the holder of a 16 to 25 Railcard with no minimum fare (as amended or replaced from time to time) and whose purchase was made without condition.

2.2 The Franchisee shall not Create or agree to Create any:

- (a) Fare with a validity of 13 or more months; or
- (b) Discount Card,

without the consent of the Secretary of State (such consent not to be unreasonably withheld).

SCHEDULE 5.3

Allocation of Fares to Fares Baskets

1. Allocation of Fares to Fares Baskets

1.1 On or prior to the Start Date the Secretary of State shall allocate each Commuter Fare and each Protected Fare to the relevant Fares Basket in accordance with this Schedule 5.3.

1.2 Subject to paragraph 2, every Commuter Fare shall be allocated by the Secretary of State to the Commuter Fares Basket and every Protected Fare shall be allocated by the Secretary of State to the Protected Fares Basket.

2. Designation of Non-Fares Basket Fares

2.1 On or prior to the Start Date, the Secretary of State shall:

(a) separately (or in aggregate with other Fares of the same type in the opposite direction or for similar journeys that have the same Price or Child Price as the case may be) rank, in descending order according to their Gross Revenue for the period of 12 months which ended 31 March 2010:

(i) all Commuter Fares; and

(ii) all Protected Fares;

(b) aggregate, following such ranking:

(i) those Commuter Fares with the lowest Gross Revenue, until the total of the aggregated Gross Revenue of such fares accounts for up to five per cent. of the aggregate Reference Revenue of all Commuter Fares; and

(ii) those Protected Fares with the lowest Gross Revenue, until the total of the aggregated Gross Revenue of such fares accounts for up to five per cent. of the aggregate Reference Revenue of all Protected Fares; and

(c) designate, following such aggregation:

(i) those Commuter Fares referred to in paragraph 2.1(b)(i) as Non-Fares Basket Fares; and

(ii) those Protected Fares referred to in paragraph 2.1(b)(ii) as Non-Fares Basket Fares.

2.2 Without prejudice to the Secretary of State's right to require the content of a Fares Basket to change at any time prior to the Start Date or the Combined Effective Date (as the case may be) or, thereafter, prior to the commencement of any Fares Setting Round, pursuant to paragraph 1 of Schedule 5.7 (Changes to Fares and Fares Baskets), any Commuter Fare or Protected Fare that is also designated as a Non-Fares Basket Fare shall not be allocated to the relevant Fares Basket.

- 2.3 The Secretary of State may de-designate any Non-Fares Basket Fare pursuant to paragraph 1.1 of Schedule 5.7 (Changes to Fares and Fares Regulation).

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SCHEDULE 5.4

Regulation of Fares Basket Values

1. Value of Fares Basket not to exceed Regulated Value

Subject to paragraph 1.3 of Schedule 5.6 (Exceeding the Regulated Value, Regulated Price or Regulated Child Price) the Franchisee shall procure that the Value of a Fares Basket at any time in any Fare Year does not exceed its Regulated Value for that Fare Year.

2. Value

The Value of a Fares Basket at any time shall be the aggregate of the Projected Revenue of each Fare in that Fares Basket at that time.

3. Projected Revenue

3.1 The Projected Revenue of any Fare at any time shall be an amount equal to:

$P \times 2010 \text{ Nominal Ticket Sales}$

where:

P is the Price or Child Price (as the case may be) of that Fare at that time; and

2010 Nominal Ticket Sales is the number of nominal ticket sales of that Fare for 2010 ascertained as follows:

$$\frac{A}{B}$$

where:

A is the aggregate Gross Revenue recorded by RSP as attributable to sales of that Fare and any other Fare with which it was aggregated under paragraph 2.1(a) of Schedule 5.3 (Allocation of Fares to Fares Baskets) for the period of 12 months which ended 31 March 2010; and

B is the Price or Child Price (as the case may be) for that Fare recorded by RSP in February 2010.

4. Regulated Value

4.1 The Regulated Value of a Fares Basket for any Fare Year shall be an amount equal to:

$2010 \text{ Ticket Revenue} \times \text{PPAI}$

where:

2010 Ticket Revenue is the aggregate Gross Revenue recorded by RSP as attributable to sales of all Fares in that Fares Basket for the period of 12 months which ended 31 March 2010;

PPAI is:

(a) in respect of the Fare Year commencing 1 January 2011, the Permitted Aggregate Increase for that Fare Year; and

(b) in respect of each Fare Year commencing on or after 1 January 2012, the product of the Permitted Aggregate Increase for each Fare Year between that Fare Year and the Fare Year which begins on 1 January 2011 (inclusively).

4.2 The Permitted Aggregate Increase in any Fare Year shall be an amount equal to:

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

where:

PAI is the Permitted Aggregate Increase in that Fare Year;

RPI is an amount equal to:

$$\frac{RPI_{-1}}{RPI_{-2}}$$

where:

RPI₋₁ is the Retail Prices Index for the July of the calendar year preceding that Fare Year; and

RPI₋₂ is the Retail Prices Index for the July of the calendar year preceding the calendar year referred to in the definition of RPI₋₁; and

k is equal to + one.

SCHEDULE 5.5

Regulation of Individual Fares

1. **Price or Child Price not to exceed Regulated Price or Regulated Child Price**

1.1 The Franchisee shall procure that the Price or Child Price (as the case may be) of:

- (a) each Commuter Fare included in the Commuter Fares Basket; and
- (b) each Protected Fare included in the Protected Fares Basket,

in any Fare Year does not exceed the Regulated Price or Regulated Child Price (as the case may be) for such Fare in that Fare Year.

1.2 The Franchisee shall procure that the Price or Child Price (as the case may be) of any Season Ticket Fare shall be the same in both directions.

2. **Regulated Price**

2.1 The Regulated Price or the Regulated Child Price (as the case may be) for any Fare in any Fare Year shall be an amount equal to the greater of:

- (a) Preceding Year Ticket Price + £0.10p; and
- (b) Preceding Year Ticket Price x PII

where:

Preceding Year
Ticket Price

for the Fare Year commencing 1 January 2011, is the maximum Price or Child Price (as the case may be) for that Fare recorded by RSP in 2010 and, for any subsequent Fare Year, is the maximum Price or Child Price (as the case may be) recorded by RSP in the Fare Year preceding that Fare Year, provided that such maximum Price or Child Price (as the case may be) complied with the requirements of this Schedule 5. If such maximum Price or Child Price (as the case may be) did not so comply, then such maximum Price or Child Price (as the case may be) shall be the last Price or Child Price (as the case may be) recorded by RSP which did so comply; and

PII is the Permitted Individual Increase in any Fare Year, as determined in accordance with paragraph 2.2.

2.2 The Permitted Individual Increase in any Fare Year shall be an amount equal to:

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

where:

PII is the Permitted Individual Increase in that Fare Year;

RPI is an amount equal to:

$$\frac{RPI_{-1}}{RPI_{-2}}$$

where: RPI₋₁ is the Retail Prices Index for the July of the calendar year preceding that Fare Year; and

RPI₋₂ is the Retail Prices Index for the July of the calendar year preceding the calendar year referred to in the definition of RPI₋₁;

k is equal to + one; and

f is equal to + two.

2.3 Where:

- (a) the Franchisee sets the Price or Child Price (as the case may be) of any Commuter Fare or Protected Fare in any Fare Year; and
- (b) the Secretary of State reasonably determines that the Price or Child Price (as the case may be) of such Commuter Fare or Protected Fare was set solely for the purpose of increasing the value of the Preceding Year Ticket Price in the next Fare Year,

the Preceding Year Ticket Price for the purposes of determining the Regulated Price or Regulated Child Price (as the case may be) pursuant to paragraph 2.1 in the next Fare Year shall be the maximum Price or Child Price (as the case may be) prior to such setting that complied with the requirements of this Schedule 5, as recorded by RSP in the relevant preceding Fare Year.

3. **Compulsory Inter-available Flows**

Where the Franchisee:

- (a) as Lead Operator for a Compulsory Inter-available Flow, is responsible for setting the Price or Child Price (as the case may be) of a Commuter Fare for that Flow; and
- (b) has notified RSP of the Price or Child Price (as the case may be) of that Commuter Fare in any Fares Setting Round,

the Franchisee shall not increase the Price or Child Price (as the case may be) of that Commuter Fare in the same Fares Setting Round without the consent of either the Secretary of State or each other Train Operator which provides railway passenger services for such Flow.

SCHEDULE 5.6

Exceeding the Regulated Value, Regulated Price or Regulated Child Price

1. Exceeding the Regulated Value

1.1 If the Franchisee is in contravention of paragraph 1 of Schedule 5.4 (Regulation of Fares Basket Values) in respect of either the Commuter Fares Basket or the Protected Fares Basket it shall reduce the Price or Child Price of Fares in the relevant Fares Basket at the next available opportunity and, in any event, at the next Fares Setting Round, so as to comply with the requirements of paragraph 1 of Schedule 5.4 (Regulation of Fares Basket Values) from such date.

1.2 It shall not be a contravention of paragraph 1 of Schedule 5.4 (Regulation of Fares Basket Values) if and to the extent that:

- (a) the Value of the Commuter Fares Basket exceeds its Regulated Value in any Fare Year;
- (b) such excess is caused by the Price or Child Price of any relevant Commuter Fare being set pursuant to the terms of the Ticketing and Settlement Agreement by another person (other than an Affiliate); and
- (c) the Franchisee does not have a reasonable opportunity, under any procedure for consulting or notifying Train Operators of alterations to the Prices and Child Prices of Fares under the Ticketing and Settlement Agreement or otherwise, to alter some or all of the other Commuter Fares in the Commuter Fares Basket so as to avoid the Value of the Commuter Fares Basket exceeding its Regulated Value.

1.3 If and to the extent that the circumstances described in paragraph 1.2 prevail in any Fare Year, the Franchisee shall not subsequently increase during that Fare Year, or any subsequent Fare Year, the Price or Child Price of any Commuter Fare in the Commuter Fares Basket which it is entitled to set pursuant to the terms of the Ticketing and Settlement Agreement, unless, following such increase, the Franchisee would, otherwise than under paragraph 1.3, comply with the provisions of paragraph 1 of Schedule 5.4 (Regulation of Fares Basket Values) in relation to the Commuter Fares Basket.

1.4 Where circumstances described in paragraph 1.2 prevail in any Fare Year, the Franchisee shall not be required to reduce the Price or Child Price of any other Commuter Fare at any time during that Fare Year, or any subsequent Fare Year, where such Price or Child Price has previously been set in a Fares Setting Round.

2. Exceeding the Regulated Price or Regulated Child Price

2.1 If the Franchisee is in contravention of paragraph 1 of Schedule 5.5 (Regulation of Individual Fares):

- (a) it shall reduce the Price or Child Price of any relevant Fare at the next available opportunity and, in any event, at the next Fares Setting Round, so as to comply with the requirements of paragraph 1 of Schedule 5.5 (Regulation of Individual Fares) from such date.

SCHEDULE 5.7

Changes to Fares and Fares Regulation

1. Changes to Fares Baskets

1.1 The Secretary of State may require the content of the Commuter Fares Basket or the Protected Fares Basket (as the case may be) to change in accordance with the following:

- (a) where the Secretary of State is not satisfied that the Price or Child Price of any Non-Fares Basket Fare is reasonably constrained by the Price or Child Price of other Fares which:
 - (i) have been set in respect of the same, or part of the same, Flow as such Non-Fares Basket Fare, or a Flow which is reasonably proximate to the Flow on which such Non-Fares Basket Fare has been set; and
 - (ii) have been included in the relevant Fares Basket,the Secretary of State may de-designate any Non-Fares Basket Fare and include such Non-Fares Basket Fare in the relevant Fares Basket;
- (b) where any Commuter Fare for a Flow has been included in the Commuter Fares Basket, the Secretary of State may require the inclusion in the Commuter Fares Basket of any Weekly Season Ticket, Monthly Season Ticket, Quarterly Season Ticket, Annual Season Ticket, unrestricted Single Fare or unrestricted Return Fare that existed on that Flow in February 2010;
- (c) where any Protected Fare for a Flow has been included in the Protected Fares Basket, the Secretary of State may require the inclusion in the Protected Fares Basket of any Protected Return Fare or Protected Weekly Season Ticket that existed on that Flow in February 2003; and/or
- (d) where the Secretary of State changes the Reference Revenue and/or the Gross Revenue of any Fare pursuant to paragraph 3.1(a) and/or (b) then, in relation to the Fares Basket in which such Fare is or would be included, and without limiting paragraphs 1.1(a) to (c) inclusive, the Secretary of State may also:
 - (i) make any of the changes to such Fares Basket contemplated by this paragraph 1.1;
 - (ii) designate any Fare as a Non-Fares Basket Fare in accordance with the provisions (other than the requirement that such designation occurs on or prior to the Start Date) of paragraph 2 of Schedule 5.3 (Allocation of Fares to Fares Baskets); and/or
 - (iii) de-designate any Non-Fares Basket Fare and include such Non-Fares Basket Fare in the relevant Fares Basket.

- 1.2 The Secretary of State shall serve notice in writing on the Franchisee:
- (a) at any time prior to the Start Date; and
 - (b) thereafter, no later than the commencement of any Fares Setting Round, to require any Fare to be included in a Fares Basket or to designate any Fare as a Non-Fares Basket Fare pursuant to paragraph 1.1.

2. Changes to the 2010 Nominal Ticket Sales

2.1 The Franchisee may, in the event of any significant change to the pattern of travel on the Passenger Services during the Franchise Term, apply to the Secretary of State for the value of factors A and/or B in the formula for determining 2010 Nominal Ticket Sales in paragraph 3 of Schedule 5.4 (Regulation of Fares Basket Values) to be adjusted to take account of such changes, such that:

- (a) the value of factor A is re-calculated by using the Gross Revenue in respect of the sales of the relevant Fares for the most recently completed period of 12 months ending 31 March; and/or
- (b) the value of factor B is recalculated by using the Price or Child Price (as the case may be) of the relevant Fares recorded by RSP in the month of February during such period.

2.2 The Secretary of State shall act reasonably in relation to any such application but shall not under any circumstances be obliged to accept any such application in whole or in part. The Secretary of State shall be entitled to impose conditions upon any such acceptance, including conditions requiring that the value of both factors A and B are adjusted and/or are adjusted in respect of any or all Fares in the relevant Fares Basket.

3. Changes to the Reference Revenue, Gross Revenue, 2010 Nominal Ticket Sales and/or 2010 Ticket Revenue

3.1 The Secretary of State may, by notice in writing served on the Franchisee no later than the date of commencement of any Fares Setting Round, require:

- (a) the Reference Revenue of any Fares Basket to be calculated by reference to a different reference period for the purpose of paragraph 2 of Schedule 5.3 (Allocation of Fares to Fares Baskets) than the period of 12 months ended 31 March 2010; and/or
- (b) the Gross Revenue of all Commuter Fares and Protected Fares to be re-calculated for the purpose of paragraph 2 of Schedule 5.3 (Allocation of Fares to Fares Baskets) by reference to a different reference period than the period of 12 months ended 31 March 2010; and/or
- (c) the value of factor A in the formula for determining the 2010 Nominal Ticket Sales in paragraph 3 of Schedule 5.4 (Regulation of Fares Basket Values) to be re-calculated in respect of any Fare by reference to a different reference period than the period of 12 months ended 31 March 2010; and/or
- (d) the value of factor B in the formula for determining the 2010 Nominal Ticket Sales in paragraph 3 of Schedule 5.4 (Regulation of Fares Basket

Values) to be re-calculated in respect of any Fare by reference to a different reference date other than February 2010; and/or

- (e) the 2010 Ticket Revenue in respect of any Fares Basket to be re-calculated for the purpose of paragraph 4 of Schedule 5.4 (Regulation of Fares Basket Values) by reference to a different reference period than the period of 12 months ended 31 March 2010.

3.2 Where, in accordance with paragraph 3.1(e), the 2010 Ticket Revenue in respect of any Fares Basket is re-calculated by reference to a different reference period, the value of "PPAI" in paragraph 4 of Schedule 5.4 (Regulation of Fares Basket Values) shall be determined solely by reference to the product of the Permitted Aggregate Increase for each Fare Year beginning after the end of such reference period.

3.3 Any revision pursuant to paragraph 3.1 or 3.2 shall take effect upon commencement of the next Fare Year to commence after the Fares Setting Round referred to in paragraph 3.1.

4. **Changes to Prices**

The Franchisee may from time to time submit proposals to the Secretary of State to increase any Prices or Child Prices beyond the levels permitted under Schedules 5.4 (Regulation of Fares Basket Values) and 5.5 (Regulation of Individual Fares) in connection with any proposed or actual improvement in any aspect of the Passenger Services relating to such Fares. The Secretary of State shall consider any such proposal and may (at his sole discretion) require the Franchisee to implement any such proposal in whole or in part.

5. **Changes to Fares Regulation**

The parties agree that the Secretary of State shall have the power at any time and on more than one occasion during the Franchise Term to alter the obligations of, and restrictions on, the Franchisee under Schedule 5.1 (Purpose Structure and Construction), Schedules 5.2 (Franchisee's Obligation to Create Fares) to 5.8 (Fares Regulation Information and Monitoring) inclusive for any Fare Year, or part thereof (including alteration of the value of "k" under paragraph 4.2 of Schedule 5.4 (Regulation of Fares Basket Values) and/or paragraph 2.2 of Schedule 5.5 (Regulation of Individual Fares) and/or alteration of the value of "f" under paragraph 2.2 of Schedule 5.5 (Regulation of Individual Fares)). The exercise by the Secretary of State of his powers under this paragraph 5 shall be a Change.

6. **Changes to Compulsory Inter-available Flows**

6.1 Where:

- (a) pursuant to Clause 4-7 of the Ticketing and Settlement Agreement, the consent of the Secretary of State is requested for the abolition of a Compulsory Inter-available Flow (the "**Reference Flow**") in respect of which any Fare Created would be a Commuter Fare or a Protected Fare (the "**Reference Fare**"); and
- (b) a Flow exists, which, in the Secretary of State's opinion, is substantially similar to the Reference Flow (the "**Equivalent Flow**"),

the Secretary of State may, as a condition of granting his consent to the abolition of the Reference Flow, by written notice to the Franchisee, require any Fare Created in respect of the Equivalent Flow which has substantially the same characteristics as the Reference Fare to be included in a Fares Basket (the "**Equivalent Fare**").

- 6.2 The Secretary of State shall not issue any such notice in respect of an Equivalent Fare unless the provisions of such notice have first been approved by the Ticketing and Settlement Scheme Council (as defined in the Ticketing and Settlement Agreement) or a delegate of such council.
- 6.3 The Price and Child Price of any Equivalent Fare in the first Fare Year in which it is to be introduced shall be no greater than the maximum permitted Price or Child Price in that Fare Year of the relevant Reference Fare, as if such Reference Fare had not been abolished.

7. **Change of Lead Operator/Major Flow Operator**

- 7.1 The Franchisee shall not without the Secretary of State's prior approval, agree to any request under the Ticketing and Settlement Agreement that it cease to be Lead Operator in respect of any Flow.
- 7.2 The Franchisee shall inform the Secretary of State if it becomes the Lead Operator in respect of any Flow. Upon the Franchisee becoming the Lead Operator in respect of any Flow, the Secretary of State may without limiting paragraph 3, exercise his rights pursuant to paragraph 3 in relation to the relevant Fares Basket.
- 7.3 The Franchisee shall inform the Secretary of State if it ceases to be a Major Flow Operator in respect of any Flow.

8. **Changes to Fares Documents**

- 8.1 Following:

- (a) any allocation of Fares to any Fares Basket pursuant to Schedule 5.3 (Allocation of Fares to Fares Baskets); or
- (b) any subsequent adjustment thereof pursuant to this Schedule 5.7,

the Secretary of State shall set out in the Commuter Fares Document and/or the Protected Fares Document (as the case may be) all Fares then included in the relevant Fares Basket and, as soon as reasonably practicable thereafter, the Secretary of State shall issue or reissue (as the case may be) such Fares Document(s) to the Franchisee.

9. **Changes to the Bid Fares Policy**

- 9.1 Where the Secretary of State exercises any of his rights specified in any of paragraphs 1 to 8 of this Schedule 5.7, it is acknowledged that changes to the Bid Fares Policy may be required in order for the Fares Created in accordance with the Bid Fares Policy to be consistent with those which would be Created consistently with the Good Operator Standard as defined in paragraph 2.3 of Schedule 5.8 (Fares Regulation Information and Monitoring).
- 9.2 Accordingly, in complying with its obligations under paragraph 2.3 of Schedule 5.8 (Fares Regulation Information and Monitoring) in respect of the Fares Setting

Round in which any changes resulting from an exercise of the Secretary of State's rights first take effect, the Franchisee is required to propose such changes to the Bid Fares Policy as are necessary to reflect those changes and in these circumstances the provisions of paragraph 3 of Schedule 5.8 (Fares Regulation Information and Monitoring) shall apply.

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SCHEDULE 5.8

Fares Regulation Information and Monitoring

1. Purpose

1.1 This Schedule sets out:-

- (a) the terms and conditions and the further restrictions that are placed on the Franchisee's ability to Create Fares, in addition to those contained in Schedules 5.1(Purpose, Structure and Construction) to 5.9 (ITSO Certified Smartmedia); and
- (b) information and monitoring provisions which apply to all Fares Created.

1.2 The Secretary of State bears Revenue risk in relation to the Franchise because of the particular commercial circumstances that apply to it. In consequence of this it is acknowledged that it is necessary and proportionate for this Franchise Agreement to include provisions which are different from those which apply where a franchisee takes fare box revenue risk. Accordingly this Schedule contains mechanisms, to address this issue including:

- (a) the absence of the normal commercial incentives which a franchisee would have to maximise fare box revenue;
- (b) perverse incentives to price off demand so as to reduce operating costs or to increase non farebox revenue at the expense of Revenue,

as required to protect the interests of passengers and tax payers and the long term value of the Franchise.

2. The Bid Fares Policy

2.1 The Bid Fares Policy is in the agreed terms marked **BFP** and includes a clear and quantified description of the planned structure and policy to be adopted by the Franchisee in respect of:

- (a) the Creation of Protected Fares and Commuter Fares and
- (b) the Creation of Unregulated Fares between London (as a minimum) and the following stations:
 - (i) Bedford;
 - (ii) Brighton;
 - (iii) Cambridge;
 - (iv) Eastbourne;
 - (v) Gatwick Airport;
 - (vi) Luton Airport Parkway;
 - (vii) Peterborough;

- (viii) St Albans; and
- (ix) Stevenage,

in each case such planned structure and policy being compliant with the requirements of this Schedule 5 and the terms of the Ticketing and Settlement Agreement.

2.2 Subject to paragraph 2.3 and paragraph 3 of this Schedule 5.8, for each Fares Setting Round during the Franchise Term, the Franchisee shall Create each Fare on the basis specified in the Bid Fares Policy in respect of such Fare.

2.3 The Franchisee shall, in respect of every Fares Setting Round:

- (a) consider whether changes are necessary to the Bid Fares Policy or the price or terms of any Fare Created in accordance with it; and
- (b) if so, consider what the changes to the Bid Fares Policy or any such Fare should be,

in each case to the extent that a skilled and experienced Train Operator bearing the farebox revenue risk in relation to the Franchise and seeking to maximise its profit consistent with its other obligations under the Franchise Agreement (including compliance with Schedule 5.4 (Regulation of Fares Basket Value) and Schedule 5.5 (Regulation of Individual Fares) would reasonably be expected to do so (the "**Good Operator Standard**").

3. **Changes to the Bid Fares Policy**

3.1 By no later than week 4 of each Fares Setting Round, the Franchisee shall provide to the Secretary of State:

- (a) details (including supporting documentation) of any Fare where, in the reasonable opinion of the Franchisee, the Creation of such Fare on the basis set out in the Bid Fares Policy would not be consistent with the Good Operator Standard together with:
 - (i) a detailed explanation of the reasons for the Franchisee's opinion pursuant to paragraph 3.1(a) and, if applicable, an explanation of the changes that would need to be made to the Bid Fares Policy to ensure that any Fares Created in any subsequent Fares Setting Rounds would be consistent with the Good Operator Standard;
 - (ii) the details of such alternative Fare (including the Price or Child Price (as the case may be) and the terms of such alternative Fare) that it wishes to Create in place of the Fare contained in the Bid Fares Policy (plus supporting documentation to evidence that such Fare would comply with the Good Operator Standard (as applicable) ("**Alternative Fare**")); and
 - (iii) written confirmation from a statutory director of the Franchisee which confirms that the Alternative Fare complies with the Good Operator Standard. It shall be a contravention of the Franchise Agreement if any such written confirmation from a statutory director of the Franchisee pursuant to this

paragraph 3.1 is, in the reasonable opinion of the Secretary of State, in any material respect, untrue, inaccurate and/or misleading.

3.2 On receipt of the information required by paragraph 3.1, the Secretary of State may by no later than week 9 of the Fares Setting Round, by notice to the Franchisee:-

- (a) confirm his agreement to the modification of the Bid Fares Policy as proposed by the Franchisee pursuant to paragraph 3.1 and the Bid Fares Policy as so modified shall apply indefinitely or for such alternative period as the Secretary of State may specify; or
- (b) decline to agree the modification, in which case the provisions of paragraph 3.3 shall apply.

If the Secretary of State does not notify the Franchisee within the time specified, the Secretary of State shall be deemed to have declined to agree.

3.3 Where the Secretary of State declines (or is deemed to have declined) to agree a modification to the Bid Fares Policy he shall be entitled to refer the question on whether:

- (a) the Creation of the affected Fare as specified in the Bid Fares Policy is inconsistent with the Good Operator Standard; and/or
- (b) the proposed Alternative Fare and associated modification of the Bid Fares Policy complies with the Good Operator Standard,

in each case, for resolution in accordance with such dispute resolution procedure as the Secretary of State and the Franchisee may agree or, in the absence of agreement, in accordance with the Dispute Resolution Rules. Until the determination of any such dispute the Franchisee shall Create the affected Fare(s) as specified in the Bid Fares Policy. Following determination of any such dispute the Secretary of State and the Franchisee shall take such steps as are required to give effect to such determination (including by making the required modification to the Bid Fares Policy and by the Franchisee making such necessary changes to the affected Fare at the next available opportunity and, in any event, at the next Fares Setting Round).

4. **Fare Information**

4.1 The Franchisee shall provide to the Secretary of State by no later than week 12 of each Fares Setting Round, a summary (to such level of detail or generality as the Secretary of State may reasonably require) of the Prices and Child Prices of each Commuter Fare, Protected Fare and Unregulated Fare that it is intending to set in accordance with the provisions of paragraphs 2 and 3.

4.2 The Franchisee shall provide any information required pursuant to this paragraph 4 in such form (including by electronic data transfer) as the Secretary of State may reasonably require.

4.3 The Franchisee shall make available, or procure that RSP makes available, to the Secretary of State, for any Fares Setting Round during the Franchise Term, such details (including the proposed Prices or Child Prices) of the Initial Permanent Fare of any Commuter Fare or Protected Fare or Unregulated Fare for each such

Fares Setting Round as the Secretary of State may reasonably request from time to time.

5. Monitoring

5.1 The Franchisee shall provide to the Secretary of State:

- (a) such access as the Secretary of State may require to information pertaining to the Prices or Child Prices of Commuter Fares and Protected Fares and the Prices or Child Prices of Unregulated Fares from time to time; and
- (b) such further information as the Secretary of State may require for the purpose of:
 - (i) determining the Gross Revenue of the Franchisee in relation to any particular Fare or Fares or any particular period; or
 - (ii) determining whether to agree or decline to agree pursuant to paragraph 3.2.

5.2 By no later than week 17 of each Fares Setting Round, the Franchisee will provide to the Secretary of State written confirmation from a statutory director of the Franchisee of whether the Franchisee has complied with its obligations under this Schedule 5 during each such Fares Setting Round. It shall be a contravention of the Franchise Agreement if any such written confirmation from a statutory director of the Franchisee pursuant to this paragraph 5.2 is, in the reasonable opinion of the Secretary of State, in any material respect, untrue, inaccurate and/or misleading.

5.3 The Franchisee shall take such action as the Secretary of State may require following receipt of any details from the Franchisee pursuant to paragraph 4 in order to ensure that the Franchisee will comply with the provisions of Schedule 5.2 (Franchisee's Obligation to Create Fares) to this Schedule 5.8 (inclusive).

Schedule 5.9

ITSO Certified Smartmedia

1. General Obligations

1.1 The Franchisee shall use all reasonable endeavours to co-operate with Network Rail and other Train Operators in relation to the provision of equipment to permit the use of ITSO Certified Smartmedia.

1.2 The Franchisee shall use all reasonable endeavours to:

- (a) co-operate with other Train Operators in relation to the introduction of flexible ticketing schemes by such other Train Operators (including flexible season tickets and/or flexible ticketing schemes based on ITSO Certified Smartmedia);
- (b) develop an approach to the use of ITSO Certified Smartmedia to facilitate use of more sophisticated ticket types and demand management over time;
- (c) facilitate the use of ITSO Certified Smartmedia on IOP within the Zones for the IOP London Products;
- (d) accept, retail and fulfil on ITSO Certified Smartmedia the IOP London Products and all products that are currently accepted, retailed and fulfilled under the Ticketing and Settlement Agreement;
- (e) co-operate with other Train Operators who either have or will have ITSO Certified Smartmedia functionality, to ensure reciprocal operation of ITSO Certified Smartmedia;
- (f) promote the inter-availability of any smartmedia related ticketing schemes and shall join any ATOC approved smartmedia related ticketing scheme such as the South East Flexible Ticketing Programme; and
- (g) co-operate with relevant passenger transport executives, local authorities and TfL as well as other train operators in relation to any proposals to convert any multi-modal fare schemes to use ITSO Certified Smartmedia.

1.3 The Franchisee will co-operate with TfL, the Secretary of State and relevant Train Operators in making such reasonable changes to joint ticketing products as are reasonably required to permit TfL to generate sufficient additional revenue to meet the IOP operating and maintenance costs as set out in the IOP Agreement subject to:

- (a) TfL meeting the Franchisee's reasonable and demonstrable costs as agreed in advance by the Secretary of State that are directly associated with the changes to such joint ticketing products;
- (b) any necessary changes to, or derogations from, fares regulation being granted by the Secretary of State; and
- (c) the Franchisee not being obliged to make any payment or transfer of revenue to TfL to cover TfL's IOP operating and maintenance costs as

defined in the scope of the IOP Agreement, except in the case of a change where the Franchisee has agreed to pay for all or part of TfL's operating and maintenance costs associated with that change.

1.4 The Franchisee shall ensure that:

- (a) any smartcard or smartmedia ticketing technology (and any amendment, extension or replacement thereof) inherited, used or introduced by the Franchisee (whether on a permanent or a trial basis) is at all times compliant with the ITSO specification TS1000 v2.1.4 and operating requirement (or such subsequent ITSO specification as the Franchisee and Secretary of State may agree). This obligation shall not prevent the Franchisee from progressing additional ticket developments involving wave and pay technology, bar code technology or EMV standards which may not be ITSO compliant; and
- (b) any smart card and ITSO Certified Smartmedia readers introduced by the Franchisee (whether on a permanent or temporary basis) must:
 - (i) be compliant with the ITSO specification; and
 - (ii) conform to EMV level 1 certification (hardware) and must be capable of being upgraded whilst in operation to EMV level 2 (application).

1.5 The Franchisee shall undertake such actions as the Secretary of State may reasonably require in connection with the introduction of smartcard or smartmedia ticketing on the network. Except where such further action is required to be undertaken in any TGN SEFT Deed or Southern SEFT Deed (as the case may be) to be entered into by the Franchisee pursuant to paragraph 2.1 or paragraph 2.2 (respectively), the Secretary of State will reimburse the reasonable costs incurred by the Franchisee in complying with any such requirement of the Secretary of State provided that, prior to incurring such costs, the Franchisee has obtained the Secretary of State's approval of the same.

1.6 On the introduction of ITSO Certified Smartcard ticketing system in relation to the Franchisee, the Franchisee shall continue to provide and make available (and where applicable effectively maintain) such ITSO Certified Smartmedia ticketing system (including any associated ITSO Certified Smartmedia product retailing equipment, cards, readers and validators) and the ITSO Certified Smartmedia as so introduced.

2. **SEFT Deeds**

TGN Franchise Services

2.1 On or after the Start Date and at the direction of the Secretary of State the Franchisee shall enter into a deed with the Secretary of State for the implementation of the SEFT Programme in respect of the TGN Franchise Services (the "**TGN SEFT Deed**"). The TGN SEFT Deed shall be:

- (a) on such terms as may be specified by the Secretary of State;
- (b) based on the assumptions contained in the document in agreed terms marked **TSD**; and

- (c) supplemental to the Franchise Agreement and be construed together with the Franchise Agreement.

Southern Franchise Services

2.2 On or after the Combined Effective Date and at the direction of the Secretary of State the Franchisee shall enter into a deed with the Secretary of State for the implementation of the SEFT Programme in respect of the Southern Franchise Services (the "**Southern SEFT Deed**"). The Southern SEFT Deed shall be:

- (a) on such terms as may be specified by the Secretary of State;
- (b) based on the assumptions contained in the document in agreed terms marked **SSD**; and
- (c) supplemental to the Franchise Agreement and be construed together with the Franchise Agreement.

2.3 The Franchisee shall from the Combined Effective Date and for the duration of the Franchise Term continue to provide and make available (and where applicable effectively maintain) such ITSO Certified Smartmedia ticketing system (including any associated ITSO Certified Smartmedia product retailing equipment, cards, readers and validators) and the ITSO Certified Smartmedia as introduced and operated by the Southern Franchisee immediately prior to the Combined Effective Date. *[Bidder to note that the intention is that the DfT will designate as Primary Franchise Assets certain of the ITSO equipment currently owned by Southern. These assets will then be included in the Combined Effective Date Transfer Scheme.]*

3. Flexible Ticketing Pilot Scheme

Where, prior to the Start Date or the Combined Effective Date (as the case maybe), the FCC Franchisee or the Southern Franchisee (as the case may be) participated in any flexible ticketing pilot scheme organised by the Secretary of State (or a nominee on his behalf) the Franchisee shall continue to so participate in such flexible ticketing pilot scheme on the same basis as the FCC Franchisee or the Southern Franchisee (as the case may be).

4. CPAY Acceptance

4.1 Where, prior to the Start Date or the Combined Effective Date (as the case maybe), the FCC Franchisee or the Southern Franchisee (as the case may be) entered into an agreement (which for the purposes of this paragraph 4 shall include participation in a pilot scheme) with TfL for the introduction and operation of CPAY then the Franchisee shall, to the extent required by TfL, enter into such agreement for the introduction or operation of CPAY on the same basis as the FCC Franchisee or the Southern Franchisee (as the case may be).

4.2 Where, prior to the Start Date or the Combined Effective Date (as the case may be), the FCC Franchisee or the Southern Franchisee (as the case may be) has not entered into any agreement for the introduction or operation of CPAY with TfL then the Franchisee shall co-operate in good faith with TfL to facilitate the introduction and operation of CPAY in connection with the provision of the Franchise Services.

SCHEDULE 6

Committed Obligations and Other Provisions

- Schedule 6.1: Committed Obligations and Related Provisions**
- Schedule 6.2: TSGN Franchise Specific Provisions**
- Schedule 6.3: TLP/TRSP Related Provisions**
- Schedule 6.4: Integration of the Southern Services**

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SCHEDULE 6.1

Committed Obligations and Related Provisions

Part 1: List of Committed Obligations

Part 2: Miscellaneous Provisions

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Part 1 to Schedule 6.1

List of Committed Obligations

[This Part will specify the terms of the Committed Obligations and the dates by which the Committed Obligations must be performed¹². For any Specimen Scheme this will also include the applicable expenditure commitment and the output intended to be delivered by the Specimen Scheme.]

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¹² To be populated by the Committed Obligations set out in the bidder's Schedule of Committed Obligations in accordance with the ITT.

Part 2 to Schedule 6.1

Miscellaneous Provisions

1. APPLICATION

This Part 2 of this Schedule 6.1 sets out further terms which apply to the Committed Obligations set out in Part 1 (List of Committed Obligations) to this Schedule 6.1 and the references to Committed Obligations in this Part 2 of this Schedule 6.1 are only to the Committed Obligations in Part 1 (List of Committed Obligations) of this Schedule 6.1.

2. CONTINUATION OF AVAILABILITY

2.1 Save as expressly provided in this Schedule 6.1, the Franchisee shall maintain facilities or activities or other matters established in accordance with its Committed Obligations throughout the remainder of the Franchise Term.

2.2 The Franchisee shall be treated as maintaining the relevant facilities, activities or other matters which are the subject of the Committed Obligation(s) 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 (List of Committed Obligations) to this Schedule 6.1 includes a commitment regarding staffing or particular appointments the Franchisee 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 Schedule 6.1 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 (List of Committed Obligations) to this Schedule 6.1, 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)).

Expenditure by Network Rail

- 3.3 All amounts which the Franchisee has committed (whether unconditionally or otherwise) pursuant to Part 1 (List of Committed Obligations) to this Schedule 6.1 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 Schedule 6.1, 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 Schedule 6.1 shall be in addition to any obligation of the Franchisee elsewhere in this Agreement and nothing in this Schedule 6.1 shall limit or restrict an obligation imposed on the Franchisee elsewhere in this Agreement.
- 5.2 Where in Part 1 (List of Committed Obligations) to this Schedule 6.1, 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 Schedule 6.1 shall come to an end on expiry of the Franchise Term for whatever reason.

6. REVIEW OF COMPLIANCE

- 6.1 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.
- 6.2 In addition to its obligation under paragraph 6.1, 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. 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 Schedule 6.1, such late, partial or non-delivery shall constitute a contravention of the Franchise Agreement.

8. SPECIMEN SCHEMES

- 8.1 The Franchisee may propose to undertake an **Alternative Scheme** in place of a Specimen Scheme. Any such Alternative Scheme must:
- (a) be intended to deliver as a minimum the relevant Specimen Scheme Output;
 - (b) require the Franchisee to incur expenditure of no less than the expenditure which the Franchisee is committed to incur in relation to the relevant Specimen Scheme; and
 - (c) deliver at least an equivalent level of benefits (whether to passengers, the Secretary of State, the wider rail industry or otherwise) as the Specimen Scheme.
- 8.2 If the Franchisee wishes to propose an Alternative Scheme, the Franchisee will provide the Secretary of State with such details of the Alternative Scheme as the Secretary of State may reasonably require.
- 8.3 If the Secretary of State approves (such approval not to be unreasonably withheld or delayed) such Alternative Scheme then it shall replace the relevant Specimen Scheme and Part 1 of this Schedule 6.1 shall be amended accordingly.
- 8.4 For the avoidance of doubt, if the Franchisee does not propose or the Secretary of State does not approve an Alternative Scheme then the Franchisee shall remain obliged to deliver the relevant Specimen Scheme in accordance with Part 1 of this Schedule 6.1

SCHEDULE 6.2

TSGN Franchise Specific Provisions

1. **British Transport Police Accommodation**

The Franchisee shall give due consideration to any request by the British Transport Police for the Franchisee to provide suitable accommodation (including additional or alternative accommodation) or facilities at Stations to enable the British Transport Police to effectively perform the services owed to the Franchisee under any contract or arrangement entered into between the British Transport Police and the Franchisee.

2. **Ticketless Travel Regime**

2.1 **Ticketless Travel Surveys**

- (a) The Secretary of State (or a nominee on his behalf) shall carry out Ticketless Travel Surveys in accordance with the Ticketless Travel Survey Methodology.
- (b) The Franchisee shall co-operate with the Secretary of State as he may reasonably request from time to time to allow or facilitate the carrying out of Ticketless Travel Surveys. When so requested by the Secretary of State the Franchisee shall permit the Secretary of State (or a nominee on his behalf) to have access to passengers and other persons who use the Passenger Services (such access to be provided on relevant trains and/or at relevant Stations or as otherwise reasonably required by the Secretary of State) for the purposes of the Secretary of State (or his nominee on his behalf) carrying out Ticketless Travel Surveys.
- (c) It is acknowledged and agreed by the Franchisee that:
 - (i) a Ticketless Travel Survey can only be carried out during a Ticketless Travel Survey Period;
 - (ii) nothing in this paragraph 2.1 shall prevent the Secretary of State from carrying out any other ticketless travel surveys as he may wish to undertake from time to time (such surveys not to be subject to the provisions of this paragraph 2); and
 - (iii) the Secretary of State may (but shall not be obliged to) determine not to carry out, or suspend or delay or discontinue any Ticketless Travel Survey planned or commenced for a Ticketless Travel Survey Period if he considers that in the circumstances it is inappropriate or impractical to carry out or continue such survey.
- (d) The Secretary of State shall procure that the results of any Ticketless Travel Surveys are provided to the Franchisee as soon as reasonably practicable following the completion of such surveys.

2.2 **Ticketless Travel Survey Periods Calculations**

First Three Ticketless Travel Survey Periods

(a) At the end of each of the first three Ticketless Travel Survey Periods falling within the first Performance Calculation Year the Secretary of State shall use the Ticketless Travel Rate for each such Ticketless Travel Survey Period to determine the Franchisee’s performance against the Breach Initial Period Benchmark as follows:

(i) for the first of such three Ticketless Travel Survey Periods, the Secretary of State shall compare the Ticketless Travel Rate against the Breach Initial Period Benchmark for that Ticketless Travel Survey Period and a contravention of the Franchise Agreement shall occur (in which case the provisions of paragraph 2.3 shall apply) if for that Ticketless Travel Survey Period the Ticketless Travel Rate is above (that is equal to or worse than) the Breach Initial Period Benchmark specified in column 1 of the table in Part 1 of the Appendix to this Schedule 6.2;

(ii) for the second of such three Ticketless Travel Survey Periods the Secretary of State shall use the Ticketless Travel Rate for that Ticketless Travel Survey Period to calculate the Franchisee’s performance against the Breach Initial Period Benchmark in accordance with the following formula:

$$Q2P = \frac{A + B}{2}$$

where:

Q2P is the Franchisee’s performance for that Ticketless Travel Survey Period;

A is the Ticketless Travel Rate for that Ticketless Travel Survey Period; and

B is the Ticketless Travel Rate for the preceding Ticketless Travel Survey Period.

A contravention of the Franchise Agreement shall occur (in which case the provisions of paragraph 2.3 shall apply) if the value of *Q2P* in respect of that Ticketless Travel Survey Period is above (that is equal to or worse than) the Breach Initial Period Benchmark specified in column 2 of the table in Part 1 of the Appendix to this Schedule 6.2; and

(iii) for the last of such three Ticketless Travel Survey Periods the Secretary of State shall use the Ticketless Travel Rate for that Ticketless Travel Survey Period to calculate the Franchisee’s performance against the Breach Initial Period Benchmark in accordance with the following formula:

$$Q3P = \frac{A + B}{3}$$

where:

Q3P is the Franchisee's performance for that Ticketless Travel Survey Period;

A is the Ticketless Travel Rate for that Ticketless Travel Survey Period; and

B is the sum of the Ticketless Travel Rate in each of the two preceding Ticketless Travel Survey Periods.

A contravention of the Franchisee Agreement shall occur (in which case the provisions of paragraph 2.3 shall apply) if the value of *Q3P* in respect of that Ticketless Travel Survey Period is above (that is equal to or worse than) the Breach Initial Period Benchmark specified in column 3 of the table in Part 1 of the Appendix to this Schedule 6.2.

Subsequent Ticketless Travel Survey Periods

- (b) At the end of each Ticketless Travel Survey Period (other than the first three Ticketless Travel Survey Periods falling within the first Performance Calculation Year for which the provisions of paragraph 2.2(a) shall apply) the Secretary of State shall use the Ticketless Travel Rate for that Ticketless Travel Survey Period to calculate the Franchisee's performance against the Ticketless Travel Benchmark in accordance with the following formula:

$$\frac{A + B}{4}$$

where:

A is the Franchisee's performance for that Ticketless Travel Survey Period; and

B is the sum of the Ticketless Travel Rate in each of the three preceding Ticketless Travel Survey Periods.

2.3 Consequences for poor performance

Without limiting paragraph 2.4, if for any Ticketless Travel Survey Period the Ticketless Rate as calculated pursuant to paragraph 2.2 is above (that is, is equal to or worse than) the relevant Breach Ticketless Travel Benchmark or the relevant Breach Initial Period Benchmark (as applicable) then a contravention shall occur and the Secretary of State may serve a Remedial Plan Notice in accordance with the provisions of paragraph 1 of Schedule 10.1 (Remedial Plans and Remedial Agreement). For the purposes of paragraph 1.4(c) of Schedule 10.1 (Remedial Plans and Remedial Agreements) the steps to be proposed by the Franchisee pursuant to that paragraph are those which ensure that the Ticketless Travel Rates will be below (that is, equal to or better than) the Target Ticketless Travel Benchmark or the Breach Initial Period Benchmarks (as applicable).

2.4 **Ticketless Travel Adjustment**

- (a) At the end of each Performance Calculation Year the Secretary of State shall use the Ticketless Travel Rates for that Performance Calculation Year to calculate the Franchisee’s performance against the Annual Ticketless Travel Benchmark in accordance with the following formula:

$$ACTUAL = \frac{\sum A}{B}$$

where:

- ACTUAL** is the moving average of the Ticketless Travel Rates for each of the Ticketless Travel Survey Periods in that Performance Calculation Year; and
- $\sum A$ is the sum of the values of A as determined in accordance with paragraph 2.2 for that Performance Calculation Year except that in respect of the first Performance Calculation Year the relevant Ticketless Travel Rate for the purposes of determining the value of ACTUAL shall be those applicable in respect of the Passenger Services falling within paragraph (a) of the definition of TGN Franchise Services; and
- B** is in respect of a Performance Calculation Year consisting of 13 Reporting Periods, 4 and in respect of a Performance Calculation Year consisting of less than 4 Ticketless Travel Survey Periods, the number of Ticketless Travel Survey Periods in such Performance Calculation Year;

- (b) if the value of ACTUAL for a Performance Calculation Year as calculated pursuant to paragraph 2.4(a) is:

- (i) less than (that is, better than) the Annual Target Ticketless Travel Benchmark for that Performance Calculation Year then the Ticketless Travel Payment Adjustment payable by the Secretary of State to the Franchisee shall be an amount calculated as follows:

$$(TARGET - ACTUAL) \times TTB$$

where:

- TARGET** is the Annual Target Ticketless Travel Benchmark for that Performance Calculation Year;
- ACTUAL** has the meaning given to it in paragraph 2.4(a); and
- TTB** is:
- (A) in respect of the first Performance Calculation Year an amount that is determined as follows:

$$TTB \times 0.4$$

where:

TTB is the amount specified in the first row of the table in Part 4 of the Appendix to this Schedule 6.2;

(B) in respect of any subsequent Performance Calculation Year ("Year n") an amount calculated as follows:

$TTB \times RPIMF$

where

TTB has the meaning given to it in this paragraph 2.4(b)(i); and

RPIMF is the RPI multiplication factor for that Performance Calculation Year calculated as follows:

$$RPIMF = \left(RPI_{py} \times \left(\frac{RPI_n}{RPI_{n-1}} + 0.01 \right) \right)$$

where:

RPI_n is the Retail Prices Index for the January which falls in Year n;

RPI_{n-1} is the Retail Prices Index for the January which falls in the Performance Calculation Year immediately preceding Year n;

RPI_{py} is RPIMF as calculated for the purpose of the Performance Calculation Year preceding Year n. Where that preceding Year n is the first Performance Calculation Year, this figure will be 1;

(ii) more than (that is, worse than) the Annual Target Ticketless Travel Benchmark for that Performance Calculation Year but less than (that is, better than) the Annual Breach Ticketless Travel Benchmark for that Performance Calculation Year then the Ticketless Travel Payment Adjustment payable by the Franchisee to the Secretary of State shall be an amount calculated as follows:

$$(TARGET - ACTUAL) \times TTP$$

where:

ACTUAL has the meaning given to it in paragraph 2.4(a);

TARGET is the Annual Target Ticketless Travel Benchmark for that Performance Calculation Year;

TTP is:

(A) in respect of the first Performance Calculation Year an amount that is determined as follows:

$$TTP \times 0.4$$

where:

TTP is the amount that is equal to the amount specified in the second row of the table in Part 4 of the Appendix to this Schedule 6.2;

(B) in respect of any subsequent Performance Calculation Year ("**Year n**") an amount calculated as follows:

$$TTB \times RPIMF$$

where:

TTP has the meaning given to it in this paragraph 2.4(b)(ii); and

RPIMF has the meaning given to it in paragraph 2.4(b)(i)(B);

(iii) more than (that is, is worse than) the Annual Breach Ticketless Travel Benchmark for that Performance Calculation Year then the Ticketless Travel Payment Adjustment payable by the Franchisee to the Secretary of State shall be an amount calculated as follows (provided that for the purposes of the formula in paragraph 1.1 of Schedule 8.1 (Franchise Payments) any such amount shall be a negative number notwithstanding that the amount calculated as below produces a positive number):

$$(BREACH - TARGET) \times TTP$$

where:

BREACH is the Annual Breach Ticketless Travel Benchmark for that Performance Calculation Year;

TARGET is the Annual Target Ticketless Travel Benchmark for that Performance Calculation

Year; and

TTP has the meaning given to in paragraph 2.4(b)(ii).

- (c) Each Ticketless Travel Adjustment in respect of any Performance Calculation Year shall be paid on each Ticketless Travel Adjustment Date:
- (i) by the Secretary of State to the Franchisee in respect of any payments pursuant to paragraph 2.4(b)(i); and
 - (ii) by the Franchisee to the Secretary of State in respect of any payments pursuant to paragraph 2.4(b)(ii) or paragraph 2.4(b)(iii).

2.5 Calculations

The Secretary of State shall perform the calculations referred to in paragraphs 2.2 and 2.4 rounded to three decimal places, with the mid point rounded up (that is, 3.3771% rounded to 3.377% or 3.3775% rounded to 3.378%).

2.6 Determination of the Annual Ticketless Travel Benchmarks for Performance Calculation Years that are shorter than 13 Reporting Periods

Where a Performance Calculation Year is shorter than 13 Reporting Periods the Secretary of State will perform the following calculations for the purposes of determining the Annual Target Ticketless Travel Benchmark and the Annual Breach Ticketless Travel Benchmark relating to that Performance Calculation Year:

- (a) in respect of the Annual Target Ticketless Travel Benchmark for that Performance Calculation Year:

$$\frac{\sum A}{B}$$

where:

$\sum A$ is the sum of the data relevant for each of the Ticketless Travel Survey Periods in that Performance Calculation Year, such data being the data which was used for the purposes of determining the Annual Ticketless Travel Benchmark in respect of a full Performance Calculation Year as more particularly set out in the document in agreed terms marked **ABD**; and

B is the number of Ticketless Travel Survey Periods in that Performance Calculation Year; and

- (b) in respect of the Annual Breach Ticketless Travel Benchmark for that Performance Calculation Year:

$$\frac{\sum A}{B}$$

where:

- ΣA is the sum of the data relevant for each of the Ticketless Travel Survey Periods in that Performance Calculation Year, such data being the data which was used for the purposes of determining the Annual Breach Ticketless Travel Benchmark in respect of a full Performance Calculation Year as more particularly set out in the document in agreed terms marked **ABD**; and
- B is the number of Ticketless Travel Survey Periods in that Performance Calculation Year.

3. **Revenue Protection Strategy**

[Bidder to populate: Bidder to include provisions which reflect its Revenue Protection Strategy as submitted as part of its bid. This provision should also include measures identified by the bidder for using publicity to deter passengers from travelling without a valid ticket.]

4. **Marketing Plan**

4.1 The Marketing Plan applicable as at the Start Date is in the agreed terms marked **MP**. In each Franchisee Year during the Franchise Term the Franchisee shall spend no less than the amount specified in column 2 of the table in paragraph 4.2(e) for that Franchisee Year ("**Agreed Marketing Spend**") on such marketing activities as agreed by the Franchisee and the Secretary of State (or on failure to agree, as reasonably determined by the Secretary of State) and identified in the Marketing Plan provided that:

- (a) if the Franchise terminates part way through a Franchisee Year, the commitment will be regarded as fulfilled where the expenditure to the date of termination is consistent with fulfilment of the Marketing Plan over the entire Franchisee Year if there had been no such termination (and to the extent that the expenditure is less than is so consistent, then without prejudice to the Secretary of State's other rights and remedies, the amount of the shortfall shall be regarded as an underspend and be recoverable by the Secretary of State as specified in paragraph 4.1(b));
- (b) within 10 days of the end of each Franchisee Year a statutory director of the Franchisee shall certify the amount of the marketing expenditure actually incurred by the Franchisee in respect of that Franchisee Year and if such amount is less than the aggregate of the Agreed Marketing Spend for that Franchisee Year ("**Year to Date Marketing Spend**"), then without prejudice to the Secretary of State's other rights and remedies, the Franchisee shall pay to the Secretary of State (as a debt) the difference between such lesser amount and the Year to Date Marketing Spend within 3 days of such certificate being issued. The Franchisee shall provide such information as the Secretary of State shall reasonably require for the purposes of verifying the information contained in the certificate provided and the Secretary of State may require a further balancing payment to be made if he reasonably determines that the original payment made by the Franchisee was less than the Year to Date Marketing Spend due to have been made by that date;
- (c) as part of the review process set out in paragraph 4.3, the Secretary of State may (at his absolute discretion) permit the Franchisee to carry expenditure required for a later year to be carried over to an earlier year (or vice versa), in which case the Agreed Marketing Spend for that

Franchisee Year shall be reduced or increased (as applicable) by a corresponding amount; and

- (d) the Agreed Marketing Spend in respect of each Franchisee Year (other than the first Franchisee Year) shall be subject to indexation by the Retail Prices Index in the same way as the component of VCRPI is indexed in Schedule 8.2 (Annual Franchise Payment) of the Franchise Agreement; and
- (e) the Agreed Marketing Spend in respect of each Franchisee Year is as specified in the second column of the table below:

Column 1	Column 2
Franchisee Year	Agreed Marketing Spend
Year 1 (part year)	£3,000,000
Year 2	£11,500,000
Year 3	£12,500,000
Year 4	£12,500,000
Year 5	£12,500,000
Year 6	£12,500,000
Year 7	£12,500,000
Year 8 (part year)	£6,000,000
First year of up to 26 Reporting Periods Extension	£12,500,000
Second year of up to 26 Reporting Periods Extension	£12,500,000

4.2 As part of each Business Plan to be submitted after the Start Date under paragraph 2.3 of Schedule 13 (Information and Industry Initiatives) the Franchisee shall deliver to the Secretary of State for his approval an updated version of the Marketing Plan in respect of the remainder of the Franchise Term:

- (a) in substantially the same form as the immediately preceding Marketing Plan delivered to the Secretary of State in accordance with the Franchise Agreement:
- (b) revised to:
 - (i) describe the Franchisee's planned expenditure and activities to advertise, market and promote the Passenger Services for each Franchisee Year (or part Franchisee Year) during the remainder of the Franchise Term (such description being in detail for the next Franchisee Year and in outline for subsequent Franchisee Years);

- (ii) include details of the Franchisee's planned arrangements to measure the effectiveness of such expenditure and activities; and
 - (iii) confirm how the Franchisee will improve the Marketing Plan and increase the effectiveness of its expenditure and activities; and
- (c) containing a statement of the differences between such updated Marketing Plan and the immediately preceding Marketing Plan delivered to the Secretary of State in accordance with the Franchise Agreement, together with an explanation of such differences.

The Franchisee may also apply to the Secretary of State to make interim revisions to the Marketing Plan in the course of any Franchisee Year.

4.3 The Marketing Plan shall be reviewed by the Franchisee and the Secretary of State every 12 months as part of the Business Plan to be submitted after the Start Date under paragraph 2.3 of Schedule 13 (Information and Industry Initiatives), or more frequently upon the Secretary of State's request, at a meeting called by the Secretary of State for this purpose. The Franchisee shall:

- (a) produce evidence to the Secretary of State's satisfaction that it has incurred the expenditure and carried out the activities shown in the Marketing Plan for the period under review;
- (b) report on the effectiveness of such expenditure and activities; and
- (c) confirm how the effectiveness of the expenditure and activities could be further improved by explaining the successes and failures of such Marketing Plan and how the Franchisee plans to build on successes and address and rectify failures going forward.

4.4 At the end of each Franchisee Year and as part of the review process set out in paragraph 4.3 the Secretary of State may, at his absolute discretion reduce or increase the amount of the Agreed Marketing Spend (the "**Substitute Marketing Spend**") applicable in respect of the following Franchisee Year. If the Secretary of State exercises his discretion pursuant to this paragraph 4.4 in respect of a particular Franchisee Year then:

- (a) a Qualifying Change shall occur and for the purposes of that Change the only Revised Input shall be the substitution of the then current Agreed Marketing Spend for that Franchisee Year with the Substitute Marketing Spend; and
- (b) the Franchisee's obligation under this paragraph 4 in respect of that Franchisee Year shall be an obligation to spend the Substitute Marketing Spend and all references to Agreed Marketing Spend under this paragraph 4 shall be to Substitute Marketing Spend in respect of that Franchisee Year.

5. The Specified Projects

5.1 The Franchisee shall from the Start Date until the completion of each Specified Project co-operate in good faith with all relevant parties responsible for the delivery of such Specified Project with the intention of assisting its timely, efficient and cost effective completion. To the extent that any Specified Project

leads to the Franchisee having rights under railway industry procedures including Network Change or Station Change the Franchisee shall not act in a way designed to directly or indirectly prevent, prejudice or frustrate the delivery of such Specified Project and the Franchisee shall not unreasonably raise any objection under any railway industry procedure including Network Change or Station Change.

5.2 The Franchisee shall provide such information in respect of the Specified Projects as the Secretary of State may reasonably request from time to time.

5.3 For the purposes of this paragraph 5:

(a) **"Specified Project"** means any of the following projects:

- (i) the construction at Farringdon Station to be undertaken as part of the Crossrail Programme; and
- (ii) the development of proposals for new stations at Wixams, Chesterton and Cricklewood - Brent Cross and if applicable, the implementation of these proposals,

together with such other infrastructure and station projects which impact on the routes over which the Passenger Services are operated (including those which are required to be delivered in consequence of a high level output specification or the operation of the high level output specification change process) and as are notified to the Franchisee by the Secretary of State from time to time; and

(b) **"Station Change"** has the meaning given to the term "Proposal for Change" under the Station Access Conditions.

6. **ERTMS Programme**

6.1

(a) The Franchisee shall:

- (i) from the Start Date until completion of the implementation of the ERTMS Programme co-operate in good faith with the relevant third parties involved in the implementation of the ERTMS Programme (including Network Rail and the relevant rolling stock providers) with the intention of ensuring its timely, efficient and cost effective completion and, in particular assisting in the development and implementation of the programme for the design and fitment of the relevant ERTMS equipment on the first Rolling Stock Unit of each class of rolling stock comprised in the Train Fleet and used for the purposes of operating the Passenger Services on the ERTMS Enabled Network (the **"First in Class Unit"**) and the testing and commissioning of such equipment on each First in Class Unit. It is acknowledged by the Secretary of State and the Franchisee that Network Rail is responsible for the capital costs for the design and fitment of the relevant ERTMS equipment on each First in Class Unit;

- (ii) prepare a plan (and keep such plan under review and if necessary updated) which addresses how it will deliver those

activities for the implementation of the ERTMS Programme for which it is responsible including:

- (A) the training of Franchise Employees who are drivers and other relevant Franchise Employees;
- (B) the obtaining of such approvals and consents as may be required for the retro fitment of the relevant equipment to the other Rolling Stock Units (other than the First In Class Units) comprised in the Train Fleet as are to be used for the operation of the Passenger Services on the ERTMS Enabled Network (the "**Affected Train Fleet**");
- (C) the installation, testing and commissioning of the relevant ERTMS equipment on each unit comprised in the Affected Train Fleet; and
- (D) the maintenance of any such ERTMS equipment fitted on the Affected Fleet and the First in Class Units,

(the "**Franchisee ERTMS Plan**").

Any Franchisee ERTMS Plan prepared by the Franchisee pursuant to this paragraph shall be prepared on the basis that is consistent with the Proposed ERTMS Implementation Plan;

- (iii) implement the Franchisee ERTMS Plan in accordance with its terms; and
 - (iv) following the implementation of ERTMS on any part of the routes specified in the Proposed ERTMS Implementation Plan (the "**ERTMS Enabled Network**") co-operate, in good faith, with Network Rail, the lessors of the Affected Train Fleet and the First in Class Units and other relevant third parties, with a view to ensuring the on-going efficient operation of the Passenger Services operated on the ERTMS Enabled Network including by working together with Network Rail, the lessors of the Affected Train Fleet and the other relevant third parties to resolve any compatibility issues that may arise between the train borne equipment and the trackside equipment.
- (b) If at any time the Secretary of State (acting reasonably) is satisfied that the Franchisee has not complied or is not likely to comply with its obligations in this paragraph 6.1 he may at his discretion, and entirely without prejudice to his other rights consequent upon the relevant contravention, serve a Remedial Plan Notice pursuant to paragraph 1.1 of Schedule 10.1 (Remedial Plans and Remedial Agreements).

6.2 The Franchisee shall at the request of the Secretary of State provide to him (as soon as reasonably practicable and in any event within five working days following the receipt by the Franchisee of any such request) such information (including progress reports and the latest Franchisee ERTMS Plan as at the date of such request) as the Secretary of State may reasonable require in relation to the implementation of the ERTMS Programme including for the purposes of

- (a) satisfying himself that:
 - (i) the Franchisee ERTMS Plan is robust and deliverable; and
 - (ii) the implementation of the ERTMS Programme is being undertaken in accordance with the Proposed ERTMS Implementation Plan; and
- (b) reporting on progress in relation to matters relating to the implementation of the ERTMS Programme (including progress on the implementation of the Franchisee ERTMS Plan).

The Franchisee shall, upon reasonable notice, attend any such meeting as the Secretary of State may reasonably require for the purposes of discussing and explaining the Franchisee ERTMS Plan (including progress on the implementation of such plan).

6.3 The Franchisee shall use all reasonable endeavours to ensure that any Track Access Agreement that it enters into with Network Rail as required pursuant to paragraph 1.1(a) of Schedule 6.4 (Integration of the Southern Franchise Services) reflects the following principles:

- (a) there will be no right for the Franchisee to claim compensation from Network Rail under Condition G.2 of the Network Code in relation to the direct or indirect consequences of any and all impacts on the Passenger Services due to the implementation of the ERTMS Programme except in the circumstances provided in paragraph 6.3(b) ("**Network Change Compensation Claims**"); and
- (b) the Franchisee will have the right to claim under Condition G.2 of the Network Code for any additional costs it incurs where there is a material change to the actual implementation plans (including the relevant timescales for the delivery of such plans) adopted by Network Rail in respect of the ERTMS Programme when compared to the plans as specified in the Proposed ERTMS Implementation Plan except where such material change is wholly attributable to the actions or inactions of the Franchisee.

6.4 If and to the extent that the Track Access Agreement entered into by the Franchisee pursuant to paragraph 1.1(a) of Schedule 6.4 (Integration of the Southern Franchise Services) does not reflect any of the principles set out in paragraph 6.3 including as a result of:

- (a) the Franchisee not being able to obtain the ORR's approval to any such terms; or
- (b) the Franchisee not complying with its obligations under paragraph 6.3 and entirely without prejudice to the other rights the Secretary of State may have under the Franchise Agreement consequent upon a contravention by the Franchisee of the provisions of paragraph 6.3,

then the Franchisee shall immediately pay to the Secretary of State (as a debt), an amount equal to any amounts received by the Franchisee from Network Rail in respect of any Network Change Compensation Claim(s). Any amounts payable by the Franchisee to the Secretary of State pursuant to this paragraph 6.4 shall be paid on the next Payment Date following receipt by the Franchisee of any such amounts from Network Rail or where no such Payment Date exists shall be

paid within 30 days of receipt by the Franchisee of any such amounts from Network Rail.

7. **Entitlement to compensation from Network Rail**

7.1 **Interpretation**

- (a) In this paragraph 7 except to the extent the context otherwise requires, words and expressions defined in the applicable Track Access Agreement shall have the same meanings when used herein.
- (b) The commercial intention of the parties is that:
 - (i) all sums payable by or to Network Rail pursuant to Schedule 8 of the Track Access Agreement in respect of Network Rail's performance (as represented as at the date of this Agreement in Network Rail Performance Sums and excluding compensation for Sustained Poor Performance) shall be for the benefit or account respectively of the Secretary of State;
 - (ii) sums payable by Network Rail in respect of the level of Network Rail performance characterised at the date of this Agreement and from time to time as Sustained Poor Performance shall be:-
 - (A) for the benefit of the Franchisee in so far as they relate to compensation for costs incurred; and
 - (B) for the Secretary of State in so far as they relate to revenue losses incurred (except that the Franchisee shall be entitled to retain 10% of amounts received from Network Rail in respect of such revenue losses);
 - (iii) sums payable by Network Rail pursuant to Schedule 4 shall be:
 - (A) for the benefit of the Franchisee in so far as they relate to compensation for costs incurred; and
 - (B) for the Secretary of State in so far as they relate to revenue losses incurred (except that the Franchisee shall be entitled to retain 10% of amounts received from Network Rail in respect of such revenue losses relating to a Type 3 Liability Claim and/or an SPD Claim).
- (c) The following provisions in this paragraph 7 set out the mechanisms which the parties have agreed to give effect to this intention based on the current Track Access Agreement (based on the ORR's Track Access passenger model contract as at the date of this Agreement) and without limiting Clause 1.1(I) any relevant Change (including any Change as a consequence of a Charge Variation) shall take into account this commercial intention.

7.2 Schedule 8 Payments/Receipts

- (a) Immediately upon receipt of any such statement from Network Rail, the Franchisee shall provide to the Secretary of State the statements of allocated responsibility for incidents made by Network Rail for each day (including any further statements and/or adjustments) as provided by Network Rail to the Franchisee pursuant to paragraph 6 of Schedule 8 of the Track Access Agreement.
- (b) The Franchisee shall, immediately upon receipt of such statement from Network Rail, provide to the Secretary of State any statement (together with such supporting documentation) notifying the Franchisee of the Performance Sums for which Network Rail or the Franchisee is liable in respect of a Reporting Period as provided by Network Rail to the Franchisee pursuant to paragraph 11 of Schedule 8 of the Track Access Agreement.
- (c) In respect of any Reporting Period where the value of NRPS as calculated pursuant to paragraph 9 of Schedule 8 of the Track Access Agreement:
 - (i) is less than zero the Franchisee shall, by way of adjustment to Franchise Payments, pay to the Secretary of State the amount of such NRPS; and
 - (ii) is more than zero the Secretary of State shall, by way of adjustment to Franchise Payments, pay to the Franchisee the amount of such NRPS.
 - (iii) Any such payment shall be paid, by way of adjustment to Franchise Payments, on the next Payment Date following the date that is 35 days after the end of that Reporting Period. Any payment under this paragraph 7.2(c) which is due and payable in respect of a Reporting Period during the Franchise Period and which has not been calculated and paid during the Franchise Period shall be paid (as a debt) by the Franchisee to the Secretary of State or the Secretary of State to the Franchisee (as the case may be) within 35 days of the same being calculated (or in the case of any payment due from the Secretary of State, within 35 days of the date of receipt of the relevant statement evidencing the calculation).
- (d) The Franchisee shall exercise such rights as it may have in relation to the allocation of responsibility for Minutes Delay and the calculation of Performance Sums (including the rights to dispute such allocation or calculation of Performance Sums) in such manner as a skilled and experienced franchised Train Operator, bearing the farebox revenue risk in relation to the franchise and seeking to maximise its profit consistent with its other obligations (including under its franchise agreement), would reasonably be expected to act.
- (e) Where the Secretary of State reasonably considers that the Franchisee has not complied with its obligations under paragraph 7.2(d) he shall be entitled to:
 - (i) conduct or commission a nominee to conduct an audit of the Franchisee's compliance at the cost of the Franchisee. For the purposes of any such audit the Franchisee shall grant to the

Secretary of State or his nominee access to all relevant data, records or information (in written and electronic form) and relevant Franchise Employees;

- (ii) require the Franchisee to exercise such rights as it may have under Schedule 8 of the Track Access Agreement in such manner as he considers appropriate in the circumstances including:
 - (A) notifying Network Rail of its intention to dispute (and disputing) any statement of allocated responsibility in accordance with paragraph 6.4 of Schedule 8 of the Track Access Agreement or calculation of the Performance Sums to which Network Rail is liable in accordance with paragraph 11.2 of Schedule 8 of the Track Access Agreement; and
 - (B) submitting such dispute to any relevant dispute resolution arrangements or procedures.
- (f) The Secretary of State shall, to the extent reasonably practicable, allow the Franchisee a reasonable opportunity to make representations to him concerning the exercise by the Franchisee of any of its rights referred to in this paragraph 7.2(d) prior to exercising any of his rights under paragraph 7.2(e).

7.3 **Compensation for Sustained Poor Performance**

- (a) In connection with the exercise of such rights as it may have under paragraph 18 of Schedule 8 of the Track Access Agreement to make a claim against Network Rail for the recovery of Relevant Losses under paragraph 18 of Schedule 8 of the Track Access Agreement the Franchisee shall act in such manner as a skilled and experienced Train Operator, bearing the farebox revenue risk in relation to the franchise and seeking to maximise its profit consistent with its other obligations under the Franchise Agreement, would reasonably be expected to act.
- (b) Where the Secretary of State reasonably considers that the Franchisee has not complied with its obligations under paragraphs 7.3(a) the provisions of paragraphs 7.2(e)(ii) and 7.2(f) shall apply, mutatis mutandis.
- (c) The Franchisee shall, by way of adjustment to Franchise Payments, pay to the Secretary of State the amount that is equivalent to 90% (ninety per cent.) of any amounts that it receives from Network Rail pursuant to paragraph 18.2 of Schedule 18 of the Track Access Agreement to that extent that such sums relate to compensation for loss of revenue (the "**SPP Compensation Amounts**"). Any SPP Compensation Amounts received by the Franchisee on or after the Franchise Period shall be paid (as a debt) by the Franchisee to the Secretary of State within 35 days of receipt of any such SPP Compensation Amounts.
- (d) The Franchisee shall:
 - (i) ensure that any claim it makes to Network Rail pursuant to this paragraph is disaggregated such that any claims relating

to loss of revenue and increased costs are separately identified in any such claim; and

- (ii) not act or omit to act in any way such that sums to which the Secretary of State would otherwise be entitled in respect of Sustained Poor Performance are compromised or reduced in order to benefit in any way the Franchisee.

7.4 **Schedule 4 Payments/Receipts**

- (a) Immediately upon receipt of any Day 42 Statement from Network Rail in respect of any Reporting Period, the Franchisee shall provide to the Secretary of State such Day 42 Statement.
- (b) In connection with the exercise of such rights as it may have under Schedule 4 of the Track Access Agreement to make a compensation claim against Network Rail in relation to a Type 1 Restriction of Use, Type 2 Restriction of Use or a Type 3 Restriction of Use or to initiate or make a Type 3 Liability Claim or SPD Claim, the Franchisee shall act in such manner as a skilled and experienced franchised Train Operator, bearing the farebox revenue risk in relation to the franchise and seeking to maximise its profit consistent with its other obligations (including under its franchise agreement), would reasonably be expected to act.
- (c) Where the Secretary of State reasonably considers that the Franchisee has not complied with its obligations under paragraph 7.4(b) he shall be entitled to:
 - (i) require the Franchisee to exercise such rights as it may have under Schedule 4 of the Track Access Agreement in such manner as he considers appropriate in the circumstances including:
 - (A) requiring the Franchisee to exercise any such rights it may have under Schedule 4 of the Track Access Agreement to initiate an SPD Claim or a Type 3 Liability Claim including by the issue of an ROU Claim Notice in relation to a Type 3 Liability Claim or an SPD Claim Notice in relation to an SPD Claim; or
 - (B) requiring the Franchisee to exercise its rights under any of paragraphs 10 or 13.2 of Schedule 4 of the Track Access Agreement.
- (d) In relation to a Type 1 Restriction of Use, the Franchisee shall pay to the Secretary of State, by way of adjustment to Franchise Payments, an amount that is equivalent to the amount that the Franchisee receives from Network Rail as compensation for loss of revenue on the occurrence of a Type 1 Restriction of Use as calculated in accordance with paragraph 3 of Schedule 4 of the Track Access Agreement.
- (e) In relation to a Type 2 Restriction of Use, the Franchisee shall pay to the Secretary of State, by way of adjustment to Franchise Payments, an amount that is equivalent to the amount that the Franchisee receives from Network Rail as compensation for loss of revenue on the occurrence of a Type 2 Restriction of Use as calculated in accordance with paragraph 3 of Schedule 4 of the Track Access Agreement.

- (f) In relation to a Type 3 Restriction of Use where no Type 3 Liability Claim has been made, the Franchisee shall pay to the Secretary of State, by way of adjustment to Franchise Payments, an amount that is equivalent to the amount that the Franchisee receives from Network Rail as compensation for loss of revenue on the occurrence of a Type 3 Restriction of Use as calculated in accordance with paragraph 3 of Schedule 4 of the Track Access Agreement.
- (g) In relation to a Type 3 Restriction of Use where a Type 3 Liability Claim or an SPD Claim has been made, the Franchisee shall pay to the Secretary of State by way of adjustments to Franchise Payments the amount that is equivalent to:
- (i) 90% (ninety per cent.) of any amounts it receives from Network Rail in respect of such Type 3 Liability Claim as calculated in accordance with paragraph 7 of Schedule 4 of the Track Access Agreement; and
 - (ii) 90% (ninety per cent.) of any amounts it receives from Network Rail in respect of such SPD Claim as calculated in accordance with paragraph 8 of Schedule 4 of the Track Access Agreement,
- in each case, to the extent that such amounts relate to compensation for loss of revenue.
- (h) Where in relation to a Type 3 Restriction of Use there is a Type 3 Liability Claim or an SPD Claim for loss of revenue and it is determined or agreed for the purpose of the Track Access Agreement that there has been:
- (i) an overpayment by Network Rail to the Franchisee of compensation for loss of revenue relating to any such Type 3 Restriction of Use or such SPD Claim (as the case may be) which the Franchisee is required under the Track Access Agreement to repay to Network Rail then the Secretary of State shall pay to the Franchisee such amount as is necessary for the purposes of ensuring that the amount of compensation for loss of revenue retained by the Secretary of State is 90% of the amount of compensation for loss of revenue in relation to any such Type 3 Restriction of Use or such SPD Claim (as the case may be) as determined in accordance with paragraph 7 of Schedule 4 of the Track Access Agreement in respect of such Type 3 Restriction of Use or paragraph 8 of Schedule 4 of the Track Access Agreement in respect of such SPD Claim; or
 - (ii) a shortfall in respect of the compensation for loss of revenue paid by Network Rail to the Franchisee in relation to any such Type 3 Restriction of Use or such SPD Claim (as the case may be) then the Franchisee shall pay to the Secretary of State such amount as is necessary for the purposes of ensuring that the amount of compensation for loss of revenue paid to the Secretary of State is 90% of the amount of compensation for loss of revenue in relation to any such Type 3 Restriction of Use or such SPD Claim (as the case may be) as determined in accordance with paragraph 7 of Schedule 4 of the Track Access Agreement in respect of such

Type 3 Restriction of Use or paragraph 8 of Schedule 4 of the Track Access Agreement in respect of such SPD Claim.

- (iii) Any amounts payable by the Franchisee to the Secretary of State or the Secretary of State to the Franchisee pursuant to this paragraph 7.4 in any Reporting Period shall be paid, by way of adjustment to Franchise Payments, on the next Payment Date following the date that is:
 - (1) for any such amounts that are not in dispute pursuant to paragraph 13 of Schedule 4 of the Track Access Agreement, 35 days after the end of that Reporting Period; and
 - (2) for any such amounts that are in dispute pursuant to paragraph 13 of Schedule 4 of the Track Access Agreement, 28 days after any such dispute is resolved or determined.
- (i) Any payment under this paragraph 7.4 which is due and payable in respect of a Reporting Period during the Franchise Period and which has not been calculated or determined and paid during the Franchise Period shall be paid (as a debt) by the Franchisee to the Secretary of State or the Secretary of State to the Franchisee (as the case may be) within 35 days of the same being calculated or determined (or in the case of any payment due from the Secretary of State, within 35 days of the date of receipt from the Franchisee of notice evidencing the calculation or determination).
- (j) The Franchisee shall
 - (i) ensure that any Type 3 Liability Claim or SPD Claim that it makes to Network Rail pursuant to Schedule 4 of the Track Access Agreement is disaggregated such that any claims relating to loss of revenue and increased costs are separately identified in any such claim; and
 - (ii) not act or omit to act in any way such that sums to which the Secretary of State would otherwise be entitled in respect of any Type 3 Liability Claim or SPD Claim are compromised or reduced in order to benefit in any other way the Franchisee.

7.5 Payments by Network Rail to Franchisee pursuant to Condition L of the Depot Access Conditions

- (a) The Franchisee shall promptly notify the Secretary of State if it is entitled to make an indemnity claim against Network Rail under Condition L of the Depot Access Conditions.
- (b) If and to the extent requested by the Secretary of State the Franchisee shall, following consultation with the Secretary of State:
 - (i) make any such indemnity claim under Condition L of the Depot Access Conditions as may be directed by the Secretary of State; and

- (ii) exercise such rights as it may have under the relevant Access Agreement or Depot Access Condition (as the case may be) in such manner and take such action as the Secretary of State may require in respect of any such claim for (including in relation to any agreement of the amount of any compensation payable and including submitting any relevant dispute to any relevant dispute resolution procedures).
- (c) The Franchisee shall not, without the consent of the Secretary of State, agree or propose to agree a value in relation to any indemnity under Condition L of the Depot Access Conditions.
- (d) The Franchisee shall ensure that any claim it makes to Network Rail under Condition L of the Depot Access Conditions is disaggregated such that any claims relating to loss of revenue and increased costs are separately identified in any such claim. The Franchisee shall not amend, agree or propose to amend, the provisions relating to the payment of compensation under Condition L of the Depot Access Conditions (including by agreeing or proposing to agree any commercial agreements or arrangements which will have the effect of excluding the application of such conditions) without the consent of the Secretary of State.
- (e) The Franchisee shall pay to the Secretary of State by way of adjustments to Franchise Payments any compensation sums received by the Franchisee from Network Rail under Condition L of the Depot Access Conditions to the extent that such sums relate to compensation for loss of revenue ("**Condition L Compensation Amounts**"). Any Condition L Compensation Amounts received by the Franchisee on or after the Franchise Period shall be paid (as a debt) by the Franchisee to the Secretary of State within 30 days of receipt of any such Condition L Compensation Amounts.

7.6 **Payments under Part G or Part F of the Network Code**

- (a) The Franchisee shall promptly notify the Secretary of State:
 - (i) on receipt of any proposal for Vehicle Change (as such term is defined under the Network Code) and specify in any such notice whether it is entitled to claim compensation under Part F of the Network Code or otherwise from Network Rail or any other party in respect of any consequences of any such Vehicle Change on the operation of the Passenger Services (and if so the amount of any such compensation disaggregated such that amounts relating to loss of revenue and costs are separately identified);
 - (ii) on receipt of any proposal for Network Change (as such term is defined under the Network Code) and specify in any such notice whether it is entitled to claim compensation under Part G of the Network Code or otherwise from Network Rail or any other party in respect of any consequences of any such Network Change on the operation of the Passenger Services (and if so the amount of any such compensation disaggregated such that amounts relating to loss of revenue and costs are separately identified);

- (b) If and to the extent requested by the Secretary of State the Franchisee shall, following consultation with the Secretary of State:
- (i) respond to any Vehicle Change or Network Change (as the case may be) as may be directed by the Secretary of State; and
 - (ii) exercise such rights as it may have under the relevant Access Agreement or Network Code (as the case may be) in such manner and take such action as the Secretary of State may require in respect of any such Vehicle Change or Network Change (including in relation to any agreement of the amount of any compensation payable and including submitting any relevant dispute to any relevant dispute resolution procedures).
- (c) The Franchisee shall not, without the consent of the Secretary of State, agree or propose to agree a value in relation to any compensation payable in relation to any Vehicle Change or Network Change (including in respect of any benefit to be taken into account in determining the amount of the compensation payable in relation to any such Vehicle Change or Network Change (as the case may be) pursuant to condition F 3.2 or condition G2.2 or condition G4.2 (respectively)).
- (d) The Franchisee shall ensure that any claim it makes to Network Rail or any other party in respect of any Vehicle Change or Network Change is disaggregated such that any claims relating to loss of revenue and increased costs are separately identified in any such claim. The Franchisee shall not amend, agree or propose to amend, the provisions relating to the payment of compensation under Part G and/or Part F of the Network Code (as appropriate) (including by agreeing or proposing to agree any commercial agreements or arrangements which will have the effect of excluding the application of such conditions) without the consent of the Secretary of State.
- (e) It is acknowledged that in determining the amount of compensation to be paid in respect of a Network Change or Vehicle Change account is taken of any benefit to be obtained or likely to be obtained in the future by the Franchisee as a consequence of the Vehicle Change or Network Change (as the case may be), which for this purpose shall include any benefit which the Franchisee would have obtained or been likely to have obtained but which the Secretary of State by virtue of the provisions of this Franchise Agreement will or is likely to obtain instead of the Franchisee (the "**Cost or Revenue Benefit**"). Accordingly where in determining the amount of compensation payable by Network Rail to the Franchisee in respect of a Network Change or Vehicle Change (as the case may be):
- (i) no Cost or Revenue Benefit is considered to be derived or is taken into account as a consequence of such Network Change or Vehicle Change then the Franchisee shall, by way of adjustment to Franchise Payments, pay to the Secretary of State the amount of compensation received from Network Rail in respect of any such Vehicle Change or Network Change (as the case may be) to the extent that such amounts relate to loss of revenue; or

- (ii) account is taken of the Cost or Revenue Benefit to be derived as a consequence of such Network Change or Vehicle Change and this results in the:
- (1) Franchisee not receiving the compensation payments for any costs (including direct losses and expenses but only to the extent that these relate to costs) which it would otherwise have been entitled to receive as a consequence of the implementation of the Network Change or Vehicle Change (as the case may be) but for the Cost or Revenue Benefit (the "**Cost Claim**") then the Secretary of State shall, by way of adjustment to Franchise Payments, pay to the Franchisee the amount of the Cost Claim foregone (for the avoidance of doubt, after taking into account any cost savings comprised in the Cost or Revenue Benefit); or
 - (2) Franchisee not receiving on behalf of the Secretary of State the compensation payments for any loss of revenue which it would otherwise have been entitled to receive (and is required pursuant to paragraph 7.6(e)(i) to account for to the Secretary of State) as a consequence of the implementation of the Network Change or Vehicle Change (as the case may be) but for the Cost or Revenue Benefit (the "**Revenue Claim**") then the Franchisee shall, by way of adjustments to Franchise Payments, pay to the Secretary of State the amount of the Revenue Claim foregone (for the avoidance of doubt after taking into account any revenue benefit comprised in the Cost or Revenue Benefit).
 - (iii) Any amounts payable pursuant to this paragraph 7.6 by the Secretary of State to the Franchisee or the Franchisee to the Secretary of State (as the case may be) shall be paid, by way of adjustment to Franchise Payments, on the next Payment Date following the date that is 35 days after the date upon which such amount is agreed or determined in accordance with the terms of the Network Code. If the date upon which any amounts payable pursuant to this paragraph 7.6 by the Secretary of State to the Franchisee or the Franchisee to the Secretary of State (as the case may be) is agreed or determined in accordance with the terms of the Network Code falls on or after the Franchise Period then any such amounts shall be paid (as a debt) by the Secretary of State to the Franchisee or the Franchisee to the Secretary of State (as the case may be) within 30 days following the date of any such agreement or determination.

8. **LSER Related Provisions**

8.1 **LSER Thameslink Trading Agreements**

- (a) The Franchisee agrees and undertakes to:-

- (i) observe and comply with all the conditions and obligations on its part contained in each LSER Thameslink Trading Agreement;
 - (ii) agree, and take all steps which may be required to implement, any amendment to any LSER Thameslink Trading Agreement as the Secretary of State may direct from time to time;
 - (iii) take all such steps as may be required to terminate each or any LSER Thameslink Trading Agreement as the Secretary of State may direct from time to time;
 - (iv) except as otherwise directed by the Secretary of State pursuant to paragraph 8.1(a)(ii) or paragraph 8.1(a)(iii), not vary, agree to vary, waive performance of, terminate or in any other way deal with or change the terms of any LSER Thameslink Trading Agreement without the prior consent of the Secretary of State; and
 - (v) to enter into replacement LSER Thameslink Trading Agreements on materially the same commercial terms with, as the case may be, a successor operator who becomes the franchisee of all or part of the services provided by the LSER Franchisee or a successor operator to the LSER Franchisee except to the extent that the Secretary of State otherwise directs.
- (b) The Franchisee shall at the Secretary of State's request from time to time provide to the Secretary of State and (if and to the extent so requested by the Secretary of State) to the LSER Franchisee (or any successor operator to the LSER Franchisee) such information as the Secretary of State may reasonably request in connection with the planning, timetabling, diagramming and operation of the Franchise Services which may reasonably be expected for reasons in connection with the LSER Thameslink Trading Agreements to affect the planning, timetabling diagramming or operation of services by the LSER Franchisee (or any successor operator to the LSER Franchisee).

8.2 **Proposed Transfer of the LSER Thameslink Joint Passenger Services**

The Franchisee shall co-operate, in good faith, with the Secretary of State and/or the LSER Franchisee (or any successor operator to the LSER Franchisee) in connection with any proposal by the Secretary of State to transfer the operation of any Passenger Services from the Franchisee to the LSER Franchisee or any railway passenger services from the LSER Franchisee to the Franchisee (as the case may be).

8.3 **Station Transfers**

- (a) Subject to paragraph 8.3(b), the Franchisee shall by 21 December 2014 (or such other earlier or later date as the Secretary of State may otherwise direct) enter into leases (the "**Transfer Station Leases**") in respect of the following stations (such that from such date it becomes the Facility Owner at each such station):
 - (i) Beckenham Hill;

- (ii) Bellingham;
 - (iii) Catford;
 - (iv) Crofton Park;
 - (v) Denmark Hill;
 - (vi) Nunhead; and
 - (vii) Ravensbourne.
- (b) It is acknowledged that the LSER Franchisee is currently the Facility Owner at the stations referred to in paragraph 8.3(a) (the "**Transfer Stations**"). Accordingly the Franchisee's obligation under paragraph 8.3(a) to enter into the Transfer Station Leases is subject to:
- (i) the LSER Franchisee (or a successor operator to the LSER Franchisee) agreeing to:
 - (A) surrender its rights in respect of each Transfer Station to which it is a party as at the date of such transfer; or
 - (B) novate or assign such station leases to the Franchisee; and
 - (ii) any counterparty to such station leases (other than the LSER Franchisee or a successor operator to the LSER Franchisee) agreeing to:
 - (A) any such surrender, assignment or novation (as the case maybe); and
 - (B) on the surrender of such station leases, enter into such Transfer Station Leases with the Franchisee.

The Franchisee shall use all reasonable endeavours to obtain the agreement of those parties required under paragraphs 8.3(b)(i) and 8.3(b)(ii).

8.4 **Class 377 Sub Leasing Arrangements**

- (a) Subject to paragraph 8.4(e), the Franchisee shall, when directed by the Secretary of State, negotiate and enter into an agreement with the LSER Franchisee (or any successor operator to the LSER Franchisee) for the subleasing by the Franchisee to the LSER Franchisee (or any such successor operator) of 25 x 4 car Class 377 units (not being the dual voltage units forming part of the Train Fleet) (the "**Class 377 Sub Lease**"). The Franchisee shall co-operate in good faith with the LSER Franchisee (or any such successor operator) to agree the terms of the Class 377 Sub Lease such that the Class 377 Sub Lease is executed and comes into full force and effect on or about the Passenger Change occurring in December 2017 (or such earlier or later date as the Secretary of State may otherwise direct).

- (b) The Class 377 Sub Lease shall be on terms to be agreed by the Franchisee and the LSER Franchisee (or any successor operator to the LSER Franchisee) and shall as a minimum reflect the following principles:
- (i) LSER Franchisee (or any successor operator to the LSER Franchisee) shall be responsible for undertaking all heavy and light maintenance activities in relation to the Class 377 units to be subleased to it under the Class 377 Sub Lease;
 - (ii) the rent payable by the LSER Franchisee (or any successor operator to the LSER Franchisee) to the Franchisee under the Class 377 Sub Lease shall be an amount that is equal to all amounts that the Franchisee is obliged to pay under the Rolling Stock Lease for the Class 377 Units in respect of the Class 377 units which are to be sub leased under the Class 377 Sub Lease;
 - (iii) the Franchisee will if requested to do so by the LSER Franchisee (or any successor operator to the LSER Franchisee) procure technical support, spares and special tools on behalf of the LSER Franchisee (or any successor operator to the LSER Franchisee) under the Technical Support and Spares Supply Agreement to be entered into by the Franchisee in relation to the Class 377 Units, on the basis that the costs of such technical support, spares and special tools shall be borne by the LSER Franchisee (or any successor operator to the LSER Franchisee); and
 - (iv) each party shall bear its own costs and expenses incurred in connection with or arising out of the negotiation, preparation and execution of the Class 377 Sub Lease (including any costs relating to the negotiation, preparation and execution of any of the amendments required to be made to the Rolling Stock Lease and/or the Technical Support and Spares Supply Agreement in relation to the Class 377 units as a consequence of the entry into the Class 377 Sub Lease).
- (c) The Franchisee shall obtain the approval of the Secretary of State prior to entering into the Class 377 Sub Lease. If the Secretary of State does not approve the terms of Class 377 Sub Lease (as agreed by the Franchisee and the LSER Franchisee (or any successor operator to the LSER Franchisee)) or the Secretary of State reasonably considers that the Franchisee and the LSER Franchisee (or any successor operator to the LSER Franchisee) are not likely to agree and enter into the Class 377 Sub Lease by the Passenger Change occurring on or about December 2017, the Secretary of State may require the Franchisee to enter into a Class 377 Sub Lease on such terms as he may require.
- (d) From the date upon which the Class 377 Sub Lease come into full force and effect the Franchisee shall:
- (i) observe and comply with all the conditions and obligations on its part contained in the Class 377 Sub Lease;
 - (ii) agree, and take all steps which may be required to implement, any amendment to the Class 377 Sub Lease as the Secretary of State may direct from time to time;

- (iii) take all such steps as may be required to terminate the Class 377 Sub Lease as the Secretary of State may direct from time to time;
 - (iv) except as otherwise directed by the Secretary of State pursuant to paragraph 8.4(d)(ii) and 8.4(d)(iii), not vary, agree to vary, waive performance of, terminate or in any other way deal with or change the terms of the Class 377 Sub Lease without the prior consent of the Secretary of State; and
 - (v) enter into a replacement Class 377 Sub Lease on materially the same commercial terms with, as the case may be, a successor operator who becomes the franchisee of all or part of the services provided by the LSER Franchisee (or a successor operator to the LSER Franchisee) except to the extent that the Secretary of State otherwise directs.
- (e) It is acknowledged that the entry into the Class 377 Sub Lease is subject to the Franchisee first securing the consents of any applicable lessor. Accordingly the Franchisee shall use all reasonable endeavours to conclude such matters on terms consistent with the agreed terms of the Class 377 Sub Lease and without the terms of the consents requiring the Franchisee to incur any further costs or liability as a term of such consent. The Franchisee shall keep the Secretary of State regularly informed of its progress and notify the Secretary of State of any issues which may either prevent any required consent being obtained or require any amendment, variation or supplement to the proposed terms of the Class 377 Sub Lease. The Franchisee shall use all reasonable endeavours to minimise any such requirements and shall not be required to incur any further costs or liability as a term of consent or agree to any amendment, variation or supplement unless directed to do so by the Secretary of State in which case such direction shall be treated as a Change under paragraph 2.2 of Schedule 9.3 (Secretary of State Risk Assumptions).

8.5 **Lead Operator for the LSER December 2014 Services**

- (a) On or before the date of transfer to the Franchisee of the Passenger services described in paragraph (b) of the definition of TGN Franchise Services (the "**LSER Passenger Services**") the Franchisee shall undertake the process under the Ticketing and Settlement Agreement for changing the identity of the Lead Operator in relation to the Compulsory Inter-available Flows comprised in the LSER Passenger Services, such that the Franchisee becomes the Lead Operator, at least, in respect of those flows where the Franchisee is the principal revenue earner.
- (b) For the purposes of this paragraph 8.5, "**Lead Operator**" has the meaning given it under the Ticketing and Settlement Agreement.

9. **Southern Trading Arrangements**

9.1 The Franchisee agrees and undertakes to:

- (a) observe and comply with all the conditions and obligations on its part contained in each Southern Trading Agreement;

- (b) agree, and take all steps which may be required to implement, any amendment to any Southern Trading Agreement as the Secretary of State may direct from time to time;
- (c) take all such steps as may be required to terminate each or any Southern Trading Agreement as the Secretary of State may direct from time to time;
- (d) except as otherwise directed by the Secretary of State pursuant to paragraph 9.1(b) or paragraph 9.1(c), not vary, agree to vary, waive performance of, terminate or in any other way deal with or change the terms of any Southern Trading Agreement without the prior consent of the Secretary of State; and
- (e) to enter into replacement Southern Trading Agreements on materially the same commercial terms with, as the case may be, a successor operator who becomes the franchisee of all or part of the services provided by the Southern Franchisee or a successor operator to the Southern Franchisee except to the extent that the Secretary of State otherwise directs.

10. **DOO Operations**

10.1 The Franchisee shall:

- (a) ensure that all relevant Passenger Services continue to be operated as Driver Only Operation throughout the Franchise Term from:
 - (i) the Start Date in the respect of the relevant Passenger Services specified in paragraph (a) of the definition of TGN Franchise Services;
 - (ii) 21 December 2014 in respect of the relevant Passenger Services specified in paragraph (b) of the definition of TGN Franchise Services; and
 - (iii) the Combined Effective Date in respect of the relevant Passenger Services comprised in the Southern Franchise Services; and
- (b) having undertaken such consultation as the Franchisee reasonably considers appropriate, unless the Secretary of State (acting reasonably) agrees that on the basis of the response to that consultation it would not be appropriate to implement Driver Only Operation on the Core Thameslink Passenger Service, implement Driver Only Operation on the Core Thameslink Passenger Service with effect from the date on which any such Core Thameslink Passenger Service first operates through the Core Thameslink Route (as such term is defined in Schedule 6.3 (TLP/TRSP Related Provisions)). For the avoidance of doubt the requirement to implement Driver Only Operation on a Core Thameslink Passenger Service shall be a requirement to implement Driver Only Operation on such Core Thameslink Passenger Service throughout its entire journey (that is, from its originating station to its destination station and not just for the duration of its operation through the Core Thameslink Route).

10.2 For the purpose of paragraph 10.1:

- (a) **"relevant Passenger Service"** means:
- (i) for the purposes of paragraph 10.1(a)(i), a Passenger Service comprised in the TGN Franchise Services as specified in paragraph (a) of the definition of TGN Franchise Services and which was operated using Driver Only Operation prior to the Start Date;
 - (ii) for the purposes of paragraph 10.1(a)(ii), a Passenger Service comprised in the TGN Franchise Services as specified in paragraph (b) of the definition of TGN Franchise Services and which was operated using Driver Only Operation prior to 21 December 2014;
 - (iii) for the purposes of paragraph 10.1(a)(iii), a Passenger Service comprised in the Southern Franchise Services and which was operated using Driver Only Operation prior to the Combined Effective Date;
- (b) **"Core Thameslink Passenger Service"** means any Passenger Service (other than a relevant Passenger Service) that is operated through the Core Thameslink Route (as such term is defined in Schedule 6.3 (TLP/TRSP Related Provisions)).
- (c) **"Driver Only Operation"** means operation by a driver alone without the operational need for a conductor.

11. Customer Reports

- 11.1 On or before each of the Start Date and the Combined Effective Date, the Franchisee shall publish a Customer Report. A Customer Report shall include the following information:
- (a) inform passengers of:
 - (i) the fact that a new Franchise has commenced;
 - (ii) the Start Date and the Combined Effective Date (as the case may be);
 - (iii) the term of the Franchise; and
 - (iv) the corporate identity of the Franchisee and the Franchisee's trading name;
 - (b) an explanation of the immediate changes (if any) or short term changes in relation to the provision of the Franchise Services which the Franchisee intends to implement and the reasons for such changes;
 - (c) an explanation of the Franchisee's opinion of the key customer priorities for the Franchise and how the Franchisee proposes to address them;
 - (d) an explanation of the specific targets for performance and customer satisfaction and quality (as specified in Schedule 7 (Performance Benchmarks and PEM Regime) and ticketless travel (as specified in paragraph 2 of Schedule 6.2 (TSGN Franchise Specific Provisions))

together with an explanation of the Franchisee's plan for achieving such targets;

- (e) an explanation of the Franchisee's key priorities for improving the customer experience; and
- (f) an explanation of the Franchisee's passenger engagement plans (including how passengers can provide their views on the future development of the Franchise and how those views would be acted upon by the Franchisee).

11.2 At intervals of no more than 12 months from the date of the last published Customer Report, the Franchisee shall publish further Customer Reports which shall include:

- (a) a summary of the commitments and targets highlighted in the immediately preceding Customer Report;
- (b) an explanation of whether and how such commitments and targets have been met (or if not met, why they have not been met);
- (c) an overview of the Franchisee's passenger engagement since the publication of the immediately preceding Customer Report and the Franchisee's key priorities from such engagement; and
- (d) details of the Franchisee's targets and commitments for the subsequent periods and the Franchisee's plans for addressing passengers' priorities for improvements to the Franchise Services.

11.3 For the purposes of this paragraph 11 "**publish**" shall mean [*Bidders to populate: Bidders to insert their proposal for the publication of the Customer Reports as set out in their bid.*]

[*Bidders to populate: Bidders may supplement or amend the provisions of this paragraph 11 to reflect their proposals in relation to the publication of Customer Reports*].

12. **Overnight Passenger Services to Luton Parkway Station**

12.1 To assist the Secretary of State in his decision on whether to continue to specify the Additional Luton Airport Overnight Services beyond the three year trial period currently specified in the Train Service Requirement and subject to paragraph 12.2, the Franchisee shall, on or before 30 June 2015 and every six months thereafter until 31 December 2018, provide to the Secretary of State a report regarding the operation of the Luton Airport Overnight Services for the six months immediately preceding the date of any such report. Such report shall include the following information:

- (a) the best available estimate of the number of passengers using each of the Luton Airport Overnight Services (either to travel to/from Luton Airport Parkway station or other stations at which such passenger services call);
- (b) the estimated revenue arising from the provision of each of the Luton Airport Overnight Services;
- (c) the costs to the Franchisee for the operation of each of the Luton Airport Overnight Services; and

- (d) any other relevant information in respect of the operation of the Luton Airport Overnight Services that the Secretary of State may reasonably require from time to time.
- 12.2 The Secretary of State may require the Franchisee to provide the reports referred to in paragraph 12.1 at such other regular intervals as the Secretary of State may notify to the Franchisee provided that any such requirement shall not result in the Franchisee having to provide any more reports than those required pursuant to paragraph 12.1.
- 12.3 At the request of the Secretary of State the Franchisee shall, within 20 working days from the date of any such request, provide to the Secretary of State an estimate of the costs and revenues for the continued provision of the Additional Luton Airport Overnight Services (either in the form specified in the applicable Train Service Requirement or in a modified form) beyond December 2018.
- 12.4 For the purposes of this paragraph 12:
- (a) **“Additional Luton Airport Overnight Services”** means such of the railway passenger services arriving at, or departing from, Luton Airport parkway station between 0000 and 0700 (in both directions) as are required to be operated by the Franchisee only from the Passenger Change Date commencing in December 2015 until the Passenger Change Date commencing in December 2018;
- (b) **“Existing Luton Airport Overnight Services”** means such of the railway passenger services arriving at, or departing from, Luton Airport parkway station between 0000 and 0700 (in both directions) as are required to be operated by the Franchisee from the Start Date; and
- (c) **“Luton Airport Overnight Services”** means the Additional Luton Airport Overnight Services and the Existing Luton Airport Overnight Services.
13. **Route Efficiency Benefit Share**
- 13.1 The Franchisee shall obtain the prior consent of the Secretary of State prior to exercising any rights it may have under the Track Access Agreement or otherwise to opt out from the Route Efficiency Benefit Share Mechanism.
- 13.2 Where a Train Operator under a Previous Franchise Agreement has exercised its rights under a track access agreement to opt out from the Route Efficiency Benefit Share Mechanism the Franchisee shall take all steps necessary to ensure that it opts back into the Route Efficiency Benefit Share Mechanism including through agreement of a new Track Access Agreement or a variation of an existing Track Access Agreement.

APPENDIX TO SCHEDULE 6.2

PART 1 TO APPENDIX

Breach Initial Period Benchmark Table

Breach Initial Period Benchmark			
	Column 1	Column 2	Column 3
Periods	First Ticketless Travel Survey Period in the first Performance Calculation Year (2014/15 P7 – P9)	Second Ticketless Travel Survey Period in the first Performance Calculation Year (2014/15 P10– P13)	Last Ticketless Travel Survey Period in the first Performance Calculation Year (2015/16 P1– P3)
Benchmark value	[•]	[•]	[•]

PART 2 TO APPENDIX

Ticketless Travel Benchmark

Column 1		Column 2	Column 3
Performance Calculation Year	Ticketless Travel Survey Periods	Target Ticketless Travel Benchmark (%)	Breach Ticketless Travel Benchmark (%)
Year 1			
Year 2			
Year 3			
Year 4			
Year 5			
Year 6			
Year 7			
First Year of up to 26 Reporting Periods Extension			
Second year of up to 26 Reporting Periods Extension			

DRAFT

PART 3 TO APPENDIX

Annual Ticketless Travel Benchmark

Column 1	Column 2	Column 3
Performance Calculation Year	Annual Target Ticketless Travel Benchmark (%)	Annual Breach Ticketless Travel Benchmark (%)
Year 1		
Year 2		
Year 3		
Year 4		
Year 5		
Year 6		
Year 7		
First year of up to 26 Reporting Periods Extension		
Second year of up to 26 Reporting Periods Extension		

PART 4 TO APPENDIX

Payment Table

Definitions	Amount (£)
TTB	3,200,000
TTP	6,300,000

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SCHEDULE 6.3

TLP/TRSP Related Provisions

1. Definitions and Interpretation

- 1.1 In this Schedule 6.3, except where the context otherwise requires, words and expressions defined in the MDCTA shall have the same meaning when used herein.
- 1.2 In this Schedule 6.3, except where the context otherwise requires, the following words and expressions shall have the following meanings:

“Automatic Train Operation” means the system to permit the automatic operation of the Class 700 units over the Core Thameslink Route;

“ATO Infrastructure” means:

- (a) all of the on-board train equipment installed on the Class 700 units to allow the use of Automatic Train Operation;
- (b) the Automatic Train Operation trackside infrastructure and train-borne signalling subsystem; and
- (c) such other equipment and infrastructure as is necessary for the operation of Automatic Train Operation;

“Backstop Date” means for each TLP Milestone Target, the date (if any) specified in column 3 of the table in respect of that TLP Milestone Target;

“Conventional Infrastructure” means the infrastructure required to deliver 20 trains per hour in both directions through the Core Thameslink Route including the following work packages; London Bridge Station works, London Bridge area structures strengthening programme, London Bridge area railway systems works (including track, power supply and conventional signalling renewals and upgrades) and the ‘outer areas’ works including stabling, depot connections, and Canal Tunnel commissioning

“Core Thameslink Route” means the railway route connecting London Blackfriars and London St Pancras International stations;

“ETCS”	means European Train Control System;
“ETCS Infrastructure”	means: <ul style="list-style-type: none"> (a) all of on-board train equipment installed on the Class 700 units to allow the use of ETCS; (b) the ETCS trackside infrastructure and train-borne signalling subsystem; and (c) such other equipment as is necessary for the operation of ETCS;
“Final Calculation Year”	means the Calculation Year ending on 19 September 2021;
“Final Performance Calculation Year”	means the Performance Calculation Year ending on 22 August 2021;
“KO2 Infrastructure” or “High Capacity Infrastructure”	means the infrastructure required to deliver 24 trains per hour in both directions through the Core Thameslink Route and include the installation and commissioning of ETCS and Automatic Train Operation, the station upgrades required to implement such systems (including enhanced passenger/customer information systems at core area stations) and the commissioning of the Three Bridges rail operations centre;
“Peak Period”	means TRSP Morning Peak or TRSP Evening Peak;
“Pension Amount”	has the meaning given to such term in paragraph 1.1 of Schedule 18 of the TSA;
“Relevant Protected Persons”	has the meaning given to such term in paragraph 1.1 of Schedule 18 of the TSA;
“Relevant Indefeasible Rights Member”	has the meaning given to such term in paragraph 1.1 of Schedule 18 of the TSA;
“Scheme Actuary”	has the meaning given to such term in paragraph 1.1 of Schedule 18 of the TSA;
“Table”	means the table set out in paragraph 6.4 of this Schedule 6.3;
“Target Date”	means for each TLP Milestone Target, the date (if any) specified in column 2 of the Table in respect of that TLP Milestone Target;
“TLP Milestone Incentive”	means, for each TLP Milestone Target, the amount specified as such for that TLP

“Payment”	Milestone Target in column 4 of the Table;
“TLP Milestone Target”	means each of the milestone targets specified in column 1 of the Table;
“TMM Section”	has the meaning given to such term in paragraph 1.1 of Schedule 18 of the TSA;
“Top Up Amount”	has the meaning given to such term in paragraph 1.1 of Schedule 18 of the TSA;
“TRSP Evening Peak”	means the period between 1730 and 1829 on a Weekday;
“TRSP Morning Peak”	means the period between 0800 and 0859 on a Weekday; and
“TRSP Programme”	means the project for the procurement of rolling stock and depots as documented in the TRSP Documents.

2. Franchisee Obligations under the TRSP Documents

2.1 The Franchisee agrees and undertakes:

- (a) to observe and comply with all the conditions and obligations on its part as set out in each TRSP Document (including by making all payments for which it is responsible under each TRSP Document (as and when due) and incurring such costs as are required for the purposes of fulfilling its obligations under each of the TRSP Documents);
- (b) to enforce its rights under each of the TRSP Documents;
- (c) to act reasonably and in good faith in and about the performance of its obligations and the exercise of its rights under each of the TRSP Documents;
- (d) where the Secretary of State is obliged under any of the TRSP Documents to procure that certain steps are taken or obligations performed by the Franchisee to take such steps or perform such obligations promptly upon request by the Secretary of State; and
- (e) to take such steps which may be required to implement any amendment or variation to any TRSP Document as the Secretary of State may direct from time to time (including an amendment following a Run of the Owner Financial Model, Run of the TMM Financial Model or Run of the TSSSA Financial Model (as appropriate).

2.2 The Franchisee shall not, without the Secretary of State’s prior written consent or approval:

- (a) vary or purport to vary or agree to any variation of the terms and conditions of any TRSP Document; or
- (b) take any steps to terminate any of the TRSP Documents.

2.3 The Franchisee shall indemnify and hold harmless the Secretary of State from and against any liabilities, costs, expenses, damages, claims, losses, payments suffered or incurred by the Secretary of State arising under or in connection with any failure by the Franchisee to comply with any of its obligations under the TRSP Documents including any amounts payable by the Secretary of State pursuant to paragraphs 7.6 and 8 of Schedule 2.1 of the Umbrella Agreement and paragraphs 2.2 to 2.4 of part 1 of Schedule 2.4 of the Umbrella Agreement.

3. **Information Requirements**

3.1 The Franchisee shall, without limiting any other rights the Secretary of State may have under the Franchise Agreement:

- (a) maintain accurate, comprehensive and up to date written and electronic records of its performance of the activities for which it is responsible under each TRSP Document (the "**Franchisee TRSP Activities**") and as and when requested by the Secretary of State from time to time provide a copy of all or part of such records to the Secretary of State;
- (b) maintain a risk register in relation to the Franchisee TRSP Activities and provide details of the status of each item on that risk register to the Secretary of State promptly upon request by the Secretary of State;
- (c) provide a four weekly report to the Secretary of State on progress in respect of the delivery of the TRSP Programme and in particular the delivery of each of the Units, Associated Equipment or other contract deliverable highlighting any instances where any Unit or Associated Equipment or any other contract deliverable has been or is likely to be delivered later than its scheduled delivery date, any Permitted Delays, any Permitted Depot Delays, Force Majeure Events, Depot Force Majeure Event, non-compliances and other potential delays;
- (d) promptly notify the Secretary of State as soon as it becomes aware during the Franchise Term of any circumstances that will or are likely to cause delay to the performance of any of the Franchisee TRSP Activities, howsoever caused, and promptly provide to the Secretary of State its proposals for mitigating, to the extent reasonably possible and practicable to do so, the effect of the relevant circumstances on the delivery of the TRSP Programme;
- (e) promptly notify the Secretary of State if it becomes aware of any event that will or is likely to cause delay to the delivery of the Units, the Associated Units or the Depot Works (as such term is defined in the DAFLs) including any potential Permitted Depot Delays or potential Permitted Delays;
- (f) immediately notify the Secretary of State as soon as it becomes aware of any event which may lead to the likely occurrence or the occurrence of a:
 - (i) Lease Owner Termination Event;
 - (ii) Depot SPC Termination Event (as such term is defined in the DAFLs);
 - (iii) TSA Owner Event of Default;
 - (iv) TSA TMM Event of Default;

- (v) MSA Owner Event of Default; or
 - (vi) MSA TMM Event of Default; and
- (g) at the same time as it receives the same from the TMM provide copies to the Secretary of State of:
- (i) the Performance Report and minutes in respect of each Performance Review Meeting that is undertaken by the Franchisee and the TMM during the Franchise Term; and
 - (ii) each Performance Remedial Plans (including any subsequent update to such plans) that the TMM is required to implement pursuant to the TSA.

3.2 **Information Provision at the End of the Franchise Period**

In addition to the Secretary of State's rights to access and information under this Franchise Agreement and under the TRSP Documents, the Franchisee shall ensure that:

- (a) as from the date that the Secretary of State requires, the Franchisee makes available for inclusion in a data room to be maintained by the Secretary of State in connection with the process for the replacement of the Franchise (which may be a physical or electronic data room) or for such other provision to potential Successor Operator(s) as the Secretary of State may require, copies of the TRSP Documents and other documents and records in its possession or under its control relating to the performance of its obligations under this Schedule 6.3 and either reasonably requested by the Secretary of State to be included or otherwise considered by the Franchisee (acting reasonably) to be material or relevant to an actual or potential bidder for the replacement franchise or other potential Successor Operator;
- (b) it runs briefings and site visits in connection with the aspects of the TRSP Programme with which it is involved as reasonably required by the Secretary of State for all actual and (if relevant) potential bidders in connection with the replacement franchise or other potential Successor Operator, subject to these requirements being managed so as not to materially detract from performance of the TRSP Documents and the Franchisee TRSP Activities or unduly interfere with the continuing provision of and operation of the Franchise Services by the Franchisee;
- (c) on or prior to the end of the Franchise Period as requested by the Secretary of State, it makes available the documents, records and other materials in its possession or control relating to its performance of the TRSP Documents and fulfilment of the Franchisee TRSP Activities, having maintained those documents and records such that a Successor Operator with appropriate resources and experience is in a position immediately following the end of the Franchise Period to continue to perform its obligations under the TRSP Documents and activities similar to the Franchisee TRSP Activities from the end of the Franchise Period; and
- (d) without limitation, the Franchisee's obligations in this paragraph 3.2 shall include the preparation of such documentation, and in the case of paragraph 3.2(c), the provision of a means of access to such documentation to the Successor Operator in a manner as approved by the

Secretary of State (such approval not to be unreasonably withheld or delayed).

3.3 Provision by the Franchisee of documents, records and materials in accordance with paragraph 3.2 shall be treated as satisfying its obligations under the Umbrella Agreement to hand over that information at the end of Franchise Period.

3.4 Where any information that may be confidential or commercially sensitive to a third party is to be disclosed to any other third party pursuant to this Schedule 6.3, the Franchisee shall consult with the Secretary of State to agree the terms on which such information may or may not be provided (including the possibility of redacting certain sections of documents). In the absence of such agreement, the Secretary of State shall determine the terms of disclosure in his absolute discretion provided that the Franchisee shall not thereby be required to breach any applicable legal or contractual obligation.

4. **Pension Issues**

4.1 Without limiting paragraph 2.1(a), the Franchisee shall ensure that it pays each Pension Amount to the TMM on the basis and as determined pursuant to the terms of the Schedule 18 of the TSA and the Actuaries' Letter.

4.2 For the purposes of the definition of "Operator Actuary" under Schedule 18 of the TSA the Franchisee shall appoint as actuary such person as the Secretary of State shall direct.

4.3 The Secretary of State shall reimburse to the Franchisee an amount that is equal to the Top Up Amount that the Franchisee is required, pursuant to paragraph 1.8 of Schedule 18 of the TSA, to pay (and actually pays) to the TMM Section for and in respect of the Relevant Protected Persons and Relevant Indefeasible Rights Members. It is acknowledged and agreed by the Secretary of State and the Franchisee that:

- (a) any such Top Up Amount is to be as calculated by the Scheme Actuary in accordance with the terms of the Actuaries' Letter and as verified by the Franchisee and the TSP in accordance with the terms of Schedule 18 of the TSA; and
- (b) any reimbursement by the Secretary of State pursuant to this paragraph 4.3 shall be made by way of adjustment to Franchise Payments on the next Payment Date which falls more than 7 days after the date on which the Secretary of State receives evidence that the relevant Top Up Amount has been paid in accordance with the provisions of this paragraph 4.

5. **Secretary of State Loss of Revenue**

5.1 It is acknowledged by each of the Secretary of State and the Franchisee that:

- (a) certain provisions under each of the DAFLs (including clauses 15.3 and 31 of the DAFL in respect of Three Bridges depot and clauses 15.4 , 16.7 and 31 of the DAFL in respect of Hornsey depot) indemnify the Franchisee against Losses (which as defined in each of the DAFLs will include an indemnity for loss of revenue) incurred by the Franchisee and arising in connection with and as a consequence of the Depot SPC not performing or complying with any of its obligations or duties under any of the DAFLs (the "**Indemnity Provisions**"); and

- (b) the Secretary of State bears Revenue risk in relation to the provision of the Franchise Services and would be the party that suffers loss of Revenue that may arise in connection with and as a consequence of the Depot SPC not performing or complying with any of its obligations or duties under any of the DAFLs.

5.2 Accordingly and subject to the terms of paragraph 5.3, the Franchisee:

- (a) hereby agrees to hold the benefit of the rights in the Indemnity Provisions, in so far as they comprise the right to be indemnified in respect of loss of Revenue, on trust for the benefit of the Secretary of State; and
- (b) shall, immediately on demand, indemnify the Secretary of State for any loss of Revenue that is suffered by the Secretary of State as a direct consequence of the Depot SPC not performing or complying with any of its obligations under any of the DAFLs, provided that, and subject to the Franchisee having complied with its obligations pursuant to paragraph 5.3, the Franchisee's maximum liability under the indemnity specified in paragraph 5.2(b) shall not exceed the amount that the Franchisee actually receives from the Depot SPC in respect of any claim under the Indemnity Provisions net of any reasonable and proper costs incurred by Franchisee in complying with any direction by the Secretary of State to enforce its rights pursuant to paragraph 5.3.

5.3 The Franchisee shall immediately notify the Secretary of State if it becomes aware of any breach of, or non-performance of duties by the Depot SPC under, the DAFLs which may give risk to loss of Revenue. At and in accordance with the direction of the Secretary of State the Franchisee shall enforce its rights under the Indemnity Provisions of the applicable DAFL to recover from the Depot SPC any loss of Revenue that is suffered by the Secretary of State in connection with and as a consequence of the Depot SPC not performing or complying with any of its obligations or duties under the relevant DAFL. The obligation of the Franchisee pursuant to this paragraph 5.3 shall include a requirement to enforce any such rights through the courts or by using any dispute resolution process that applies under the relevant DAFL. Any sums recovered by the Franchisee from the Depot SPC shall be applied first in the discharge of the reasonable and proper costs of recovery as incurred by the Franchisee with the rest of the amounts being reimbursed to the Secretary of State on the first Payment Date falling no less than 7 days after the date of any such recovery or if after the Franchise Period within 30 days of any such recovery.

5.4 The Secretary of State shall act reasonably in the exercise of his rights pursuant to paragraph 5.3 and shall have regard to any representations made by the Franchisee in relation to any direction by him pursuant to paragraph 5.3.

6. **TLP Milestone Incentive Payments**

6.1 If a TLP Milestone Target is achieved:

- (a) on or before the Target Date as indicated in the Table or, where no Target Date is indicated in the Table, the Backstop Date, the Secretary of State shall pay to the Franchisee the corresponding TLP Milestone Incentive Payment of the amount specified in column 4 of the Table; or
- (b) where applicable, after the Target Date but before the Backstop Date as indicated in the Table, the Secretary of State shall pay to the Franchisee

the reduced amount corresponding TLP Milestone Incentive Payment in the amount specified in column 4 of the Table; or

- (c) after the Backstop Date, no TLP Milestone Incentive Payment shall be paid to the Franchisee in respect of that TLP Milestone Target, whatever the reason for the non-achievement.

6.2 Provided the entitlement to it has been evidenced in accordance with the terms of paragraph 6.5, each TLP Milestone Incentive Payment payable by the Secretary of State to the Franchisee shall be paid by way of adjustment to Franchise Payments on the date indicated in column 4 of the Table.

6.3 Without limiting paragraph 6.1(c), if there is a Change which impacts the likelihood of a TLP Milestone Target being achieved:

- (a) the terms of this paragraph 6 (including the Target Dates, Backstop Dates and TLP Milestone Incentive Payments) shall not be subject to revision to take account of such Change; and
- (b) for the purpose of any Run of the Financial Model in respect of such Change, no account shall be taken of any loss or reduction of the opportunity for the Franchisee to receive a TLP Milestone Incentive Payment.

6.4 **Table: TLP Milestone Incentive Payments**

TLP Milestone Target	Target Date	Backstop Date	TLP Milestone Incentive Payment (£)
<p>1) ETCS Level 2 Operational in the Core Thameslink Route</p>			
<p>1(A) ETCS Infrastructure is approved by the Target Date through the occurrence of both:</p> <p>(i) grant by the Notified Body of the relevant certification to certify that the infrastructure is interoperable; and</p> <p>(ii) grant of the relevant authorisation into service operation by the National Safety Authority.</p> <p>1(B) over 3 Reporting Periods following the receipt of the certification referred to in paragraph 1(A) above, at least 99% of the Passenger Services specified in the Train Plan to be operated using the Class 700 units are</p>	<p>29 December 2017</p>	<p>22 February 2018</p>	<p>1(C) Subject to paragraph 1(E), £2,500,000 if the TLP Milestone Target specified in paragraph 1(A) is achieved on or before the Target Date.</p> <p>1(D) Subject to paragraph 1(E), an amount calculated as follows if the TLP Milestone Target specified in paragraph 1(A) is achieved after the Target Date but before the Backstop Date:</p> <p>£2,500,000-(£1,500,000) x DA/BD) where:</p> <p>DA is the number of days between the Target Date and the date on which the</p>

TLP Milestone Target	Target Date	Backstop Date	TLP Milestone Incentive Payment (£)
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actually operated over the Core Thameslink Routes with such Class 700 Units being operated with ETCS enabled.

TLP Milestone Target specified in paragraph 1(A) is achieved; and

BD is the number of days between the Target Date and the Backstop Date.

1(E) The TLP Milestone Incentive Payment referred in paragraphs 1(C) and 1(D) above shall only become due and payable by the Secretary of State if the Franchisee satisfies the requirement specified in paragraph 1(B) and provides evidence of such satisfaction as required in paragraph 6.5(a). Any such TLP Milestone Incentive Payment shall be paid by the Secretary of State to the Franchisee on the first Payment Date falling no less than seven days after the date upon which such TLP Milestone Incentive Payment falls due.

2) ATO Operational in the Core Thameslink Route

2(A) ATO Infrastructure is certified under the ROGS (Railway and Other Guided Transport Systems (Safety) Regulations).

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2(C) Subject to paragraph 2(E), £2,500,000 if the TLP Milestone Target specified in paragraph 2(A) is achieved on or before the Target Date.

2(B) over 3 Reporting Periods following the receipt of the certification referred to in paragraph 2(A) above, at least 99% of the Passenger Services specified in the Train Plan to be operated using the Class 700 units are actually operated over the Core Thameslink Routes using Class 700 units with Automatic Train Operation

2(D) Subject to paragraph 2(E), an amount calculated as follows if the TLP Milestone Target specified in paragraph 2(A) is achieved after the Target Date but before the Backstop Date:

$$£2,500,000 - (£1,500,000) \times$$

TLP Milestone Target	Target Date	Backstop Date	TLP Milestone Incentive Payment (£)
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switched on.

DA/BD) where:

DA is the number of days between the Target Date and the date on which the TLP Milestone Target specified in paragraph 1(A) is achieved; and

BD is the number of days from the Target Date until the Backstop Date.

2(E) The TLP Milestone Incentive Payment referred in paragraphs 2(C) and 2(D) above shall only become due and payable by the Secretary of State if the Franchisee satisfies the requirement specified in paragraph 2(B) and provides evidence of such satisfaction as required in paragraph 6.5(a) Any such TLP Milestone Incentive Payment shall be paid by the Secretary of State to the Franchisee on the first Payment Date falling no less than seven days after the date upon which such TLP Milestone Incentive Payment falls due.

3) 20 tph Peak Through the Core Thameslink Route

3(A) The Conventional Infrastructure is complete and capable of permitting 20 Passenger Services per hour operation following the occurrence of all of:

N/A

By the Subsidiary Change Date occurring in May 2018

3(D) Subject to paragraph 3(E), £10,000,000 if both the TLP Milestone Targets specified in paragraphs 3(A) and 3(B) are satisfied by the Backstop Date.

(i) ROGS (Railway and Other Guided Transport Systems (Safety) Regulations)

3(E) The TLP Milestone Incentive Payment referred in paragraph 3(D) above shall only become due and

TLP Milestone Target	Target Date	Backstop Date	TLP Milestone Incentive Payment (£)
<p>approval being obtained;</p> <p>(ii) Network Rail and the Franchisee both signing off under their respective safety management systems in relation to such use of the Conventional Infrastructure; and</p> <p>(ii) each of the Franchisee and Network Rail issuing an "entry into service" certificate in relation to such use of the Conventional Infrastructure.</p> <p>3(B) The Franchisee has sufficient Class 700 Units in service and trained drivers available to be rostered to drive such Class 700 units to enable it to operate 20 trains per hour through the Core Thameslink Route (in each direction) during each Peak Period using Class 700 units, measured against its Train Plan and driver training plan.</p> <p>3(C) For 3 Reporting Periods following the achievement of the TLP Milestone Target specified in paragraph (3A) the Franchisee operates, in each such Reporting Period, 20 trains per hour through the Core Thameslink Route (in each direction) in each Peak Period utilising Class 700 units.</p> <p>The TLP Milestone Target specified in paragraph 3(C) shall be deemed to be achieved during each of the three Reporting Periods if in each such Reporting Period the Franchisee, using Class 700 units, actually operates the 20 trains per hour in each direction as required to be operated pursuant to paragraph 3(C) during no</p>			<p>payable by the Secretary of State if the Franchisee satisfies the requirement specified in paragraph 3(C) and provides evidence of such satisfaction as required in paragraph 6.5(b). Any such TLP Milestone Incentive Payment shall be paid by the Secretary of State to the Franchisee on the first Payment Date falling no less than seven days after the date upon which such TLP Milestone Incentive Payment falls due.</p> <p>3(F) For the avoidance of doubt no TLP Milestone Incentive Payment shall be made if the TLP Milestone Target is not achieved by the Backstop Date.</p>

TLP Milestone Target	Target Date	Backstop Date	TLP Milestone Incentive Payment (£)
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fewer than 90 per cent. of the Peak Periods falling within each such Reporting Period. It is acknowledged that in determining whether the TLP Milestone Target specified in this paragraph 3(C) has been achieved no account shall be taken of whether the failure to operate the required 20 trains per hour is attributable to a Force Majeure Event Network Rail, the Franchisee or any other party.

4) K02 is Delivered: 24 tph through the Core Thameslink Route

4(A) K02 Infrastructure or High Capacity Infrastructure is authorised by the ORR as complete and capable of permitting 24 Passenger Services per hour operation through the Core Thameslink Route and certified under ROGS (Railway and Other Guided Transport Systems (Safety) Regulations).

N/A

By the Principal Change Date occurring in December 2018

4(D) Subject to paragraph 4(E), £5,000,000 if both the TLP Milestone Targets specified in paragraphs 4(A) and 4(B) are satisfied by the Backstop Date (the "First Payment").

4(E) The First Payment shall only become due and payable by the Secretary of State if the Franchisee satisfies the requirement specified in paragraph 4(C) and provides evidence of such satisfaction as required in paragraph 6.5(c). The First Payment shall be paid by the Secretary of State to the Franchisee on the first Payment Date falling no less than seven days after the date upon which it falls due.

4(B) the Franchisee has sufficient Class 700 Units in service and trained drivers available to be rostered to drive such Class 700 units to enable it to operate 24 trains per hour through the Core Thameslink Route (in both directions) during each Peak Period utilising Class 700 units, measured against its Train Plan and driver training plan.

4(C) For 3 Reporting Periods following the achievement of the TLP Milestone Target specified in paragraph (4A) the Franchisee operates in

4(F) For the avoidance of doubt none of the First Payment, Second Payment (as defined in paragraph 4(G)) or the Third Payment

TLP Milestone Target	Target Date	Backstop Date	TLP Milestone Incentive Payment (£)
<p>each such Reporting Period, 24 trains per hour through the Core Thameslink Route (in both directions) in each Peak Period utilising Class 700 units.</p> <p>The TLP Milestone Target specified in paragraph 4(C) shall be deemed to be achieved during each of the three Reporting Periods if in each such Reporting Period the Franchisee, using Class 700 units, actually operates the 24 trains per hour in each direction as required to be operated pursuant to paragraph 4(C) during no fewer than 90 per cent. of the Peak Periods falling within each such Reporting Period. It is acknowledged that in determining whether the TLP Milestone Target specified in this paragraph 4(C) has been achieved no account shall be taken of whether the failure to operate the required 24 trains per hour is attributable to a Force Majeure Event Network Rail, the Franchisee or any other party.</p>			<p>(as defined in paragraph 4(H)) shall be made if the TLP Milestone Target specified in paragraphs 4(A) and 4(B) is not achieved by the Backstop Date or the requirements specified in paragraph 4(C) are not satisfied, evidenced by the provision of the information required pursuant to paragraph 6.5(c).</p> <p>4(G) Subject to paragraph 4(F) but otherwise in addition to and separate from the First Payment and the Third Payment, a payment may be made by the Secretary of State to the Franchisee ("Second Payment") if the Franchise Period ends on or after 19 September 2021. The extent (if any) of such Second Payment shall be determined as follows:</p> <ol style="list-style-type: none"> <li data-bbox="1013 1243 1417 1713">(1) if in the Final Calculation Year the Franchisee's PEM (as determined pursuant to paragraph 5.1 or 2.18(a) of Schedule 7.2 (PEM Regime)) is greater than the PEM Benchmark Level for that Final Calculation Year then the Second Payment shall be £2,500,000; but <li data-bbox="1013 1736 1417 2022">2) if in the Final Calculation Year the Franchisee's PEM (as determined pursuant to paragraph 5.1 or 2.18(a) of Schedule 7.2 (PEM Regime)) is equal to or less than the PEM

TLP Milestone Target	Target Date	Backstop Date	TLP Milestone Incentive Payment (£)
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Benchmark Level and is greater than the PEM Floor Level for that Final Calculation Year then the Second Payment shall be an amount that is determined as follows:

$$\text{£2,500,000} - ((\text{PEM Benchmark} - \text{PEM}) / (\text{PEM Benchmark} - \text{PEM Floor})) \times \text{£2,500,000}.$$

For the avoidance of doubt no Second Payment shall be payable if the Franchisee's PEM for the Final Calculation Year (as determined pursuant to paragraph 5.1 or 2.18(a) of Schedule 7.2 (PEM Regime)) is equal to or less than the PEM Floor Level for that Final Calculation Year.

4(H) Subject to paragraph 4(F) but otherwise in addition and separate from the First Payment and the Second Payment a payment may be made by the Secretary of State to the Franchisee ("**Third Payment**") if the Franchise Period ends on or after 19 September 2021. The extent (if any) of such Third Payment shall be determined as follows:

- (1) if the Franchisee's performance in relation to the Annual TOC Minute Delay Benchmark (as calculated pursuant to paragraph 2.8 of

TLP Milestone Target	Target Date	Backstop Date	TLP Milestone Incentive Payment (£)
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Schedule 7.1 (Performance Benchmarks)) for the Final Performance Calculation Year is less than (that is, better than) the Annual Target Performance Level for that Final Performance Calculation Year then the Third Payment shall be £2,500,000; but

2) if the Franchisee's performance in relation to the Annual TOC Minute Delay Benchmark (as calculated pursuant to paragraph 2.8 of Schedule 7.1 (Performance Benchmarks)) for the Final Performance Calculation Year is more than (that is, equal to or worse than) than the Annual Target Performance Level and is less than (that is better than) the Annual Breach Performance Level for that Final Performance Calculation Year then the Third Payment shall be determined as follows:

$$£2,500,000 - ((\text{ACTUAL} - \text{TARGET}) / (\text{BREACH} - \text{TARGET})) \times £2,500,000).$$

The terms ACTUAL, TARGET

TLP Milestone Target	Target Date	Backstop Date	TLP Milestone Incentive Payment (£)
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and BREACH shall each have the meanings given to it in paragraph 3.4 of Schedule 7.1 (Performance Benchmarks).

For the avoidance of doubt no Third Payment shall be payable if the Franchisee's performance in relation to the Annual TOC Minute Delay Benchmark (as calculated pursuant to paragraph 2.8 of Schedule 7.1 (Performance Benchmarks)) for the Final Performance Calculation Year is more than (that is equal to or worse than) the Annual Breach Performance Level for that Final Performance Calculation Year.

Any Second Payment or Third Payment due and payable shall be paid by the Secretary of State to the Franchisee within 30 days following 19 September 2021 (if the Franchise Term has ended by that date) or the first Payment Date that falls no earlier than 7 days after 19 September 2021 (if the Franchise Term is continuing after that date).

6.5 Evidencing the achievement of the TLP Milestone Target

The Franchise shall provide the following information as evidence to the Secretary of State for the purposes of evidencing the achievement of the TLP Milestone Targets:

- (a) in respect of the TLP Milestone Target specified in paragraphs 1(C) and 2(C) of the Table, the records/information derived from the trackside ETCS and Automatic Train Operation system; and
- (b) in respect of the TLP Milestone Target specified in paragraphs 3(C) provision of information to demonstrate the following:

- (i) in respect of each Passenger Service specified in paragraph 3(C) operated over the 3 Reporting Period following the achievement of the TLP Milestone Target specified in paragraph 3(A):
 - (1) the number of Passenger Services departing London Blackfriars station through platforms heading south during the Weekday in the Peak Period; and
 - (2) the number of Passenger Services departing London St. Pancras International through platforms heading north during the Weekday in the Peak Period,

in each case measured by the trackside equipment; and
- (c) in respect of the TLP Milestone Target specified in paragraphs 4(C) provision of information to demonstrate the following:
 - (i) in respect of each Passenger Service specified in paragraph 4(C) operated over the 3 Reporting Period following the achievement of the TLP Milestone Target specified in paragraph 4(A):
 - (1) the number of Passenger Services departing London Blackfriars station through platforms heading south during the Weekday in the Peak Period; and
 - (2) the number of Passenger Services departing London St. Pancras International station through platforms heading north during the Weekday in the Peak Period,

in each case measured by the trackside equipment.

7. **The Thameslink Programme Office**

7.1 The Franchisee shall co-operate with the Secretary of State, Network Rail and/or any other third party relevant to the Thameslink Programme and the TRSP Programme, including, in particular being proactive in partnering with Network Rail as a member of Network Rail's Thameslink Programme project team, or otherwise in developing the best overall solution for the associated construction works, and in so doing, the Franchisee shall use all reasonable endeavours to optimise the Secretary of State's potentially competing needs to:

- (a) minimise disruption to the Passenger Services during the implementation of associated works;
- (b) secure the best service level output for passengers from that programme; and
- (c) maximise value for money for the taxpayer from that programme.

7.2

- (a) From the Start Date until the end of the Franchise Term, the Franchisee shall:

- (i) provide and maintain a dedicated, suitably qualified and experienced Programme Office (the "**Thameslink Programme Office**") to provide change management, programme management and technical and operational integration expertise in respect of the Thameslink Programme and the TRSP Programme. The Thameslink Programme Office shall work alongside and integrate with the Secretary of State's system integration and programme office, Network Rail's Thameslink team and initially with the Southern Franchisee until the Combined Effective Date and the LSER Franchisee;
 - (ii) provide a suitable experienced person who shall be a director of the Franchisee and who shall work full time for the Franchisee on the delivery of the TRSP Programme including the acquisition of the Units and the enhancement and maintenance of the relevant depots to facilitate the Thameslink Programme (including to facilitate the performance by the Franchisee of its obligations under any of the TRSP Documents and to the extent relevant obligations under paragraph 7.2(b)); and
- (b) The responsibilities of the Thameslink Programme Office shall include:
- (i) periodic reporting on progress of the Thameslink Programme;
 - (ii) provide reporting/updates on the rolling stock cascades;
 - (iii) support stageworks planning and risk reporting on a periodic basis with Network Rail;
 - (iv) report on any impacts of the Thameslink Programme and the TRSP Programme on any high level output statements affecting the Franchisee;
 - (v) periodic performance reporting prior, during and post the introduction of the Class 700 fleet (including on dwell times, platform re-occupation times and adhesion);
 - (vi) work with the TMM and Network Rail to resolve and report on technical issues around rolling stock and depots;
 - (vii) chair the operational readiness group and reporting ("**ORG**");
 - (viii) attend and actively contribute governance meetings required by the Secretary of State including those set out in the document entitled "Thameslink Programme Governance Arrangements v6.2" and as set out in section 7 Systems Integration of that document;
 - (ix) working with the TMM and Network Rail to resolve and report upon issues agreed with the schedule and benefits group, the systems level technical authority and/or ORG;
 - (x) ensure necessary project management tools and techniques are deployed appropriately to ensure assurance and contingency processes are robust;

- (xi) act as the technical and operational integrator of various workstreams as set out in document entitled "Systems Level Technical Authority Paper" dated 26 November 2012 and the relevant schedules of the MSA to achieve the required changes in service over the Franchise Period;
- (xii) act as the technical authority for on-board ETCS and Automatic Train Operation and other equipment, and work with the TMM and Network Rail to resolve technical and operational issues;
- (xiii) provide regular test and training plan updates;
- (xiv) contribute to benefits realisation and reporting;
- (xv) support to managing change and the "Change Control" process;
- (xvi) manage and report on risk and opportunities, including maintaining a risk and opportunities register;
- (xvii) work collaboratively with Network Rail in preparing and updating industry plans;
- (xviii) prepare, maintain and update as required the deliverables in respect of the TRSP Documents for which the Franchisee is responsible including training plans, test plans and the rolling stock cascade plans; and
- (xix) periodic reporting of the Programme Office's effectiveness and availability of Franchisee Employees within the Thameslink Programme Office measured through key performance indicators.

[Bidders to populate: Bidders may supplement or amend the provisions of paragraph 7 to better reflect their proposals in relation to the Thameslink Programme Office. Also Bidders to amend the provisions of paragraph 7 as necessary to reflect their proposals in relation to KPIs for the monitoring, availability and performance of the Thameslink Programme Office.]

8. Planning to utilise the Initial Units

- 8.1 In addition to and without prejudice to its obligations in paragraph 7 of Schedule 1.1 (Service Development), with effect from the Passenger Change Date occurring in May 2018, the Franchisee shall, in preparing its Timetable and Train Plan (unless the Secretary of State otherwise agrees), plan to use the Initial Units for the provision of at least 95 per cent. of all Passenger Services to be operated during each Weekday between London Blackfriars station and London St Pancras International (Low Level) station (in both directions). The Franchisee's compliance with the provisions of this paragraph 8 shall be measured by reference to the number of Passenger Services planned to be operated and not by reference to the Passenger Carrying Capacity planned to be provided.

9. **Class 313 Test Unit**

9.1 The Franchisee shall amend its Safety Management System to the extent necessary to allow for the operation of the Class 313 Test Unit for the purposes of undertaking the Test Programme. The Franchisee shall provide such assistance as may be reasonably required by Network Rail to enable Network Rail to secure the necessary safety approvals (including approvals for changes to the Network Rail safety case) required to enable the Test Programme to be implemented in accordance with its specification.

9.2 For the purposes of the Test Programme the Franchisee shall:

- (a) at its own cost and at the request of Network Rail make available to Network Rail the following:
- (i) secure stabling facilities for the Class 313 Test Unit;
 - (ii) CET/water replenishment;
 - (iii) internal cleaning of the Class 313 Test Unit;
 - (iv) external vehicle cleaning (A or B exam);
 - (v) maintenance of the Class 313 Test Unit (excluding the ETCS on-board equipment) in accordance with the maintenance programme supplied to the Franchisee by Network Rail;
 - (vi) provision of ¹³[•]train manager, ¹⁴[•] test train manager and ¹⁵[•] driver for each Test Shift; and
 - (vii) booking of such access rights as required in the Test Programme for the purposes of operating the Class 313 Test Unit at the ENI Facility and over the Core Thameslink Route,

provided that there shall be no requirement on the Franchisee pursuant to this paragraph 9.2 to provide to Network Rail, at its costs, any additional requirements (that is, over and above the requirements specified in paragraphs 9.2(a)(i) to 9.2(a)(vii)).

9.3 For the purposes of this paragraph 9:

- (a) "**Class 313 Test Unit**" means the unit leased by Network Rail to be used for the purposes of the Test Programme;
- (b) "**ENI Facility**" means the ERTMS National Integration Facility located near Hertford;
- (c) "**Industry Plan**" means the document published by the Department for Transport and entitled Thameslink Programme System Integration Industry Plan V4.0 baseline;

¹³ Bidder to populate.

¹⁴ Bidder to populate.

¹⁵ Bidder to populate.

- (d) **"Test Programme"** means the programme for the testing and commissioning of ERTMS at the ENI Facility and over the Core Thameslink Route as more particularly described in the Industry Plan; and
- (e) **"Test Shift"** means:
 - (i) in relation to the test to be undertaken at the ENI Facility, 10.00 to 16:00 (5 shifts per week for the duration of the Test Programme; and
 - (ii) in relation to the test to be undertaken in respect of the Core Thameslink Route, 01:00 to 0400 (3 shifts per week for the duration of the Test Programme).

10. **Outer Area Sidings**

10.1 The Franchisee shall use its reasonable endeavours to enter into depot leases with Network Rail as follows:

- (a) by no later than the Start Date for the new light maintenance depot at Brighton Down Yard siding depot;
- (b) by no later than 30 June 2015 for the new light maintenance depot at Cricklewood depot;
- (c) by no later than 30 April 2016 for the Peterborough depot; and
- (d) by no later than 30 September 2016 for the new light maintenance depot Horsham up yard sidings depot.

11. **Three Bridges Control Centre**

The Franchisee shall ensure that, subject to Network Rail granting such access as may be reasonably required for these purposes, its operational and customer control functions are located at the Three Bridges rail operating centre by no later than 1 December 2014 and remain so located for the remainder of the Franchise Term.

12. **Train Passenger Information Systems**

12.1 At least one year prior to the planned achievement of Configuration State 6 the Franchisee shall develop, implement and operate a server that shall have the capability to effectively communicate through server COM@RL to update the on-train Passenger Information System ("**PIS**") server on Class 700 units. The Franchisee shall for the remainder of the Franchise Term use such server to update such PIS with accurate, consistent and up to date information (including real time information on train performance and alterations to timetabled stopping patterns).

12.2 For the purposes of this paragraph 12,

- (a) **"Configuration State 6"** has the meaning given to it in the Invitation to Tender; and
- (b) **"Com@RL"** means is the common server which the TMM is responsible for, which the Class 700 trainborne systems will communicate with.

Com@RL will carry public and WLAN communications to train applications and on-board databases such as PIS, CCTV, DAS and ATO.

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Schedule 6.4

Integration of the Southern Franchise Services

1. **Obligations to be satisfied by the Franchisee on or before the Combined Effective Date**

1.1 The Franchisee shall on or before the Combined Effective Date undertake the following activities ("**Southern Integration Obligations**"):

- (a) the Franchisee shall enter into a Track Access Agreement:
 - (i) that would enable the Franchisee throughout the Franchise Term to perform its roles and responsibilities under the Franchise Agreement and in accordance with Schedule 1.1 (Service Development) use all reasonable endeavours to ensure that it has all the Timetable Development Rights required by it for the purposes of securing a Timetable that enables it to operate the Train Service Requirement applicable from the Combined Effective Date until the end of the Franchise Term; and
 - (ii) which does not include any timetable development rights in relation to railway passenger services operating from London Bridge to London Blackfriars (in both directions) during the period from the Combined Effective Date until 1 January 2018;
- (b) the Franchisee shall obtain such Licences (or amend its Licences) as may be necessary for the purposes of ensuring that it is authorised to operate the Southern Franchise Services on and from the Combined Effective Date. The Franchisee shall, on or before the Combined Effective Date, provide to the Secretary of State a written notice from the ORR which confirms that, the Franchisee has been granted or will be granted such Licences (or such Licences have been amended or will be amended);
- (c) the Franchisee shall make such amendment to its Safety Certificate and Safety Authorisation as is necessary for the purposes of ensuring that it can operate the Southern Franchise Services on and from the Combined Effective Date. The Franchisee shall, on or before the Combined Effective Date, provide to the Secretary of State a written notice from the ORR which confirms that, the Safety Certificate and Safety Authorisation have been amended as necessary to allow for the operation of the Southern Franchise Services on and from the Combined Effective Date;
- (d) the Franchisee shall, on or before the Combined Effective Date, enter into such:
 - (i) Access Agreements (and, where relevant, the associated Collateral Agreements), in the agreed terms in respect of the Stations and Franchisee Access Stations, Depots (if any) and other depots where the Train Fleet is to be maintained during the Franchise Term and Managed Stations;
 - (ii) Connection Agreements in respect of Depots (if any); and

- (iii) leases with Network Rail in respect of Stations, Depots (if any), Managed Station Areas and Shared Facilities with the intent, for the purposes of Section 31 of the Act, that the properties comprised in such leases will be used for or in connection with the provision of the Southern Franchise Services,

in each case to the extent necessary for the purposes of providing the Southern Franchise Services on and from the Combined Effective Date; and

- (e) the Franchisee shall on or before the Combined Effective Date:

- (i) enter into, in respect of the employees transferring to it on the Combined Effective Date, the deeds of establishment, participation or adherence with the trustees of the Railways Pension Scheme and if any employee of the Franchisee whose employment transfers to the Franchisee from the Train Operator under the Previous Franchise Agreement in respect of the Southern Franchise Services, is a member of either of the British Railways Superannuation Fund or the BR (1974) Pension Fund, with the trustees of those Funds; and

- (ii) take such other steps (if any),

as are required to secure compliance with the terms of Schedule 16 (Pensions) of the Franchise Agreement (such compliance to also be from the Combined Effective Date).

2. **Review of Compliance**

2.1 From the period commencing on the Start Date until the Combined Effective Date, progress of the Southern Integration Obligations will be 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.

2.2 In addition to its obligation under paragraph 2.1, the Franchisee shall prepare and submit to the Secretary of State a monthly report containing such information as the Secretary of State may reasonably request (including where requested evidence demonstrating its compliance with any of the Southern Integration Obligations) in relation to the Franchisee's compliance with the Southern Integration Obligations.

3. **Combined Effective Date Transfer Scheme**

3.1 Subject to paragraph 3.2, the Secretary of State will utilise his powers under Section 12 and Schedule 2 of the Railways Act 2005 to make one or more transfer schemes (each a "**Combined Effective Date Transfer Scheme**") so as to transfer to the Franchisee the following franchise assets of a Train Operator under the Previous Franchise Agreement relating to the Southern Franchise Services, being the Train Operator's property, rights and future liabilities in respect of the following:

- (a) each of the:

- (i) Depot Works Agreements; and

(ii) Depot Sub Lease,

in each case as defined in paragraph 5.9 of this Schedule 6.4.

- 3.2 The Secretary of State's obligation to make any Combined Effective Date Transfer Scheme will be subject to the Secretary of State being satisfied that all the Southern Integration Obligations will be satisfied (or waived) on or before the Combined Effective Date.
- 3.3 The Secretary of State agrees to act reasonably in response to any request that is made by the Franchisee in accordance with paragraph 3.4 to transfer to it under the Combined Effective Date any further assets and/or liabilities of a Train Operator under a Previous Franchise Agreement relating to the Southern Franchise Services which are required by the Franchisee to perform its obligations under the Franchise Agreement and cannot conveniently be transferred to it by other means.
- 3.4 Any request made pursuant to paragraph 3.3 shall be made in writing, submitted to the Secretary of State on or prior to the date falling ten weekdays prior to the Combined Effective Date or such lesser time period as the parties may agree between them, and specify in reasonable detail:
- (a) the assets and/or liabilities to be transferred; and
 - (b) the terms agreed as to the proposed transfer with any party affected by the proposed transfer.
- 3.5 Without limiting any other obligation it may have, the Franchisee agrees to enter into the Supplemental Agreement (as defined under the Previous Franchise Agreement relating to the Southern Franchise Services) with the Train Operator under the Previous Franchise Agreement relating to the Southern Franchise Services.
- 3.6 To the extent that a waiver is required from a relevant counterparty in respect of any agreement to be transferred to the Franchisee under a Combined Effective Date Transfer Scheme because such transfer would otherwise trigger an event of default, right of re-entry or other rights to terminate under that agreement, the Franchisee shall ensure that such waiver is obtained.
4. **HLOS Phase 2 Arrangements**
- 4.1 The Franchisee shall when directed by the Secretary of State enter into a sub lease with the Southern Franchisee in respect of the HLOS Phase 2 Core Units (the "**HLOS Phase 2 Sub Lease**"). If so required by the Secretary of State the Franchisee shall enter into a lease (instead of the HLOS Phase 2 Sub Lease) with the Southern Franchisee in respect of the HLOS Phase 2 Core Units (the "**HLOS Phase 2 Lease**"). The HLOS Phase 2 Sub Lease or the HLOS Phase 2 Lease (as the case may be) shall be on terms specified by the Secretary of State and shall be sub leased or leased on the basis that the Southern Franchisee will undertake the maintenance and stabling activities in relation to such HLOS Phase 2 Core Units.
- 4.2 If the Franchisee enters into a HLOS Phase 2 Lease it shall, if so directed by the Secretary of State subsequently surrender such HLOS Phase 2 Lease and simultaneously enter into a sub lease with the Southern Franchisee in respect of the HLOS Phase 2 Core Units from a date and on terms to be specified by the Secretary of State (the "Subsequent HLOS Phase 2 Sub Lease").

4.3 From the date that the Franchisee enters into any HLOS Phase 2 Sub Lease, HLOS Phase 2 Lease or Subsequent HLOS Phase 2 Sub Lease (as applicable) then any such HLOS Phase 2 Sub Lease, HLOS Phase 2 Lease or Subsequent HLOS Phase 2 Sub Lease (as applicable) shall be a Southern Trading Agreement for the purposes of paragraph 9 of Schedule 6.2 (TSGN Franchise Specific Provisions) and paragraph 2.6 of Schedule 9.3 (Secretary of State Risk Assumptions).

4.4 The Franchisee shall co-operate in good faith with the Secretary of State and the Southern Franchisee to facilitate the introduction of the HLOS Phase 2 Core Units into revenue earning passenger service and as and when requested by the Southern Franchisee take all reasonable steps to assist the Southern Franchisee in obtaining the necessary approvals for the HLOS Phase 2 Core Units.

4.5 **Transfer of the relevant documents**

(a) **Novation on or prior to the Combined Effective Date**

(i) The Franchisee shall, on or before the Combined Effective Date and at direction of the Secretary of State, enter into a deed of novation in respect of the:

- (A) HLOS Phase 2 MSA;
- (B) the HLOS Southern Operating Lease but only in circumstances where the HLOS Phase 2 Core Units have been refinanced and the Southern Franchisee has entered into an HLOS Southern Operating Lease;
- (C) the HLOS Phase 2 Spares Supply Agreement; and
- (D) each HLOS Phase 2 MSA Associated Document (as applicable),

(the "**Relevant HLOS Phase 2 Agreements**") with the Southern Franchisee or such other third party as the Secretary of State may nominate. Any such novation shall be:

- (1) on the basis that the Franchisee steps into such agreements as operator in the place of the Southern Franchisee (and in the absence of financing as at such date, as financier in the place of the Southern Franchisee); and
- (2) on such terms as the Secretary of State may reasonably require, including that the Southern Franchisee shall not be released from any accrued but unperformed obligation, the consequences of any antecedent breach of a covenant or obligation under any Relevant HLOS Phase 2 Agreement or any liability in respect of any act or omission under or in relation to any the Relevant HLOS Phase 2 Agreement prior to, or as at the date of, any such novation (except to the extent that the Franchisee agrees to assume responsibility for

such unperformed obligation, such liability or the consequences of such breach in connection with the relevant novation).

- (ii) From the date of any novation or transfer of the Relevant HLOS Phase 2 Agreements, the Franchisee shall observe and comply with all the conditions and obligations on its part under any such Relevant HLOS Phase 2 Agreements.

(b) **Cascade Arrangements during the Franchise Term where Franchisee is the Financier under the HLOS Phase 2 MSA**

- (i) Subject to paragraph 4.5(b)(ii), the Franchisee shall at the direction of the Secretary of State:

- (A) (by 31 December 2016) enter into a sublease with such third party as the Secretary of State may nominate for the leasing of 10 x 4 car HLOS Phase 2 Core Units. Any such sub lease to be entered into by the Franchisee pursuant to this paragraph 4.5(b)(i)(A) shall be on substantially the same terms as the HLOS Phase 2 Lease except that:

- (1) the relevant third party shall be responsible for the maintenance and stabling of the HLOS Phase 2 Core Units which are the subject of the sub lease and as a consequence will not pay any maintenance and stabling charges as applies under the HLOS Phase 2 Lease; and
- (2) the Franchisee will if requested to do so by the relevant third party procure spares and special tools on behalf of the relevant third party under the HLOS Phase 2 Spares Supply Agreement, on the basis that the costs of such spares and special tools shall be borne by such relevant third party;
- (3) no capital rents will be paid by the relevant third party to the Franchisee under any such sub lease;
- (4) each party shall bear its own costs and expenses incurred in connection with or arising out of the negotiation, preparation and execution of the sub lease (including any costs relating to the negotiation, preparation and execution of any of the amendments required to be made to the HLOS Phase 2 MSA and/or HLOS Phase 2 Spares Supply Agreement as a consequence of the entry into such sub lease; and
- (5) any such sub lease shall expire on the date that the novation contemplated in paragraph 4.5(b)(i)(B) comes into force except where the

relevant third party is a party to any such novation; and

- (B) (by 31 December 2018) enter into a deed of novation with such other third party as the Secretary of State may nominate in respect of:
- (1) the HLOS Phase 2 MSA;
 - (2) the HLOS Phase 2 Spares Supply Agreement; and
 - (3) each HLOS Phase 2 MSA Associated Document (as applicable); and
 - (4) the sub lease entered into pursuant to paragraph 4.5(b)(i)(A) but only in circumstances where the relevant third party under such sub lease is not a party to the novation referred to in this paragraph 4.5(b)(i)(B).

Any novation required pursuant to paragraph 4.5(b)(i)(B) shall be on such terms as the Secretary of State may reasonably require, including that the Franchisee shall not be released from any accrued but unperformed obligation, the consequences of any antecedent breach of a covenant or obligation under any of the agreements so novated or any liability in respect of any act or omission under or in relation to any such novated agreements prior to, or as at the date of, any such novation (except to the extent that any such third party agrees to assume responsibility for such unperformed obligation, such liability or the consequences of such breach in connection with the relevant novation).

- (ii) The provisions of paragraph 4.5(b)(i) shall only apply in circumstances where the Franchisee is the Financier (as such term is defined in the HLOS Phase 2 MSA) as at the dates specified in paragraph 4.5(b)(i)(A) or 4.5(b)(ii)(B) (as the case may be).

(c) **Cascade Arrangements during the Franchise Term where Franchisee is not the Financier under the HLOS Phase 2 MSA**

- (i) Subject to paragraph 4.5(c)(ii), the Franchisee shall at the direction of the Secretary of State:
- (A) (by 31 December 2016) cease to lease 10 x 4 car HLOS Phase 2 Core Units under any operating lease which may be applicable at the time in relation to the HLOS Phase 2 Core Units; and
 - (B) (by 31 December 2018) cease to lease 19 x 4 car HLOS Phase 2 Core Units under any operating lease

which may be applicable at the time in relation to the HLOS Phase 2 Core Units.

- (ii) The provisions of paragraph 4.5(c)(i) shall only apply in circumstances where the HLOS Phase 2 Core Units are being leased under an operating lease which is either the HLOS Southern Operating Lease or the HLOS Franchisee Operating Lease (as the case may be).
- (iii) It is acknowledged that the termination of the leasing arrangements as contemplated in paragraphs 4.5(c)(i) is subject to the Franchisee first securing the consents of any applicable lessor. Accordingly the Franchisee shall use all reasonable endeavours to obtain any such consent without the terms of the consent requiring the Franchisee to incur any further costs or liability as a term of such consent. The Franchisee shall keep the Secretary of State regularly informed of its progress and notify the Secretary of State of any issues which may either prevent any required consent being obtained. The Franchisee shall use all reasonable endeavours to minimise any such requirements and shall not be required to incur any further costs or liability as a term of consent unless directed to do so by the Secretary of State in which case such direction shall be treated as a Change under paragraph 2.6 of Schedule 9.3 (Secretary of State Risk Assumptions).

4.6 **Franchisee becoming Financier under the HLOS Phase 2 MSA**

- (a) If on the transfer of the Relevant HLOS Phase 2 Agreements to the Franchisee pursuant to the novation specified in paragraph 4.5(a) or under the Combined Effective Date Transfer Scheme, the Franchisee steps into the HLOS Phase 2 MSA as Financier (as such term is defined in the HLOS Phase 2 MSA) in place of the Southern Franchisee then:
 - (i) the provisions of paragraph 4.7 shall apply; and
 - (ii) if any amount of the Contract Price (as such term is defined in the HLOS Phase 2 MSA is still outstanding (the "Outstanding Contract Price") as at the date of any such transfer and the Franchisee is obliged under the HLOS Phase 2 MSA to pay (and the Franchisee pays) any such Outstanding Contract Price then the Secretary of State shall, by way of adjustment to Franchise Payments on the first Payment Date falling no less than 7 days after the date upon which any such payment is made by Franchisee, pay to the Franchisee an amount that is equal to any such Outstanding Contract Price so paid by the Franchisee.

4.7 **Procurement of the Financing for the HLOS Phase 2 Units**

- (a) Where this paragraph 4.7 applies, 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 with a view to securing a willing purchaser for the HLOS Phase 2 Core

Units (the "**HLOS Phase 2 Financier**"). The terms of any such procurement will require the HLOS Phase 2 Financier to:

- (i) 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;
- (ii) immediately enter into an operating lease with the Franchisee (the "**HLOS Franchisee Operating Lease**") for the period until the end of the Franchise Term, the terms of such HLOS Franchisee 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 and shall include the right for the Franchisee to terminate the leasing of the HLOS Phase 2 Core Units in the manner contemplated in paragraph 4.5(c)(i) and to permit the cascade of such HLOS Phase 2 Core Units to such third party as may be nominated by the Secretary of State;
- (iii) without prejudice to the Franchisee's obligations under paragraph 5 of Schedule 14.3 (Key Contracts) enter into a Direct Agreement with the Secretary of State in respect of the HLOS Phase 2 Core Units;
- (iv) immediately pay to the Franchisee in full without any deduction an amount equal to any amounts of the Contract Price that has, as at that date, been paid to the Manufacturer under the HLOS Phase 2 MSA ("HLOS Phase 2 Purchase Price");
- (v) 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 (or in the absence of agreement as directed by the Secretary of State) prior to issue of the relevant invitation to tender) including without limitation, priced options where:
 - (A) 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
 - (B) 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; and

- (b) 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. Any such 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 4.7. The Secretary of State shall have the right within 20 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.
- (c) Without limiting paragraph 4.7(a), 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.
- (d) The Franchisee shall provide the Secretary of State with such progress reports and information on the conduct of any procurement process commenced pursuant to this paragraph 4.7 as he shall reasonably require.
- (e) In the context of the duties of the Secretary of State with regard to the expenditure of public funds the Franchisee agrees to:
- (i) 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;
 - (ii) provide the Secretary of State with its evaluation report to appropriate industry standards (as soon as reasonably practicable after it is finalised) 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
 - (iii) permit the Secretary of State to comment on the documents and information provided to it pursuant to paragraphs 4.5(a) and 4.5(b) above within 20 working days of receipt and have due regard to such comments.
- (f) 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 Core Units with any participant in the HLOS Phase 2 Financing Procurement Process.

- (g) If the Secretary of State exercises his rights under paragraph 4.7(f) to require the Franchisee not to proceed with the HLOS Phase 2 Financing Procurement Process, the Franchisee shall on a date to be agreed by the Secretary of State and the Franchisee (or on failure to agree on a date reasonably determined by the Secretary of State) commence another procurement process:
- (i) on the same basis (or such other basis as may be agreed by the Secretary of State and the Franchisee (or on failure to agree as reasonably determined by the Secretary of State) as that required under this paragraph 4;
 - (ii) the provisions of paragraphs 4.7(b) to 4.7(f) shall apply in respect of any such procurement process; and
- (h) 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 this paragraph 4.7:
- (i) the Franchisee shall:
 - (A) (subject to compliance with relevant provisions of the Franchise Agreement) use reasonable endeavours to immediately enter into the HLOS Franchisee Operating Lease and other relevant legal agreements with the HLOS Phase 2 Financier;
 - (B) on the first Payment Date falling no less than 7 days following the date upon which payment from the HLOS Phase 2 Financier is due under any sale and purchase agreement relating to the HLOS Phase 2 Core Units pay to the Secretary of State in full without any deduction an amount that is equal to the amounts due to be received from the HLOS Phase 2 Financier under any such sale and purchase agreement, such an amount to be equal to the HLOS Phase 2 Purchase Price (the "**Reimbursed HLOS Phase 2 Amount**");
 - (C) pay to the Secretary of State interest at the Interest Rate accruing on a day to day basis on the Reimbursed HLOS Phase 2 Amount if the Franchisee fails to pay to the Secretary of State the Reimbursed HLOS Phase 2 Amount by the due date as specified in paragraph 4.7(h)(i)(B) such interest to accrue from such due date to the date that payment is made to the Secretary of State; and
 - (D) set up a separate, dedicated interest bearing bank account (the "**HLOS 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 HLOS 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 HLOS 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. The Franchisee shall ensure that any Reimbursed HLOS Phase 2 Amount is, immediately upon receipt of such monies, deposited in the HLOS Escrow Account.

- (i) Within 3 months of the date of the execution of the HLOS Franchisee Operating Lease, a Qualifying Change shall occur. For the purposes of agreeing or determining the Revised Inputs in respect of such Qualifying account shall be taken of the following matters:
 - (i) the Revised Inputs shall reflect the amounts payable by the Franchisee under the HLOS Franchisee Operating Lease in respect of each HLOS Phase 2 Core Unit and, to the extent not already accounted for in the Financial Model as at that date, any amounts payable in respect of the HLOS Phase 2 Spares and Special Tools; and
 - (ii) the Revised Inputs shall reflect the reasonable and proper costs (including any related consultancy costs and legal costs) incurred by the Franchisee in carrying out the HLOS Phase 2 Financing Procurement Process to the extent that the Franchisee has obtained the prior consent of the Secretary of State prior to incurring any such costs.

4.8 **Additional Franchisee Obligations in circumstances where the HLOS Phase 2 Core Units are delayed**

- (a) The provisions of this paragraph 4.8 shall apply where any of the HLOS Phase 2 Core Units have not been Accepted as at the date of the novation of the Relevant HLOS Phase 2 Agreements to the Franchisee as contemplated in paragraph 4.5(a).
- (b) Where this paragraph 4.8 applies the Franchisee shall:
 - (i) within 2 weeks from the date of the novation of the Relevant HLOS Phase 2 Agreements 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) a credible and deliverable strategy for the purposes of ensuring that further delay to the programme for Acceptance of HLOS Phase 2 Core Units is minimised to the maximum extent reasonably practicable including through engagement with the Manufacturer in the context of the rights of the Franchisee under the HLOS Phase 2 MSA and otherwise (and the plan shall propose the exercise of such rights in specified circumstances where this is reasonably commercially appropriate);

- (B) the approach to operational arrangements proposed by the Franchisee to:
 - (1) 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 Units;
 - (2) enable the delivery, testing and acceptance of the HLOS Phase 2 Core Units which are yet to be Accepted under Part D of the HLOS Phase 2 MSA; and
 - (3) manage the cascade of HLOS Phase 2 Core Units to such third party as may be nominated by the Secretary of State;
- (ii) implement the HLOS Phase 2 Implementation and Acceptance Plan in accordance with its terms;
- (iii) (until such a time as all of the HLOS Phase 2 Core Units have been Accepted) 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;
- (c) 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 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;
- (d) act in such manner as the Secretary of State may reasonably direct from time to time by notice in writing to the Franchisee in relation to the exercise by the Franchisee of any of the rights or discretions under the HLOS Phase 2 MSA (including in respect of the rights of the Franchisee to nominate a Cascade Network (as such term is defined under the HLOS Phase 2 MSA)) or in the carrying out of its obligations under the HLOS Phase 2 MSA.

5. **South Central Depots**

Commencement

5.1 The provisions of this paragraph 5 shall take effect and be binding on the Secretary of State and the Franchisee on and from the Combined Effective Date.

5.2 **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 all 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.

- (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 of the Depot Sub Leases; or
 - (ii) take any steps to terminate any of the Depot Sub Leases.

5.3 **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 5.3(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 any breach referred to in paragraph 5.3(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 5.2(a) and 5.2(b) upon any expiry of this Franchise Agreement the Secretary of State shall, if he exercises his rights under paragraphs 5.2(a) and 5.2(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.

5.4 **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 any 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 5.4(b), the Secretary of State shall be deemed to have consented for the purpose of this paragraph 5.4(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 5.4(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).

5.5 **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.

5.6 **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 (to the extent such provisions continue to apply in the Cashflow Agreement).

5.7 **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 5.7(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).

5.8 **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 5.7(b), such matter shall be determined in accordance with the Dispute Resolution Rules.
- (d) If pursuant to paragraphs 5.8(b) or 5.8(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 5.8 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.

5.9 For the purposes of this paragraph 5:

"**Cashflow Agreement**" has the meaning ascribed to that term in each Depot Sub Lease (as such agreement may be amended, transferred or assigned from time to time);

"**DepCo**" means Lombard Corporate Finance (September 1) Limited (registered number 02392930) whose registered office is at The Quadrangle, The Promenade Cheltenham, Gloucestershire 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;

"**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;

"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; and

"Superior Lease" means, in relation to any Enhancement Depot, the lease of that depot made between (1) Network Rail and (2) DepCo.

SCHEDULE 7

Performance Benchmarks and the PEM Regime

Schedule 7.1: Performance Benchmarks

Appendix 1: Cancellations Benchmark Table

Appendix 2: Peak Short Formation Benchmark Table

Appendix 3: TOC Minute Delay Benchmark Table

Schedule 7.2: PEM Regime

Appendix 1: NPS Indicators, Benchmarks, Floors and Weightings

Appendix 2: QuEST Indicators and weightings

Appendix 3: PEM Benchmarks, Floor and Ceilings

Appendix 4: PEM Payments

SCHEDULE 7.1

Performance Benchmarks

1. Benchmarks and Annual Benchmarks

Location of and amendment of Benchmarks and Annual Benchmarks

- 1.1 The Cancellations Benchmarks are set out in the table in Part 1 of Appendix 1 (Cancellations Benchmark Table) to this Schedule 7.1.
- 1.2 The Annual Cancellations Benchmarks are set out in the table in Part 2 of Appendix 1 to this Schedule 7.1.
- 1.3 The Peak Short Formation Benchmarks are set out in the table in Part 1 of Appendix 2 (Peak Short Formation Benchmark Table) to this Schedule 7.1.
- 1.4 The Annual Peak Short Formation Benchmarks are set out in the table in Part 2 of Appendix 2 to this Schedule 7.1.
- 1.5 The TOC Minute Delay Benchmarks are set out in the table in Part 1 of Appendix 3 (TOC Minute Delay Benchmark Table) to this Schedule 7.1.
- 1.6 The Annual TOC Minute Delay Benchmarks are set out in the table in Part 1 of Appendix 3 (TOC Minute Delay Benchmark Table) to this Schedule 7.1.
- 1.7 The Secretary of State may at any time after a Charging Review vary, on giving not less than 3 months notice in writing, any of the Benchmarks and Annual Benchmarks to reflect the Secretary of State's reasonable view of the performance trajectory set as part of such Charging Review. Where the Secretary of State exercises his right pursuant to this paragraph 1.7, the relevant Benchmark Tables and Annual Benchmark Tables shall be deemed to have been amended accordingly.

2. Information Provisions

Cancellations Benchmarks

- 2.1 At the end of each Reporting Period, the Franchisee shall, in accordance with the relevant requirements of Appendix 3 (Operational Information) to Schedule 13 (Information and Industry Initiatives), report to the Secretary of State:
 - (aa) the total number of Cancellations and Partial Cancellations in that Reporting Period;
 - (bb) the total number of Disputed Cancellations and Disputed Partial Cancellations in that Reporting Period;
 - (cc) the total number of Network Rail Cancellations and Network Rail Partial Cancellations in that Reporting Period;

- (dd) the total number of Disputed Cancellations and Disputed Partial Cancellations from the 12 preceding Reporting Periods for which the attribution remains in dispute; and
- (ee) the total number of Disputed Cancellations and Disputed Partial Cancellations for which the disputed attribution has been resolved since the Franchisee's last report pursuant to this paragraph 2.1 (including whether each relevant Disputed Cancellation and/or Disputed Partial Cancellation was attributed to Network Rail or to the Franchisee).

For any Reporting Period falling within the first Performance Calculation Year the Franchisee shall provide the information required pursuant to this paragraph 2.1, disaggregated to separately show such information in respect of the railway passenger services specified in paragraph (a) of the definition of TGN Franchise Services.

The No Breach Reporting Periods Calculations

- (a) For each of the first five Reporting Periods falling within the first Performance Calculation Year (the "**No Breach Reporting Periods**"), the Secretary of State shall perform the following calculation for the purposes of determining the value of A for each such Reporting Period:

where A is ascertained as follows:

$$\frac{B}{C} \times 100$$

where

B is the total number of Cancellations or Partial Cancellations of Passenger Services in that No Breach Reporting Period, on the basis that:

- (a) Cancellation shall count as 1;
- (b) a Partial Cancellation shall count as 0.5; and
- (c) any Cancellations or Partial Cancellations during that No Breach Reporting Period which were caused by:
 - (i) the Franchisee's implementation of a Service Recovery Plan during that No Breach Reporting Period; or
 - (ii) the occurrence or continuing effect of a Force Majeure Event,

shall, if the Franchisee has complied with paragraph 4, be disregarded in determining such total number;

C is the total number of Passenger Services scheduled to be operated in the Enforcement Plan of the Day for that No Breach Reporting Period, disregarding, if the Franchisee has complied with paragraph 4, any

Cancellations or Partial Cancellations during that Reporting Period which were caused by:

- (a) the Franchisee's implementation of a Service Recovery Plan during that No Breach Reporting Period; or
- (b) the occurrence or continuing effect of a Force Majeure Event; and

Breach Reporting Periods Calculations

- (b) For each Breach Reporting Period the Secretary of State shall calculate the Franchisee's performance against the Cancellations Benchmark in accordance with the following formula:

$$\frac{A + D}{n}$$

where:

A is ascertained as follows:

$$\frac{B}{C} \times 100$$

where

B is the total number of Cancellations or Partial Cancellations of Passenger Services in that Breach Reporting Period, on the basis that:

- (a) a Cancellation shall count as 1;
- (b) a Partial Cancellation shall count as 0.5; and
- (c) any Cancellations or Partial Cancellations during that Breach Reporting Period which were caused by:
 - (i) the Franchisee's implementation of a Service Recovery Plan during that Breach Reporting Period; or
 - (ii) the occurrence or continuing effect of a Force Majeure Event,

shall, if the Franchisee has complied with paragraph 4, be disregarded in determining such total number;

C is the total number of Passenger Services scheduled to be operated in the Enforcement Plan of the Day for that Breach Reporting Period, disregarding, if the Franchisee has complied with paragraph 4, any Cancellations or Partial Cancellations during that

Reporting Period which were caused by

- (a) the Franchisee's implementation of a Service Recovery Plan during that No Breach Reporting Period; or
- (b) the occurrence or continuing effect of a Force Majeure Event; and

D is the sum of the values of *A* in each of the Reporting Periods in the first Performance Calculation Year immediately preceding that Breach Reporting Period; and

n is the number of Reporting Periods that have elapsed since the Start Date.

Subsequent Reporting Periods Calculations

- (c) For each Reporting Period (other than the No Breach Reporting Periods and the Breach Reporting Periods for which the provisions of paragraphs 2.1(a) and 2.1(b) shall apply respectively), the Secretary of State shall calculate a moving annual average of the Franchisee's performance against the Cancellations Benchmark in accordance with the following formula:

$$\frac{A + D}{13}$$

where:

A is ascertained as follows:

$$\frac{B}{C} \times 100$$

where:

B is the total number of Cancellations or Partial Cancellations of Passenger Services in that Reporting Period, on the basis that:

- (a) a Cancellation shall count as 1;
- (b) a Partial Cancellation shall count as 0.5; and
- (c) any Cancellations or Partial Cancellations during that Reporting Period which were caused by:
 - (i) the Franchisee's implementation of a Service Recovery Plan during that Reporting Period; or
 - (ii) the occurrence or continuing effect of a Force Majeure Event,

shall, if the Franchisee has complied with paragraph 4, be disregarded in determining

such total number;

C is the total number of Passenger Services scheduled to be operated in the Enforcement Plan of Day for that Reporting Period, disregarding, if the Franchisee has complied with paragraph 4, any Cancellations or Partial Cancellations during that Reporting Period which were caused by:

(i) the Franchisee's implementation of a Service Recovery Plan during that Reporting Period; or

(ii) the occurrence or continuing effect of a Force Majeure Event; and

D is the sum of the values of A in each of the 12 preceding Reporting Periods (which for the avoidance of doubt and in respect of the 13th Reporting Period in the first Performance Calculation Year, shall be the sum of the values of A for the No Breach Reporting Periods (as calculated pursuant to paragraph 2.1(a)) and the Breach Reporting Periods (as calculated pursuant to paragraph 2.1(b)).

Performance Calculation Year Cancellations Calculations

2.2 At the end of each Performance Calculation Year the Secretary of State shall calculate a moving annual average of the Franchisee's performance against the Annual Cancellations Benchmark in accordance with the following formula:

$$ACTUAL = \frac{\sum A}{B}$$

where:

ACTUAL is the moving annual average of the Franchisee's performance against the Annual Cancellations Benchmark for that Performance Calculation Year; and

$\sum A$ is the sum of the values of A as determined in accordance with paragraph 2.1 for each Reporting Period in that Performance Calculation Year except that in respect of the first Performance Calculation Year the value of ACTUAL shall be calculated using the Cancellations and the Partial Cancellations in respect of the Passenger Services falling within paragraph (a) of the definition of TGN Franchise Services; and

B is in respect of a Performance Calculation Year consisting of 13 Reporting Periods, 13 and in respect of a Performance Calculation Year consisting of less than 13 Reporting Periods, the number of Reporting Periods in such Performance Calculation Year.

Peak Short Formation Benchmarks

Reporting Period Calculations

- 2.3 At the end of each Reporting Period the Franchisee shall, in accordance with the relevant requirements of Appendix 3 to Schedule 13, report to the Secretary of State the total number of Peak Passenger Services in that Reporting Period operated with less than the Passenger Carrying Capacity specified for each such Peak Passenger Services in the Train Plan. For any Reporting Period falling within the first Performance Calculation Year the Franchisee shall provide the information required pursuant to this paragraph 2.3, disaggregated to separately show total number of Peak Passenger Services relating to the railway passenger services specified in paragraph (a) of the definition of TGN Franchise Services which are operated in each Reporting Period in that first Performance Calculation Year with less than the Passenger Carrying Capacity specified for each such Peak Passenger Service in the Train Plan.

The No Breach Reporting Periods Calculations

- (a) For each of the No Breach Reporting Periods, the Secretary of State shall perform the following calculation for the purposes of determining the values of A for each such Reporting Period:

where A is ascertained as follows:

$$\frac{B}{C} \times 100$$

where:

B is the total number of Peak Passenger Services in that No Breach Reporting Period operated with less Passenger Carrying Capacity than the Passenger Carrying Capacity specified for each such Peak Passenger Service in the Train Plan, disregarding, if the Franchisee has complied with paragraph 4, any such Peak Passenger Services which were operated in that way as a result of:

- (i) the Franchisee's implementation of a Service Recovery Plan during that No Breach Reporting Period; or
- (ii) the occurrence or continuing effect of a Force Majeure Event;

C is the total number of Peak Passenger Services scheduled to be operated in that No Breach Reporting Period, disregarding, if the Franchisee has complied with paragraph 4, any Peak Passenger Services operated with less Passenger Carrying Capacity than the Passenger Carrying Capacity specified for each such Peak Passenger Service in the Train Plan as a result of:

- (i) the Franchisee's implementation of a Service Recovery Plan during that No Breach Reporting Period; or
- (ii) the occurrence or continuing effect of a Force Majeure Event.

Breach Reporting Periods Calculations

- (b) For each Breach Reporting Period the Secretary of State shall calculate the Franchisee's performance against the Peak Short Formations Benchmark in accordance with the following formula:

$$\frac{A + D}{n}$$

where:

A is ascertained as follows:

$$\frac{B}{C} \times 100$$

where:

B is the total number of Peak Passenger Services in that Breach Reporting Period operated with less Passenger Carrying Capacity than the Passenger Carrying Capacity specified for each such Peak Passenger Service in the Train Plan, disregarding, if the Franchisee has complied with paragraph 4, any such Peak Passenger Services which were operated in that way as a result of:

- (i) the Franchisee's implementation of a Service Recovery Plan during that Breach Reporting Period; or
- (ii) the occurrence or continuing effect of a Force Majeure Event;

C is the total number of Peak Passenger Services scheduled to be operated in that Breach Reporting Period, disregarding, if the Franchisee has complied with paragraph 4, any Peak Passenger Services operated with less Passenger Carrying Capacity than the Passenger Carrying Capacity specified for each such Peak Passenger Service in the Train Plan as a result of:

- (i) the Franchisee's implementation of a Service Recovery Plan during that Reporting Period; or
- (ii) the occurrence or continuing effect of a Force Majeure Event; and

D is the sum of the values of *A* in each of the Reporting Periods in the first Performance Calculation Year immediately preceding that Breach Reporting Period; and

n is the number of Reporting Periods that have elapsed since the Start Date.

Subsequent Reporting Periods Calculations

- (c) For each Reporting Period (other than the No Breach Reporting Periods and the Breach Reporting Periods for which the provisions of paragraphs 2.3(a) and 2.3(b) shall apply respectively), the Secretary of State shall calculate a moving annual average of the Franchisee's performance against the Peak Short Formation Benchmark in accordance with the following formula:

$$\frac{A + D}{13}$$

where:

A is ascertained as follows:

$$\frac{B}{C} \times 100$$

where

B is the total number of Peak Passenger Services in that Reporting Period operated with less Passenger Carrying Capacity than the Passenger Carrying Capacity specified for each such Peak Passenger Service in the Train Plan, disregarding, if the Franchisee has complied with paragraph 4, any such Peak Passenger Services which were operated in that way as a result of:

- (i) the Franchisee's implementation of a Service Recovery Plan during that Reporting Period; or
- (ii) the occurrence or continuing effect of a Force Majeure Event;

C is the total number of Peak Passenger Services scheduled to be operated in that Reporting Period, disregarding, if the Franchisee has complied with paragraph 4, any Peak Passenger Services operated with less Passenger Carrying Capacity than the Passenger Carrying Capacity specified for each such Peak Passenger Service in the Train Plan as a result of:

- (i) the Franchisee's implementation of a Service Recovery Plan during that Reporting Period; or
- (ii) the occurrence or continuing effect of a Force Majeure Event; and

D is the sum of the values of A in each of the 12 preceding Reporting Periods (which for the avoidance of doubt and in respect of the 13th Reporting Period in the first Performance Calculation Year, shall be the sum of the values of A for the Breach Reporting Periods (as calculated pursuant to paragraph 2.3(a)) and the Breach Reporting Periods (as calculated

pursuant to paragraph 2.3(b)).

Performance Calculation Year Peak Short Formation Calculations

- 2.4 At the end of each Performance Calculation Year the Secretary of State shall calculate a moving annual average of the Franchisee's performance against the Annual Peak Short Formation Benchmark in accordance with the following formula:

$$ACTUAL = \frac{\sum A}{B}$$

where:

ACTUAL is the moving annual average of the Franchisee's performance against the Annual Peak Short Formation Benchmark for that Performance Calculation Year;

$\sum A$ is the sum of the values of A as determined in accordance with paragraph 2.3 for that Performance Calculation Year except that in respect of the first Performance Calculation Year the value of ACTUAL shall be calculated using the Peak Passenger Services in respect of the Passenger Services falling within paragraph (a) of the definition of TGN Franchise Services which were operated with less Passenger Carrying Capacity than that specified in the Train Plan; and

B is in respect of a Performance Calculation Year consisting of 13 Reporting Periods, 13 and in respect of a Performance Calculation Year consisting of less than 13 Reporting Periods, the number of Reporting Periods in such Performance Calculation Year.

- 2.5 For the purposes of the calculations to be undertaken by the Secretary of State pursuant to paragraphs 2.3 and 2.4 the following shall apply:
- (a) if and to the extent that any Peak Passenger Service is operated with Passenger Carrying Capacity in excess of the Passenger Carrying Capacity specified for that Peak Passenger Service in the Train Plan, the excess capacity shall be disregarded; and
 - (b) any Peak Passenger Service that is the subject of a Cancellation or a Partial Cancellation shall be disregarded altogether.

TOC Minute Delay Benchmarks

Reporting Period Calculations

- 2.6 At the end of each Reporting Period the Franchisee shall, in accordance with the relevant requirements of Appendix 3 to Schedule 13 (Information and Industry Initiatives), report to the Secretary of State:

- (a) the total number of Minutes Delay:
 - (i) in that Reporting Period attributable to the Franchisee;

- (ii) in that Reporting Period for which the attribution is in dispute between Network Rail and the Franchisee;
 - (iii) from the 12 preceding Reporting Periods for which the attribution remains in dispute; and
 - (iv) from the 12 preceding Reporting Periods for which disputed attributions have been resolved or determined since the Franchisee's last report pursuant to this paragraph 2.6, and the number of such Minutes Delay attributed to each of the Franchisee and Network Rail as a result of such resolution or determination; and
- (b) the aggregate Train Mileage operated in that Reporting Period.
- (c) For any Reporting Period falling within the first Performance Calculation Year the Franchisee shall provide the information required by this paragraph 2.6 disaggregated to separately show such information in respect of the railway passenger services specified in paragraph (a) of the definition of TGN Franchise Services.

2.7

The No Breach Reporting Periods Calculations

- (a) For each of the No Breach Reporting Periods, the Secretary of State shall perform the following calculation for the purposes of determining the Franchisee's performance against the TOC Minute Delay Benchmark for each such Reporting Period:

$$\frac{A}{D}$$

where:

A is the sum of the number of Minutes Delay that are attributable to the Franchisee in such No Breach Reporting Period; and

D is ascertained as follows:

$$\frac{B}{1000}$$

where:

B is the sum of the actual Train Mileage operated by the Franchisee in that No Breach Reporting Period.

Breach Reporting Periods Calculations

- (b) For each Breach Reporting Period the Secretary of State shall calculate the Franchisee's performance against the TOC Minute Delay Benchmark in accordance with the following formula:

$$\frac{A}{D}$$

where:

A is the sum of the number of Minutes Delay that are attributable to the Franchisee:

- (i) in such Breach Reporting Period; and
- (ii) in each of the Reporting Periods in the first Performance Calculation Year immediately preceding that Breach Reporting Period; and

D is ascertained as follows:

$$\frac{B}{1000}$$

where:

B is the sum of the actual Train Mileage operated by the Franchisee:

- (i) in such Breach Reporting Period; and
- (ii) in each of the Reporting Periods in the first Performance Calculation Year immediately preceding that Breach Reporting Period.

Subsequent Reporting Periods Calculations

- (c) For each Reporting Period (other than the No Breach Reporting Periods and the Breach Reporting Periods for which the provisions of paragraphs 2.7(a) and 2.7(b) shall apply respectively), the Secretary of State shall calculate a moving annual average of the Franchisee's performance against the TOC Minute Delay Benchmark in accordance with the following formula:

$$\frac{A}{D}$$

where:

A is the sum of the number of Minutes Delay that are attributable to the Franchisee:

- (i) in such Reporting Period; and
- (ii) in each of the 12 preceding Reporting Periods (which for the avoidance of doubt and in respect of the 13th Reporting Period in the first Performance Calculation Year, shall be the sum of the values of *A* for the No Breach Reporting Periods (as calculated pursuant to paragraph 2.7(a)) and the Breach Reporting Periods (as calculated pursuant to paragraph 2.7(b)));

D is ascertained as follows:

$$\frac{B}{1000}$$

where:

B is the sum of the actual Train Mileage operated by the Franchisee:

- (i) in such Reporting Period; and
- (ii) in each of the 12 preceding Reporting Periods (which for the avoidance of doubt and in respect of the 13th Reporting Period in the first Performance Calculation Year, shall be the sum of the values of D for the No Breach Reporting Periods (as calculated pursuant to paragraph 2.7(a)) and the Breach Reporting Periods (as calculated pursuant to paragraph 2.7(b)).

Performance Calculation Year TOC Minute Delay Calculations

2.8 At the end of each Performance Calculation Year the Secretary of State shall calculate a moving annual average of the Franchisee's performance against the Annual TOC Minute Delay Benchmark in accordance with the following formula:

$$ACTUAL = \frac{AA}{AD}$$

where:

ACTUAL is the Franchisee's performance against the Annual TOC Minute Delay Benchmark for that Performance Calculation Year;

AA is the sum of the number of Minutes Delay that are attributable to the Franchisee in each Reporting Period in that Performance Calculation Year except that in respect of the first Performance Calculation Year the value of *AA* shall be calculated using the Minutes Delay occurring in respect of the Passenger Services falling within paragraph (a) of the definition of TGN Franchise Services which are attributed to the Franchisee; and

AD is ascertained as follows:

$$\frac{AB}{1000}$$

where:

AB is the sum of the actual Train Mileage operated by the Franchisee in each Reporting Period in that Performance Calculation Year except that in respect of the first Performance Calculation Year the value of *AB* shall be calculated using the Train Mileage in respect of the Passenger Services falling within

paragraph (a) of the definition of TGN Franchise Services.

- 2.9 In performing the calculations pursuant to paragraphs 2.7 and/or 2.8 the Secretary of State shall, subject to the Franchisee having complied with its obligations in paragraph 4, disregard any Minutes Delay that are caused by the occurrence or continuing effect of a Force Majeure Event or the Franchisee's implementation of a Service Recovery Plan.

Allocation of Disputed Minutes Delay

- 2.10 Where the attribution of any Minutes Delay is in dispute between Network Rail and the Franchisee at the end of a Reporting Period and/or a Performance Calculation Year (as applicable) the Secretary of State shall, for the purpose of performing the calculations referred to in paragraphs 2.7 and/or 2.8, allocate any disputed Minutes Delay between the Franchisee and Network Rail in the proportions of:

A to B

where:

A is:

- (i) for the purposes of the calculations specified in paragraph 2.7(a) the total number of undisputed Minutes Delay in respect of a No Breach Reporting Period that are attributable to the Franchisee including any disputed attributions which were resolved or determined during such No Breach Reporting Period;
- (ii) for the purposes of the calculations specified in paragraph 2.7(b) the total number of undisputed Minutes Delay in respect of a Breach Reporting Period that are attributable to the Franchisee including any disputed attributions which were resolved or determined during such Breach Reporting Period; and
- (iii) for the purposes of the calculations specified in paragraphs 2.7(c) and 2.8, total number of undisputed Minutes Delay, in each case, from the 12 preceding Reporting Periods that are attributable to the Franchisee including any disputed attributions which were resolved or determined during such 12 preceding Reporting Periods; and

B is:

- (i) for the purposes of the calculations specified in paragraph 2.7(a) the total number of undisputed Minutes Delay in respect of a No Breach Reporting Period that are attributable to Network Rail including any disputed attributions which were resolved or determined during such No Breach Reporting Period;
- (ii) for the purposes of paragraph 2.7(b) the total number of undisputed Minutes Delay in respect of a Breach Reporting Period that are attributable to Network Rail including any

disputed attributions which were resolved or determined during such Breach Reporting Period; and

- (iii) for the purposes of paragraph 2.7(c) and 2.8, total number of undisputed Minutes Delay from the 12 preceding Reporting Periods that are attributable to Network Rail including any disputed attributions which were resolved or determined during such 12 preceding Reporting Periods.

Allocation of Disputed Cancellations/Partial Cancellations

2.11 Where there are any Disputed Cancellations and/or Disputed Partial Cancellations at the end of a Reporting Period and/or a Performance Calculation Year (as applicable) the Secretary of State shall, for the purpose of performing the calculations referred to in paragraphs 2.2 and/or 2.3 allocate any Disputed Cancellations and/or Disputed Partial Cancellations between the Franchisee and Network Rail in the proportions of:

A to B

where:

A is:

- (i) for the purposes of the calculations specified in paragraph 2.1(a) the total number of undisputed Cancellations and/or Partial Cancellations (that is, which are not Disputed Cancellations or Disputed Partial Cancellations) in respect of a No Breach Reporting Period including any Disputed Cancellations or Disputed Partial Cancellations which were resolved or determined during such No Breach Reporting Period;
- (ii) for the purposes of the calculations specified in paragraph 2.1(b) the total number of undisputed Cancellations and/or Partial Cancellations (that is, which are not Disputed Cancellations or Disputed Partial Cancellations) in respect of a Breach Reporting Period including any Disputed Cancellations or Disputed Partial Cancellations which were resolved or determined during such Breach Reporting Period; and
- (iii) for the purposes of the calculations specified in paragraphs 2.1(c) and 2.2, the total number of undisputed Cancellations and/or Partial Cancellations (that is, which are not Disputed Cancellations or Disputed Partial Cancellation) from the 12 preceding Reporting Periods including any Disputed Cancellations or Disputed Partial Cancellations which were resolved or determined during such 12 preceding Reporting Periods; and

B is:

for the purposes of the calculations specified in paragraph 2.1(a) the total number of undisputed Network Rail Cancellations and/or Network Rail Partial Cancellations (that is, which are not Disputed Cancellation or Disputed Partial

Cancellation) in respect of a No Breach Reporting Period including any Disputed Cancellation or Disputed Partial Cancellation which were resolved or determined during such No Breach Reporting Period;

- (ii) for the purposes of paragraph 2.1(b) the total number of undisputed Network Rail Cancellation and/or Network Rail Partial Cancellation (that is, which are not Disputed Cancellation or Disputed Partial Cancellation) in respect of a Breach Reporting Period including any Disputed Cancellation or Disputed Partial Cancellation which were resolved or determined during such Breach Reporting Period; and
- (iii) for the purposes of paragraph 2.1(c) and 2.2, the total number of undisputed Network Rail Cancellation and/or Network Rail Partial Cancellation (that is, which are not Disputed Cancellation or Disputed Partial Cancellation) from the 12 preceding Reporting Periods including any Disputed Cancellation or Disputed Partial Cancellation which were resolved or determined during such 12 preceding Reporting Periods.

2.12 The Franchisee agrees with the Secretary of State to comply with the requirements of the Track Access Agreement in respect of Minutes Delay attribution.

Calculations

2.13 The Secretary of State shall perform the calculations referred to in paragraphs 2.1, 2.2, 2.3, 2.4, 2.7 and 2.8 rounded to two decimal places, with the midpoint (that is, 11.115) rounded upwards (that is, 11.12).

Notice of Performance Results

2.14 As soon as reasonably practicable after the end of each Reporting Period and each Performance Calculation Year, the Secretary of State shall notify the Franchisee of the results of the calculations performed pursuant to this paragraph 2.

Meaning of Train Plan

2.15 For the purposes of this Schedule 7.1 Train Plan shall, unless otherwise stated, mean the then current train plan which has been finalised pursuant to paragraph 7 of Schedule 1.1 (Service Development) and which includes any amendments thereto pursuant to paragraph 3 of Schedule 1.2, where:

- (a) such amendments are required as a consequence of Network Rail exercising its rights pursuant to the Track Access Agreement; and
- (b) the Franchisee has complied with the provisions of such paragraph in respect thereof.

Consequences for Poor Performance in each Reporting Period

2.16 Without limiting the provisions of paragraph 2.17 and paragraph 3, if in any Reporting Period (other than a No Breach Reporting Period) the Franchisee's

performance as calculated pursuant to paragraphs 2.1(b), 2.1(c), 2.3(b), 2.3(c), 2.7(b) or 2.7(c) exceeds (that is, is equal to or worse than):

- (a) in respect of any Breach Reporting Period, the Breach Period Performance Level relating to each Benchmark; or
- (b) in respect of any other Reporting Period (other than a No Breach Reporting Period and a Breach Reporting Period), the Breach Performance Level relating to each Benchmark,

then a contravention shall occur and the Secretary of State may serve a Remedial Plan Notice in accordance with the provisions of paragraph 1 of Schedule 10.1 (Remedial Plans and Remedial Agreement). For the purposes of paragraph 1.4(c) of Schedule 10.1 (Remedial Plan and Remedial Agreement) the steps to be proposed by the Franchisee pursuant to that paragraph are those which ensure that the Franchisee's performance against the relevant Benchmark will be equal to or better than the Target Performance Level relating to such Benchmark.

2.17 Certain consequences of the Franchisee's performance being equal to or worse than the Default Performance Level relating to each Benchmark are set out in paragraph 2.6 of Schedule 10.3 (Events of Default and Termination Events).

3. Performance Sum Payments

3.1 At the end of each Performance Calculation Year the Secretary of State shall calculate:

- (a) the Cancellations Performance Sum and TOC Minute Delay Performance Sum payable by the Secretary of State to the Franchisee or the Franchisee to the Secretary of State (as the case may be); and
- (b) the Short Formation Performance Sum payable by the Franchisee to the Secretary of State,

in each case as follows in this paragraph 3:

3.2 Cancellations Performance Sum

where for that Performance Calculation Year, the Franchisee's performance in relation to the Annual Cancellations Benchmark as calculated pursuant to paragraph 2.2 (that is, the value of ACTUAL) is:

- (a) less than (that is, better than) the Annual Target Performance Level for that Annual Cancellations Benchmark and is less than (that is, better than) or equal to the Annual Cap Performance Level for such Annual Cancellations Benchmark, in each case, for that Performance Calculation Year then the Cancellations Performance Sum in respect of that Performance Calculation Year shall be payable by the Secretary of State to the Franchisee and shall be an amount calculated as follows:

$$(TARGET - CAP) \times PBP$$

where:

TARGET is the Annual Target Performance Level relating to that Annual Cancellations Benchmark for that Performance

Calculation Year;

CAP is the Annual Cap Performance Level relating to that Annual Cancellations Benchmark for that Performance Calculation Year;

PBP is:

- (A) in respect of the first Performance Calculation Year an amount determined as follows:

$$PBP \times 0.4$$

where:

PBP is the amount specified in the first row of the table in Part 3 of Appendix 1 to this Schedule 7.1;

- (B) in respect of any subsequent Performance Calculation Year ("**Year n**") an amount calculated as follows:

$$PBP \times RPIMF$$

where

RPIMF is the RPI multiplication factor for that Performance Calculation Year calculated as follows:

$$RPIMF = \left(RPI_{py} \times \left(\left(\frac{RPI_n}{RPI_{n-1}} \right) + 0.01 \right) \right)$$

where:

RPI_n is the Retail Prices Index for the January which falls in Year n;

RPI_{n-1} is the Retail Prices Index for the January which falls in the Performance Calculation Year immediately preceding Year n; and

RPI_{py} is *RPIMF* as calculated for the purpose of the Performance Calculation Year preceding Year n. Where that preceding Year n is the first Performance Calculation Year, this figure will be 1;

- (b) less than (that is, better than) the Annual Target Performance Level for that Annual Cancellations Benchmark but more than (that is, worse than)

the Annual Cap Target Performance Level for that Annual Cancellations Benchmark, in each case, for that Performance Calculation Year then the Cancellations Performance Sum in respect of that Performance Calculation Year shall be payable by the Secretary of State to the Franchisee and shall be an amount calculated as follows:

$$(TARGET - ACTUAL) \times PBP$$

where:

TARGET has the meaning given to it in paragraph 3.2(a);

ACTUAL has the meaning given to it in paragraph 2.2; and

PBP has the meaning given to it in paragraph 3.2(a);

- (c) more than (that is, worse than) the Annual Target Performance Level for that Annual Cancellations Benchmark but less than (that is, better than) the Annual Breach Performance Level for that Annual Cancellations Benchmark, in each case, for that Performance Calculation Year then the Cancellations Performance Sum in respect of that Performance Calculation Year shall be payable by the Franchisee to the Secretary of State and shall be an amount calculated as follows, provided that for the purposes of the formula in paragraph 1.1 of Schedule 8.1 (Franchise Payments) any such amount shall be a negative number notwithstanding that the amount calculated as below produces a positive number:

$$(ACTUAL - TARGET) \times PPP$$

where:

ACTUAL has the meaning given to it in paragraph 2.2;

TARGET is the Annual Target Performance Level relating to the Annual Cancellations Benchmark for that Performance Calculation Year;

PPP is:

- (A) in respect of the first Performance Calculation Year an amount determined as follows:

$$PPP \times 0.4$$

where

PPP is the amount specified in the second row of the table in Part 3 of Appendix 1 to this Schedule 7.1;

- (B) in respect of any subsequent Performance Calculation Year ("**Year n**") an amount calculated as follows:

$$PPP \times RPIMF$$

where:

RPIMF has the meaning given to it in paragraph 3.2(a); and

- (d) more than (that is, worse than) or equal to the Annual Breach Performance Level for that Annual Cancellations Benchmark for that Performance Calculation Year then the Cancellations Performance Sum payable by the Franchisee to the Secretary of State shall be an amount calculated as follows, provided that for the purposes of the formula in paragraph 1.1 of Schedule 8.1 (Franchise Payments) any such amount shall be a negative number notwithstanding that the amount calculated as below produces a positive number:

$$(BREACH - TARGET) \times PPP$$

where:

BREACH is the Annual Breach Performance Level relating to that Annual Cancellations Benchmark for that Performance Calculation Year;

TARGET has the meaning given to it in paragraph 3.2(a); and

PPP has the meaning given to it in paragraph 3.2(c);

3.3 Short Formation Performance Sum

where, for that Performance Calculation Year, the Franchisee's performance in relation to the Annual Peak Short Formation Benchmark as calculated pursuant to paragraph 2.4 (that is, the value of ACTUAL) is:

- (a) more than (that is, worse than) the Annual Breach Performance Level in relation to the Annual Peak Short Formation Benchmark for that Performance Calculation Year, in each case, for that Performance Calculation Year then the Short Formation Performance Sum in respect of that Performance Calculation Year shall be payable by the Franchisee to the Secretary of State and shall be an amount calculated as follows, provided that for the purposes of the formula in paragraph 1.1 of Schedule 8.1 (Franchise Payments) any such amount shall be a negative number notwithstanding that the amount calculated as below produces a positive number:

$$((AIL - TARGET) \times IPR) + ((BREACH - AIL) \times BPR)$$

where:

AIL is the Annual Intermediate Peak Short Formation Payment Level for that Performance Calculation Year;

TARGET is the Annual Target Performance Level relating to that Annual Peak Short Formation Benchmark for that Performance Calculation Year:

IPR is:

- (A) in respect of the first Performance Calculation Year an amount that is determined as follows:

$$IPR \times 0.4$$

where:

IPR is the amount specified in the first row of the table in Part 3 of Appendix 2 to this Schedule 7.1;

- (B) in respect of any subsequent Performance Calculation Year ("**Year n**") an amount calculated as follows:

$$IPR \times RPIMF$$

RPIMF has the meaning given to it in paragraph 3.2(a);

BREACH is the Annual Breach Performance Level relating to that Annual Peak Short Formation Benchmark for that Performance Calculation Year

BPR is:

- (A) in respect of the first Performance Calculation Year is an amount that is determined as follows:

$$BPR \times 0.4$$

where:

BPR is the amount specified in the second row of the table in Part 3 of Appendix 2 to this Schedule 7.1;

- (B) in respect of any subsequent Performance Calculation Year ("**Year n**") an amount calculated as follows:

$$BPR \times RPIMF$$

RPIMF has the meaning given to it in paragraph 3.2(a);

- (b) more than (that is, worse than) the Annual Intermediate Peak Short Formation Payment Level in relation to the Annual Peak Short Formation Benchmark for that Performance Calculation Year but less than (that is, better than) the Annual Breach Performance Level, in each case, for that Performance Calculation Year then the Short Formation Performance Sum in respect of that Performance Calculation Year shall be payable by the Franchisee to the Secretary of State and shall be an amount calculated as follows, provided that for the purposes of the formula in paragraph 1.1 of Schedule 8.1 (Franchise Payments) any such amount shall be a negative number notwithstanding that the amount calculated as below produces a positive number:

$$((AIL - TARGET) \times IPR) + ((ACTUAL - AIL) \times BPR)$$

where

AIL, *TARGET*, *IPR* and *BPR* each have the meanings given to each such term in paragraph 3.3(a); and

ACTUAL has the meaning given to it in paragraph 2.4;

- (c) is less than (that is, better than) or equal to the Annual Intermediate Peak Short Formation Payment Level in relation to the Annual Peak Short Formation Benchmark for that Performance Calculation Year, in each case, for that Performance Calculation Year then the Short Formation Performance Sum in respect of that Performance Calculation Year shall be payable by the Franchisee to the Secretary of State and shall be an amount calculated as follows, provided that for the purposes of the formula in paragraph 1.1 of Schedule 8.1 (Franchise Payments) any such amount shall be a negative number notwithstanding that the amount calculated as below produces a positive number:

$$((ACTUAL - TARGET) \times IPR)$$

where:

ACTUAL, *TARGET* and *IPR* each have the meanings given to each such term in paragraph 3.3(b);

3.4 **TOC Minute Delay Performance Sum**

where for that Performance Calculation Year, the Franchisee's performance in relation to the Annual TOC Minute Delay Benchmark as calculated pursuant to paragraph 2.8 (that is, the value of *ACTUAL*) is:

- (a) less than (that is, better than) the Annual Target Performance Level for that Annual TOC Minute Delay Benchmark and is less than (that is, better than) or equal to the Annual Cap Performance Level for such Annual TOC Minute Delay Benchmark, in each case, for that Performance Calculation Year then the TOC Minute Delay Performance Sum in respect of such Performance Calculation Year shall be payable by the Secretary of State to the Franchisee and shall be an amount calculated as follows:

$$((TARGET - CAP) \times PBP)$$

where:

TARGET is the Annual Target Performance Level relating to that Annual TOC Minute Delay Benchmark for that Performance Calculation Year;

CAP is the Annual Cap Performance Level relating to that Annual TOC Minute Delay Benchmark for that Performance Calculation Year;

PBP is:

- (A) in respect of the first Performance Calculation Year an amount that is determined as follows:

$$PBP \times 0.4$$

where:

PBP is the amount specified in the first row of the table in Part 3 of Appendix 3 to this Schedule 7.1;

- (B) in respect of any subsequent Performance Calculation Year ("**Year n**") an amount calculated as follows:

$$PBP \times RPIMF$$

where

PBP is the amount specified in the first row of the table in Part 3 of Appendix 3 to this Schedule 7.1; and

RPIMF has the meaning given to it in paragraph 3.2(a);

- (b) less than (that is, better than) the Annual Target Performance Level for that Annual TOC Minute Delay Benchmark but more than (that is, worse than) the Annual Cap Performance Level for that Annual TOC Minute Delay Benchmark, in each case, for that Performance Calculation Year then the TOC Minute Delay Performance Sum in respect of that Performance Calculation Year shall be payable by the Secretary of State to the Franchisee and shall be an amount calculated as follows:

$$((TARGET - ACTUAL) \times PBP)$$

where:

TARGET has the meaning given to it in paragraph 3.4(a);

ACTUAL has the meaning given to it in paragraph 2.8; and

PBP has the meaning given to it in paragraph 3.4(a);

- (c) more than (that is, worse than) the Annual Target Performance Level for that Annual TOC Minute Delay Benchmark but less than (that is, better than) the Annual Breach Performance Level for that Annual TOC Minute Delay Benchmark, in each case, for that Performance Calculation Year then the TOC Minute Delay Performance Sum in respect of that Performance Calculation Year shall be payable by the Franchisee to the Secretary of State and shall be an amount calculated as follows, provided that for the purposes of the formula in paragraph 1.1 of Schedule 8.1 (Franchise Payments) any such amount shall be a negative number notwithstanding that the amount calculated as below produces a positive number:

$$((ACTUAL - TARGET) \times PPP)$$

where:

ACTUAL has the meaning given to it in paragraph 2.8;

TARGET has the meaning given to it in paragraph 3.4(a);

PPP is:

- (A) in respect of the first Performance Calculation Year an amount that is determined as follows:

$$PPP \times 0.4$$

where:

PPP is the amount specified in the second row of the table in Part 3 of Appendix 3 to this Schedule 7.1;

- (B) in respect of any subsequent Performance Calculation Year ("**Year n**") an amount calculated as follows:

$$PPP \times RPIMF$$

where

PPP is the amount that is equal to the amount specified in the second row of the table in Part 3 of Appendix 3 to this Schedule 7.1; and

RPIMF has the meaning given to it in paragraph 3.2(a); and

- (d) more than (that is, worse than) or equal to the Annual Breach Performance Level for that Annual TOC Minute Delay Benchmark for that Performance Calculation Year then the TOC Minute Delay Performance Sum in respect of that Performance Calculation Year shall be payable by the Franchisee to the Secretary of State and shall be an amount calculated as follows, provided that for the purposes of the formula in paragraph 1.1 of Schedule 8.1 (Franchise Payments) any such amount shall be a negative number notwithstanding that the amount calculated as below produces a positive number:

$$((BREACH - TARGET) \times PPP)$$

where:

BREACH is the Annual Breach Performance Level relating to that Annual TOC Minute Delay Benchmark for that Performance Calculation Year;

TARGET has the meaning given to it in paragraph 3.4(a); and

PPP has the meaning given to it in paragraph 3.4(c).

3.5 Each:

- (a) Cancellations Performance Sum and TOC Minute Delay Performance Sum calculated pursuant to paragraphs 3.2 and 3.4 (respectively) in respect of any Performance Calculation Year payable by the Secretary of State to the Franchisee or the Franchisee to the Secretary of State (as the case may be); and
- (b) Short Formation Performance Sum payable by the Franchisee to the Secretary of State calculated pursuant to paragraphs 3.3,

shall, subject to paragraph 3.6, be paid by way of adjustment to Franchise Payments on the Performance Sum Adjustment Date.

3.6 Any Cancellations Performance Sum, Short Formation Performance Sum or TOC Minute Delay Performance Sum to be paid in respect of the final Franchisee Year shall be determined in accordance with this paragraph 3 but shall be paid within 30 days of the Secretary of State giving written notice to the Franchisee of the amount of such Cancellations Performance Sum, Short Formation Performance Sum or TOC Minute Delay Performance Sum (as the case may be).

4. **Submission of Records Relating to the Implementation of a Service Recovery Plan**

The Franchisee shall, at the end of each Reporting Period for which a Service Recovery Plan has been implemented (or such other period as may be agreed by the Secretary of State), submit to the Secretary of State all the comprehensive records (as more particularly described in the relevant paragraph of the Service Recovery Plan) which relate to the implementation of such Service Recovery Plan during that Reporting Period.

5. **Determination of the Annual Benchmarks for Performance Calculation Years that are shorter than 13 Reporting Periods**

5.1 Where a Performance Calculation Year is shorter than 13 Reporting Periods the Secretary of State will perform the following calculations for the purposes of determining the Annual Cancellations Benchmark, the Annual Peak Short Formation Benchmarks and the Annual TOC Minute Delay Benchmark relating to that Performance Calculation Year:

- (a) in respect of the Annual Cancellations Benchmark for that Performance Calculation Year:

$$\frac{\sum A}{B}$$

where:

$\sum A$ is:

- (a) for the Annual Cap Performance Level, the sum of the data relevant for each of the Reporting Periods in that Performance Calculation Year, such data being the data which was used for the purposes of determining the Annual Cap Performance Level in respect of a full Performance Calculation Year as more particularly set out in the document in agreed terms marked **ABD**; or

- (b) for the Annual Target Performance Level, the sum of the data relevant for each of the Reporting Periods in that Performance Calculation Year, such data being the data which was used for the purposes of determining the Annual Target Performance Level in respect of a full Performance Calculation Year as more particularly set out in the document in agreed terms marked **ABD**; or
- (c) for the Annual Breach Performance Level, the sum of the data relevant for each of the Reporting Periods in that Performance Calculation Year, such data being the data which was used for the purposes of determining the Annual Breach Performance Level in respect of a full Performance Calculation Year as more particularly set out in the document in agreed terms marked **ABD**; and

B is the number of Reporting Periods in that Performance Calculation Year; and

- (b) in respect of the Annual Peak Short Formation Benchmark for that Performance Calculation Year:

$$\frac{\sum A}{B}$$

where:

$\sum A$ is:

- (a) for the Annual Target Performance Level, the sum of the data relevant for each of the Reporting Periods in that Performance Calculation Year, such data being the data which was used for the purposes of determining the Annual Target Performance Level in respect of a full Performance Calculation Year as more particularly set out in the document in agreed terms marked **ABD**; or
- (b) for the Annual Intermediate Peak Short Formation Payment Level, the sum of the data relevant for each of the Reporting Periods in that Performance Calculation Year, such data being the data which was used for the purposes of determining the Annual Intermediate Peak Short Formation Payment Level in respect of a full Performance Calculation Year as more particularly set out in the document in agreed terms marked **ABD**; or
- (c) for the Annual Breach Performance Level, the sum of the data relevant for each of the Reporting Periods in that Performance Calculation Year, such data being the data which was used for the purposes of determining the Annual Breach Performance Level in respect of a full Performance Calculation Year as

more particularly set out in the document in agreed terms marked **ABD**; and

B is the number of Reporting Periods in that Performance Calculation Year; and

(c) in respect of the Annual TOC Minute Delay Benchmark for that Performance Calculation Year:

$$\frac{\sum AA}{AB}$$

where:

$\sum AA$ is:

- (a) for the Annual Cap Performance Level, the sum of the Minutes Delay attributable to the Franchisee as comprised in the data relevant for each of the Reporting Periods in that Performance Calculation Year, such Minutes Delay data being the data which was used for the purposes of determining the Annual Cap Performance Level in respect of a full Performance Calculation Year as more particularly set out in the document in agreed terms marked **ABD**; or
- (b) for the Annual Target Performance Level, the sum of the Minutes Delay attributable to the Franchisee as comprised in the data relevant for each of the Reporting Periods in that Performance Calculation Year, such Minutes Delay data being the data which was used for the purposes of determining the Annual Target Performance Level in respect of a full Performance Calculation Year as more particularly set out in the document in agreed terms marked **ABD**; or
- (c) for the Annual Breach Performance Level, the sum of the Minutes Delay attributable to the Franchisee as comprised in the data relevant for each of the Reporting Periods in that Performance Calculation Year, such Minutes Delay data being the data which was used for the purposes of determining the Annual Breach Performance Level in respect of a full Performance Calculation Year as more particularly set out in the document in agreed terms marked **ABD**; and

AB is ascertained as follows:

$$\frac{B}{1000}$$

where:

B is :

- (a) for the Annual Cap Performance Level, the sum of the Train Mileage as comprised in the data relevant for each of the Reporting Periods in that Performance Calculation Year, such Train Mileage data being the data which was used for the purposes of determining the Annual Cap Performance Level in respect of a full Performance Calculation Year as more particularly set out in the document in agreed terms marked **ABD**; or
- (b) for the Annual Target Performance Level, the sum of the Train Mileage as comprised in the data relevant for each of the Reporting Periods in that Performance Calculation Year, such Train Mileage data being the data which was used for the purposes of determining the Annual Target Performance Level in respect of a full Performance Calculation Year as more particularly set out in the document in agreed terms marked **ABD**; or
- (c) for the Annual Breach Performance Level, the sum of the Train Mileage as comprised in the data relevant for each of the Reporting Periods in that Performance Calculation Year, such Train Mileage data being the data which was used for the purposes of determining the Annual Breach Performance Level in respect of a full Performance Calculation Year as more particularly set out in the document in agreed terms marked **ABD**.

APPENDIX 1 TO SCHEDULE 7.1

Part 1

Cancellations Benchmark Table

Column 1				Column 2	Column 3	Column 4	Column 5
Franchisee Year	Reporting Period	Performance Calculation Year	Reporting period	Target Performance Level (%)	Breach Performance Level (%)	Default Performance Level (%)	Breach Period Performance Level (%)
Year 1	Period 7	Year 1	Period 1	1.00	N/A	N/A	N/A
	Period 8		Period 2	1.19	N/A	N/A	N/A
	Period 9		Period 3	1.26	N/A	N/A	N/A
	Period 10		Period 4	1.48	N/A	N/A	N/A
	Period 11		Period 5	1.52	N/A	N/A	N/A
	Period 12		Period 6	1.47	N/A	1.92	1.69
	Period 13		Period 7	1.43	N/A	1.86	1.64
Year 2	Period 1		Period 8	1.41	N/A	1.83	1.62
	Period 2		Period 9	1.39	N/A	1.81	1.60
	Period 3		Period 10	1.39	N/A	1.80	1.60
	Period 4		Period 11	1.39	N/A	1.81	1.60
	Period 5		Period 12	1.29	N/A	1.68	1.48

Column 1				Column 2	Column 3	Column 4	Column 5
Franchisee Year	Reporting Period	Performance Calculation Year	Reporting period	Target Performance Level (%)	Breach Performance Level (%)	Default Performance Level (%)	Breach Period Performance Level (%)
	Period 6	Year 2	Period 13	1.22	1.41	1.59	N/A
	Period 7		Period 1	1.18	1.36	1.54	N/A
	Period 8		Period 2	1.17	1.34	1.52	N/A
	Period 9		Period 3	1.16	1.33	1.51	N/A
	Period 10		Period 4	1.19	1.37	1.55	N/A
	Period 11		Period 5	1.17	1.35	1.52	N/A
	Period 12		Period 6	1.14	1.32	1.49	N/A
	Period 13		Period 7	1.13	1.30	1.46	N/A
Year 3	Period 1	Year 3	Period 8	1.09	1.25	1.42	N/A
	Period 2		Period 9	1.06	1.22	1.38	N/A
	Period 3		Period 10	1.04	1.20	1.35	N/A
	Period 4		Period 11	1.02	1.17	1.33	N/A
	Period 5		Period 12	1.02	1.17	1.33	N/A
	Period 6		Period 13	1.02	1.17	1.33	N/A
	Period 7	Period 1	1.02	1.17	1.32	N/A	
	Period 8	Period 2	1.02	1.17	1.32	N/A	
	Period 9	Period 3	1.01	1.17	1.32	N/A	
	Period 10	Period 4	1.01	1.16	1.32	N/A	
	Period 11	Period 5	1.01	1.16	1.31	N/A	

Column 1				Column 2	Column 3	Column 4	Column 5
Franchisee Year	Reporting Period	Performance Calculation Year	Reporting period	Target Performance Level (%)	Breach Performance Level (%)	Default Performance Level (%)	Breach Period Performance Level (%)
	Period 12		Period 6	1.01	1.16	1.31	N/A
	Period 13		Period 7	1.00	1.16	1.31	N/A
Year 4	Period 1		Period 8	1.00	1.15	1.30	N/A
	Period 2		Period 9	1.00	1.15	1.30	N/A
	Period 3		Period 10	1.00	1.15	1.30	N/A
	Period 4		Period 11	0.99	1.14	1.29	N/A
	Period 5		Period 12	0.99	1.14	1.29	N/A
	Period 6		Period 13	0.99	1.14	1.28	N/A
	Period 7	Year 4	Period 1	0.99	1.13	1.28	N/A
	Period 8		Period 2	0.98	1.13	1.27	N/A
	Period 9		Period 3	0.98	1.13	1.27	N/A
	Period 10		Period 4	0.98	1.12	1.27	N/A
	Period 11		Period 5	0.97	1.12	1.27	N/A
	Period 12		Period 6	0.97	1.12	1.27	N/A
	Period 13		Period 7	0.97	1.12	1.27	N/A
Year 5	Period 1		Period 8	0.97	1.12	1.27	N/A
	Period 2		Period 9	0.97	1.12	1.26	N/A
	Period 3		Period 10	0.97	1.12	1.27	N/A
	Period 4		Period 11	0.97	1.12	1.27	N/A

Column 1				Column 2	Column 3	Column 4	Column 5	
Franchisee Year	Reporting Period	Performance Calculation Year	Reporting period	Target Performance Level (%)	Breach Performance Level (%)	Default Performance Level (%)	Breach Period Performance Level (%)	
	Period 5	Year 5	Period 12	0.97	1.12	1.26	N/A	
	Period 6		Period 13	0.97	1.12	1.27	N/A	
	Period 7		Period 1	0.97	1.12	1.27	N/A	
	Period 8		Period 2	0.98	1.12	1.27	N/A	
	Period 9		Period 3	0.97	1.12	1.27	N/A	
	Period 10		Period 4	0.97	1.12	1.27	N/A	
	Period 11		Period 5	0.97	1.12	1.26	N/A	
	Period 12		Period 6	0.97	1.11	1.26	N/A	
	Period 13		Period 7	0.97	1.11	1.26	N/A	
	Year 6		Period 1	Period 8	0.97	1.11	1.26	N/A
			Period 2	Period 9	0.96	1.11	1.25	N/A
			Period 3	Period 10	0.96	1.10	1.25	N/A
			Period 4	Period 11	0.95	1.10	1.24	N/A
Period 5		Period 12	0.95	1.09	1.24	N/A		
Period 6		Period 13	0.95	1.09	1.23	N/A		
Period 7		Year 6	Period 1	0.94	1.08	1.23	N/A	
Period 8			Period 2	0.94	1.08	1.22	N/A	
Period 9			Period 3	0.94	1.08	1.22	N/A	
Period 10			Period 4	0.93	1.07	1.21	N/A	

Column 1			Column 2	Column 3	Column 4	Column 5	
Franchisee Year	Reporting Period	Performance Calculation Year	Reporting period	Target Performance Level (%)	Breach Performance Level (%)	Default Performance Level (%)	Breach Period Performance Level (%)
	Period 11		Period 5	0.93	1.07	1.21	N/A
	Period 12		Period 6	0.92	1.06	1.20	N/A
	Period 13		Period 7	0.92	1.06	1.20	N/A
Year 7	Period 1		Period 8	0.92	1.05	1.19	N/A
	Period 2		Period 9	0.92	1.05	1.19	N/A
	Period 3		Period 10	0.91	1.05	1.19	N/A
	Period 4		Period 11	0.91	1.05	1.19	N/A
	Period 5		Period 12	0.91	1.05	1.19	N/A
	Period 6		Period 13	0.91	1.05	1.19	N/A
	Period 7	Year 7	Period 1	0.91	1.05	1.19	N/A
	Period 8		Period 2	0.91	1.05	1.18	N/A
	Period 9		Period 3	0.91	1.05	1.18	N/A
	Period 10		Period 4	0.91	1.05	1.18	N/A
	Period 11		Period 5	0.91	1.04	1.18	N/A
	Period 12		Period 6	0.91	1.04	1.18	N/A
	Period 13		Period 7	0.91	1.04	1.18	N/A
Year 8	Period 1		Period 8	0.91	1.04	1.18	N/A
	Period 2		Period 9	0.91	1.04	1.18	N/A
	Period 3		Period 10	0.90	1.04	1.18	N/A

Column 1			Column 2	Column 3	Column 4	Column 5	
Franchisee Year	Reporting Period	Performance Calculation Year	Reporting period	Target Performance Level (%)	Breach Performance Level (%)	Default Performance Level (%)	Breach Period Performance Level (%)
	Period 4		Period 11	0.90	1.04	1.18	N/A
	Period 5		Period 12	0.90	1.04	1.17	N/A
	Period 6		Period 13	0.90	1.04	1.17	N/A
26 Reporting Periods Extension	Period 7	26 Reporting Periods Extension	Period 1	0.90	1.04	1.17	N/A
	Period 8		Period 2	0.90	1.04	1.17	N/A
	Period 9		Period 3	0.90	1.04	1.17	N/A
	Period 10		Period 4	0.90	1.03	1.17	N/A
	Period 11		Period 5	0.90	1.03	1.17	N/A
	Period 12		Period 6	0.90	1.03	1.17	N/A
	Period 13		Period 7	0.90	1.03	1.17	N/A
	Period 1		Period 8	0.90	1.03	1.17	N/A
	Period 2		Period 9	0.90	1.03	1.17	N/A
	Period 3		Period 10	0.90	1.03	1.16	N/A
	Period 4		Period 11	0.90	1.03	1.16	N/A
	Period 5		Period 12	0.89	1.03	1.16	N/A
	Period 6		Period 13	0.89	1.03	1.16	N/A
	Period 7		Period 1	0.89	1.03	1.16	N/A
	Period 8		Period 2	0.89	1.03	1.16	N/A
	Period 9		Period 3	0.89	1.03	1.16	N/A

Column 1				Column 2	Column 3	Column 4	Column 5
Franchisee Year	Reporting Period	Performance Calculation Year	Reporting period	Target Performance Level (%)	Breach Performance Level (%)	Default Performance Level (%)	Breach Period Performance Level (%)
	<i>Period 10</i>		Period 4	0.89	1.02	1.16	N/A
	<i>Period 11</i>		Period 5	0.89	1.02	1.16	N/A
	<i>Period 12</i>		Period 6	0.89	1.02	1.16	N/A
	<i>Period 13</i>		Period 7	0.89	1.02	1.15	N/A
	<i>Period 1</i>		Period 8	0.89	1.02	1.15	N/A
	<i>Period 2</i>		Period 9	0.88	1.02	1.15	N/A
	<i>Period 3</i>		Period 10	0.88	1.02	1.15	N/A
	<i>Period 4</i>		Period 11	0.88	1.01	1.15	N/A
	<i>Period 5</i>		Period 12	0.88	1.01	1.14	N/A
	<i>Period 6</i>		Period 13	0.88	1.01	1.14	N/A

Part 2

Annual Cancellations Benchmark Table

Column 1	Column 2	Column 3	Column 4
Performance Year	Calculation	Annual Cap Performance Level (%)	Annual Target Performance Level (%)
		Annual Breach Performance Level (%)	
Year 1		1.17	1.38
Year 2		0.87	1.02
Year 3		0.84	0.99
Year 4		0.83	0.97
Year 5		0.80	0.95
Year 6		0.78	0.91
Year 7		0.77	0.90
First year of the 26 Reporting Periods Extension		0.76	0.89
Second year of the 26 Reporting Periods Extension		0.75	0.88

Part 3

Annual Cancellations Payment Table

Definition	Amount (£)
PBP	8,600,000
PPP	17,200,000

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APPENDIX 2 TO SCHEDULE 7.1

Part 1

Peak Short Formation Benchmark Table

		Column 1		Column 2	Column 3	Column 4	Column 5
Franchisee Year	Reporting Period	Performance Calculation Year	Reporting period	Target Performance Level (%)	Breach Performance Level (%)	Default Performance Level (%)	Breach Period Performance Level (%)
Year 1	Period 7	Year 1	Period 1	0.00	N/A	N/A	N/A
	Period 8		Period 2	0.00	N/A	N/A	N/A
	Period 9		Period 3	0.00	N/A	N/A	N/A
	Period 10		Period 4	0.00	N/A	N/A	N/A
	Period 11		Period 5	0.00	N/A	N/A	N/A
	Period 12		Period 6	0.00	N/A	0.97	0.85
	Period 13		Period 7	0.00	N/A	0.94	0.83
Year 2	Period 1		Period 8	0.00	N/A	0.92	0.82
	Period 2		Period 9	0.00	N/A	0.91	0.81
	Period 3		Period 10	0.00	N/A	0.91	0.80
	Period 4		Period 11	0.00	N/A	0.91	0.80
	Period 5		Period 12	0.00	N/A	0.95	0.84
	Period 6		Period 13	0.00	0.87	0.99	N/A

		Column 1		Column 2	Column 3	Column 4	Column 5	
Franchisee Year	Reporting Period	Performance Calculation Year	Reporting period	Target Performance Level (%)	Breach Performance Level (%)	Default Performance Level (%)	Breach Period Performance Level (%)	
	Period 7	Year 2	Period 1	0.00	0.92	1.04	N/A	
	Period 8		Period 2	0.00	0.98	1.11	N/A	
	Period 9		Period 3	0.00	1.04	1.18	N/A	
	Period 10		Period 4	0.00	1.13	1.28	N/A	
	Period 11		Period 5	0.00	1.18	1.34	N/A	
	Period 12		Period 6	0.00	1.23	1.39	N/A	
	Period 13		Period 7	0.00	1.28	1.44	N/A	
Year 3	Period 1			Period 8	0.00	1.30	1.47	N/A
	Period 2			Period 9	0.00	1.34	1.51	N/A
	Period 3			Period 10	0.00	1.37	1.55	N/A
	Period 4			Period 11	0.00	1.40	1.59	N/A
	Period 5			Period 12	0.00	1.40	1.58	N/A
	Period 6			Period 13	0.00	1.40	1.58	N/A
	Period 7	Year 3	Period 1	0.00	1.40	1.58	N/A	
	Period 8		Period 2	0.00	1.40	1.58	N/A	
	Period 9		Period 3	0.00	1.39	1.57	N/A	
	Period 10		Period 4	0.00	1.39	1.57	N/A	
	Period 11		Period 5	0.00	1.38	1.56	N/A	
	Period 12		Period 6	0.00	1.38	1.56	N/A	

		Column 1		Column 2	Column 3	Column 4	Column 5
Franchisee Year	Reporting Period	Performance Calculation Year	Reporting period	Target Performance Level (%)	Breach Performance Level (%)	Default Performance Level (%)	Breach Period Performance Level (%)
	Period 13		Period 7	0.00	1.38	1.56	N/A
Year 4	Period 1		Period 8	0.00	1.38	1.56	N/A
	Period 2		Period 9	0.00	1.37	1.55	N/A
	Period 3		Period 10	0.00	1.37	1.55	N/A
	Period 4		Period 11	0.00	1.37	1.54	N/A
	Period 5		Period 12	0.00	1.36	1.54	N/A
	Period 6		Period 13	0.00	1.36	1.53	N/A
	Period 7			Period 1	0.00	1.35	1.53
	Period 8	Year 4	Period 2	0.00	1.35	1.52	N/A
	Period 9		Period 3	0.00	1.34	1.52	N/A
	Period 10		Period 4	0.00	1.34	1.52	N/A
	Period 11		Period 5	0.00	1.34	1.51	N/A
	Period 12		Period 6	0.00	1.34	1.51	N/A
	Period 13		Period 7	0.00	1.34	1.51	N/A
	Year 5		Period 1		Period 8	0.00	1.34
Period 2			Period 9	0.00	1.34	1.51	N/A
Period 3			Period 10	0.00	1.34	1.51	N/A
Period 4			Period 11	0.00	1.34	1.51	N/A
Period 5			Period 12	0.00	1.33	1.51	N/A

		Column 1		Column 2	Column 3	Column 4	Column 5	
Franchisee Year	Reporting Period	Performance Calculation Year	Reporting period	Target Performance Level (%)	Breach Performance Level (%)	Default Performance Level (%)	Breach Period Performance Level (%)	
	Period 6	Year 5	Period 13	0.00	1.34	1.51	N/A	
	Period 7		Period 1	0.00	1.34	1.51	N/A	
	Period 8		Period 2	0.00	1.34	1.51	N/A	
	Period 9		Period 3	0.00	1.34	1.51	N/A	
	Period 10		Period 4	0.00	1.34	1.51	N/A	
	Period 11		Period 5	0.00	1.33	1.51	N/A	
	Period 12		Period 6	0.00	1.33	1.50	N/A	
	Period 13		Period 7	0.00	1.33	1.50	N/A	
Year 6	Period 1		Year 6	Period 8	0.00	1.33	1.50	N/A
	Period 2			Period 9	0.00	1.32	1.49	N/A
	Period 3			Period 10	0.00	1.32	1.49	N/A
	Period 4			Period 11	0.00	1.31	1.48	N/A
	Period 5			Period 12	0.00	1.31	1.48	N/A
	Period 6	Period 13		0.00	1.30	1.47	N/A	
	Period 7	Period 1		0.00	1.30	1.47	N/A	
	Period 8	Period 2		0.00	1.29	1.46	N/A	
	Period 9	Period 3		0.00	1.29	1.45	N/A	
	Period 10	Period 4		0.00	1.28	1.45	N/A	
	Period 11	Period 5		0.00	1.27	1.44	N/A	

		Column 1		Column 2	Column 3	Column 4	Column 5
Franchisee Year	Reporting Period	Performance Calculation Year	Reporting period	Target Performance Level (%)	Breach Performance Level (%)	Default Performance Level (%)	Breach Period Performance Level (%)
	Period 12		Period 6	0.00	1.27	1.43	N/A
	Period 13		Period 7	0.00	1.26	1.43	N/A
Year 7	Period 1		Period 8	0.00	1.26	1.42	N/A
	Period 2		Period 9	0.00	1.26	1.42	N/A
	Period 3		Period 10	0.00	1.26	1.42	N/A
	Period 4		Period 11	0.00	1.26	1.42	N/A
	Period 5		Period 12	0.00	1.26	1.42	N/A
	Period 6	Period 13	0.00	1.25	1.42	N/A	
	Period 7	Year 7	Period 1	0.00	1.25	1.42	N/A
	Period 8		Period 2	0.00	1.25	1.42	N/A
	Period 9		Period 3	0.00	1.25	1.41	N/A
	Period 10		Period 4	0.00	1.25	1.41	N/A
Period 11	Period 5		0.00	1.25	1.41	N/A	
Period 12	Period 6		0.00	1.25	1.41	N/A	
Period 13	Period 7		0.00	1.25	1.41	N/A	
Year 8	Period 1		Period 8	0.00	1.25	1.41	N/A
	Period 2		Period 9	0.00	1.24	1.41	N/A
	Period 3		Period 10	0.00	1.24	1.41	N/A
	Period 4	Period 11	0.00	1.24	1.40	N/A	

		Column 1		Column 2	Column 3	Column 4	Column 5
Franchisee Year	Reporting Period	Performance Calculation Year	Reporting period	Target Performance Level (%)	Breach Performance Level (%)	Default Performance Level (%)	Breach Period Performance Level (%)
	Period 5		Period 12	0.00	1.24	1.40	N/A
	Period 6		Period 13	0.00	1.24	1.40	N/A
26 Reporting Periods Extension	Period 7	26 Reporting Periods Extension	Period 1	0.00	1.24	1.40	N/A
	Period 8		Period 2	0.00	1.24	1.40	N/A
	Period 9		Period 3	0.00	1.24	1.40	N/A
	Period 10		Period 4	0.00	1.24	1.40	N/A
	Period 11		Period 5	0.00	1.24	1.40	N/A
	Period 12		Period 6	0.00	1.23	1.40	N/A
	Period 13		Period 7	0.00	1.23	1.39	N/A
	Period 1		Period 8	0.00	1.23	1.39	N/A
	Period 2		Period 9	0.00	1.23	1.39	N/A
	Period 3		Period 10	0.00	1.23	1.39	N/A
	Period 4		Period 11	0.00	1.23	1.39	N/A
	Period 5		Period 12	0.00	1.23	1.39	N/A
	Period 6		Period 13	0.00	1.23	1.39	N/A
	Period 7		Period 1	0.00	1.23	1.39	N/A
	Period 8		Period 2	0.00	1.23	1.39	N/A
	Period 9		Period 3	0.00	1.23	1.39	N/A
	Period 10		Period 4	0.00	1.22	1.38	N/A

		Column 1		Column 2	Column 3	Column 4	Column 5
Franchisee Year	Reporting Period	Performance Calculation Year	Reporting period	Target Performance Level (%)	Breach Performance Level (%)	Default Performance Level (%)	Breach Period Performance Level (%)
	Period 11		Period 5	0.00	1.22	1.38	N/A
	Period 12		Period 6	0.00	1.22	1.38	N/A
	Period 13		Period 7	0.00	1.22	1.38	N/A
	Period 1		Period 8	0.00	1.22	1.38	N/A
	Period 2		Period 9	0.00	1.22	1.37	N/A
	Period 3		Period 10	0.00	1.21	1.37	N/A
	Period 4		Period 11	0.00	1.21	1.37	N/A
	Period 5		Period 12	0.00	1.21	1.37	N/A
	Period 6		Period 13	0.00	1.21	1.36	N/A

Part 2

Annual Peak Short Formation Benchmark Table

Column 1	Column 2	Column 3	Column 4
Performance Calculation Year	Annual Target Performance Level (%)	Annual Intermediate Peak Short Formation Payment Level (%)	Annual Breach Performance Level (%)
Year 1	0.00	0.69	0.79
Year 2	0.00	1.22	1.40
Year 3	0.00	1.18	1.36
Year 4	0.00	1.16	1.34
Year 5	0.00	1.13	1.30
Year 6	0.00	1.09	1.25
Year 7	0.00	1.08	1.24
First year of the 26 Reporting Periods Extension	0.00	1.07	1.23
Second year of the 26 Reporting Periods Extension	0.00	1.05	1.21

Part 3

Annual Peak Short Formations Payment Table

Definition	Amount (£)
IPR	2,600,000
BPR	5,100,000

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APPENDIX 3 TO SCHEDULE 7.1

Part 1

TOC Minute Delay Benchmark Table

Column 1				Column 2	Column 3	Column 4	Column 5
Franchisee Year	Reporting Period	Performance Calculation year	Reporting period	Target Performance Level (Delay minutes per 1000 train miles)	Breach Performance Level (Delay minutes per 1000 train miles)	Default Performance Level (Delay minutes per 1000 train miles)	Breach Period Performance Level (Delay minutes per 1000 train miles)
Year 1	Period 7	Year 1	Period 1	8.16	N/A	N/A	N/A
	Period 8		Period 2	9.99	N/A	N/A	N/A
	Period 9		Period 3	10.59	N/A	N/A	N/A
	Period 10		Period 4	10.96	N/A	N/A	N/A
	Period 11		Period 5	12.47	N/A	N/A	N/A
	Period 12		Period 6	12.29	N/A	15.98	14.14
	Period 13		Period 7	12.11	N/A	15.75	13.93
Year 2	Period 1		Period 8	11.88	N/A	15.45	13.67
	Period 2		Period 9	11.81	N/A	15.35	13.58
	Period 3		Period 10	11.67	N/A	15.17	13.42
	Period 4		Period 11	11.62	N/A	15.10	13.36
	Period 5		Period 12	11.58	N/A	15.05	13.32

Column 1				Column 2	Column 3	Column 4	Column 5	
Franchisee Year	Reporting Period	Performance Calculation year	Reporting period	Target Performance Level (Delay minutes per 1000 train miles)	Breach Performance Level (Delay minutes per 1000 train miles)	Default Performance Level (Delay minutes per 1000 train miles)	Breach Period Performance Level (Delay minutes per 1000 train miles)	
	Period 6	Year 2	Period 13	11.51	13.23	14.96	N/A	
	Period 7		Period 1	11.95	13.74	15.53	N/A	
	Period 8		Period 2	12.82	14.74	16.66	N/A	
	Period 9		Period 3	13.54	15.58	17.61	N/A	
	Period 10		Period 4	14.19	16.32	18.45	N/A	
	Period 11		Period 5	14.67	16.87	19.07	N/A	
	Period 12		Period 6	14.83	17.05	19.28	N/A	
	Period 13		Period 7	15.02	17.27	19.53	N/A	
Year 3	Period 1		Year 3	Period 8	14.84	17.06	19.29	N/A
	Period 2			Period 9	14.76	16.97	19.19	N/A
	Period 3			Period 10	14.68	16.89	19.09	N/A
	Period 4			Period 11	14.53	16.70	18.88	N/A
	Period 5			Period 12	14.51	16.69	18.87	N/A
	Period 6	Period 13		14.50	16.68	18.85	N/A	
	Period 7	Period 1		14.49	16.66	18.84	N/A	
	Period 8	Period 2		14.47	16.65	18.82	N/A	
	Period 9	Period 3		14.43	16.59	18.76	N/A	

Column 1				Column 2	Column 3	Column 4	Column 5
Franchisee Year	Reporting Period	Performance Calculation year	Reporting period	Target Performance Level (Delay minutes per 1000 train miles)	Breach Performance Level (Delay minutes per 1000 train miles)	Default Performance Level (Delay minutes per 1000 train miles)	Breach Period Performance Level (Delay minutes per 1000 train miles)
Year 4	Period 10		Period 4	14.41	16.57	18.73	N/A
	Period 11		Period 5	14.34	16.49	18.64	N/A
	Period 12		Period 6	14.33	16.48	18.63	N/A
	Period 13		Period 7	14.30	16.45	18.60	N/A
	Period 1		Period 8	14.29	16.44	18.58	N/A
	Period 2		Period 9	14.24	16.37	18.51	N/A
	Period 3		Period 10	14.22	16.35	18.48	N/A
	Period 4	Period 11	14.18	16.31	18.44	N/A	
	Period 5	Period 12	14.14	16.26	18.39	N/A	
	Period 6	Period 13	14.10	16.22	18.33	N/A	
	Period 7	Year 4	Period 1	14.08	16.19	18.31	N/A
	Period 8		Period 2	14.02	16.13	18.23	N/A
	Period 9		Period 3	14.01	16.11	18.21	N/A
Period 10	Period 4		13.98	16.07	18.17	N/A	
Period 11	Period 5		13.93	16.02	18.11	N/A	
Period 12	Period 6		13.92	16.01	18.10	N/A	
Period 13	Period 7	13.90	15.99	18.07	N/A		

Column 1				Column 2	Column 3	Column 4	Column 5
Franchisee Year	Reporting Period	Performance Calculation year	Reporting period	Target Performance Level (Delay minutes per 1000 train miles)	Breach Performance Level (Delay minutes per 1000 train miles)	Default Performance Level (Delay minutes per 1000 train miles)	Breach Period Performance Level (Delay minutes per 1000 train miles)
Year 5	Period 1		Period 8	13.82	15.89	17.96	N/A
	Period 2		Period 9	13.70	15.75	17.80	N/A
	Period 3		Period 10	13.62	15.66	17.71	N/A
	Period 4		Period 11	13.53	15.56	17.59	N/A
	Period 5		Period 12	13.42	15.43	17.45	N/A
	Period 6		Period 13	13.35	15.35	17.36	N/A
	Period 7	Year 5	Period 1	13.28	15.27	17.26	N/A
	Period 8		Period 2	13.21	15.19	17.17	N/A
	Period 9		Period 3	13.10	15.06	17.02	N/A
	Period 10		Period 4	13.02	14.97	16.93	N/A
	Period 11		Period 5	12.87	14.81	16.74	N/A
	Period 12		Period 6	12.80	14.72	16.64	N/A
	Period 13		Period 7	12.70	14.61	16.51	N/A
Year 6	Period 1		Period 8	12.70	14.60	16.51	N/A
	Period 2		Period 9	12.64	14.54	16.44	N/A
	Period 3		Period 10	12.59	14.48	16.37	N/A
	Period 4		Period 11	12.54	14.42	16.30	N/A

Column 1				Column 2	Column 3	Column 4	Column 5		
Franchisee Year	Reporting Period	Performance Calculation year	Reporting period	Target Performance Level (Delay minutes per 1000 train miles)	Breach Performance Level (Delay minutes per 1000 train miles)	Default Performance Level (Delay minutes per 1000 train miles)	Breach Period Performance Level (Delay minutes per 1000 train miles)		
	Period 5	Year 6	Period 12	12.48	14.35	16.23	N/A		
	Period 6		Period 13	12.43	14.29	16.16	N/A		
	Period 7		Period 1	12.37	14.23	16.08	N/A		
	Period 8		Period 2	12.32	14.16	16.01	N/A		
	Period 9		Period 3	12.26	14.10	15.94	N/A		
	Period 10		Period 4	12.20	14.03	15.87	N/A		
	Period 11		Period 5	12.15	13.97	15.79	N/A		
	Period 12		Period 6	12.09	13.91	15.72	N/A		
	Period 13		Period 7	12.04	13.84	15.65	N/A		
	Year 7		Period 1	Year 6	Period 8	11.98	13.78	15.58	N/A
			Period 2		Period 9	11.98	13.77	15.57	N/A
			Period 3		Period 10	11.97	13.77	15.56	N/A
			Period 4		Period 11	11.97	13.76	15.56	N/A
Period 5		Period 12	11.96		13.75	15.55	N/A		
Period 6		Period 13	11.95		13.75	15.54	N/A		
Period 7		Year 7	Period 1		11.95	13.74	15.53	N/A	
Period 8			Period 2	11.94	13.73	15.52	N/A		

Column 1				Column 2	Column 3	Column 4	Column 5	
Franchisee Year	Reporting Period	Performance Calculation year	Reporting period	Target Performance Level (Delay minutes per 1000 train miles)	Breach Performance Level (Delay minutes per 1000 train miles)	Default Performance Level (Delay minutes per 1000 train miles)	Breach Period Performance Level (Delay minutes per 1000 train miles)	
	Period 9		Period 3	11.93	13.71	15.50	N/A	
	Period 10		Period 4	11.91	13.70	15.49	N/A	
	Period 11		Period 5	11.90	13.69	15.47	N/A	
	Period 12		Period 6	11.89	13.68	15.46	N/A	
	Period 13		Period 7	11.89	13.67	15.45	N/A	
Year 8	Period 1		Period 8	11.88	13.66	15.44	N/A	
	Period 2		Period 9	11.87	13.65	15.43	N/A	
	Period 3		Period 10	11.86	13.64	15.42	N/A	
	Period 4		Period 11	11.86	13.63	15.41	N/A	
	Period 5		Period 12	11.85	13.63	15.40	N/A	
	Period 6		Period 13	11.84	13.62	15.40	N/A	
26 Reporting Periods Extension	Period 7		26 Reporting Periods Extension	Period 1	11.83	13.61	15.38	N/A
	Period 8			Period 2	11.82	13.59	15.37	N/A
	Period 9	Period 3		11.81	13.58	15.35	N/A	
	Period 10	Period 4		11.80	13.57	15.34	N/A	
	Period 11	Period 5		11.79	13.55	15.32	N/A	
	Period 12	Period 6		11.78	13.54	15.31	N/A	

Column 1				Column 2	Column 3	Column 4	Column 5
Franchisee Year	Reporting Period	Performance Calculation year	Reporting period	Target Performance Level (Delay minutes per 1000 train miles)	Breach Performance Level (Delay minutes per 1000 train miles)	Default Performance Level (Delay minutes per 1000 train miles)	Breach Period Performance Level (Delay minutes per 1000 train miles)
	Period 13		Period 7	11.77	13.53	15.30	N/A
	Period 1		Period 8	11.76	13.52	15.29	N/A
	Period 2		Period 9	11.75	13.51	15.28	N/A
	Period 3		Period 10	11.74	13.50	15.27	N/A
	Period 4		Period 11	11.74	13.50	15.26	N/A
	Period 5		Period 12	11.73	13.49	15.25	N/A
	Period 6		Period 13	11.72	13.48	15.24	N/A
	Period 7		Period 1	11.71	13.47	15.23	N/A
	Period 8		Period 2	11.70	13.46	15.21	N/A
	Period 9		Period 3	11.69	13.44	15.20	N/A
	Period 10		Period 4	11.68	13.43	15.18	N/A
	Period 11		Period 5	11.66	13.41	15.16	N/A
	Period 12		Period 6	11.65	13.40	15.15	N/A
	Period 13		Period 7	11.64	13.39	15.14	N/A
	Period 1		Period 8	11.64	13.38	15.13	N/A
	Period 2		Period 9	11.63	13.37	15.11	N/A
	Period 3		Period 10	11.62	13.36	15.10	N/A

Column 1				Column 2	Column 3	Column 4	Column 5
Franchisee Year	Reporting Period	Performance Calculation year	Reporting period	Target Performance Level (Delay minutes per 1000 train miles)	Breach Performance Level (Delay minutes per 1000 train miles)	Default Performance Level (Delay minutes per 1000 train miles)	Breach Period Performance Level (Delay minutes per 1000 train miles)
	Period 4		Period 11	11.61	13.35	15.09	N/A
	Period 5		Period 12	11.60	13.34	15.08	N/A
	Period 6		Period 13	11.59	13.33	15.07	N/A

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Part 2

Annual TOC Minute Delay Benchmark Table

Column 1	Column 2	Column 3	Column 4	
Performance Year	Calculation	Annual Cap Performance Level (Delay minutes per 1000 train miles)	Annual Target Performance Level (Delay minutes per 1000 train miles)	Annual Breach Performance Level (Delay minutes per 1000 train miles)
Year 1		9.42	11.08	12.74
Year 2		12.33	14.50	16.68
Year 3		11.99	14.10	16.22
Year 4		11.35	13.35	15.35
Year 5		10.56	12.43	14.29
Year 6		10.16	11.95	13.75
Year 7		10.07	11.84	13.62
First year of the 26 Reporting Periods Extension		9.96	11.72	13.48
Second year of the 26 Reporting Periods Extension		9.85	11.59	13.33

Part 3

Annual TOC Minutes Delay Payment Table

Definition	Amount (£)
PBP	3,500,000
PPP	7,100,000

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SCHEDULE 7.2

PEM Regime

1. Introduction

This Schedule 7.2 provides for:

- 1.1 the service quality management and process arrangements to be put in place by the Franchisee for the management and delivery of service quality for the Franchise Term;
- 1.2 the responsibilities including the inspection, auditing and reporting requirements of the Franchisee;
- 1.3 the rights of the Secretary of State to witness audits carried out by the Franchisee;
- 1.4 the means of the measurement and reporting of the level of performance identified during inspections required to be carried out by the Franchisee in accordance with the QuEST Service Schedules;
- 1.5 the means of calculation of any PEM Payments;
- 1.6 the remedies available to the Secretary of State in the event of underperformance by the Franchisee;
- 1.7 the application of the NPS Surveys for the purposes of determining the level of performance and the calculation of the PEM and PEM Payments;
- 1.8 the performance information the Franchisee will be required to publish; and
- 1.9 Appendix 5 to this Schedule 7.2 sets out the basis for undertaking QuEST Inspections for certain QuEST Service Schedules.

QuEST Regime

2. Obligations of the Franchisee

- 2.1 The Franchisee shall put in place management arrangements and processes (including the collection of relevant data) which shall (as a minimum):
 - (a) be capable of measuring and reporting the Franchisee's performance against each QuEST Service Specification; and
 - (b) set out procedures for:
 - (i) ensuring compliance with the requirements of this Schedule 7.2 including the obligation to conduct QuEST Inspections as required pursuant to paragraph 2; and
 - (ii) identifying and rectifying failures identified during each QuEST Inspection (including processes which ensure that corrective actions identified during any QuEST Inspection are undertaken in a diligent and prompt manner),

(the "**QuEST Management System**").

2.2 The QuEST Management System shall be implemented and fully operational by no later than:

- (a) in respect of the TGN Services, the first day of the Reporting Period commencing in January 2015; and
- (b) in respect of the Southern Services, the first day of the Reporting Period commencing in October 2015.

If at any during time the Franchise Term the Franchisee operates or provides Stations or Passenger Services which are not comprised in the TGN Services or the Southern Services (the "**New Services**") the Franchisee shall update its QuEST Management System to include such Stations and/or Passenger Services by the later of the first day of the Reporting Period after the date upon which the Franchisee begins to operate or provide such Stations or Passenger Services and the first day of the Reporting Period commencing in January 2015.

2.3 **QuEST Register**

- (a) The Franchisee shall prepare and complete the QuEST Register by no later than the date upon which the Franchisee is required pursuant to paragraph 2.4 to undertake or procure the undertaking of the first QuEST Inspection. The form and content of the QuEST Register shall include:

[Bidders to populate: Insert provisions which reflect the Bidder's proposal in relation to the format and scope of information to be included in the QuEST Register as specified in bid.]

- (b) The Franchisee shall:
 - (i) maintain the QuEST Register; and
 - (ii) update such QuEST Register:
 - (A) by no later than the first day of the Reporting Period commencing in October 2015 to include the facilities and services which exist at a Station or a QuEST Train comprised in the Southern Services;
 - (B) at the same time as the Franchisee is required pursuant to paragraph 2.2 to update the QuEST Management System in respect of New Services, to include the facilities and services which exist at a Station or a QuEST Train comprised in any such New Service; and
 - (C) in any case, at such regular intervals as is reasonably necessary; and
 - (iii) immediately at the request of the Secretary of State, provide an up to date copy of the QuEST Register to the Secretary of State or to any person carrying out an SoS Audit or SoS QuEST Inspection on behalf of the Secretary of State).

QuEST Inspections

2.4 In each Reporting Period commencing from:

- (a) the first day of the Reporting Period commencing in January 2015 in relation to the TGN Services; and
- (b) the first day of the Reporting Period commencing in October 2015 in relation to the Southern Services,

and, in each case, for the duration of the Franchise Term, the Franchisee shall, in accordance with the requirements of paragraph 2.5, undertake or procure the undertaking of QuEST Station Services Inspections, QuEST Train Services Inspections and the QuEST CCTV Services Inspections (the "**QuEST Inspections**").

2.5 The Franchisee shall (as a minimum):

- (a) ensure that each QuEST Inspection is carried out accurately and impartially by independent persons (who for these purposes can be Franchise Employees):
 - (i) who are not responsible for the management or operation of any of the Stations, QuEST Trains or QuEST CCTV Services; and
 - (ii) whose base salary payment or provision of any benefit (whether contractual or otherwise) is not dependent on the result of any QuEST Inspections;
- (b) where relevant, ensure that each QuEST Inspection is undertaken as specified in Appendix 5 to this Schedule 7.2;
- (c) ensure that any Franchise Employee who is involved in the operations of any Stations, QuEST Trains or QuEST CCTV Services (including any person who is responsible for the management and operation of any such Stations, QuEST Trains or QuEST CCTV Services) in respect of which a QuEST Inspection is to be undertaken is not notified or otherwise made aware of the date or time of any proposed or actual QuEST Inspection;
- (d) ensure that each Station is the subject of a QuEST Station Services Inspection as follows:
 - (i) at least 4 times in each Calculation Year (other than the last Calculation Year of the Franchise Term); and
 - (ii) for the last Calculation Year of the Franchise Term, at least the number of times (rounded down to the next whole number, that is 2.7 is rounded down to 2) determined as follows:

$$SI \times \frac{NCY}{365}$$

where:

SI equals 4; and
NCY is the number of days in the last Calculation Year;

(e) ensure that QuEST Station Services Inspections are carried out so that in total (that is, including the QuEST Station Services Inspections required pursuant to paragraph 2.5(d)):

(i) in respect of each Reporting Period falling within the first day of the Reporting Period commencing in January 2015 until the last day of the Reporting Period which commences in September 2015, at least 50 QuEST Station Services Inspections are carried out in each such Reporting Period; and

(ii) in respect of each Reporting Period thereafter, 150 QuEST Station Services Inspections are carried out in each such Reporting Period,

and, in each case, with the probability of any particular Station being selected for additional QuEST Station Services Inspections under this paragraph 2.5(e) in any Reporting Period being proportionate to typical passenger footfall at such Station relative to other Stations;

(f) undertake:

(i) in respect of each Reporting Period falling within the first day of the Reporting Period commencing in January 2015 until the last day of the Reporting Period which commences in September 2015, a minimum of 50 QuEST Train Services Inspections in respect of each vehicle comprised within a QuEST Train in each such Reporting Period; and

(ii) in respect of each Reporting thereafter, a minimum of 120 QuEST Train Services Inspections in respect of each vehicle comprised within a QuEST Train in each such Reporting Period,

and, in each case, with such QuEST Train Services Inspections being distributed across the day and between the days of the week in proportion to the typical distribution of passenger journeys across the day and between the days of the week; and

(g) undertake:

(i) in respect of each Reporting Period falling within the first day of the Reporting Period commencing in January 2015 until the last day of the Reporting Period which commences in September 2015, a minimum of [x]¹⁶ number of QuEST CCTV Services Inspections in each such Reporting Period; and

¹⁶ Bidder to populate.

- (ii) in respect of each Reporting thereafter, a minimum of [x]¹⁷ number of QuEST CCTV Services Inspections in each such Reporting Period.

[Bidders to populate: provisions in 2.5(g) to be amended./supplemented by the Bidders to reflect the bidders proposals on how CCTV Service Inspections will be conducted.]

- (h) For any Reporting Period which is longer than 32 days or shorter than 25 days the minimum number of:
 - (i) Quest Stations Services Inspections as specified in paragraphs 2.5(d) and 2.5(e);
 - (ii) QuEST Train Services Inspections as specified in paragraph 2.5(f); and
 - (iii) QuEST CCTV Services Inspections as specified in paragraph 2.5(g),

shall be increased or reduced pro rata based on a normal Reporting Period of 28 days.

2.6 **Maintenance of Records**

Without limiting the obligations of the Franchisee pursuant to paragraphs 1.5 and 1.6 of Schedule 13 (Information and Industry Initiatives), the Franchisee shall, for the duration of the Franchise Term, maintain true, up to date and complete records of the results of each QuEST Inspection and its calculations of the Pass Rates, PEM and PEM Payments in relation to such QuEST Inspections. The Franchisee shall, immediately at the request of the Secretary of State, make any such records available to the Secretary of State.

Annual Audits

2.7

- (a) In respect of each Calculation Year the Franchisee shall (at its cost) procure the carrying out of an independent audit (which for these purposes shall include the carrying out of inspections which are conducted on a basis that is, as far as reasonably practicable, consistent with the QuEST Inspections undertaken in that Calculation Year) to verify and confirm that the:
 - (i) QuEST Management System complies with the requirements of paragraph 2.1 and has been implemented as required pursuant to paragraph 2.2;
 - (ii) QuEST Inspections undertaken in that Calculation Year comply with the requirements of paragraph 2.5;
 - (iii) Pass Rates reported by the Franchisee for Reporting Periods within that Calculation Year have been calculated in accordance with the requirements of paragraph 3.1;

¹⁷

Bidder to populate.

- (iv) Pass Rates, PEM and the PEM Payment reported by the Franchisee for that Calculation Year have been calculated in accordance with paragraphs 3.2 and 5 (respectively); and
 - (b) such audit shall:
 - (i) also confirm that, after having regards to the findings of such inspections, its assessment of the matters referred to in paragraphs 2.7(a)(i) to 2.7(a)(iv) and any other relevant information at the disposal of any person conducting the Independent PEM Audit, it can reasonably be concluded that the Pass Rates reported by the Franchisee for that Calculation Year and/or for Reporting Periods within that Calculation Year are a fair, accurate and impartial reflection of the Franchisee's performance against each QuEST Service Specification; or
 - (ii) state that such confirmation cannot be provided,
- (the "**Independent PEM Audit**").

Any Independent PEM Audit shall be for the benefit of the Secretary of State. Each terms of reference for the procurement of an Independent PEM Audit and the identity of any independent person proposed to undertake such audit shall be approved by the Secretary of State prior to any procurement by the Franchisee of any such Independent PEM Audit.

- 2.8 The Secretary of State (and any of his employees, agents, representatives and/or advisers, each such employee, agent, representative and/or adviser to be referred to as his nominee for the purposes of this paragraph 2) shall have the right to witness any QuEST Inspection or Independent PEM Audit (as the case may be). The Franchisee shall co-operate in good faith with the Secretary of State in permitting the Secretary of State (including his nominees) to exercise his rights under this paragraph 2.8 including by promptly providing to him the details of how and when any Independent PEM Audit will be conducted a reasonable time (and in any event not less than 2 weeks) prior to the commencement of any such Independent PEM Audit.
- 2.9 The Franchisee shall provide the report of any Independent PEM Audit to the Secretary of State as soon as reasonably practicable after the end of the Calculation Year to which it relates and in any event by no later than the date that is 3 Reporting Periods after the end of the relevant Calculation Year. To the extent that any confirmation required pursuant to paragraph 2.7 cannot be provided in respect of any Independent PEM Audit the Franchisee shall procure that any such audit report specifies in detail the reasons why such confirmation cannot be given (including details of any material discrepancies between any Pass Rate reported by the Franchisee in accordance with paragraphs 3.1 and/or 3.2 and a comparable Pass Rate derived from the inspections carried out as part of the Independent PEM Audit (and in particular where any such material discrepancies are in favour of the Franchisee)).

Secretary of State's right of audit

- 2.10 Without prejudice to any other audit rights the Secretary of State may have under the Franchise Agreement, the Secretary of State (and his employees, representatives, agents and advisers on his behalf) shall have the right to carry out audits (the "**SoS Audits**") for the purposes of verifying, as a minimum, the

matters referred to in paragraph 2.7. The Secretary of State shall use his reasonable endeavours to procure that any inspections carried out as part of any SoS Audits undertaken pursuant to this paragraph 2.10 are conducted on a basis that is, as far as reasonable practicable, consistent with the QuEST Inspections undertaken in respect of the Calculation Year to which the SoS Audit relates.

2.11 The Franchisee shall grant such access to information, individuals and facilities including:

- (a) access to the Stations, QuEST Trains and any premises used for the monitoring of CCTVs;
- (b) access to schedules of the locations and times of any actual or planned QuEST Inspections; and
- (c) access to the relevant Franchise Employees, records and information (including access to relevant third parties and information, records and other materials kept by such third parties on behalf of the Franchisee),

as is reasonably necessary to enable the Secretary of State (and his nominees) to witness any QuEST Inspections or Independent PEM Audits pursuant to paragraph 2.7 or to exercise its audit rights under paragraphs 2.10 or to undertake SoS QuEST Inspections. The Franchisee shall ensure that it has necessary arrangements in place with any relevant third parties for the purposes of ensuring that it can comply with its obligations under this paragraph 2.11.

2.12 The Secretary of State shall use reasonable endeavours to ensure that the persons employed in undertaking any SoS Audits carry out such audits diligently and objectively.

2.13 The Secretary of State shall use reasonable endeavours to notify the Franchisee of the result of any SoS Audit that is undertaken.

2.14 In carrying out any SoS Audit or witnessing any QuEST Inspections or Independent PEM Audits, the Secretary of State shall, subject to paragraph 2.15, be responsible for ensuring that his nominees:

- (a) are appropriately trained and briefed with respect to such reasonable location-specific safety rules and regulations; and
- (b) obey such reasonable location-specific rules and regulations in respect of security and access,

in each case, as have been notified to the Secretary of State under paragraph 2.15.

2.15 The Franchisee shall provide reasonable prior notice from time to time of current location-specific access, security and safety rules and regulations to the Secretary of State for the purpose of ensuring that the Secretary of State (and his nominees) can carry out their respective inspection and auditing rights in an efficient, secure and safe manner.

Consequences of a Failed SoS Audit or Independent PEM Audit

2.16 If:

- (a) following an Independent PEM Audit or SoS Audit (as the case may be) any such audit cannot verify or confirm any of the matters referred to in paragraph 2.7 or any confirmation required by paragraph 2.7 cannot be provided; or
- (b) the Franchisee fails to:
 - (i) carry out a QuEST Inspection as required by paragraph 2.5; or
 - (ii) calculate the Pass Rates and/or report to the Secretary of State the Pass Rates as required pursuant to paragraphs 3.1 or 3.2; or
 - (iii) procure that an Independent PEM Audit is carried out or fails to provide an audit report as required pursuant to paragraph 2.9,

then the provisions of paragraphs 2.17 and 2.18 shall apply.

2.17 If any of the circumstances specified in paragraph 2.16 occur then:

- (a) the Secretary of State may in the case of an SoS Audit, require the Franchisee to reimburse to him the reasonable and proper costs incurred in undertaking any such SoS Audit; and
- (b) the Secretary of State may in all cases:
 - (i) require the Franchisee to carry out additional QuEST Inspections at the Franchisee's cost (that is, in excess of those required pursuant to paragraph 2.5);
 - (ii) require the Franchisee to procure a further Independent PEM Audit (or the Secretary of State may carry out a further SoS Audit) for the purposes of verifying whether any deficiencies in the QuEST Management System that have led or contributed to the failure of any Independent PEM Audit or SoS Audit to confirm or verify any of the matters referred to in paragraph 2.7 have been subsequently rectified by the Franchisee; or
 - (iii) elect to step in and carry out inspections of the QuEST Station Services, QuEST Train Services and QuEST CCTV Services himself (or by a nominee on his behalf) (the "**SoS QuEST Inspections**") in place of QuEST Inspections for the duration of the Franchise Term or such other period as the Secretary of State may specify (the "**SoS QuEST Inspection Period**") and in these circumstances:
 - (A) the results of each SoS QuEST Inspection shall be used for the purposes of calculating the Pass Rates, PEM and the PEM Payments in accordance with paragraphs 3.1, 3.2 and 5 (respectively);

- (B) the Franchisee's obligations to undertake QuEST Inspections and procure an Independent PEM Audit shall cease to apply for the duration of the SoS QuEST Inspection Period; and
- (C) the Secretary of State may require the Franchisee to reimburse to him the reasonable and proper costs incurred by him in undertaking any such SoS QuEST Inspection during the SoS QuEST Inspection Period.

2.18

- (a) On the first occasion that any Independent PEM Audit or SoS Audit (as the case may be) reveals that the value of PEM as reported by the Franchisee for a Calculation Year (the "**Reported PEM**") was incorrect (including where any such Independent PEM Audit or SoS Audit (as the case may be) fails to confirm or verify any of the matters specified in paragraphs 2.7(a) or 2.7(b)), the Franchisee and the Secretary of State shall agree the value of PEM (or on failure to agree, the Secretary of State shall reasonably determine the value of PEM) for that Calculation Year (the "**True PEM**"). Where True PEM is:
 - (i) more than the Reported PEM then, for the purposes of paragraph 5, the calculation of the PEM Payment for that Calculation Year shall be determined using the value of the Reported PEM; or
 - (ii) less than the Reported PEM then, for the purposes of paragraph 5 and the calculation of the PEM Payment for that Calculation Year, the value of PEM shall be substituted by the Adjusted PEM where Adjusted PEM is determined as follows:

$$\text{Adjusted PEM} = \text{True PEM} - 2 \times (\text{Reported PEM} - \text{True PEM}).$$
- (b) If the circumstance specified in paragraph 2.18(a) occurs on more than one occasion then a contravention of the Franchise Agreement shall occur.

3. **Reporting Arrangements**

- 3.1 Within 14 days after the end of each Reporting Period, the Franchisee shall provide to the Secretary of State:
 - (a) a statement setting out the following:
 - (i) the number of QuEST Inspections carried out in respect of each QuEST Service Schedule in that Reporting Period;
 - (ii) the number of QuEST Inspections where a "fail" was recorded in respect of a QuEST Service Specification in that Reporting Period and setting out (to the extent known) the reasons why such failures occurred;
 - (iii) the number of QuEST Inspections where a "pass" was recorded in respect of a QuEST Service Specification in that Reporting Period;

- (b) in respect of that Reporting Period, its calculation of:
- (i) the Pass Rate for each of the QuEST Service Schedules, such Pass Rate to be calculated as follows:

$$P_r = \frac{Q_p}{Q_t}$$

where:

P_r is the Pass Rate for a QuEST Service Schedule for that Reporting Period;

Q_p is the total number of QuEST Inspections carried out in respect of that QuEST Service Schedule in that Reporting Period which did not result in a "fail"; and

Q_t is the total number of QuEST Inspections carried out in respect of that QuEST Service Schedule in that Reporting Period.

- 3.2 Within 14 days after the end of each Calculation Year, the Franchisee shall provide to the Secretary of State its calculation of the Pass Rate for that Calculation Year in respect of each QuEST Service Schedule, such Pass Rate to be calculated as follows:

$$FP_r = \frac{Q_p F}{Q_t F}$$

where:

FP_r is the Pass Rate for a QuEST Service Schedule for that Calculation Year;

$Q_p F$ is the total number of QuEST Inspections carried out in respect of that QuEST Service Schedule in that Calculation Year which did not result in a "fail"; and

$Q_t F$ is the total number of QuEST Inspections carried out in respect of that QuEST Service Schedule in that Calculation Year.

- 3.3 The Franchisee shall publish (as a minimum):

- (a) the Pass Rate for each QuEST Service Schedule for each Reporting Period and each Calculation Year alongside the applicable QuEST Benchmark Level and QuEST Floor Level for such QuEST Service Schedule on its website; and
- (b) the Pass Rate for each Calculation Year alongside the applicable QuEST Benchmark Level and QuEST Floor Level for such QuEST Service Schedule for that Calculation Year in its Customer Report. The Customer Report shall also inform passengers on where they can obtain information in relation to the Pass Rates for each Reporting Period.

4. **NPS Regime**

Conduct of NPS Surveys

4.1 The Franchisee agrees with the Secretary of State that:

- (a) the Passengers' Council may measure the level of passenger satisfaction with the Franchise Services through NPS Surveys;
- (b) the Passengers' Council shall determine how, when (normally twice per annum) and where NPS Surveys are to be carried out;
- (c) the Franchisee shall grant access on trains or at stations to the Passengers' Council (or its representatives and agents) to carry out NPS Surveys;
- (d) the Franchisee shall co-operate with the Passengers' Council (in such manner as the Passengers' Council may reasonably request or as the Secretary of State may reasonably direct) in order to enable the Passengers' Council to carry out NPS Surveys; and
- (e) the Passengers' Council and/or the Secretary of State may, from time to time, publish the results of the NPS Surveys.

4.2 The Secretary of State shall or shall procure that:

- (a) the findings of any NPS Survey are made available by the Passengers' Council to the Franchisee within a reasonable period of time after the completion of each such survey; and
- (b) if any such survey includes a comparison between its findings and the findings of any equivalent earlier survey, such comparison forms a reasonable basis for monitoring the trends of passenger satisfaction over time.

4.3 The Franchisee shall, as soon as reasonably practicable after such information is made available to the Franchisee in accordance with paragraph 4.2, publicise its performance in relation to each NPS Indicator, at least by displaying such information on its website and including such information within its Customer Reports.

4.4 It is agreed by the Franchisee that, subject to paragraph 4.5, the methodology to be adopted by the Passengers' Council in conducting any such NPS Survey shall be as described in the document in the agreed terms marked **PSM** (the "**Passenger Survey Methodology**");

4.5 If:

- (a) at any time during the Franchise Term the methodology adopted in conducting any NPS Survey is, in the reasonable opinion of the Secretary of State, materially inconsistent with the Passenger Survey Methodology; and
- (b) the Secretary of State reasonably determines that in consequence a revision to the NPS Benchmarks is required in order to hold constant the risk of the Franchisee failing to satisfy the requirements of any NPS Benchmark,

then the Secretary of State shall make such revisions to such NPS Benchmarks as he reasonably considers appropriate to hold constant such risk.

4.6 If the Passengers' Council ceases to undertake NPS Surveys then the relevant NPS Survey for the purposes of this Schedule 7.2 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 (the "**Alternative NPS**"). The provisions of this Schedule 7.2 shall apply in respect of any Alternative NPS and for these purposes Passengers' Council shall be replaced with such other entity that is responsible for conducting such Alternative NPS.

4.7 It is agreed by the Secretary of State and the Franchisee that the results of the NPS Survey(s) carried out by the Passengers' Council in any Calculation Year shall be used to determine:

- (a) the Franchisee's performance in respect of each NPS Indicator for that Calculation Year; and
- (b) the PEM and the PEM Payment for that Calculation Year in accordance with paragraph 5.

4.8 If in any Calculation Year the Passengers' Council has conducted:

- (a) only one NPS Survey in that Franchisee Year then the performance of the Franchisee against each NPS Indicator shall be measured against, and the PEM and PEM Payments shall be calculated using, the results of such NPS Survey; or
- (b) more than one NPS Survey in that Calculation Year then the performance of the Franchisee against each NPS Indicator shall be measured against, and the PEM and PEM Payments shall be calculated using, the average of the results of all of the NPS Surveys conducted by the Passengers' Council in that Calculation Year.

4.9 For the purposes of undertaking the determination pursuant to paragraph 4.7, the results referred to in paragraph 4.8(a) or paragraph 4.8(b) (as the case may be) shall be rounded to two decimal places with the midpoint (that is, 4.455) rounded upwards (that is, 4.46).

5. **Calculation of the PEM and the PEM Payments**

5.1

- (a) For each Calculation Year the Franchisee shall calculate a weighted sum of the Franchisee's performance in respect of each NPS Indicator and QuEST Service Schedule as follows:

$$PEM = \sum_{i=1}^{53} \alpha_i \times ACTUAL_i$$

where:

PEM is the weighted sum of the Franchisee's performance in respect of each NPS Indicator and QuEST Service Schedule;

α_i is the weighting factor as specified in column 4 of the table in Appendix 1 in respect of each NPS Indicator and column 2 of the

table in Appendix 2 of this Schedule 7.2 in respect of each QuEST Service Schedule;

ACTUAL_i is the actual level of performance for each indicator:

- (a) in the case of each NPS Indicator, as derived using the NPS Survey for that Calculation Year (in accordance with paragraph 4.8) provided that in respect of the Calculation Year commencing in January 2015 the relevant NPS Indicators for the purposes of calculating the PEM Payment for that Calculation Year shall be those applicable in relation to the TGN Services only; and
 - (b) in the case of each QuEST Service Schedule, being the Pass Rate for each QuEST Service Schedule as calculated in accordance with paragraph 3.2 provided that in respect of the Calculation Year commencing in January 2015 and for the purposes of calculating the PEM Payment for that Calculation Year, such Pass Rate shall be those applicable in relation to the TGN Services only.
- (b) For each Calculation Year, the Franchisee shall by the later of:
- (i) the date that is 28 days following the receipt of the findings of the last NPS Survey carried out during that Calculation Year in accordance with paragraph 4.2; and
 - (ii) the date that is 28 days after the end of that Calculation Year,
- calculate and notify to the Secretary of State the value of PEM and the PEM Payment (calculated in accordance with this paragraph 5) for that Calculation Year.
- (c) On the later of receipt of the:
- (i) notification referred to in paragraph 5.1(b) by the Secretary of State in respect of any Calculation Year; and
 - (ii) any audit report relating to any Independent PEM Audit or SoS Audit (as the case may be) undertaken in respect of that Calculation Year,
- the Secretary of State shall:
- (A) confirm to the Franchisee that he agrees with the calculation of PEM and the PEM Payment for that Calculation Year, in which case, the PEM Payment for that Calculation Year shall be paid in accordance with paragraph 5.1(d); or
 - (B) where any Independent PEM Audit or SoS Audit (as the case may be) reveals that the calculation of PEM (and so the PEM Payment) for that Calculation Year was incorrect (including where any such Independent PEM Audit or SoS Audit (as the case may be) fails to confirm or verify any of the matters specified in

paragraphs 2.7(a) or 2.7(b)), notify the Franchisee of that fact and the provisions of paragraph 2.18(a) shall apply.

- (d) Any PEM Payment to be made in respect of any Calculation Year shall be made by way of adjustment to Franchise Payments on the next Payment Date which falls more than 7 days following:
- (i) the receipt of the confirmation from the Secretary of State pursuant to paragraph 5.1(c)(ii)(A); or
 - (ii) in the circumstances specified in paragraph 5.1(c)(ii)(B), following the determination of the value of PEM and the calculation of the applicable PEM Payment in accordance with paragraph 2.18(a),

provided that any PEM Payment to be made in respect of the final Calculation Year shall be calculated in accordance with paragraph 5 but shall be paid by the Franchisee to the Secretary of State or the Secretary of State to the Franchisee (as the case may be) within 30 days of the receipt of the confirmation from the Secretary of State pursuant to paragraph 5.1(c)(ii)(A) or in the circumstances specified in paragraph 5.1(c)(ii)(B), following the determination of the value of Adjusted PEM and the calculation of the applicable PEM Payment in accordance with paragraph 2.18(a).

PEM Payments

5.2 The PEM Payment for each Calculation Year shall be calculated as follows:

- (a) where the value of PEM as calculated in accordance with paragraph 5.1 or paragraph 2.18(a) (as the case may be) is:
- (i) greater than or equal to the PEM Ceiling Level then the payment from the Secretary of State to the Franchisee shall be an amount that is equal to the value of CPAYT,

where CPAYT is:

- (A) in respect of the first Calculation Year (commencing on the first day of the Reporting Period commencing in January 2015) an amount determined as follows:

$$TYP \times AF$$

where:

TYP is the amount specified in the second row of the table in Appendix 4 of this Schedule 7.2; and

AF is 0.4; and

- (B) in respect of any subsequent Calculation Year, the amount specified in the second row of the table in Appendix 4 of this Schedule 7.2 x RPI, where RPI is the quotient of the Retail Prices Index for the January

in which that subsequent Calculation Year commences divided by the Retail Prices Index for January 2015 save that where the last Calculation Year is shorter or longer than 13 Reporting Periods, CPAYT shall be reduced pro rata;

- (ii) less than the PEM Ceiling Level but greater than the PEM Benchmark Level then the Secretary of State shall pay to the Franchisee an amount determined as follows:

$$\frac{(PEM - PEMBenchmark)}{(PEMCeiling - PEMBenchmark)} \times CPAYT$$

where:

PEM is as determined pursuant to paragraph 5.1 or paragraph 2.18(a) (as the case may be);

PEMBenchmark is the PEM Benchmark Level for that Calculation Year; and

PEMCeiling is the PEM Ceiling Level for that Calculation Year; and

CPAYT has the meaning given to it in paragraph 5.2(a)(i);

- (iii) less than or equal to the PEM Floor Level then the payment from the Franchisee to the Secretary of State (such payment to be a negative amount for the purposes of the formula in paragraph 1.1 of Schedule 8.1 (Franchise Payments) notwithstanding that the amount calculated as below produces a positive number) shall be an amount that is equal to FPAYT where FPAYT is:

- (A) in respect of the first Calculation Year (commencing on the first day of the Reporting Period commencing in January 2015) an amount determined as follows:

$$TYP \times AF$$

where:

TYP is the amount specified in the first row of the table in Appendix 4 of this Schedule 7.2; and

AF is 0.4; and

- (B) in respect of any subsequent Calculation Year, the amount specified in the first row of the table in Appendix 4 of this Schedule 7.2 x RPI, where RPI is the quotient of the Retail Prices Index for the January in which that subsequent Calculation Year commences divided by the Retail Prices Index for January 2015 save that where the last Calculation

Year is shorter or longer than 13 Reporting Periods, FPAYT shall be reduced pro rata; and

- (iv) less than the PEM Benchmark Level but greater than the PEM Floor Level the payment (such payment to be a negative amount for the purposes of the formula in paragraph 1.1 of Schedule 8.1 (Franchise Payments) notwithstanding that the amount calculated as below produces a positive number) from the Franchisee to the Secretary of State shall be determined as follows:

$$\frac{(PEMBenchmark - PEM)}{(PEMBenchmark - PEMFloor)} \times FPAYT$$

where:

PEM is as determined pursuant to paragraph 5.1 or paragraph 2.18(a) (as the case may be);

PEMBenchmark is the PEM Benchmark Level for that Calculation Year; and

PEMFloor is the PEM Floor Level for that Calculation Year; and

FPAYT has the meaning given to it in paragraph 5.2(a)(iii);

- (b) For the avoidance of doubt:

- (i) no PEM Payment shall be made:

(A) if PEM in any Calculation Year is equal to the PEM Benchmark Level for that Calculation Year; and

(B) in respect of any Calculation Year commencing prior to January 2015; and

- (ii) for the purposes of calculating the PEM Payment for the first Calculation Year commencing on the first day of the Reporting Period in January 2015, only the NPS Indicators and the Pass Rates for the TGN Services shall apply.

6. Variations to the QuEST Regime

- 6.1 Without prejudice to paragraph 6.2, the Secretary of State and the Franchisee may from time to time agree to vary the contents of the QuEST Schedules, the NPS Benchmarks, the QuEST Benchmarks or the PEM Benchmarks (including the weightings ascribed to each QuEST Benchmark and each NPS Benchmark and/or the values of the CPAYT and FPAYT (as each such term is defined in paragraph 5.2)) including by reducing the QuEST Benchmarks as specified in respect of certain QuEST Service Schedules or certain NPS Benchmarks (as the case may be) and at the same time increasing others. Any variation agreed by the Secretary of State and the Franchisee pursuant to this paragraph 6 shall be effective from the date agreed by the parties for this purpose. Any such variation

as agreed by the Secretary of State and the Franchisee shall not constitute a Change.

6.2 The parties agree that the Secretary of State shall have the right at any time during the Franchise Period to vary the provisions of this Schedule 7.2 (including in respect of any of the matters referred to in paragraph 6.1). The exercise by the Secretary of State of his rights under this paragraph 6.2 shall be a Change.

7. **Consequences of performance falling below the NPS Floor Level, QuEST Floor Level or PEM Floor level**

7.1 If:

- (a) the Pass Rate calculated in accordance with paragraph 3.1 for any QuEST Service Schedule is below the QuEST Floor Level for:
 - (i) any three consecutive Reporting Periods; or
 - (ii) any four Reporting Periods within any period of thirteen consecutive Reporting Periods; or
- (b) in respect of any Calculation Year the Pass Rate calculated in accordance with paragraph 3.2 for any QuEST Service Schedule is below the QuEST Floor Level; or
- (c) in respect of any Calculation Year the average of the results of each NPS Survey carried out in that Calculation Year (as determined in accordance with paragraph 4.8) show that the level of customer satisfaction in respect of any NPS Indicator is below the NPS Floor Level for that Calculation Year; or
- (d) in respect of any Calculation Year the PEM is below the PEM Floor Level for that Calculation Year,

then the Franchisee shall immediately notify the Secretary of State of such fact and within 28 days (or such longer period as the Secretary of State may specify) of the date of any such notification submit to the Secretary of State (for his approval) its proposals (including proposed timescales for the implementation of any such proposals) for ensuring that the affected NPS Indicator, QuEST Service Schedule or the value of PEM (as the case may be) will, as soon as reasonable practicable, be provided at a level that is equal to or above the QuEST Benchmark Level, the NPS Benchmark Level or the PEM Benchmark Level (as applicable).

7.2 If the Secretary of State is not reasonably satisfied that any proposal submitted to him by the Franchisee pursuant to paragraph 7.1 will ensure that the relevant QuEST Service or that the Franchisee's performance in relation to any NPS Survey will, as soon as reasonably practicable, be provided at a level that is equal to or above the QuEST Benchmark Level, the NPS Benchmark Level or the PEM Benchmark Level (as applicable) then the Secretary of State will notify the Franchisee of such fact (including his reasons for not being so reasonably satisfied) and the Franchisee shall within two weeks (or such longer period as the Secretary of State may specify) from receipt of any such notice from the Secretary of State submit a revised proposal which seeks to address any of the Secretary of State's concerns as notified to the Franchisee (the "**Revised Proposal**").

7.3 Following receipt of any proposal pursuant to paragraph 7.1 or receipt of a Revised Proposal the Secretary of State may require the Franchisee to implement any such proposal within such timescales as the Secretary of State may reasonably determine having regard to any timescales proposed by the Franchisee in any such proposal.

7.4 If following receipt of any Revised Proposal the Secretary of State is still not satisfied that such Revised Proposal will ensure that the relevant QuEST Service or that the Franchisee's performance in relation to any NPS Survey will, as soon as reasonably practicable, be provided at a level that is equal to or above the QuEST Benchmark Level, the NPS Benchmark Level or the PEM Benchmark Level (as applicable) then the Secretary of State may require the Franchisee to implement such alternative proposals or measures as the Secretary of State may reasonably determine, within such timescales as he may reasonably determine having regard to any timescales proposed by the Franchisee in such Revised Proposal.

7.5 If:

- (a) the Franchisee fails to implement any proposal as required pursuant to this paragraph 7 within the required timescales; or
- (b) the relevant QuEST Service or the Franchisee's performance in relation to any NPS Survey is not at a level that is equal to or above the QuEST Benchmark Level, the NPS Benchmark Level or the PEM Benchmark Level (as the case may be) within the period specified in such proposal (or the period reasonably determined by the Secretary of State in exercise of his rights under paragraph 7.3 or 7.4 (as the case may be),

then a contravention of the Franchise Agreement shall occur and the Secretary of State may (except as he may otherwise agree including by agreeing a variation pursuant to paragraph 6), and without prejudice to his other rights consequent upon the relevant contravention, serve a Remedial Plan Notice pursuant to paragraph 1.1 of Schedule 10.1 (Remedial Plans and Remedial Agreements).

APPENDIX 1 TO SCHEDULE 7.2

NPS indicators, benchmarks, floors and weightings

(1)		(2)								(3)								(4)
NPS Indicator		NPS Benchmark Level								NPS Floor Level								Weighting
		2014	2015	2016	2017	2018	2019	2020	2021	2014	2015	2016	2017	2018	2019	2020	2021	
(1)	How well train company deals with delays	31.2 2%	34.7 2%	40.1 3%	45.9 3%	47.7 9%	48.5 5%	48.7 3%	48.8 7%	26.2 2%	29.7 2%	35.1 3%	40.9 3%	42.7 9%	43.5 5%	43.7 3%	43.87 %	6.5%
(2)	How request to station staff was handled	83.9 7%	83.2 7%	83.5 7%	85.8 1%	86.4 8%	86.7 9%	86.8 5%	86.9 1%	78.9 7%	78.2 7%	78.5 7%	80.8 1%	81.4 8%	81.7 9%	81.8 5%	81.91 %	2.5%
(3)	The attitudes and helpfulness of the staff (Station)	69.0 2%	70.4 5%	73.2 8%	77.0 2%	78.2 0%	78.7 0%	78.8 1%	78.9 0%	64.0 2%	65.4 5%	68.2 8%	72.0 2%	73.2 0%	73.7 0%	73.8 1%	73.90 %	1.0%
(4)	Usefulness of Information Provided during Delay	44.6 1%	43.8 5%	44.8 0%	47.1 2%	47.8 2%	48.1 4%	48.2 0%	48.2 6%	39.6 1%	38.8 5%	39.8 0%	42.1 2%	42.8 2%	43.1 4%	43.2 0%	43.26 %	1.0%
(5)	The availability of staff (Station)	57.0 3%	58.6 4%	61.1 8%	63.7 9%	64.6 4%	64.9 8%	65.0 6%	65.1 3%	52.0 3%	53.6 4%	56.1 8%	58.7 9%	59.6 4%	59.9 8%	60.0 6%	60.13 %	1.0%
(6)	Provision of information about train times/platforms	78.1 4%	79.0 8%	80.6 2%	82.3 2%	82.8 7%	83.0 9%	83.1 4%	83.1 8%	73.1 4%	74.0 8%	75.6 2%	77.3 2%	77.8 7%	78.0 9%	78.1 4%	78.18 %	2.5%
(7)	Cleanliness (Station)	73.1 0%	73.6 8%	75.5 7%	79.4 5%	80.6 5%	81.1 7%	81.2 8%	81.3 8%	68.1 0%	68.6 8%	70.5 7%	74.4 5%	75.6 5%	76.1 7%	76.2 8%	76.38 %	1.0%
(8)	Ticket buying facilities	69.6 0%	71.2 7%	74.2 8%	78.1 2%	79.3 4%	79.8 5%	79.9 7%	80.0 6%	64.6 0%	66.2 7%	69.2 8%	73.1 2%	74.3 4%	74.8 5%	74.9 7%	75.06 %	1.0%
(9)	Facilities for car parking	44.7 8%	44.5 4%	44.5 0%	46.0 4%	47.5 9%	49.1 3%	50.6 8%	51.7 9%	39.7 8%	39.5 4%	39.5 0%	41.0 4%	42.5 9%	44.1 3%	45.6 8%	46.79 %	1.0%
(10)	The upkeep/repair of the station buildings/platforms	66.1 1%	66.7 1%	67.9 8%	70.1 2%	71.3 8%	72.5 0%	73.2 0%	73.4 5%	61.1 1%	61.7 1%	62.9 8%	65.1 2%	66.3 8%	67.5 0%	68.2 0%	68.45 %	1.0%

(1)		(2)								(3)								(4)
NPS Indicator		NPS Benchmark Level								NPS Floor Level								Weighting
		2014	2015	2016	2017	2018	2019	2020	2021	2014	2015	2016	2017	2018	2019	2020	2021	
(11)	The facilities and services (Station)	50.7 5%	52.0 9%	54.1 2%	56.6 7%	58.2 1%	59.5 6%	60.3 9%	60.6 7%	45.7 5%	47.0 9%	49.1 2%	51.6 7%	53.2 1%	54.5 6%	55.3 9%	55.67 %	1.0%
(12)	Your personal security whilst using that station	67.8 8%	68.3 0%	69.9 2%	72.4 9%	73.3 0%	73.6 4%	73.7 2%	73.7 8%	62.8 8%	63.3 0%	64.9 2%	67.4 9%	68.3 0%	68.6 4%	68.7 2%	68.78 %	1.0%
(13)	The provision of shelter facilities	61.3 9%	63.2 1%	65.4 8%	66.6 9%	67.1 1%	67.2 6%	67.3 1%	67.3 4%	56.3 9%	58.2 1%	60.4 8%	61.6 9%	62.1 1%	62.2 6%	62.3 1%	62.34 %	1.0%
(14)	Overall environment (Station)	66.7 6%	67.1 3%	68.2 9%	70.7 7%	72.2 0%	73.4 9%	74.3 0%	74.5 9%	61.7 6%	62.1 3%	63.2 9%	65.7 7%	67.2 0%	68.4 9%	69.3 0%	69.59 %	2.5%
(15)	Availability of seating (Station)	42.5 8%	42.2 6%	42.5 8%	45.3 0%	46.8 1%	48.2 0%	49.0 9%	49.4 2%	37.5 8%	37.2 6%	37.5 8%	40.3 0%	41.8 1%	43.2 0%	44.0 9%	44.42 %	1.0%
(16)	The cleanliness of the inside (Train)	63.1 4%	68.1 2%	74.7 3%	81.0 3%	83.7 2%	85.1 7%	85.6 6%	85.7 9%	58.1 4%	63.1 2%	69.7 3%	76.0 3%	78.7 2%	80.1 7%	80.6 6%	80.79 %	4.0%
(17)	Sufficient room for all passengers to sit/stand	60.2 9%	61.1 1%	64.0 4%	65.7 2%	68.2 0%	69.8 7%	70.5 4%	69.9 7%	55.2 9%	56.1 1%	59.0 4%	60.7 2%	63.2 0%	64.8 7%	65.5 4%	64.97 %	4.0%
(18)	The provision of information during the journey	49.0 6%	60.6 8%	74.7 2%	80.7 8%	82.7 6%	82.8 7%	83.0 1%	83.0 1%	44.0 6%	55.6 8%	69.7 2%	75.7 8%	77.7 6%	77.8 7%	78.0 1%	78.01 %	2.0%
(19)	Upkeep and repair of the train	59.7 9%	66.4 7%	75.2 3%	82.1 7%	84.3 7%	84.9 5%	85.1 3%	85.2 4%	54.7 9%	61.4 7%	70.2 3%	77.1 7%	79.3 7%	79.9 5%	80.1 3%	80.24 %	1.5%
(20)	Your personal security on board	70.5 1%	72.5 4%	76.3 6%	79.6 5%	80.9 7%	81.5 4%	81.8 6%	81.9 5%	65.5 1%	67.5 4%	71.3 6%	74.6 5%	75.9 7%	76.5 4%	76.8 6%	76.95 %	2.5%
(21)	The cleanliness of the outside (Train)	56.6 4%	63.2 8%	70.6 3%	74.7 8%	77.5 6%	79.8 8%	81.2 1%	81.5 8%	51.6 4%	58.2 8%	65.6 3%	69.7 8%	72.5 6%	74.8 8%	76.2 1%	76.58 %	1.0%
(22)	The space for luggage (Train)	44.1 0%	45.5 5%	46.6 2%	47.4 8%	48.3 5%	49.2 1%	50.0 7%	50.5 3%	39.1 0%	40.5 5%	41.6 2%	42.4 8%	43.3 5%	44.2 1%	45.0 7%	45.53 %	1.0%
(23)	Punctuality/reliability (i.e. the train arriving/departing on time)	76.1 6%	76.4 0%	76.6 8%	77.5 6%	78.6 3%	79.1 7%	79.3 1%	79.4 5%	71.1 6%	71.4 0%	71.6 8%	72.5 6%	73.6 3%	74.1 7%	74.3 1%	74.45 %	9.0%

APPENDIX 2 TO SCHEDULE 7.2

QuEST indicators and weightings

(1)		(2)								(3)								(4)
QuEST Benchmark		QuEST Benchmark Level								QuEST Floor Level								Weighting
		2014	2015	2016	2017	2018	2019	2020	2021	2014	2015	2016	2017	2018	2019	2020	2021	
(1)	Ticket Offices	94.0 3%	94.9 2%	97.2 1%	98.4 8%	98.8 0%	98.8 8%	98.9 3%	98.9 8%	89.0 3%	89.9 2%	92.2 1%	93.4 8%	93.8 0%	93.8 8%	93.9 3%	93.98 %	1.20%
(2)	Ticket Vending Machines	92.5 8%	93.3 7%	95.4 2%	96.5 5%	96.8 4%	96.9 1%	96.9 6%	97.0 0%	87.5 8%	88.3 7%	90.4 2%	91.5 5%	91.8 4%	91.9 1%	91.9 6%	92.00 %	1.20%
(3)	Station Shelters and Waiting Areas	85.0 3%	85.3 4%	86.4 4%	87.9 3%	88.8 0%	89.6 7%	89.9 7%	90.2 3%	80.0 3%	80.3 4%	81.4 4%	82.9 3%	83.8 0%	84.6 7%	84.9 7%	85.23 %	1.05%
(4)	Station Seats	88.0 9%	88.9 6%	91.2 1%	92.4 6%	92.7 8%	92.8 6%	92.9 1%	92.9 6%	83.0 9%	83.9 6%	86.2 1%	87.4 6%	87.7 8%	87.8 6%	87.9 1%	87.96 %	1.05%
(5)	Station Lights	90.0 9%	90.9 7%	93.2 4%	94.5 0%	94.8 3%	94.9 0%	94.9 5%	95.0 0%	85.0 9%	85.9 7%	88.2 4%	89.5 0%	89.8 3%	89.9 0%	89.9 5%	90.00 %	1.80%
(6)	Station Graffiti	85.2 0%	87.1 3%	92.1 3%	94.9 0%	95.6 2%	95.7 8%	95.8 9%	96.0 0%	80.2 0%	82.1 3%	87.1 3%	89.9 0%	90.6 2%	90.7 8%	90.8 9%	91.00 %	1.60%
(7)	Litter and Contamination	90.1 3%	91.3 6%	94.5 4%	96.3 0%	96.7 6%	96.8 6%	96.9 3%	97.0 0%	85.1 3%	86.3 6%	89.5 4%	91.3 0%	91.7 6%	91.8 6%	91.9 3%	92.00 %	1.90%
(8)	Station Timetables and Information	95.0 2%	95.2 4%	95.8 0%	96.1 1%	96.1 9%	96.2 0%	96.2 2%	96.2 3%	90.0 2%	90.2 4%	90.8 0%	91.1 1%	91.1 9%	91.2 0%	91.2 2%	91.23 %	2.50%
(9)	Station Clocks	97.1 6%	97.3 1%	97.7 0%	97.9 1%	97.9 7%	97.9 8%	97.9 9%	98.0 0%	92.1 6%	92.3 1%	92.7 0%	92.9 1%	92.9 7%	92.9 8%	92.9 9%	93.00 %	1.05%
(10)	Station Posters	90.0 7%	90.7 5%	92.5 0%	93.4 7%	93.7 2%	93.7 8%	93.8 2%	93.8 5%	85.0 7%	85.7 5%	87.5 0%	88.4 7%	88.7 2%	88.7 8%	88.8 2%	88.85 %	2.50%
(11)	Public Announcement and Customer Information Systems	90.1 1%	91.1 6%	93.8 8%	95.3 8%	95.7 7%	95.8 6%	95.9 2%	95.9 8%	85.1 1%	86.1 6%	88.8 8%	90.3 8%	90.7 7%	90.8 6%	90.9 2%	90.98 %	2.45%
(12)	Station Toilets	85.0 5%	85.5 8%	87.4 8%	90.0 4%	91.5 4%	93.0 4%	93.5 5%	94.0 0%	80.0 5%	80.5 8%	82.4 8%	85.0 4%	86.5 4%	88.0 4%	88.5 5%	89.00 %	1.05%
(13)	Parking and Taxi Ranks	95.0 5%	95.5 8%	96.9 4%	97.7 0%	97.9 0%	97.9 4%	97.9 7%	98.0 0%	90.0 5%	90.5 8%	91.9 4%	92.7 0%	92.9 0%	92.9 4%	92.9 7%	93.00 %	1.05%

(1)		(2)								(3)								(4)
QuEST Benchmark		QuEST Benchmark Level								QuEST Floor Level								Weighting
		2014	2015	2016	2017	2018	2019	2020	2021	2014	2015	2016	2017	2018	2019	2020	2021	
(14)	Station Lifts and Escalators	94.0 5%	94.5 8%	95.9 4%	96.7 0%	96.9 0%	96.9 4%	96.9 7%	97.0 0%	89.0 5%	89.5 8%	90.9 4%	91.7 0%	91.9 0%	91.9 4%	91.9 7%	92.00 %	1.05%
(15)	Landscaping and Vegetation	92.0 8%	93.3 5%	96.6 3%	98.4 5%	98.9 1%	99.0 2%	99.0 9%	99.1 7%	87.0 8%	88.3 5%	91.6 3%	93.4 5%	93.9 1%	94.0 2%	94.0 9%	94.17 %	2.60%
(16)	Help Points	74.1 0%	75.3 3%	79.7 8%	85.7 5%	89.2 5%	92.7 6%	93.9 5%	95.0 0%	69.1 0%	70.3 3%	74.7 8%	80.7 5%	84.2 5%	87.7 6%	88.9 5%	90.00 %	1.05%
(17)	Telephones	84.8 4%	85.4 4%	87.6 0%	90.5 0%	92.2 1%	93.9 1%	94.4 9%	95.0 0%	79.8 4%	80.4 4%	82.6 0%	85.5 0%	87.2 1%	88.9 1%	89.4 9%	90.00 %	1.05%
(18)	Station Staff	95.0 5%	95.5 8%	96.9 4%	97.7 0%	97.9 0%	97.9 4%	97.9 7%	98.0 0%	90.0 5%	90.5 8%	91.9 4%	92.7 0%	92.9 0%	92.9 4%	92.9 7%	93.00 %	1.05%
(19)	Station CCTV and Security	86.1 3%	87.4 4%	90.8 1%	92.6 8%	93.1 6%	93.2 7%	93.3 4%	93.4 2%	81.1 3%	82.4 4%	85.8 1%	87.6 8%	88.1 6%	88.2 7%	88.3 4%	88.42 %	1.05%
(20)	Train Seats, Racks and other Passenger Facilities	80.0 9%	81.1 6%	85.1 9%	90.5 9%	93.4 0%	95.9 0%	96.7 5%	97.5 0%	75.0 9%	76.1 6%	80.1 9%	85.5 9%	88.4 0%	90.9 0%	91.7 5%	92.50 %	1.55%
(21)	Train Lighting	85.0 5%	85.5 8%	87.5 0%	90.0 6%	91.5 7%	93.0 8%	93.5 9%	94.0 4%	80.0 5%	80.5 8%	82.5 0%	85.0 6%	86.5 7%	88.0 8%	88.5 9%	89.04 %	1.55%
(22)	Train Toilets	78.0 7%	79.1 1%	83.2 4%	88.7 6%	91.3 0%	93.2 0%	93.8 5%	94.4 2%	73.0 7%	74.1 1%	78.2 4%	83.7 6%	86.3 0%	88.2 0%	88.8 5%	89.42 %	1.55%
(23)	Train Graffiti	88.9 4%	90.1 6%	93.3 1%	95.0 5%	95.5 0%	95.6 1%	95.6 8%	95.7 5%	83.9 4%	85.1 6%	88.3 1%	90.0 5%	90.5 0%	90.6 1%	90.6 8%	90.75 %	2.70%
(24)	Train Cleanliness	88.1 6%	89.8 9%	94.6 6%	97.8 3%	98.6 6%	98.8 0%	98.8 9%	98.9 8%	83.1 6%	84.8 9%	89.6 6%	92.8 3%	93.6 6%	93.8 0%	93.8 9%	93.98 %	2.70%
(25)	Destination Boards and Passenger Information Displays	85.2 0%	87.1 3%	92.1 3%	94.9 0%	95.6 2%	95.7 8%	95.8 9%	96.0 0%	80.2 0%	82.1 3%	87.1 3%	89.9 0%	90.6 2%	90.7 8%	90.8 9%	91.00 %	2.50%
(26)	Train Heating/Ventilation	85.0 8%	85.9 8%	89.3 7%	93.9 1%	96.3 0%	98.4 3%	99.1 6%	99.8 0%	80.0 8%	80.9 8%	84.3 7%	88.9 1%	91.3 0%	93.4 3%	94.1 6%	94.80 %	1.55%
(27)	Train Posters/On Train information	90.1 3%	91.4 5%	94.8 4%	96.7 2%	97.2 1%	97.3 2%	97.3 9%	97.4 7%	85.1 3%	86.4 5%	89.8 4%	91.7 2%	92.2 1%	92.3 2%	92.3 9%	92.47 %	1.80%
(28)	Public Address	88.0 4%	88.5 7%	90.7 0%	93.5 5%	94.1 0%	94.4 0%	94.4 4%	94.5 0%	83.0 4%	83.5 7%	85.7 0%	88.5 5%	89.1 0%	89.4 0%	89.4 4%	89.50 %	1.80%
(29)	Train Doors	90.1 3%	91.3 6%	94.5 4%	96.3 0%	96.7 6%	96.8 6%	96.9 3%	97.0 0%	85.1 3%	86.3 6%	89.5 4%	91.3 0%	91.7 6%	91.8 6%	91.9 3%	92.00 %	1.55%

(1)		(2)								(3)								(4)
QuEST Benchmark		QuEST Benchmark Level								QuEST Floor Level								Weighting
		2014	2015	2016	2017	2018	2019	2020	2021	2014	2015	2016	2017	2018	2019	2020	2021	
(30)	On-Train CCTV	88.1 4%	89.5 5%	93.3 3%	95.7 0%	96.3 2%	96.4 3%	96.5 1%	96.5 8%	83.1 4%	84.5 5%	88.3 3%	90.7 0%	91.3 2%	91.4 3%	91.5 1%	91.58 %	2.50%

DRAFT

APPENDIX 3 TO SCHEDULE 7.2

PEM Benchmarks

PEM Benchmarks	2014	2015	2016	2017	2018	2019	2020	2021*
PEM Benchmark Level	74.92%	76.47%	79.53%	82.20%	83.35%	84.00%	84.27%	84.41%
PEM Floor Level	72.92%	74.47%	77.53%	80.20%	81.35%	82.00%	82.27%	82.41%
PEM Ceiling Level	77.92%	79.47%	82.53%	85.20%	86.35%	87.00%	87.27%	87.41%

* And subsequent Calculation Years in the event that the Franchise Agreement is extended into 2022 or 2023.

APPENDIX 4 TO SCHEDULE 7.2

PEM Payment

Definition	Amount (£)
FPAYT	12,800,000
CPAYT	4,200,000

DRAFT

APPENDIX 5 TO SCHEDULE 7.2

Basis for QuEST Inspections

1. The basis for undertaking QuEST Inspections in respect of certain QuEST Service Schedules are as specified below:
 - 1.1 Schedules 1, 2, 5 to 11 and 13 to 18: the relevant facilities/services will be inspected per station, with a single pass or fail being recorded for each station inspected;
 - 1.2 Schedule 3: station shelters will be inspected per shelter, with a pass or fail being recorded for each shelter inspected;
 - 1.3 Schedule 4: station seats will be inspected per platform, with a pass or fail being recorded for each platform inspected;
 - 1.4 Schedule 12: station toilets will be inspected per toilet facility, with a pass or fail being recorded for each toilet facility inspected. For the purposes of this paragraph 1.4 "**toilet facility**" shall mean a room containing water closets and/or urinals (as appropriate), wash stations and hand drying facilities;
 - 1.5 Schedules 19 and 30: station and on-train CCTV will be inspected as follows: [*Bidders to populate: Bidders to amend to include their proposals in this respect*]; and
 - 1.6 Schedules 20 to 29: the relevant facilities /services will be inspected per vehicle comprised within a QuEST Train, with a pass or fail being recorded for each vehicle inspected. For the purposes of this paragraph 1.6 "**vehicle**" shall mean an individual car or a vehicle comprised in a Rolling Stock Unit.

SCHEDULE 8

Payments

Schedule 8.1: Franchise Payments

Appendix 1: Profit Share Thresholds

Appendix 2: Components of AFA and DFR

Schedule 8.2: Annual Franchise Payments

Appendix: Figures for the Calculation of Annual Franchise payments

Schedule 8.3: Miscellaneous Payment Provisions

Schedule 8.4: Track Access Adjustments and Station Charge Adjustments

SCHEDULE 8.1

Franchise Payments

1. Franchise Payments

1.1 The Franchise Payment for any Reporting Period shall be an amount equal to:

$$\begin{aligned} \text{£FP} = & \text{ PFP} - \text{ PAR} + \text{ RPBAR} + \text{ FYRBAR} + \text{ TAA} + \text{ SCA} + \text{ TTPA} + \text{ CPS} + \text{ TMDPS} - \\ & \text{ SFPS} - \text{ SDCCA} + \text{ NRPS} - \text{ SPP} - \text{ Type1} - \text{ Type2} - \text{ Type3} - \text{ SPD} + \text{ OP} - \text{ SP} \\ & - \text{ CLCA} + \text{ NRCA} + (\text{ TLPMP} \times \text{ RPI}) + \text{ TUA} + \text{ PEM} + \text{ OCP} \end{aligned}$$

where:

£FP means the Franchise Payment for that Reporting Period;

PFP means $\left(\frac{\text{RPD}}{\text{FYD}} \times \text{AFP} \right)$

where:

RPD means the number of days in that Reporting Period;

FYD means the number of days in the Franchisee Year in which that Reporting Period occurs provided that in respect of any Reporting Period occurring during any Franchisee Year in which the Franchise Agreement terminates early pursuant to Schedule 10 (Remedies, Termination and Expiry), FYD shall mean the number of days there would have been in such Franchisee Year had such early termination not occurred; and

AFP means the Annual Franchise Payment for the Franchisee Year in which that Reporting Period occurs, as determined in accordance with Schedule 8.2 (Annual Franchise Payments);

PAR means the Assumed Revenue as calculated pursuant to paragraph 3 of this Schedule 8.1 to be made on that Reporting Period's Payment Date;

RPBAR means the RP Revenue Balancing Amount (if any) to be made on that Reporting Period's Payment Date;

FYRBAR means the FY Revenue Balancing Amount (if any) to be made on that Reporting Period's Payment Date;

TAA means any Track Access Adjustment to be made on that Reporting Period's Payment Date;

SCA means any Station Charge Adjustment to be made on that Reporting Period's Payment Date;

TTPA means any Ticketless Travel Payment Adjustment payable by the Secretary of State to the Franchisee or the Franchisee to the Secretary

- of State (as the case may be) on that Reporting Period's Payment Date;
- CPS means any Cancellations Performance Sum payable by the Secretary of State to the Franchisee or the Franchisee to the Secretary of State (as the case may be) on that Reporting Period's Payment Date;
- SFPS means any Short Formation Performance Sum payable by the Franchisee to the Secretary of State on that Reporting Period's Payment Date;
- TMDPS means any TOC Minute Delay Performance Sum payable by the Secretary of State to the Franchisee or the Franchisee to the Secretary of State (as the case may be) on that Reporting Period's Payment Date
- SDCCA means any Station/Depot Change Compensation Amounts payable by the Franchisee to the Secretary of State on that Reporting Period's Payment Date;
- NRPS means any of the amounts referred to under paragraph 7.2(c)(iii) of Schedule 6.2 (TSGN Franchise Specific Provisions) and payable by the Franchisee to the Secretary of State or the Secretary of State to the Franchisee (as the case may be) to be made on that Reporting Period's Payment Date;
- SPP means any SPP Compensation Amounts payable by the Franchisee to the Secretary of State on that Reporting Period's Payment Date;
- Type1 means any of the amounts referred to in paragraph 7.4(d) of Schedule 6.2 (TSGN Franchise Specific Provisions) and payable by the Franchisee to the Secretary of State on that Reporting Period's Payment Date;
- Type2 means any of the amounts referred to in paragraph 7.4(e) of Schedule 6.2 (TSGN Franchise Specific Provisions) and payable by the Franchisee to the Secretary of State on that Reporting Period's Payment Date;
- Type3 means any of the amounts referred to in paragraph 7.4(f) of Schedule 6.2 (TSGN Franchise Specific Provisions) and payable by the Franchisee to the Secretary of State on that Reporting Period's Payment Date;
- SPD means any of the amounts referred to in paragraph 7.4(g) of Schedule 6.2 (TSGN Franchise Specific Provisions) and payable by the Franchisee to the Secretary of State on that Reporting Period's Payment Date;
- OP means the amount referred to in paragraph 7.4(h)(i) of Schedule 6.2 (TSGN Franchise Specific Provisions) and payable by the Secretary of State to the Franchisee to be made on that Reporting Period's Payment Date;
- SP means the amount referred to in paragraph 7.4(h)(ii) of Schedule 6.2 (TSGN Franchise Specific Provisions) and payable by the Franchisee to the Secretary of State to be made on that Reporting Period's Payment Date;

- CLCA means any Condition L Compensation Amounts payable by the Franchisee to the Secretary of State on that Reporting Period's Payment Date;
- NRCA means any of the amounts referred to under paragraph 7.6 of Schedule 6.2 (TSGN Franchise Specific Provisions) payable by the Franchisee to the Secretary of State or the Secretary of State to the Franchisee (as the case may be) to be made on that Reporting Period's Payment Date;
- TLPMP means any TLP Milestone Incentive Payment payable on that Reporting Period's Payment Date;
- RPI has the meaning given to that term in Schedule 8.2 (Annual Franchise Payments);
- TUA means any Top Up Amount (as such term is defined in Schedule 6.3 (TLP/TRSP Related Provisions) payable by the Secretary of State to the Franchisee on that Reporting Period's Payment Date;
- PEM means any PEM Payment payable by the Secretary of State to the Franchisee or the Franchisee to the Secretary of State (as the case may be) on that Reporting Period's Payment Date; and
- OCP means any Outstanding Contract Price payable by the Secretary of State to the Franchisee on that Reporting Period's Payment Date;

1.2 Where a Franchisee Year starts or ends during a Reporting Period, £FP and PFP shall be determined as if references in paragraph 1.1 to a Reporting Period were to each of the separate sections of two such Reporting Periods which fall either side of such Franchisee Year start or end, and the Franchise Payment for such Reporting Period shall be the sum of £FP as determined for each such section of such Reporting Period.

1.3 The parties agree that:

- (a) each of £FP, RPBar, FYRBar, TAA, SCA, TTPA, CPS, TMDPS, NRPS, NRCA or PEM may be a positive number (where it is an adjustment to Franchise Payments in favour of the Franchisee) or a negative number (where it is an adjustment to Franchise Payments in favour of the Secretary of State);
- (b) where £FP is a positive number, the Secretary of State shall pay that amount to the Franchisee on the Payment Date for that Reporting Period; and
- (c) where £FP is a negative number, the Franchisee shall pay the corresponding positive amount to the Secretary of State on the Payment Date for that Reporting Period.

2. **Payment of Franchise Payments**

2.1 The Secretary of State shall notify the Franchisee, no less than seven days prior to the end of each Reporting Period, of the amount of the Franchise Payment payable in respect of that Reporting Period.

- 2.2 Each such notification shall set out in reasonable detail how the Franchise Payment has been calculated.
- 2.3 The Payment Date for a Reporting Period shall be the last business day of that Reporting Period.
- 2.4 Each Franchise Payment shall be payable by the Franchisee or, as the case may be, the Secretary of State in the amount notified by the Secretary of State in accordance with paragraph 2.1 on the Payment Date of the Reporting Period to which it relates.
- 2.5 Each Franchise Payment shall be made:
- (a) by automatic electronic funds transfer in pounds sterling to such bank account in the United Kingdom as the payee of such payment may have previously specified to the payer in writing; and
 - (b) so that cleared funds are received in that account on or before the due date for payment.
- 2.6 If either party disputes the amount of a Franchise Payment, the dispute shall, unless the parties otherwise agree, be resolved in accordance with the provisions of clause 8 (Governing Law) of this Franchise Agreement. Any such dispute shall not affect the obligation of either party to pay a Franchise Payment notified in accordance with this paragraph 2.
- 2.7 If either party fails to pay any amount to the other party on its due date, it shall in addition pay interest on such amount at the Interest Rate, calculated on a daily basis, from the due date for payment to the date on which payment is made.
- 2.8 If the amount of any Franchise Payment is agreed or determined to be incorrect and:
- (a) either party has made a payment to the other party which is greater than it would have made if the amount of the Franchise Payment had been correct, then the recipient shall repay the excess within three business days of the agreement or determination; or
 - (b) either party has made a payment to the other party which is less than it would have made if the amount of the Franchise Payment had been correct, then the payer shall pay the amount of any shortfall to the payee within three business days of the agreement or determination,
- together, in each case, with interest on the amount payable at the Interest Rate, calculated on a daily basis from the date on which the Franchise Payment was paid until the date on which such excess amount or shortfall is paid.
- 2.9 **Value Added Tax**
- (a) All Franchise Payments to be made by the Secretary of State to the Franchisee under this Agreement are exclusive of Value Added Tax.
 - (b) If Value Added Tax is properly chargeable on the supply for which any such Franchise Payment is in consideration the Secretary of State shall, subject to the receipt of a valid Value Added Tax invoice, pay to the Franchisee, by way of adjustment to Franchise Payments, such additional

payments (at the rate and in the manner prescribed by law) as is required to ensure that the Franchisee can meet the Value Added Tax liability arising in respect of such Franchise Payments.

- (c) On or before the Start Date, the Secretary of State and the Franchisee shall agree the process for the submission of the Value Added Tax invoice including the timing of such submissions and the content of such invoices.
- (d) If it is subsequently determined by HM Revenue & Customs that Value Added Tax was not properly chargeable on the supply for which any such Franchise Payment is the consideration then the Franchisee shall, by way of adjustment to Franchise Payments, following notification of any such determination repay to the Secretary of State any such Value Added Tax.

3. **Assumed Revenue**

3.1 The Assumed Revenue ("**PAR**") for each Reporting Period shall be determined as follows:

- (a) in respect of each Reporting Period in the first Franchisee Year, the amounts specified for each such Reporting Period in paragraph 3.2; and
- (b) in respect of each subsequent Franchisee Year an amount in respect of each Reporting Period determined as follows:

$$\text{PAR} = \text{AR} \times \text{SF}$$

where:

AR is the amount agreed by the Secretary of State and the Franchisee (following receipt by the Secretary of State of the Franchisee's Revenue forecast as required pursuant to paragraph 2.1(b) and 2.2(c) of Schedule 13 (Information and Industry Initiatives)) or on failure to agree within 10 days of receipt by the Secretary of State of any such Revenue forecasts, as reasonably determined by the Secretary of State as being the bona fide estimate of the amount of Revenue to be derived by the Franchisee from the operation of the Franchise Services in that Franchisee Year; and

SF is in respect of each Reporting Period in such subsequent Franchisee Year the "Season Factor" percentages for each such Reporting Period as agreed by the Secretary of State and the Franchisee (following receipt by the Secretary of State of the Franchisee's view of such "Season Factor" percentages as required pursuant to paragraph 2.1(b) and 2.1(c) of Schedule 13 (Information and Industry Initiatives)) or on failure to agree within 10 days of receipt of such Franchisee's view of the "Season Factor" percentages, as reasonably determined by the Secretary of State as being the bona fide reflection of the extent of the variation in Revenue between Reporting Periods in that Franchisee Year.

- 3.2 The value of PAR for each Reporting Period in the first Franchisee Year is the amount specified for that Reporting Period in column 3 of the table below:

Column 1	Column 2	Column 3
Franchisee Year	Reporting Period	PAR (£)¹⁸
Year 1	Period 7	[Insert amount]
	Period 8	[Insert amount]
	Period 9	[Insert amount]
	Period 10	[Insert amount]
	Period 11	[Insert amount]
	Period 12	[Insert amount]
	Period 13	[Insert amount]

The Reporting Period entitled "Period 7" in the second column of the above table shall be the first Reporting Period of the Franchise Term.

4. Reporting Period Revenue Adjustments

- 4.1 For each Reporting Period the Secretary of State shall, following receipt by him of the Management Accounts in respect of that Reporting Period, calculate the RP Revenue Balancing Amount in respect of that Reporting Period in accordance with the following formula:

$$RPBAR = PAR - RPR$$

where:

RPBAR is the RP Revenue Balancing Amount payable for that Reporting Period;

PAR is the Assumed Revenue for that Reporting Period calculated in accordance with paragraph 3;

RPR is the Revenue (less, subject to the Franchisee complying with its obligations in paragraph 5.3, any Delay Repay Compensation paid by the Franchisee to passengers in accordance with the terms of the Passenger Charter in that Reporting Period) derived by the Franchisee from the operation of the Franchise Services in that Reporting Period as specified in that Reporting Period's Management Accounts.

- 4.2 The RP Revenue Balancing Amount (if any) in respect of any Reporting Period shall be payable:
- (a) by the Secretary of State if the RP Revenue Balancing Amount is a positive number; or

¹⁸ Bidders to populate.

- (b) by the Franchisee if the RP Revenue Balancing Amount is a negative number,

and shall, subject to paragraph 6, be applied to the Franchise Payment payable on the RP Revenue Balancing Date.

- 4.3 If the Franchisee fails to provide the relevant Reporting Period's Management Accounts within the period specified in paragraph 3.2 of Schedule 13 (Information and Industry Initiatives) the Secretary of State shall be entitled to (but not obliged) to determine the RP Revenue Balancing Amount in accordance with this paragraph 4 by reference to any relevant information available to the Secretary of State at the time of such determination.

5. Franchisee Year Revenue Adjustments

- 5.1 For each Franchisee Year the Secretary of State shall, following receipt by him of the Annual Audited Accounts in respect of that Franchisee Year calculate the FY Revenue Balancing Amount in respect of that Franchisee Year in accordance with the following formula:

$$\text{FYRBAr} = \text{FYPAR} - \text{FYPrBA} - (\text{ARR1} + \text{AOA})$$

where:

FYRBAr is the FY Revenue Balancing Amount payable for that Franchisee Year;

FYPAR is the aggregate amount of the Assumed Revenue determined pursuant to paragraph 3 of this Schedule 8.1 in respect of any Reporting Period (or part thereof) in that Franchisee Year;

FYPrBA is the net aggregate of each RP Revenue Balancing Amount (if any) determined pursuant to paragraph 4 of this Schedule 8.1 in respect of any Reporting Period (or part thereof) in that Franchisee Year (and, for the avoidance of doubt, for this purpose, positive and negative amounts of such RP Revenue Balancing Amounts shall be netted off against each other);

ARR1 is the aggregate amount of Revenue (less, subject to the Franchisee complying with its obligations in paragraph 5.3, the aggregate amount of any Delay Repay Compensation paid by the Franchisee to passengers in accordance with the Passenger Charter in that Franchisee Year) for that Franchisee Year as reported in the Annual Audited Accounts for that Franchisee Year; and

AOA is any other adjustment (subsequent, current or future) as is required to ensure that Revenue (or any other adjustment relating to Revenue) in respect of any Franchisee Year is correctly allocated to the Franchisee Year to which it relates (the "**Revenue Adjustment(s)**"). For the avoidance of doubt, a Revenue Adjustment may be applied retrospectively in respect of any Franchisee Year. The Franchisee shall notify the Secretary of State immediately upon becoming aware that any such Revenue Adjustment is or may be required. Without limiting paragraph 5.4, the Secretary of State may notify the Franchisee if the Secretary of State identifies that such a Revenue Adjustment is or may be required. The Revenue Adjustments shall be such sum as is agreed by the parties or, if there is any dispute about whether a Revenue Adjustment is required, the amount of it and/or the affected Franchisee

Year(s), the applicable Revenue Adjustment(s), shall be as reasonably determined by the Secretary of State.

Any Revenue Adjustments that arise after the end of the Franchise Period shall be paid by the Secretary of State to the Franchisee or the Franchisee to the Secretary of State (as the case may be) within 30 days after the date of agreement or determination by the Secretary of State (as the case may be).

5.2 The FY Revenue Balancing Amount (if any) in respect of any Franchisee Year shall be payable:

- (a) by the Franchisee if the FY Revenue Balancing Amount is a negative number; or
- (b) by the Secretary of State if the FY Revenue Balancing Amount is a positive number,

and, subject to paragraph 6, shall be applied to the Franchise Payment payable on the FY Revenue Balancing Date.

5.3 **Further Information**

- (a) For the purposes of determining the Delay Repay Compensation deductions from Revenue and for the purposes of determining the RP Revenue Balancing Amount or the FY Revenue Balancing Amount in accordance with paragraphs 4 and 5 (respectively), the Franchisee shall together with the Management Accounts and the Annual Audited Accounts provide to the Secretary of State such supporting information as the Secretary of State may reasonably require for the purposes of evidencing the amount of Delay Repay Compensation paid by the Franchisee in a Reporting Period and a Franchisee Year (as the case may be).
- (b) At the end of each Franchisee Year the Franchisee shall provide to the Secretary of State (together with the information required to be provided pursuant 5.3(a)) a certificate from a statutory director of the Franchisee confirming that any Delay Repay Compensation paid to passengers in that Franchisee Year has been paid in accordance with the terms of the Passenger Charter.
- (c) If the Franchisee fails to provide any of the information required pursuant to paragraphs 5.3(a) or 5.3(b) then no deductions in respect of Delay Repay compensation paid shall be made to Revenue in respect of any Reporting Period or Franchisee Year (as the case may be) in respect of which any such information has not been provided as so required.

5.4 **Secretary of State's right to determine Revenue Adjustments**

Without limiting any other adjustment which may be made for the purpose of the definition of AOA in paragraph 5.1, where the Secretary of State reasonably considers that for the purposes of determining any RP Revenue Balancing Amount pursuant to paragraph 4 or any FY Revenue Balancing Amount (including for the avoidance of doubt, any Revenue Adjustments) pursuant to paragraph 5, any particular item or transaction to the extent relating to Revenue has not been accounted for on a reasonable basis (including where the accounting treatment looks to the form rather than the substance, of the item or transaction) he shall be entitled to require it to be accounted for on such other

basis as he may reasonably determine and notify to the Franchisee provided that the Secretary of State shall not be entitled pursuant to this paragraph to alter the accounting policies of the Franchisee from those set out in the Record of Assumptions and applied through the Financial Model.

6. Final Franchisee Year

6.1 Any RP Revenue Balancing Amount and/or FY Revenue Balancing Amount which:

- (a) is to be made during or in respect of the final Franchisee Year; and
- (b) has not been made during the Franchise Period,

shall be determined in accordance with paragraphs 4 and 5 respectively, but shall be paid within 30 days of the Secretary of State giving written notice to the Franchisee of the amount of such RP Revenue Balancing Amount and/or FY Revenue Balancing Amount.

6.2 Annual Financial Statements

If the Franchisee fails to provide the Annual Audited Accounts for the final Franchisee Year within four Reporting Periods of the expiry of the final Franchisee Year pursuant to paragraph 3.9 of Schedule 13 (Information and Industry Initiatives), the Secretary of State shall be entitled to (but not obliged) to determine the FY Revenue Balancing Amount in accordance with paragraph 5, but by reference to any relevant information available to the Secretary of State at the time of such determination, including any information contained in the latest cumulative, year-to-date Management Accounts or in the Annual Management Accounts.

7. Profit Share

7.1 For the purposes of this paragraph 7:

"First Profit Share Threshold" means an amount in respect of any Franchisee Accounting Year determined as follows:

FPST is the amount prescribed for these purposes in paragraph 1 of Appendix 1 (Profit Share Thresholds) to this Schedule 8.1 in respect of the relevant Franchisee Accounting Year \times RPI \times (NRP/13)¹⁹,

where:

FPST	means the First Profit Share Threshold for that Franchisee Accounting Year;
RPI	has the meaning given to it in Schedule 8.2 (Annual Franchise Payments); and
NRP	means the whole number of Reporting Periods in that Franchisee Accounting Year.

¹⁹ Assumes that the First Profit Share Threshold as specified in Appendix 1 is for full Franchisee Accounting Years (so 12 months and not prorated for Franchisee Accounting Years shorter than 12 months). Formula will need to be amended if this is not the case.

"Second Profit Share Threshold" means an amount in respect of any Franchisee Accounting Year determined as follows:

SPST is the amount prescribed for these purposes in paragraph 2 of Appendix 1 (Profit Share Thresholds) to this Schedule 8.1 in respect of the relevant Franchisee Accounting Year \times RPI \times (NRP/13)²⁰,

where:

SPST means the Second Profit Share Threshold for that Franchisee Accounting Year;

RPI has the meaning given to it in Schedule 8.2 (Annual Franchise Payments); and

NRP means the whole number of Reporting Periods in that Franchisee Accounting Year.

"Relevant Profit" means, subject to paragraph 7.4, in respect of any Franchisee Accounting Year, the total profit of the Franchisee for that Franchisee Accounting Year calculated by applying the accounting policies and standards set out in the Record of Assumptions and applied through the Financial Model:

- (a) after taking into account in respect of that Franchisee Accounting Year:
- (i) interest, finance income and finance charges (other than finance items recognised in respect of retirement benefits);
 - (ii) Franchise Payments (excluding TLP Milestone Incentive Payment payable in that Franchise Accounting Year);
 - (iii) all extraordinary and exceptional items, as defined under the accounting policies and standards set out in the Record of Assumptions and applied through the Financial Model;
 - (iv) the Franchisee's normal pension contributions in relation to the Franchise Sections and any other pension schemes to the extent connected with the Franchise; and
 - (v) any payments to Affiliates of the Franchisee (including management fees and royalty fees) except to the extent that such payments exceed an amount to be determined as follows:

AFA \times RPI

where:

AFA is the amount specified in respect of each Franchisee Accounting Year in column 2 of the table set out in paragraph 1 of Appendix 2 to this Schedule 8.1 (Franchise Payments); and

²⁰

Assumes that the Second Profit Share Threshold as specified in paragraph 2 of Appendix 1 is for full Franchisee Accounting Years (so 12 months and not prorated for Franchisee Accounting Years shorter than 12 months). Formula will need to be amended if this is not the case.

RPI has the meaning given to it in the definition of Threshold Amount;

- (vi) any sums payable by or to the Franchisee pursuant to the terms of the Supplemental Agreement; and
 - (vii) any capital expenditure to the extent that it is recognised as an operating cost in the Annual Audited Accounts and any depreciation on capital expenditure that is recognised as an expense in the Annual Audited Accounts, unless the depreciation policy and assumptions used in the Annual Audited Accounts are different to those set out in the Record of Assumptions and applied through the Financial Model, in which case, an adjustment should be made to take account of the depreciation which would have been charged had the policy and assumptions set out in the Record of Assumptions been applied for the relevant Franchisee Accounting Year; and
- (b) before taking into account in respect of that Franchisee Accounting Year:
- (i) any taxation on profits including corporation tax;
 - (ii) shares of the profit of any Affiliate of the Franchisee, except dividends received in cash;
 - (iii) non cash entries in respect of the Franchise Sections and any other pension schemes to the extent connected with the Franchise, excluding accruals or prepayments of any normal pension contributions due;
 - (iv) any payment made by the Franchisee consequent upon any breach or contravention of the Franchise Agreement and/or its Licences (including as a consequence of any penalty payment paid or payable pursuant to Section 57A of the Act);
 - (v) any profit share payments payable to the Secretary of State in relation to any Franchisee Accounting Year; and
 - (vi) fees, remuneration and pension contributions in respect of any director and officers of the Franchisee in excess of an amount to be determined as follows:

$DFR \times [RPI][AWE]$ [*Bidder to populate: Bidder to delete as appropriate.*]

where:

DFR is the amount specified in respect of each Franchisee Accounting Year in column 2 of the table set out in paragraph 2 of Appendix 2 to this Schedule 8.1 (Franchise Payments); and

[RPI has the meaning given to it in the definition of Threshold Amount.] or [AWE means $\frac{CAWE}{OAW}$ where

CAWE means the Average Weekly Earnings published in the January immediately preceding the commencement of that Franchisee Year; and OAWE means the Average Weekly Earnings for January 2013.] [*Bidder to populate: Bidder to delete as appropriate.*]

Where the calculation of Relevant Profit requires account to be taken of amounts prescribed in the Financial Model or the Record of Assumptions by reference to Franchisee Years rather than Franchisee Accounting Years the Secretary of State shall reasonably determine any calculation required to apply such amounts on a pro rata basis by reference to Franchisee Accounting Years.

7.2 If the Annual Audited Accounts in respect of any Franchisee Accounting Year show that the Relevant Profit for that Franchisee Accounting Year exceeds the First Profit Share Threshold then, subject to paragraph 7.4, the Franchisee shall pay to the Secretary of State:

- (a) 50% of Relevant Profit in excess of the First Profit Share Threshold but less than or equal to the Second Profit Threshold;
- (b) 100% of Relevant Profit in excess of the Second Profit Share Threshold.

7.3 Subject to paragraphs 7.5 and 7.6 below, payments due under paragraph 7.2 shall be paid as part of the Franchise Payment for the first Reporting Period falling 30 or more days after delivery of the Annual Audited Accounts by the Franchisee to the Secretary of State under paragraph 3.9 of Schedule 13 (Information and Industry Initiatives) or if there is no such Reporting Period, within 30 days of the date of such delivery.

7.4

(a) If in any Franchisee Accounting Year (or any period of 12 consecutive months after the end of the Franchise Period) (the "**Current Franchisee Accounting Year**") the Franchisee receives a compensation or other settlement payment of at least £200,000 x RPI arising from a single claim or series of related claims which relate wholly or partly to costs, losses or expenses (including loss of revenue) arising in any other Franchisee Accounting Year or Franchisee Accounting Years, then the Franchisee shall notify the Secretary of State of such payment as soon as reasonably practicable and for the purposes of this paragraph 7 and notwithstanding its other terms:

(i) the payment which relates to such other Franchisee Accounting Year shall be attributed to that other Franchisee Accounting Year and not treated as received in the Current Franchisee Accounting Year;

(ii) where and to the extent any payments under this paragraph 7 in respect of any other Franchisee Accounting Year would have been made or would have been higher had that amount actually been received in that other Franchisee Accounting Year, the Franchisee shall pay a reconciliation amount to the Secretary of State within 30 days after delivery of the Annual Audited Accounts that relate to the Current Franchisee Accounting Year by the Franchisee to the Secretary of State under paragraph 3.9 of Schedule 13 (Information and

Industry Initiatives) or, if there is no further requirement on the Franchisee to deliver Annual Audited Accounts following the end of the Franchise Period, within 30 days of the Franchisee receiving the relevant payment; and

- (iii) RPI has the meaning given to it in Schedule 8.2 (Annual Franchise Payments).
- (b) Where the Secretary of State reasonably considers that in calculating Relevant Profit any particular item or transaction has not been accounted for on a reasonable basis (including where the accounting treatment looks to the form rather than the substance of the item or transaction) he shall be entitled to require it to be accounted for on such other basis as he may reasonably determine and notify to the Franchisee provided that the Secretary of State shall not be entitled pursuant to this paragraph to alter the accounting policies of the Franchisee from those set out in the Record of Assumptions and applied through the Financial Model.
- (c) Without prejudice to paragraph 7.4(a) where the Annual Audited Accounts in relation to any previous Franchisee Accounting Year are subject to adjustment or restatement the Secretary of State shall have a discretion to require the recalculation of Relevant Profit for the relevant Franchisee Accounting Year and to require that the Franchisee shall pay to the Secretary of State the amount which is the difference between the profit share actually paid to the Secretary of State pursuant to paragraph 7.2 and the amount that would have been paid had the Relevant Profit been originally calculated on the basis that such adjustment or revision was included in the Annual Audited Accounts. Any payment due to the Secretary of State shall be paid by the Franchisee within 30 days of the Secretary of State notifying the Franchisee that he requires a payment to be made pursuant to this paragraph.

7.5 The Franchisee shall, within 10 days after delivery of any Annual Audited Accounts under paragraph 3.9 of Schedule 13 (Information and Industry Initiatives), deliver to the Secretary of State a report identifying:

- (a) the amount of total profit and the adjustments made in the calculation of Relevant Profit pursuant to paragraph 7.1;
- (b) any items falling under paragraph 7.4(a), including details of the allocation across Franchisee Accounting Years of such items; and
- (c) any adjustments or restatements made in relation to the Annual Audited Accounts in respect of any previous Franchisee Accounting Year,

and shall provide such additional information, records or documents as the Secretary of State may reasonably require in relation to such matters (including an unqualified written report from the Franchisee's auditors which confirm that any such report gives a true and fair view of the matters contained within it including the amount of total profit and the adjustments made in the calculation of Relevant Profit).

7.6 Any profit share payment pursuant to paragraph 7.2 to be made in respect of the final Franchisee Accounting Year shall be determined in accordance with this paragraph 7 but shall be paid within 30 days of the Secretary of State giving written notice to the Franchisee of the amount of such profit share payment .

- 7.7 If the Franchisee fails to provide the Annual Audited Accounts for the final Franchisee Accounting Year within four Reporting Periods of the expiry of the final Franchisee Accounting Year pursuant to paragraph 3.9 of Schedule 13 (Information and Industry Initiatives), the Secretary of State shall be entitled (but not obliged) to determine any Profit Share Adjustment in accordance with this paragraph 7 but by reference to any relevant information available to the Secretary of State at the time of such determination, including any information contained in the latest cumulative, year-to-date Management Accounts or in the Annual Management Accounts.

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APPENDIX 1 TO SCHEDULE 8.1

Profit Share Thresholds

1. The prescribed amounts for the component of FPST for the relevant Franchisee Accounting Year and for the purposes of the definition of First Profit Share Threshold are as set out in the table below: [*Bidder to populate*]

From	To	Franchisee Accounting Year ²¹	First Profit Share Threshold Amount ²²
14 September 2014	31 March 2015	Year 1 (Part Year)	£[Insert Amount]
1 April 2015	31 March 2016	Year 2	£[Insert Amount]
1 April 2016	31 March 2017	Year 3	£[Insert Amount]
1 April 2017	31 March 2018	Year 4	£[Insert Amount]
1 April 2018	31 March 2019	Year 5	£[Insert Amount]
1 April 2019	31 March 2020	Year 6	£[Insert Amount]
1 April 2020	31 March 2021	Year 7	£[Insert Amount]
1 April 2021	18 September 2021	Year 8 (Part Year - Core)	£[Insert Amount]
19 September 2021	31 March 2022	Year 8 (Part Year - Extension)	£[Insert Amount]
1 April 2022	31 March 2023	Year 9 (Extension)	£[Insert Amount]
1 April 2023	16 September 2023	Year 10 (Part Year - Extension)	£[Insert Amount]

2. The prescribed amounts for the component of SPST for the relevant Franchisee Accounting Year and for the purposes of the definition of Second Profit Share Threshold are as set out in the table below: [*Bidder to populate*]

²¹ Years may need to be adjusted to match the number of the Franchisee Accounting Years comprised in the Franchise Term. Note that table is based on Franchisee Year of 1 April to 31 March Bidder to amend first column of table if its Franchisee Accounting Year is not 1 April to 31 March.

²² The maximum amount to be specified in this column will be 8% of Operating Costs, being the pre-set figures of FXD, VCRPI and, where applicable, VCAWE with these figures reconciled from Franchisee Years to Franchisee Accounting Years.

From	To	Franchisee Accounting Year²³	Second Profit Share Threshold Amount²⁴
14 September 2014	31 March 2015	Year 1 (Part Year)	£[Insert Amount]
1 April 2015	31 March 2016	Year 2	£[Insert Amount]
1 April 2016	31 March 2017	Year 3	£[Insert Amount]
1 April 2017	31 March 2018	Year 4	£[Insert Amount]
1 April 2018	31 March 2019	Year 5	£[Insert Amount]
1 April 2019	31 March 2020	Year 6	£[Insert Amount]
1 April 2020	31 March 2021	Year 7	£[Insert Amount]
1 April 2021	18 September 2021	Year 8 (Part Year - Core)	£[Insert Amount]
19 September 2021	31 March 2022	Year 8 (Part Year - Extension)	£[Insert Amount]
1 April 2022	31 March 2023	Year 9 (Extension)	£[Insert Amount]
1 April 2023	16 September 2023	Year 10 (Part Year - Extension)	£[Insert Amount]

²³ Years may need to be adjusted to match the number of the Franchisee Accounting Years comprised in the Franchise Term. Note that table is based on Franchisee Year of 1 April to 31 March Franchisee to amend first column of table if its Franchisee Accounting Year is not 1 April to 31 March.

²⁴ The maximum amount to be specified in this column will be 10% of Operating Costs, being the pre-set figures of FXD, VCRPI and, where applicable, VCAWE with these figures reconciled from Franchisee Years to Franchisee Accounting Years.

APPENDIX 2 TO SCHEDULE 8.1

Components of AFA and DFR

1. The amounts for the purposes of the component of AFA in paragraph 7(a)(v) of Schedule 8.1 (Franchise Payments) are set out in the table below:

From	To	Franchisee Accounting Year²⁵	Component of AFA²⁶
14 September 2014	31 March 2015	Year 1 (Part Year)	£[Insert Amount]
1 April 2015	31 March 2016	Year 2	£[Insert Amount]
1 April 2016	31 March 2017	Year 3	£[Insert Amount]
1 April 2017	31 March 2018	Year 4	£[Insert Amount]
1 April 2018	31 March 2019	Year 5	£[Insert Amount]
1 April 2019	31 March 2020	Year 6	£[Insert Amount]
1 April 2020	31 March 2021	Year 7	£[Insert Amount]
1 April 2021	18 September 2021	Year 8 (Part Year - Core)	£[Insert Amount]
19 September 2021	31 March 2022	Year 8 (Part Year - Extension)	£[Insert Amount]
1 April 2022	31 March 2023	Year 9 (Extension)	£[Insert Amount]
1 April 2023	16 September 2023	Year 10 (Part Year - Extension)	£[Insert Amount]

2. The amounts for the purposes of the component of DFR in paragraph 7(b)(vi) of Schedule 8.1 (Franchise Payments) are set out in the table below:

From	To	Franchisee Accounting Year²⁷	Component of DFR²⁸
14 September	31 March 2015	Year 1 (Part Year)	£[Insert Amount]

²⁵ Note that table is based on Franchisee Year of 1 April to 31 March Franchisee to amend first column of table if its Franchisee Accounting Year is not 1 April to 31 March.

²⁶ Bidder to populate. Bidder to note that amounts must be consistent with the Financial Model and Record of Assumptions.

²⁷ Note that table is based on Franchisee Year of 1 April to 31 March Franchisee to amend first column of table if its Franchisee Accounting Year is not 1 April to 31 March.

²⁸ Bidder to populate. Bidder to note that amounts must be consistent with the Financial Model and Record of Assumptions.

2014			
1 April 2015	31 March 2016	Year 2	£[Insert Amount]
1 April 2016	31 March 2017	Year 3	£[Insert Amount]
1 April 2017	31 March 2018	Year 4	£[Insert Amount]
1 April 2018	31 March 2019	Year 5	£[Insert Amount]
1 April 2019	31 March 2020	Year 6	£[Insert Amount]
1 April 2020	31 March 2021	Year 7	£[Insert Amount]
1 April 2021	18 September 2021	Year 8 (Part Year - Core)	£[Insert Amount]
19 September 2021	31 March 2022	Year 8 (Part Year - Extension)	£[Insert Amount]
1 April 2022	31 March 2023	Year 9 (Extension)	£[Insert Amount]
1 April 2023	16 September 2023	Year 10 (Part Year - Extension)	£[Insert Amount]

SCHEDULE 8.2

Annual Franchise Payments

1. Annual Franchise Payments

The Annual Franchise Payment for any Franchisee Year is an amount equal to:

$$AFP = FXD + (VCRPI \times RPI) + (VCAWE \times AWE) + (PRPI \times RPI) + (ARRPI \times RPI)$$

where:

AFP equals the Annual Franchise Payment in the relevant Franchisee Year;

FXD means the figure shown in respect of the relevant Franchisee Year in column 2 of the table set out in the Appendix (Figures for Calculation of Annual Franchise Payments) to this Schedule 8.2;

VCRPI means the figure shown in respect of the relevant Franchisee Year in column 3 of the table set out in Appendix (Figures for Calculation of Annual Franchise Payments) to this Schedule 8.2;

RPI is the quotient of the Retail Prices Index for the January which immediately precedes the commencement of the relevant Franchisee Year divided by the Retail Prices Index for January 2014 provided that, for the first Franchisee Year, RPI shall be one;

VCAWE means the figure shown in respect of the relevant Franchisee Year in column 4 of the table set out in Appendix (Figures for Calculation of Annual Franchise Payments) to this Schedule 8.2;

AWE is the quotient of the Average Weekly Earnings for the January which immediately precedes the commencement of the relevant Franchisee Year divided by the Average Weekly Earnings for January 2014, provided that, for the first Franchisee Year, AWE shall be one;

PRPI means the figure shown in respect of the relevant Franchisee Year in column 5 of the table set out in Appendix (Figures for Calculation of Annual Franchise Payments) to this Schedule 8.2; and

ARRPI means the figure shown in respect of the relevant Franchisee Year in column 6 of the table set out in Appendix (Figures for Calculation of Annual Franchise Payments) to this Schedule 8.2 (and which shall always be expressed as a negative number).

APPENDIX TO SCHEDULE 8.2

Figures for Calculation of Annual Franchise Payments

[Bidder to populate]

Column 1	Column 2	Column 3	Column 4	Column 5	Column 6
Franchisee Year	FXD	VCRPI	VCAWE	PRPI	ARRPI²⁹
Year 1 (Part Year)					
Year 2					
Year 3					
Year 4					
Year 5					
Year 6					
Year 7					
Year 8 (Part Year - Core)					
Year 8 (Part Year - Extension)					
Year 9 (Extension)					
Year 10 (Part Year - Extension)					

²⁹ To be expressed as negative numbers.

SCHEDULE 8.3

Miscellaneous Payment Provisions

Not Used

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SCHEDULE 8.4

Track Access Adjustments and Station Charge Adjustments

1. Track Access Adjustments

- 1.1 The Track Access Adjustment to be made in respect of any Reporting Period shall be determined in accordance with the following formula:

$$TAA = (GCA - W) \times \frac{RPD}{FYD}$$

where:

TAA means the Track Access Adjustment to be made in that Reporting Period;

GCA is the value of "GC" for the Franchisee Year in which the Reporting Period falls under Part 3A of Schedule 7 of the Track Access Agreement;

W is the value of "Wt" for the Franchisee Year in which the Reporting Period falls under Part 2 of Schedule 7 of the Track Access Agreement;

RPD means the number of days in that Reporting Period; and

FYD means the number of days in the Franchisee Year in which that Reporting Period falls,

except that, where a Reporting Period falls during two Franchisee Years, TAA shall be determined as if the references to Reporting Period were to each of the two periods within such Reporting Period which fall wholly within one of such Franchisee Years and the Track Access Adjustment to be made in that Reporting Period shall reflect the sum of TAA as determined for each such period.

- 1.2 The Franchisee shall notify the Secretary of State upon becoming aware that any Track Access Adjustment is to be made and shall supply such information as the Secretary of State may require in relation thereto. The Franchisee shall exercise its rights under the Track Access Agreement in such manner and take such other action as the Secretary of State may reasonably require in connection with any related payment thereunder (including in relation to any agreement of the amount of any such payment and including submitting any relevant dispute to any relevant dispute resolution procedures). The Franchisee shall not, without the consent of the Secretary of State, agree or propose to agree a value for "Wt" or "GC" under Parts 2 or 3A of Schedule 7 of the Track Access Agreement.
- 1.3 The Franchisee shall provide such evidence of payment as the Secretary of State may require (including any certificates) for the purpose of determining the value of W and GCA under paragraph 1.1.
- 1.4 If no value is ascertained for W or GCA prior to the date on which the Franchise Payment for the relevant Reporting Period is determined, then a Track Access Adjustment shall only be determined to the extent such values can be ascertained at such time and, when such values are subsequently ascertained,

adjustment shall be made to reflect the full Track Access Adjustment for such Reporting Period.

1.5 The values of W and GCA when used in the computation in paragraph 1.1 shall be taken to exclude any input Value Added Tax which is recoverable in respect of the payments they represent by the Franchisee under Sections 24 to 26 of the Value Added Tax Act 1994.

1.6 References in this paragraph 1 to "Wt" and "GC" and Parts 2 and 3A of Schedule 7 of the Track Access Agreement shall be deemed also to be references to such other provisions, and such other algebra under any such other provisions, of any Track Access Agreement as the Secretary of State may reasonably consider have an equivalent effect, or are intended to fulfil the same function, as "Wt" or "GC" and Parts 2 or 3A of Schedule 7 of the Track Access Agreement to which the Franchisee is a party on the Start Date.

2. **Station Charge Adjustment**

2.1 The Station Charge Adjustment to be made in respect of any Reporting Period shall be the aggregate of the Individual Station Charge Adjustments as determined in accordance with the following formula for each Station and each other Franchisee Access Station:

$$ISCA = (L - P) \times \frac{RPD}{FYD}$$

where:

ISCA means the Individual Station Charge Adjustment for the relevant station for that Reporting Period;

L is the value of "Lt" for the Franchisee Year in which the Reporting Period falls under:

(a) if the relevant station is not an Independent Station, Condition F11.2 of the Station Access Conditions entitled "National Station Access Conditions 1996 (England and Wales)" relating to such station; or

(b) if the relevant station is an Independent Station, Condition 42.3 of the Independent Station Access Conditions relating to that Independent Station,

in each case, to the extent that value represents an amount payable to or by Network Rail or any other relevant Facility Owner by or to the Franchisee on its own behalf under the relevant Access Agreement (excluding any amount payable to Network Rail by the Franchisee in its capacity as Facility Owner of a station on behalf of a beneficiary which is party to an Access Agreement in respect of a Station);

P is the value of "Pt" for the Franchisee Year in which the Reporting Period falls under:

(a) if the relevant station is not an Independent Station, Condition F11.2 of the Station Access Conditions entitled "National Station Access Conditions 1996 (England and Wales)" relating to such station; or

- (b) if the relevant station is an Independent Station, Condition 42.3 of the Independent Station Access Conditions relating to that Independent Station,

in each case, to the extent that value represents an amount payable to or by Network Rail or any other relevant Facility Owner by or to the Franchisee on its own behalf under the relevant Access Agreement (excluding any amount payable to Network Rail by the Franchisee in its capacity as Facility Owner of a station on behalf of a beneficiary which is party to an Access Agreement in respect of a Station);

RPD means the number of days in that Reporting Period; and

FYD means the number of days in the Franchisee Year in which that Reporting Period falls except that, where a Reporting Period falls during two Franchisee Years, the Station Charge Adjustment shall be determined as if the references to Reporting Period were to each of the two periods within such Reporting Period which fall wholly within one of such Franchisee Years and the Station Charge Adjustment for such Reporting Period shall be the sum of the Station Charge Adjustment as determined for each such period.

- 2.2 The Franchisee shall notify the Secretary of State upon becoming aware that any Station Charge Adjustment is to be made and shall supply such information as the Secretary of State may require in relation thereto. The Franchisee shall exercise such rights as it may have under any Access Agreement in such manner and take such other action as the Secretary of State may reasonably require in connection with any related payment thereunder (including in relation to any agreement of the amount of any such payment and including submitting any relevant dispute to any relevant dispute resolution procedures). The Franchisee shall not, without the consent of the Secretary of State, agree or propose to agree a value for "L" or "P" under any relevant Access Agreement.
- 2.3 The Franchisee shall provide such evidence of payment as the Secretary of State may require (including any certificates) for the purpose of determining the value of L and P under paragraph 2.2.
- 2.4 If no value is ascertained for any of L or P prior to the date on which the Franchise Payment for the relevant Reporting Period is determined, then a Station Charge Adjustment shall only be determined to the extent such values can be ascertained at such time and, when such values are subsequently ascertained, an adjustment shall be made to reflect the full Station Charge Adjustment for such Reporting Period.
- 2.5 The values of L and P when used in the computation in paragraph 2.2 shall be taken to exclude any input Value Added Tax which is recoverable in respect of the payments they represent by the Franchisee under Sections 24 to 26 of the Value Added Tax Act 1994.
- 2.6 For the purposes of this paragraph 2, **Independent Station** shall mean, at any time, any station of which Network Rail is the Facility Owner at that time. As at the date of the Franchise Agreement, the Independent Stations are Birmingham New Street, Edinburgh Waverley, London Fenchurch Street, Gatwick Airport, Glasgow Central High Level, London Bridge, London Cannon Street, London Charing Cross, London Euston, London King's Cross, London Liverpool Street, London Paddington, London Victoria, London Waterloo (excluding Waterloo International), Leeds, Liverpool Lime Street and Manchester Piccadilly.

- 2.7 References in this paragraph 2 to "Lt", "Pt", Condition F11.2 of the Station Access Conditions entitled "National Station Access Conditions 1996 (England and Wales)" and Condition 42.3 of the Independent Station Access Conditions shall be deemed also to be references to such other provisions, and such other algebra under any such other provisions, of any relevant station access conditions as the Secretary of State may reasonably consider have an equivalent effect, or are intended to fulfil the same function as, "Lt", Pt" and Condition F11.2 of the Station Access Conditions entitled "National Station Access Conditions 1996 (England and Wales) and Condition 42.3 of the Independent Station Access Conditions which are in effect on the Start Date.

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SCHEDULE 9

Changes and Variations

- Schedule 9.1:** **Financial and Other Consequences of Change**
Appendix 1: Summary Flow Chart
Appendix 2: Agreement or Determination of Revised Inputs
Annex to Appendix 2: Incentivising Long Term Investment
- Schedule 9.2:** **Identity of the Financial Model etc.**
- Schedule 9.3:** **Secretary of State Risk Assumptions**
- Schedule 9.4:** **Component of FAT: Definition of Threshold Amount**
- Schedule 9.5:** **Variations to the Franchise Agreement and Incentivising Beneficial Changes**

SCHEDULE 9.1

Financial and Other Consequences of Change

1. Purpose and Application of Schedule

1.1 This Schedule 9.1 sets out:

- (a) the circumstances in which the occurrence of a Change will result in an adjustment to the Franchise Payments, the Benchmarks and Annual Benchmarks; and
- (b) the process by which that adjustment to the Franchise Payments, the Benchmarks and Annual Benchmarks will be determined and effected; and
- (c) provisions dealing with the responsibility for costs incurred by the Franchisee in connection with any audit of the Run of the Financial Model and its results.

1.2 Schedule 9.2 (Identity of the Financial Model etc.) contains provisions dealing with the Financial Model which are relevant to the operation of this Schedule 9.1.

1.3 This Schedule 9.1 shall apply in relation to a Change where:

- (a) there are good reasons for considering that that Change will be a Qualifying Change or, with other Changes, part of an Aggregated Qualifying Change; and
- (b) the required notice(s) has/have been given in accordance with paragraph 1.4 (or the parties have agreed that this Schedule 9.1 will apply and there should be a Run of the Financial Model, and/or a review of the Benchmarks and Annual Benchmarks even though the required notices have not been given).

1.4 The notice requirements are:

- (a) subject to paragraph 1.4(b), a party must have notified the other that it considers that the Change will be a Qualifying Change and that it requires a Run of the Financial Model and/or a review of the Benchmarks and Annual Benchmarks in respect of that Change:
 - (i) within 6 months of the notification or agreement of that Change if it is a Variation pursuant to paragraph 1.1 of Schedule 9.5 (Variations to the Franchise Agreement and Incentivising Beneficial Changes); or
 - (ii) within 6 months of becoming aware of it, if it is any other type of Change; and
- (b) in the case of an Aggregated Qualifying Change, a party must have notified the other:
 - (i) after an individual Change occurs, within the time limits stated in 1.4(a)(i) or 1.4(a)(ii), that it reserves the right to

count that Change towards an Aggregated Qualifying Change; and

- (ii) within 6 months of the occurrence of the last Change which that party considers will trigger an Aggregated Qualifying Change, that the party requires a Run of the Financial Model and/or a review of the Benchmarks and Annual Benchmarks in respect of the Changes comprised in that Aggregated Qualifying Change. The notice must identify each of the Changes included in the Aggregated Qualifying Change.

1.5 References in the remainder of this Schedule 9.1 and in Schedule 9.2 (Identity of the Financial Model etc.) to a "Change" are to a Change in respect of which the requirements in paragraph 1.3 have been satisfied.

1.6 Appendix 1 (Summary Flow Chart) to this Schedule 9.1 contains a flow chart summary of the process described in this Schedule 9.1. This is for guidance only and if there are any inconsistencies between this flow chart and any other of the contents of Schedule 9 (Changes), the latter shall apply.

1.7 For the avoidance of doubt PR2013 shall not be prevented from being a Charging Review and/or the effect of PR2013 on any Relevant Agreement shall not be prevented from being a Charge Variation in each case for the purpose of this Agreement as a result of the fact that:

- (a) PR2013 is or may be concluded prior to the date of the Franchise Agreement; and/or
- (b) any Relevant Agreement entered into by the Franchisee, or to which the Franchisee otherwise becomes a party by Transfer Scheme or otherwise, reflects the outcome of PR2013 (as opposed to any such Relevant Agreement being varied to reflect the outcome of PR2013 after the Franchisee becomes a party to it),

provided that the Invitation to Tender (where relevant, as amended) did not require the Franchisee to submit its bid for the Franchise on the basis of the outcome of PR2013.

2. **Timescales**

2.1 Where this Schedule 9.1 applies, any resulting restatement of the Annual Franchise Payment Components and/or the Benchmarks and Annual Benchmarks (as applicable) shall be made in accordance with this Schedule:

- (a) where it is reasonably practicable to do so, at least three Reporting Periods prior to the Change; or
- (b) where the timescale in 2.1(a) is not reasonably practicable, as soon as reasonably practicable after that.

2.2 If paragraph 2.1(b) applies and it is not reasonably practicable for the restatement of the Annual Franchise Payment Components to be made before the Change occurs, then paragraph 9 (Estimated Revisions) shall apply.

3. **How any adjustments to Franchise Payments will be established**

The adjustments, if any, to the Franchise Payments to be made in respect of any Change shall be established by:

- (a) establishing those Model Changes and/or Revised Inputs required to take account of the Change; then
- (b) applying those Model Changes and/or Revised Inputs to the Financial Model before performing a Run of the Financial Model to generate the New Results; then
- (c) restating the Annual Franchise Payment Components, by substituting the New Results for the Old Results (so that, to the extent that the New Results and the Old Results are different, this will result in an adjustment to the Franchise Payments),

in each case, subject to and in accordance with the terms more particularly described in this Schedule 9.1.

4. **How Model Changes and/or Revised Inputs will be established**

4.1 The parties shall agree or the Secretary of State shall reasonably determine the Revised Inputs and (if any) the Model Changes.

4.2 **Revised Inputs** means:

- (a) the data that the Financial Model utilised in order to produce the Old Results, as such data is recorded in the Financial Model released by the Secretary of State pursuant to either of paragraphs 2.1(d) or 2.2 of Schedule 9.2 (Identity of the Financial Model etc.) for the purposes of the Run of the Financial Model; but
- (b) amended, whether by way of increase, reduction or other alterations to such data, (if at all) only as the parties may agree or the Secretary of State may reasonably determine is required by the provisions of Appendix 2 to this Schedule 9.1 in respect of a Change.

4.3 **Model Changes** means: any changes that the parties may agree or the Secretary of State may reasonably determine are required to the Financial Model and/or the Operational Model, as released by the Secretary of State pursuant to either of paragraphs 2.1(d) or 2.2 of Schedule 9.2 (Identity of the Financial Model etc.), for the purposes of the Run of the Financial Model, as a consequence of and in order to give effect to the Revised Inputs.

4.4 The Secretary of State shall provide a written statement of the Revised Inputs and any Model Changes to the Franchisee for the purposes of paragraph 6 promptly after they have been agreed or determined.

5. **Changes to Benchmarks and Annual Benchmarks**

5.1 This paragraph 5 shall apply if either party has given notice to the other that it considers that a Change has or will have, in that party's reasonable opinion, a material effect on the risk of the Franchisee failing to satisfy the requirements of any Benchmark and Annual Benchmark (whether in terms of increasing or reducing that risk).

- 5.2 Any notice pursuant to paragraph 5.1 shall be given as soon as reasonably practicable and in any event before the parties have agreed or the Secretary of State has reasonably determined the Revised Inputs in respect of the Change.
- 5.3 Where this paragraph 5 applies, the relevant Benchmarks and Annual Benchmarks shall be revised to the extent that such revision is reasonably considered to be appropriate to hold constant the risk of the Franchisee failing to satisfy the requirements of that Benchmark and Annual Benchmark. The parties shall agree or the Secretary of State shall reasonably determine any such revision(s).
- 5.4 For the purposes of any revision to the Benchmarks and Annual Benchmarks under this paragraph 5, regard may be had to:
- (a) any relevant assumptions in the Record of Assumptions; and/or
 - (b) the contents of an Operational Model; and/or
 - (c) any other information,
- to the extent they are relevant to the consideration of whether a revision is reasonably considered to be appropriate to take account of the Change.
6. **Run of the Financial Model following agreement or determination of the Revised Inputs and Model Changes**
- 6.1 When the Revised Inputs and Model Changes (if any) are agreed or determined there shall be a Run of the Financial Model.
- 6.2 The Run of the Financial Model shall be performed after making any Model Changes and utilising the Revised Inputs and shall be performed by:
- (a) the Franchisee promptly on receiving notification of the Revised Inputs and any Model Changes from the Secretary of State pursuant to paragraph 4.4 or within such period of time as the Secretary of State shall reasonably determine; or
 - (b) the Secretary of State if the Franchisee fails to do so. In these circumstances, the Franchisee shall reimburse to the Secretary of State the Secretary of State's costs of performing the Run of the Financial Model.
- 6.3 The party that performs the Run of the Financial Model pursuant to paragraph 6.2 shall provide the non performing party with a reasonable opportunity to be in attendance and shall promptly notify such other party of the New Results.
- 6.4 Where there is more than one Change, Runs of the Financial Model in respect of such Changes shall (unless otherwise agreed or the Secretary of State reasonably determines) be undertaken in the order in which such Changes occur. For this purpose, the order of occurrence will be determined by reference to the earliest date from which the Franchise Payments are reasonably expected to require adjustment as a result of the restatement of the Annual Franchise Payment Components triggered by a Change. This will be as agreed between the parties or in the absence of agreement be reasonably determined by the Secretary of State.

7. **Certification or Audit of the New Results**

- 7.1 The Secretary of State, as soon as reasonably practicable after receiving or generating the New Results pursuant to paragraph 6.2, shall either:
- (a) certify to the Franchisee his approval of the New Results; or
 - (b) notify the Franchisee that he requires the Run of the Financial Model and its results to be audited by an independent auditor appointed by the Secretary of State with the approval (not to be unreasonably withheld) of the Franchisee.
- 7.2 For purposes of paragraph 7.1, the requirement for an audit is one that requires the auditor either to certify:
- (a) that the New Results have been produced by applying the Revised Inputs (as provided to the Franchisee by the Secretary of State pursuant to paragraph 4.4) to the Financial Model after making the Model Changes (as provided to the Franchisee by the Secretary of State pursuant to paragraph 4.4); or
 - (b) the New Results themselves, by itself applying the Revised Inputs (as provided to the Franchisee by the Secretary of State pursuant to paragraph 4.4) to the Financial Model after making the Model Changes (as provided to the Franchisee by the Secretary of State pursuant to paragraph 4.4).
- 7.3 The parties shall procure that any auditor is, as soon as reasonably practicable after his appointment, able to discharge the audit requirements.
- 7.4 The results as certified by the Secretary of State pursuant to paragraph 7.1 or by the auditor pursuant to paragraph 7.2 shall be final and binding on the parties, except in the case of manifest error.
- 7.5 The Secretary of State may stipulate (on or before the date on which the Secretary of State approves or the auditor certifies the results of the Run of the Financial Model) in respect of a Change that the restated Annual Franchise Payment Components are to apply for a limited period of time only (the "**Initial Period**"), with provision thereafter, if appropriate, for a further Run of the Financial Model with new Revised Inputs and/or Model Changes based on information available at that time.

8. **Restatement of Annual Franchise Payment Components and/or Benchmarks and/or Annual Benchmarks**

- 8.1 When the New Results have been certified by the Secretary of State or the auditor in accordance with paragraph 7 then:
- (a) if:
 - (i) there is any difference between the Old Results and the New Results; and
 - (ii) the New Results are such that the Change:
 - (A) meets the criteria for a Qualifying Change; or

- (B) with other Changes meets the criteria for an Aggregated Qualifying Change,

the Annual Franchise Payment Components shall be restated in the amounts of the New Results; and

- (b) if any changes to the Benchmarks and Annual Benchmarks have been agreed or determined in accordance with paragraph 5, the Benchmarks and Annual Benchmarks shall be restated to give effect to those changes.

8.2 Subject to paragraph 8.3, the restatement of the Annual Franchise Payment Component shall have effect on and from the date on which the Secretary of State or the auditor certifies the results of the Run of the Financial Model.

8.3 If and to the extent that:

- (a) the application of the New Results in respect of the then current or any earlier Franchisee Year would, result in any change to the amount of any payments already made between the Secretary of State and the Franchisee; and
- (b) that change in payments is not already taken into account in any Reconciliation Amount payable pursuant to paragraph 9.9,

then a reconciliation payment shall be paid by the Franchisee or the Secretary of State (as the case may be). The payment shall be made on the first Payment Date which falls more than 7 days after agreement or determination of the amount of the reconciliation payment required (or if there is no such Payment Date, within 14 days after such agreement or determination).

9. **Estimated Revisions**

9.1 This paragraph 9 applies where there is or is to be a Change before there is a Run of the Financial Model in respect of it. It provides a mechanism for interim adjustments in Franchise Payments pending the final agreement or determination of those adjustments under this Schedule.

9.2 Where this paragraph 9 applies, the Secretary of State shall make the Estimated Revisions described in paragraph 9.3:

- (a) if the Franchisee requests the Secretary of State to do so at the same time as requesting a Run of the Financial Model in respect of the Change under paragraph 1.4; or
- (b) if the Secretary of State otherwise agrees or chooses (in his discretion) to do so.

9.3 The Estimated Revisions are the Secretary of State's estimates of the New Results which will apply once the process in paragraphs 4 to 8 of this Schedule 9.1 has been completed in respect of the Change. For the avoidance of doubt, Revised Inputs are not made in order to generate or take account of the Estimated Revisions.

- 9.4 The estimates referred to in paragraph 9.3 will be such estimates as the Secretary of State, acting reasonably, makes having regard to the time and the information available to him at the time the estimates fall to be made provided always that it is acknowledged that:
- (a) the purpose of the estimates is to enable some provision to be made in respect of adjustments to the Annual Franchise Payment Components before full information about the Change is available and/or full consideration of the nature and extent of Revised Inputs and/or Model Changes has been undertaken;
 - (b) it may not be reasonably practicable in all circumstances for the Secretary of State to take into account in such an estimate all actual or potential impacts of a Change. Where the Secretary of State is aware that there are any such actual or potential impacts which he has not taken into account, he shall notify the Franchisee of them when notifying the Estimated Revisions pursuant to paragraph 9.2; and
 - (c) the Secretary of State shall be entitled to adjust any Estimated Revision notified pursuant to paragraph 9.2 to the extent he reasonably considers appropriate if at any time:
 - (i) the Secretary of State becomes aware of any new or revised information which would, if it had been available to him at the time he made his original estimate, have resulted in him making a different Estimated Revision; and
 - (ii) it is reasonable to revise the Estimated Revision having regard to the likely period of delay prior to the Run of the Financial Model in respect of the relevant Change.
- 9.5 In the circumstances described in paragraph 9.2 and paragraph 9.4(c) the Annual Franchise Payment Components shall be restated in the amounts and values of the Estimated Revisions, and Franchise Payments shall be paid accordingly until the Run of the Financial Model has taken place and its results have been put into effect.
- 9.6 The Secretary of State shall use all reasonable endeavours to notify the Franchisee of the Estimated Revisions required by paragraph 9.2 at least two Reporting Periods before he considers the Change is likely to occur. If, having exercised all reasonable endeavours, the Secretary of State cannot provide two Reporting Periods' notice, he shall provide such notification as soon as reasonably practicable afterwards.
- 9.7 The restatement of the Annual Franchise Payment Components referred to in paragraph 9.5 shall have effect on and from:
- (a) the date on which the Secretary of State notifies the Franchisee of the Estimated Revisions; or
 - (b) such other date as the Secretary of State, acting reasonably, may notify the Franchisee as the date on which the Secretary of State considers the Estimated Revisions should reasonably take effect, consistent with the matters taken into account by the Secretary of State in estimating the Estimated Revisions.

9.8 No estimate made by the Secretary of State pursuant to this paragraph 9 shall prejudice the Secretary of State's subsequent determination of any Revised Input or Model Change pursuant to paragraph 4.

9.9 Subject to paragraph 9.10, where adjustments to Franchise Payments have resulted from the operation of paragraph 9.5. then, as soon as reasonably practicable after the certification of the New Results following the related Run of the Financial Model, the parties shall agree or the Secretary of State shall reasonably determine the difference (the "**Reconciliation Amount**") between:

- (a) the total amount of Franchise Payments paid or to be paid to which adjustments have been made pursuant to the operation of paragraph 9.5; and
- (b) the total amount of the Franchise Payments, as determined by that Run of the Financial Model, in respect of the same period as the period over which the adjusted Franchise Payments referred to in paragraph 9.9(a) have been paid/or are to be paid.

9.10 If a Change is agreed or determined not to be a Qualifying Change or not to be part of an Aggregated Qualifying Change with or without any Run of the Financial Model having been performed, the Reconciliation Amount shall be the total amount of the adjustments to Franchise Payments which have resulted from the operation of paragraph 9.5.

9.11 The Reconciliation Amount shall be paid:

- (a) by the Franchisee to the Secretary of State where the Estimated Revisions resulted in an overpayment of Franchise Payments by the Secretary of State to the Franchisee or an underpayment of Franchise Payments by the Franchisee to the Secretary of State compared with:
 - (i) the amount of the Franchise Payments described in paragraph 9.9(b); or
 - (ii) where paragraph 9.10 applies, the amount of the unrestated Franchise Payments over the same period; and
- (b) by the Secretary of State to the Franchisee where the Estimated Revisions resulted in an underpayment of Franchise Payments by the Secretary of State to the Franchisee or an overpayment of Franchise Payments by the Franchisee to the Secretary of State compared with:
 - (i) the amount of the Franchise Payments described in paragraph 9.9(b); or
 - (ii) where paragraph 9.10 applies, the amount of the unrestated Franchise Payments over the same period,

in either case, such payment shall be made on the first Payment Date after agreement or determination (or if none, within 14 days after such agreement or determination).

10. **Information**

The Franchisee shall promptly, having regard to the other timescales anticipated in this Schedule 9.1, provide to the Secretary of State such information as the

Secretary of State may request for the purpose of enabling the Secretary of State to exercise his rights and comply with his obligations pursuant to this Schedule 9.1.

11. Costs

11.1 This paragraph deals with the costs incurred by the Franchisee in connection with any audit required by the Secretary of State pursuant to paragraph 7.

11.2 The costs of any audit required under paragraph 7.1(b) shall be met by the Secretary of State subject to the following:

- (a) the costs of the audit shall be met entirely by the Franchisee:
 - (i) [specify other circumstances i.e. other than those already set out in (ii)(A) and (B) below]³⁰; and
 - (ii) in the case of a Change falling within any of the following sub-paragraphs within the definition of Change:
 - (A) an event set out in any Secretary of State Risk Assumption; and
 - (B) a Charge Variation; and
- (b) where paragraph 11.2(a) does not apply, the Secretary of State shall only be responsible for the reasonable costs of the Franchisee in connection with the audit, and the Franchisee shall comply with the Secretary of State's reasonable directions in connection with the audit which may include a requirement for a competitive tender for the appointment of the auditor.

³⁰ Bidder to populate.

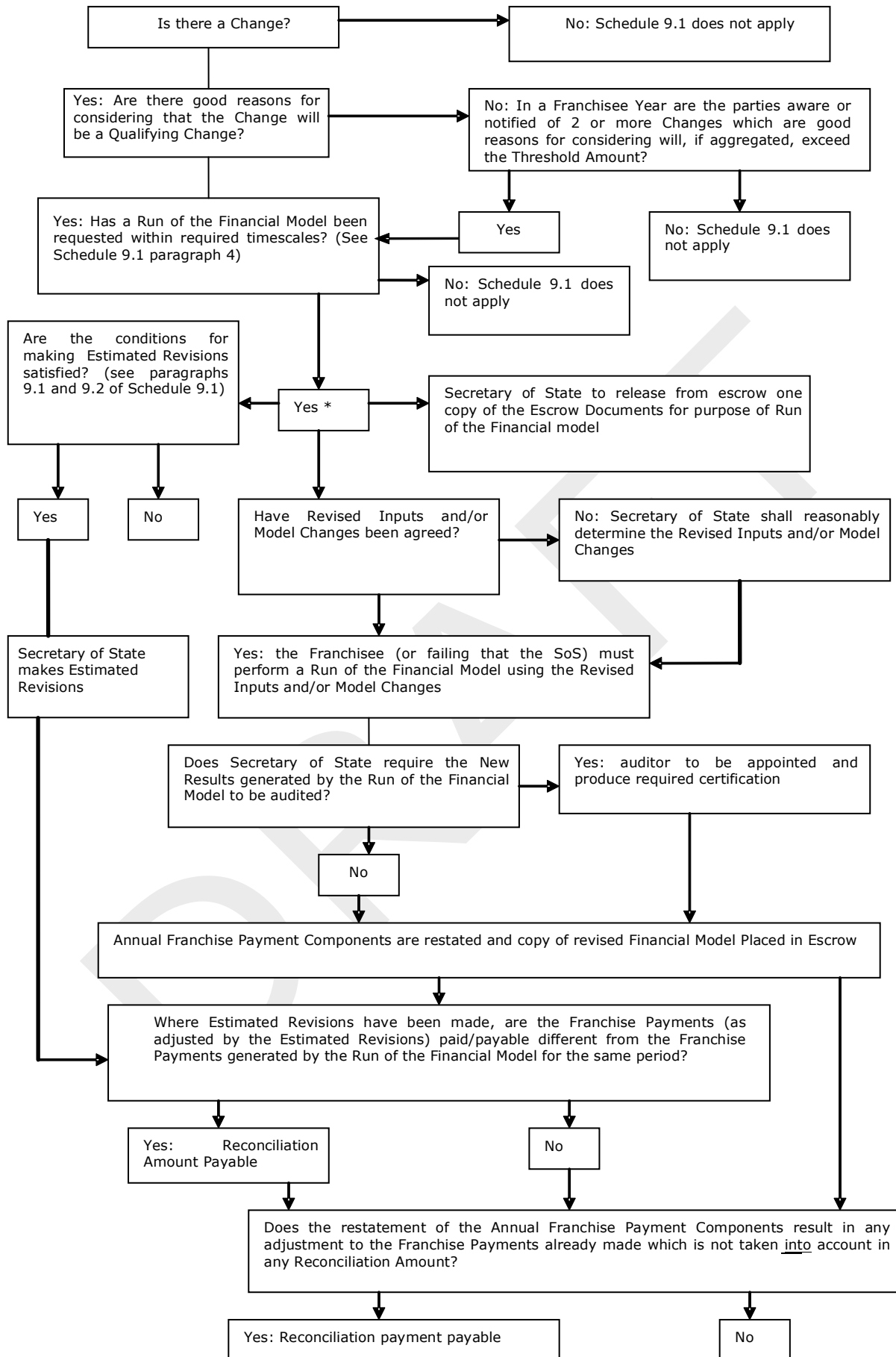
APPENDIX 1 TO SCHEDULE 9.1

Summary Flow Chart

See next page

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This summary is for guidance only. If there are any inconsistencies with the other contents of Schedule 9.1 or 9.2 (including any Appendix), those other contents shall apply.



* Note: that in these circumstances, either party may serve notice (before Revised Inputs in respect of the Change are agreed or determined) that it considers a Change has or will have a material effect on the risk of the Franchisee failing to satisfy the requirements of a Benchmark - See Schedule 9 paragraph 5.

APPENDIX 2 TO SCHEDULE 9.1

Agreement or Determination of Revised Inputs

1. The parties shall agree or the Secretary of State shall reasonably determine the Revised Inputs that are required in respect of a Change:
 - (a) on the basis of the general adjustments and/or assumptions referred to in paragraph 2;
 - (b) on the basis of the assumptions in the Record of Assumptions as added to and/or amended (if at all) in accordance with paragraph 3;
 - (c) so as to provide for Traction Electricity Charges in accordance with paragraph 4;
 - (d) so as to provide for profit in accordance with paragraph 5; and
 - (e) so as to give effect to the provisions of paragraph 6 in relation to indexation,

provided that if there is any inconsistency between the assumptions in the Record of Assumptions described in paragraph (b) above and any other of the requirements of this paragraph 1, those other requirements shall prevail, unless the Secretary of State (acting reasonably) otherwise elects.

2. **General Adjustments/Assumptions**

- 2.1 Revised Inputs are to be agreed between the parties or reasonably determined by the Secretary of State on the basis that:

- (a) any increase in costs relating to a Change; and/or
- (b) any reduction in revenues relating to a Change,

that is attributable to any activities, actions or omissions of the Franchisee which are not permitted under, or would otherwise constitute a contravention of, the terms of the Franchise Agreement, is to be disregarded.

- 2.2 Revised Inputs are to be agreed between the parties or reasonably determined by the Secretary of State on the basis that:

- (a) any reduction in costs relating to a Change; and/or
- (b) any increase in revenues relating to a Change,

that is attributable to any activities, actions or omissions of the Franchisee which are not permitted under, or would otherwise constitute a contravention of, the terms of the Franchise Agreement, is to be taken into account.

- 2.3 Revised Inputs are also to be agreed between the parties or reasonably determined by the Secretary of State on the basis that:

- (a) the Franchisee will use all reasonable endeavours to:

- (i) reduce any costs that may arise or income that may be foregone; and
- (ii) increase any revenue that may arise and avoid any cost that may be avoided,

as a consequence of a Change; and

- (b) any requirement for borrowing in respect of Capital Expenditure by the Franchisee is dealt with in accordance with paragraph 2 of Schedule 9.5 (Variations to the Franchise Agreement and Incentivising Beneficial Changes).

2.4 Where and as directed to do so by the Secretary of State (acting reasonably) the Franchisee shall undertake one or more competitive tendering exercises for the purposes of ascertaining the likely level of any costs relating to a Change which are relevant to a Revised Input.

3. **Assumptions in the Record of Assumptions**

3.1 The parties shall (unless to do so would be contrary to paragraph 2) agree or the Secretary of State shall reasonably determine Revised Inputs that are in accordance with the assumptions that are contained in the Record of Assumptions, as added to or modified pursuant to paragraph 3.2 or paragraph 3.3.

3.2 Where the Secretary of State reasonably considers that the assumptions contained in the Record of Assumptions are ambiguous or that additional assumptions are required in relation to circumstances not dealt with by the assumptions in the Record of Assumptions, the parties shall agree or the Secretary of State shall reasonably determine the assumptions or additional assumptions to be utilised for this purpose.

3.3 Where the Secretary of State reasonably considers that:

- (a) a Change is likely to result in an increase in either or both of the costs of the Franchisee and the revenues of the Franchisee; and
- (b) an assumption relevant to the Change contained in the Record of Assumptions does not accord with what would be achievable by, or experienced by, an economic and efficient franchisee,

then the parties shall agree or the Secretary of State shall reasonably determine a modification to the assumption so that, as modified, it does accord with what would be achievable by, or experienced by, an economic and efficient franchisee.

4. **Traction Electricity Charges**

4.1 This paragraph 4 applies only in relation to Charge Variations.

4.2 In agreeing or determining Revised Inputs, no adjustment shall be made in respect of a Charge Variation to the extent that Charge Variation relates, directly or indirectly and however it may be effected, to the Traction Electricity Charge payable by the Franchisee pursuant to any Track Access Agreement. For this purpose (and subject to clause 1.1(l) of this Agreement), the Traction Electricity Charge is the component of the Track Charges (as defined in the Track Access Agreement) identified as such in any Track Access Agreement or any similar

arrangement under which the Franchisee pays for traction current consumed by rolling stock vehicles operated by or on behalf of the Franchisee.

5. Revised Input for Profit

5.1

- (a) Where a Change is forecast to result in an increase to the Franchisee's costs in a Franchisee Year, the parties shall agree or the Secretary of State shall reasonably determine Revised Inputs in relation to profit that provide for an increase in the amount of profit in any Franchisee Year equal to *[insert percentage agreed profit margin]*³¹ of the forecast increase in cost for that Franchisee Year; and/or
- (b) Where a Change is forecast to result in a reduction in the Franchisee's costs in a Franchisee Year, the parties shall agree or the Secretary of State shall reasonably determine Revised Inputs in relation to profit that provide for a decrease in the amount of profit in any Franchisee Year equal to the lower of:
 - (i) the percentage specified in paragraph 5.1(a); or
 - (ii) the average profit margin in the current Business Plan for the remaining Franchise Term,of the forecast reduction in cost for that Franchisee Year.
- (c) For the purposes of paragraphs 5.1(a) and 5.1(b) there shall be no Revised Input in relation to profit where any such Change is a Charge Variation except for the insertion of a line in the Financial Model required to neutralise the effect on the absolute amount of profit in £ for £ terms which the other adjustments to the other inputs would otherwise have, such that there is no change in the absolute amount of profit as a result of the Charge Variation.

5.2 In agreeing or determining Revised Inputs in relation to profit in respect of any Change, the parties or the Secretary of State shall effect such change (if any) in the amount attributable to profit in paragraph 5.1 as they agree or the Secretary of State reasonably determines to reflect:

- (a) the risk for the Franchisee in continuing to operate the Franchise on the terms of the Franchise Agreement after and as a result of the Change; and
- (b) the likelihood of:
 - (i) material benefit from such Change arising after expiry of the Franchise Term; and
 - (ii) material detriment from such Change arising prior to the expiry of the Franchise Term.

5.3 In agreeing or determining Revised Inputs for the purposes of any Protected Proposal, the parties or the Secretary of State shall effect such change (if any)

³¹ Bidder to populate.

to the amount attributable to profit as they agree or the Secretary of State reasonably determines:

- (a) fairly rewards the Franchisee for proposing the Protected Proposal; and
- (b) reasonably incentivises the Franchisee to propose further Protected Proposals,

by sharing with the Franchisee a reasonable amount of the additional profit that is expected to arise from implementing the Protected Proposal.

5.4 The Annex (Incentivising Long Term Investment) to this Appendix 2 sets out the Secretary of State's guidance on how he approaches incentivising long term investment. Nothing in this Annex is intended to limit or be limited by, the provisions of paragraph 2.2 of Schedule 14.4 (Designation of Franchisee Assets).

6. **Indexation**

In agreeing or determining Revised Inputs, the parties shall apply the following principles in connection with indexation. For each relevant item of data in the Financial Model in respect of which a Revised Input is agreed or determined to be required:

- (a) the parties shall agree or the Secretary of State shall reasonably determine, having regard to the particular facts of the Change, the base date at which that item is priced; and
- (b) that item shall be deflated by reference to the original base date and index (if any) relevant to that item in the Financial Model.

7. **Efficiency Benefit Share/REBS**

No Revised Inputs will be made to reflect:

- (a) any amount payable by or to the Franchisee in respect of Efficiency Benefit Share or REBS (as the case may be); or
- (b) any change in the basis on which Efficiency Benefit Share or REBS (as the case may be) is calculated or is to be paid (including any change which may require amounts in respect of Efficiency Benefit Share or REBS (as the case may be) to be payable by as well as payable to the Franchisee).

For this purpose (and subject to clause 1.1(l) of this Agreement), **Efficiency Benefit Share** is the component of Track Charges (as defined in the Track Access Agreement) identified as such in any Track Access Agreement or similar arrangement under which benefits of any outperformance of efficiency targets (or risk of failure to achieve efficiency targets) are to be shared between Network Rail and train operators.

8. **Cancellations Performance Sum, Short Formation Performance Sum and TOC Minute Delay Performance Sum**

In agreeing or determining Revised Inputs, no adjustment shall be made to the Financial Model to reflect any change in the amount of the Cancellations Performance Sum, the Short Formation Performance Sum or the TOC Minute Delay Performance payable either by the Secretary of State or the Franchisee and arising from the exercise by the Secretary of State of his rights pursuant to

paragraph 1.7 of Schedule 7.1 (Performance Benchmarks). So for example if prior to such exercise the Franchisee would have been entitled to receive a Cancellations Performance Sum of £100 for a particular level of performance against the Annual Cancellations Benchmark and after such exercise the Franchisee would only be entitled to receive a Cancellations Performance Sum of £50 for achieving the same level of performance, no adjustment shall be made to the Financial Model to reflect this.

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ANNEX TO APPENDIX 2 TO SCHEDULE 9.1

Incentivising Long Term Investment

This Appendix sets out the Secretary of State's guidance on how he approaches incentivising long term investment.

1. The Secretary of State wishes to encourage the Franchisee to:
 - (a) improve the efficiency;
 - (b) reduce the cost; and
 - (c) enhance the revenue earning potential of the delivery of services to passengers,from the commencement of the Franchise, through the Franchise Term and into the successor franchises.
2. It is recognised however, that the Franchise Term may be perceived to be a barrier to undertaking investment or change programmes where:
 - (a) the time scale for implementation limits the benefit to the Franchisee; or
 - (b) the business case for such investment or change has a payback period longer than the Franchise Term.
3. In this context investment or change may be considered to encompass:
 - (a) capital investments undertaken solely by the Franchisee;
 - (b) capital investments undertaken by the Franchisee in association with others;
 - (c) total or partial substitution of certain train services by bus services where an enhanced service level could be provided for reduced cost or where the provision of bus services improves the overall capacity of the network or delivers other benefits;
 - (d) changes in working practices of the Franchisee's employees;
 - (e) changes in the contracted roles and responsibilities between the Franchisee and its major suppliers; and
 - (f) operational changes.
4. Accordingly, the Franchisee is encouraged to propose schemes that seek to achieve the objectives set out in paragraph 1 for consideration by the Secretary of State during the Franchise Term.
5. In considering the Franchisee's proposals for any investment or change proposed to be undertaken, the Secretary of State will recognise:
 - (a) the capital cost and proposed payment profile;

- (b) legitimate costs of the Franchisee in developing, procuring, delivering and project managing the project;
 - (c) the life of any capital assets and the duration of the benefits stream arising;
 - (d) the remaining Franchise Term and the projected payback period;
 - (e) the benefits associated with undertaking the investment early rather than waiting until the Franchise is re-let;
 - (f) the risks of cost overrun or under performance of the projected benefits;
 - (g) a profit element for undertaking the project commensurate with the risks of the proposed project; and
 - (h) alternative benefit sharing arrangements which could be based on:
 - (i) a capital lump sum when the expenditure is incurred;
 - (ii) an enhanced Franchise Payment over the Franchise Term;
 - (iii) a balloon payment on expiry of the Franchise which allocates a proportion of future benefits to the Franchisee;
 - (iv) an ongoing payment if the benefits materialise after the Franchise Term; and/or
 - (v) any combination of any of paragraphs 5(h)(i) to (h)(iv) inclusive.
6. In evaluating the Franchisee's proposals for any investment or change proposed to be undertaken and to enable best value for money to be obtained from third party financiers, the Secretary of State shall also give consideration to the appropriateness of the provision, by the Secretary of State, of an undertaking (or other form of comfort) pursuant to Section 54 of the Act.

SCHEDULE 9.2

Identity of the Financial Model etc.

1. Franchisee's Obligations

- 1.1 The Franchisee shall deliver two copies of each of the Financial Model, the Operational Model and the Record of Assumptions (each such copy in electronic format on CD-ROM) together with hard format copies of the output template of the Financial Model in the format set out in the document in agreed terms marked **FF** (the "**Escrow Documents**") to the Secretary of State in the agreed form, accompanied by a notice that the Escrow Documents are to be Placed in Escrow.
- 1.2 The Franchisee shall deliver the Escrow Documents in accordance with paragraph 1.1 of this Schedule 9.2:
- (a) on the date of the Franchise Agreement;
 - (b) within seven days of the Start Date, but updated only as strictly necessary for any elapsed time between the actual Start Date and the date assumed to be the Start Date in the Initial Business Plan; and
 - (c) within seven days of any approval or audit of a Run of the Financial Model as provided for in paragraph 7 of Schedule 9.1 (Financial and Other Consequences of Change), but updated with the Revised Inputs and any Model Changes.
- 1.3 The Franchisee shall deliver with each such deposit of the Escrow Documents all of the following information to the extent that it is relevant:
- (a) details of the Escrow Documents deposited (including full filename and version details, any details required to access the Escrow Documents including media type, backup command/software used, compression used, archive hardware and operating system details);
 - (b) the names and contact details of persons who are able to provide support in relation to accessing and interpreting the Escrow Documents; and
 - (c) if required by the Secretary of State, a certificate from independent auditors approved by the Secretary of State, confirming that the deposited version of the Escrow Documents is in the agreed form in accordance with paragraph 1.2(a) or (as the case may be) is in accordance with paragraphs 1.2(b) or (c).

2. Secretary of State's Obligations

- 2.1 The Secretary of State shall:
- (a) within three days following receipt, acknowledge receipt to the Franchisee of any version of the Escrow Documents delivered to him for the purposes of being Placed in Escrow;
 - (b) save as provided under paragraph 2.1(c), store each copy of the Escrow Documents in a different physical location from any other copy of each

such document and use all reasonable endeavours to ensure that each copy of the Escrow Documents is at all times kept in a safe and secure environment. In so doing the Secretary of State shall be deemed to have Placed in Escrow the Escrow Documents for the purposes of the Franchise Agreement;

- (c) notify the Franchisee if he becomes aware at any time during the term of the Franchise Agreement that any copy of the Escrow Documents or part thereof stored in a particular location has been lost, damaged or destroyed. In such an event, the Secretary of State shall be permitted to create a new copy of the Escrow Documents or part thereof from the other copy Placed in Escrow and shall within seven days notify the Franchisee accordingly and afford it the right to make reasonable inspections in order to satisfy itself that a "complete and accurate" copy has been made. Following the making of such a new copy of the Escrow Documents, the Secretary of State shall retain all copies of the Escrow Documents in accordance with paragraph 2.1(b);
 - (d) within seven days of receipt of a notice from the Franchisee stating that the Escrow Documents are required for the purposes of a Run of the Financial Model in relation to any Change, or should the Secretary of State himself so decide that the Escrow Documents are required by the Franchisee or by the Secretary of State for such purposes release one copy of the Escrow Documents accordingly and retain one copy of the Escrow Documents in escrow in accordance with paragraph 2.1(b);
 - (e) maintain a record of any release of any copy of any version of the Escrow Documents made, including details of any version released and the date of release as well as the identity of the person to whom the Escrow Documents are released;
 - (f) have no obligation or responsibility to any person whatsoever to determine the existence, relevance, completeness, accuracy, effectiveness or any other aspect of the Escrow Documents; and
 - (g) not be liable for any loss, damage or destruction caused to the Franchisee arising from any loss of, damage to or destruction of the Escrow Documents.
- 2.2 If the Franchisee fails to perform a Run of the Financial Model pursuant to paragraph 6.2(a) of Schedule 9.1 (Financial and Other Consequences of Change) or fails to return the copy of the Escrow Documents released pursuant to paragraph 2.1(d):
- (a) such failure to perform or to return the released copy to the Secretary of State shall be a contravention of the Franchise Agreement;
 - (b) the Secretary of State may release the other copy of the Escrow Documents Placed in Escrow and take a copy thereof (the "**Replacement Copy**") in order that the Secretary of State may perform a Run of the Financial Model pursuant to paragraph 6.2(a) of Schedule 9.1 (Financial and Other Consequences of Change);
 - (c) once copied, the second copy of the Escrow Documents released pursuant to this paragraph 2.2 shall be Placed in Escrow; and

- (d) once the Run of the Financial Model has been approved or audited as provided for in paragraph 7 of Schedule 9.1 (Financial and Other Consequences of Change), two copies of the Replacement Copy shall also be Placed in Escrow.
- (e) Nothing in this Schedule 9.2 shall prevent the Secretary of State or the Franchisee each retaining for their working use one or more copies of any of the Escrow Documents Placed in Escrow provided that no such working copy shall (unless otherwise explicitly agreed by the parties) be regarded as a copy released from Escrow for the purposes of this Schedule 9.2 or any Run of the Financial Model.

3. Errors in Escrow Documents

3.1 Any feature of the Escrow Documents which is in the reasonable opinion of the Secretary of State an error will be addressed as follows:

- (a) if rectification of such an error would (as the case may be) over the Franchise Term result in a net increase in the amount of Franchise Payments payable by the Secretary of State to the Franchisee or a net decrease in the amount of Franchise Payments payable by the Franchisee to the Secretary of State then such error shall be rectified provided that there shall not be a restatement of the values of the Annual Franchise Payment Components;
- (b) if rectification of such an error would (as the case may be) over the Franchise Term result in a net decrease in the amount of Franchise Payments payable by the Secretary of State to the Franchisee or a net increase in the amount of Franchise Payments payable by the Franchisee to the Secretary of State then such error shall be rectified and the values of the Annual Franchise Payment Components shall be restated where appropriate;
- (c) a record of the error shall be noted in the Record of Assumptions and, if applicable, the Financial Model; and
- (d) as soon as reasonably practicable after the date of the rectification of the error, the Franchisee shall (unless otherwise agreed by the Secretary of State) deliver to the Secretary of State a certificate from independent auditors approved by the Secretary of State confirming that the error has been rectified as required by this paragraph 3 and is now in the required form in accordance with paragraph 1.2(a), 1.2(b) or 1.2(c) as the case may be.

SCHEDULE 9.3

Secretary of State Risk Assumptions

TRSP SoSRAs

1. Interpretation

1.1 In paragraphs 1.2(a) to 1.2(g) (inclusive) except where the context otherwise requires, words and expressions defined in the MDCTA shall have the same meaning when used herein;

1.2 A Qualifying Change shall occur if and whenever any of the events set out below in any of the following risk assumptions occur during the Franchise Term:

(a) there is a variation or amendment to any of the TRSP Documents (which shall for this purpose exclude a variation or amendment proposed by the Franchisee unless the Secretary of State (in his sole discretion) determines otherwise) for any reason or there is a termination of any of the TRSP Documents or of any party's obligations under any of the TRSP Documents for any reason. The following shall also be regarded as a variation or amendment to the TRSP Document for these purposes:

(i) a variation which is made using any of the change processes in any of the TRSP Documents or otherwise (including any Run of the Owner Financial Model, Run of the TMM Financial Model or Run of the TSSSA Financial Model (as the case may be);

(ii) any exercise of any Priced Option under the TRSP MSA;

(iii) any refinancing arrangements under any of the TRSP Documents;

(iv) the commissioning and testing of the Depot Works (including any work associated with Introducing Into Operational Use) happening earlier than envisaged in the Contract Programme or the Depot Phasing Plans (as such terms are defined in the DAFLs) or there is a Closure (as such term is defined in the DAFLs);

(v) any Permitted Delay or any Permitted Depot Delay under any of the TRSP Documents. In this case, any such Change shall not take account of any increased costs or increased liabilities or other adverse impacts on the Franchisee consequent upon the occurrence of any Permitted Delay falling within limb (a) of the definition of Permitted Delay or in the case of Permitted Depot Delay any such delay arising by reason of any breach by the Franchisee of its obligations under any of the DAFLs;

(vi) any of the TRSP Documents is subject to a Force Majeure Event or there is any variation or termination of a TRSP Document as a consequence of a Force Majeure Event;

- (vii) any Change in Law (whether or not requiring a Mandatory Modification) which affects any of the TRSP Documents;
 - (viii) any assignment or other transfer of the rights and/or obligations of any party (other than the Franchisee at the end of the Franchise Period) under any of the TRSP Documents; and/or
 - (ix) any variation or amendment directed by the Secretary of State pursuant to paragraph 2.1(e) of Schedule 6.3 (TLP/TRSP Related Provisions); or
- (b) any of the TRSP Documents are terminated in accordance with their terms including on the occurrence of the following events:
- (i) on default by one or more of the parties to any of the TRSP Documents the Secretary of State:
 - (A) exercises his rights under the Umbrella Agreement to require the Franchisee to terminate or partially terminate any of the TRSP Documents in any of the circumstances described in paragraph 9.8 of the Umbrella Agreement which for these purposes shall include any of the following:
 - (1) a direction to the Franchisee to step into the obligations of any other party under any of the TRSP Documents;
 - (2) a TSSSA Requirement Notice being served in accordance with the Umbrella Agreement or the TSSSA is otherwise put into effect; and/or
 - (3) the Secretary of State does not grant his consent to the Franchisee exercising such rights as the Franchisee may have to terminate any such TRSP Document;
 - (ii) the Secretary of State exercises his rights under the Umbrella Agreement to:
 - (A) elect to terminate any of the TRSP Documents on the occurrence of an Uninsurable Risk; or
 - (B) voluntarily terminate any of the TRSP Documents in accordance with paragraph 1 of Schedule 2.7 of the Umbrella Agreement or clause 24 of the DAFLs; or
 - (iii) a Funding Shortfall Partial Termination occurs;
 - (iv) a Funding Availability Partial Termination occurs; or
 - (v) a Secretary of State Default occurs,

except that where any such termination of any TRSP Document has arisen as a result of any breach or default by the Operator then in agreeing or determining the relevant Revised Inputs no account shall be taken of any

increased costs or increased liabilities or other adverse impacts of the Qualifying Change on the Franchisee;

- (c) the Fleet Rental is reduced as contemplated under paragraph 2 of Schedule 3.10 of the Lease. Where a Qualifying Change as contemplated under this paragraph 1.2(c) occurs there shall be a further Qualifying Change on the date that the Fleet Rental is reinstated to the amount that was payable prior to that reduction in accordance with the provisions of paragraph 3 of Schedule 3.10 of the Lease;
- (d) the Franchisee ceases to pay any Rentals in relation to any Unit in the circumstances contemplated in paragraph 4 of Schedule 3.10 of the Lease;
- (e) any of the Equipment is not delivered by its Expected Delivery Date. If a Qualifying Change as contemplated under this paragraph 1.2(e) occurs then in agreeing or determining the Revised Inputs the following shall apply:
 - (i) the parties shall take into account:
 - (A) any compensation amounts received or due to be received by the Franchisee from the TMM under the relevant TRSP Documents consequent upon the late delivery of any of the Equipment to the extent that any such amounts are not reimbursed to the TMM pursuant to paragraph 14.3 of schedule 6 of the TRSP MSA or paragraph 8.3 of schedule 13 of the TRSP MSA; and/or
 - (B) any liquidated damages received or due to be received by the Franchisee from the Owner pursuant to clauses 7.1, 7.5 and/or 7.6 of the Lease; and
 - (ii) no account shall be taken of:
 - (A) any liquidated damages payable by the Franchisee to the Owner pursuant to:
 - (1) clause 7.3 and/or clause 7.6 of the Lease to the extent that the obligation to pay the Owner liquidated damages under such clauses has arisen as a result of an event falling within paragraph (a) of the definition of Permitted Delay; and/or
 - (2) clause 7.5 of the Lease; and/or
 - (B) any other increased costs or increased liabilities or other adverse impacts to the Franchisee to the extent that any such increased costs, increased liabilities or adverse impacts has arisen as a result of a breach by the Franchisee of any of its obligations under any of the TRSP Documents; and
 - (iii) where a Qualifying Change as contemplated under this paragraph 1.2(e) occurs there shall be a further Qualifying

Change on the date that any such delayed Equipment is Accepted; or

(f) the circumstances described in paragraph 7.1 of Schedule 6.3 of the TSA occurs at any time during the Franchise Period; or

(g) **Platform Works SoSRA (Capital Costs)**

(i) subject to:

(A) the Franchisee demonstrating to the reasonable satisfaction of the Secretary of State that it has complied with its obligations in paragraph 1.2(g)(ii); and

(B) the Franchisee notifying the Secretary of State prior to the commencement of any such Platform Works,

the Franchisee becomes liable under any of clauses 6.20 and/or 6.21 of the MSA to undertake any platform modifications that are necessary for the purposes of ensuring that the relevant stepping distances comply with the Applicable Laws and Standards (the "**Platform Works**") as a consequence of Network Rail not undertaking any such Platform Works. In agreeing or determining the Revised Inputs for the purposes of this Qualifying Change account shall be taken of only the capital costs incurred by the Franchisee in undertaking the Platform Works.

(ii) The Franchisee shall:

(A) use all reasonable endeavours to manage the stepping distance to and from the Vehicle doorway within its Safety Management System so as to remove the need for or reduce the extent of some or all of the Platform Works;

(B) ensure that any Platform Works it undertakes are necessary for the purposes of ensuring that the stepping distances to and from each Vehicle doorway comply with Applicable Laws and Standards; and

(C) use all reasonable endeavours to ensure that the costs for undertaking the Platform Works are as low as reasonably practicable.

(iii) At the request of the Secretary of State the Franchise shall promptly provide to the Secretary of State such information and supporting evidence as the Secretary of State may require for the purposes of verifying the costs for undertaking the Platform Works.

Southern Sub Lease Arrangements

(h) in circumstances where the Franchisee is required pursuant to paragraphs 4 of Schedule 6.4 (Integration of the Southern Franchise Services) to enter into the HLOS Phase 2 Sub Lease, HLOS Phase 2 Lease or

Subsequent HLOS Phase 2 Sub Lease (as applicable), there is a difference between the Assumed HLOS Sub Lease Amounts and the Actual HLOS Sub Lease Amounts. For the purposes of this paragraph 1.2(h):

- (i) **“Assumed HLOS Sub Lease Amounts”** means the amounts shown in ³²[insert relevant input row of the Financial Model] of the Financial Model and [insert relevant section of the Record of Assumptions]³³ of the Record of Assumptions in each case as applicable as at the Start Date and assumed by the Franchisee as being payable under the HLOS Phase 2 Sub Lease, HLOS Phase 2 Lease or Subsequent HLOS Phase 2 Sub Lease (as applicable) for the maintenance and leasing of the HLOS Phase 2 Core Units;
 - (ii) **“Actual HLOS Sub Lease Amounts”** means (if and for so long as the HLOS Phase 2 Sub Lease, HLOS Phase 2 Lease or Subsequent HLOS Phase 2 Sub Lease (as applicable) is in force) the actual amounts payable by the Franchisee to the Southern Franchisee under the HLOS Phase 2 Sub Lease, HLOS Phase 2 Lease or Subsequent HLOS Phase 2 Sub Lease (as applicable) for the maintenance and leasing of the HLOS Phase 2 Core Units;
- (i) the Franchisee is required by the Secretary of State pursuant to paragraph 4 of Schedule 6.4 (Integration of the Southern Franchise Services) to enter into HLOS Phase 2 Sub Lease, HLOS Phase 2 Lease or Subsequent HLOS Phase 2 Sub Lease (as applicable) with the Southern Franchisee on terms which are materially inconsistent with:
- (i) in the case of the HLOS Phase 2 Lease, the terms of the document in the agreed terms marked **SOL**; and
 - (ii) in the case of the HLOS Phase 2 Sub Lease or Subsequent HLOS Phase 2 Sub Lease (as applicable) the following principle terms:
 - (A) the services to be provided by the Southern Franchisee will be substantially the same as specified in the document in the agreed terms marked **SOL**;
 - (B) in addition to the payments specified in the document in the agreed terms marked **SOL**, the HLOS Phase 2 Sub Lease or Subsequent HLOS Phase 2 Sub Lease (as applicable) shall provide for the payments of amounts equal to all rental, maintenance reserve and other amounts payable by the Southern Franchisee to the lessor under the HLOS Southern Operating Lease and other associated agreements;
 - (C) the HLOS Phase 2 Sub Lease or Subsequent HLOS Phase 2 Sub Lease (as applicable) shall terminate upon expiry or termination of the HLOS Southern Operating Lease and in any case shall expire on 01:59 on 26 July 2015 or if later the date of expiry of the Previous

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³³ Bidder to populate

Franchise Agreement to which the Southern Franchisee is a party.

- (j) the Franchisee does not enter into a HLOS Phase 2 Sub Lease, HLOS Phase 2 Lease or Subsequent HLOS Phase 2 Sub Lease (as applicable) with the Southern Franchisee as contemplated in paragraph 4.1 or 4.2 of Schedule 6.4 (Integration of the Southern Franchise Services); or
- (k) any of the HLOS Phase 2 Core Units fail to reach Acceptance on or before its Contractual Acceptance Date. If a Qualifying Change as contemplated under this paragraph 1.2(k) occurs then in agreeing or determining the Revised Inputs the parties shall take into account any Delay LDs received by the Franchisee from the Manufacturer under the HLOS Phase 2 MSA (whether in its capacity Financier or Operator under the HLOS Phase 2 MSA). For the purposes of this paragraph 1.2(k), "**Contractual Acceptance Date**", "**Delay LDs**", "**Financier**" and "**Operator**" shall each have the meaning given to such term in the HLOS Phase 2 MSA; and/or

Cascade Arrangements

- (l) where the provisions of paragraph 4.5(b)(i) of Schedule 6.4 (Integration of the Southern Franchise Services) apply:
 - (i) the Secretary of State:
 - (1) does not direct the Franchisee to enter into the sub lease of the 10 x 4 car HLOS Phase 2 Core Units by the date specified in paragraph 4.5(b)(i)(A) of Schedule 6.4 ((Integration of the Southern Franchise Services); or
 - (2) directs the Franchisee to enter into the sub lease of the 10 x 4 car HLOS Phase 2 Core Units by a date that is other than that specified in paragraph 4.5(b)(i)(A) of Schedule 6.4 ((Integration of the Southern Franchise Services)
 - (ii) the Secretary of State:
 - (1) does not direct the Franchisee to enter into the sub lease of the 19 x 4 car HLOS Phase 2 Core Units by the date specified in paragraph 4.5(b)(i)(B) of Schedule 6.4 ((Integration of the Southern Franchise Services); or
 - (2) directs the Franchisee to enter into the sub lease of the 19 x 4 car HLOS Phase 2 Core Units by a date that is other than that specified in paragraph 4.5(b)(i)(B) of Schedule 6.4 ((Integration of the Southern Franchise Services); or
- (m) where the provisions of paragraph 4.5(c)(i) of Schedule 6.4 (Integration of the Southern Franchise Services) apply:
 - (i) the Secretary of State:

- (1) does not direct the Franchisee to cease the leasing of the 10 x 4 car HLOS Phase 2 Core Units by the date specified in paragraph 4.5(c)(i)(A) of Schedule 6.4 ((Integration of the Southern Franchise Services); or
 - (2) directs the Franchisee to cease the leasing of the 10 x 4 car HLOS Phase 2 Core Units by a date that is other than that specified in paragraph 4.5(c)(i)(A) of Schedule 6.4 ((Integration of the Southern Franchise Services); or
- (ii) the Secretary of State:
- (1) does not direct the Franchisee to cease the leasing of the 19 x 4 car HLOS Phase 2 Core Units by the date specified in paragraph 4.5(c)(i)(B) of Schedule 6.4 ((Integration of the Southern Franchise Services); or
 - (2) directs the Franchisee to cease the leasing of the 19 x 4 car HLOS Phase 2 Core Units by a date that is other than that specified in paragraph 4.5(c)(i)(B) of Schedule 6.4 ((Integration of the Southern Franchise Services); or
- (n) the Secretary of State exercises his rights pursuant to paragraph 4.5(c)(iii) of Schedule 6.4 (Integration of the Southern Franchise Services) to require the Franchisee to incur further costs or liabilities as a term of consent to the ceasing of the leasing arrangements as contemplated in paragraph 4.5(c) of Schedule 6.4 (Integration of the Southern Franchise Services); or

HLOS Phase 2 Core Units are refinanced prior to the Combined Effective Date

- (o) in circumstances where the HLOS Southern Operating Lease is transferred or novated to the Franchisee pursuant to paragraph 4.5(a) of Schedule 6.4 (Integration of the Southern Franchise services), there is a difference between the Assumed HLOS Sub Lease Amounts (as such term is defined in paragraph 1 of this Schedule 9.3) and the Southern Lessor Lease Amounts. For the purposes of this paragraph 1.2(i), "**Southern Lessor Lease Amounts**" means the actual amounts of rentals payable by the Franchisee to the lessor under the HLOS Southern Operating Lease; or

HLOS Phase 2 Core Units are not refinanced prior to the Combined Effective Date

- (p) if on the transfer of the Relevant HLOS Phase 2 Agreements to the Franchisee pursuant to the novation specified in paragraph 4.5(a) of Schedule 6.4 (Integration of the Southern Franchise Services) or under the Combined Effective Date Transfer Scheme, the Franchisee steps into the HLOS Phase 2 MSA as Financier (as such term is defined in the HLOS Phase 2 MSA) in place of the Southern Franchisee. In agreeing or determining the Revised Inputs for the purposes of this Qualifying Change the following shall apply:
- (i) no Revised Inputs shall be made in respect of the costs for undertaking any of the maintenance and stabling activities in

respect of the HLOS Phase 2 Core Units on the basis that this has already been accounted for in the Financial Model and the Record of Assumptions applicable as at the Start Date;

- (ii) no Revised Inputs shall be made in respect of the costs to be incurred by the Franchisee for the purposes of complying with its obligations under paragraph 4.7 of Schedule 6.4 (Integration of the Southern Franchise Services) on the basis that this will be accounted for as set out in paragraph 4.7(i) of Schedule 6.4 (Integration of the Southern Franchise Services);
- (iii) the Revised Inputs shall take account of the amounts assumed by the Franchisee in its Financial Model and Records of Assumptions as being payable under the under the HLOS Phase 2 Sub Lease, HLOS Phase 2 Lease or Subsequent HLOS Phase 2 Sub Lease (as applicable) for the leasing of the HLOS Phase 2 Core Units (that is excluding any amounts assumed in relation to maintenance), on the basis that the Franchisee as Financier (as such term is defined in the HLOS Phase 2 MSA) will be the owner of the HLOS Phase 2 Core Units and so will be under no obligation to make any lease payments to any person; and
- (iv) no Revised Inputs shall be made in respect of the Outstanding Contract Price on the basis that this will be accounted for as set out in paragraph 4.6 of Schedule 6.4 (Integration of the Southern Services); or

HLOS Phase 2 Core Units are refinanced after the Combined Effective Date

- (q) the circumstances specified in paragraph 4.7(i) of Schedule 6.4 (Integration of the Southern Franchise Services) occur; or

Track Access Charges SoSRA

- (r) there is a difference between the Assumed Track Charges and the Actual Track Charges. For the purposes of this paragraph 1.2(r):
 - (i) "**Assumed Track Charges**" means the Track Charges payable under the Track Access Agreement that the Franchisee is required to enter into with Network Rail pursuant to paragraph 1.1(a) of Schedule 6.4 (Integration of the Southern Franchise Services) (the "**Combined Franchise TAA**") as assumed by the Franchisee in its Financial Model and Record of Assumptions applicable as at the date of the Franchise Agreement, such Track Charges being as shown in [*insert relevant input rows for the 2015 Track Charges*]³⁴;
 - (ii) "**Actual Track Charges**" means the amount of the Track Charges payable by the Franchisee to Network Rail under the Combined Franchise TAA;

³⁴ Bidder to populate.

- (iii) **"Track Charges"** will have the meaning given to it under the Combined Franchise TAA.; or
- (s) **Schedule 4/Schedule 8 of the Combined Franchise TAA**
 - (i) there is a difference between:
 - (A) the assumptions made by the Franchisee in its Financial Model and Record of Assumptions applicable as at the date of the Franchise Agreement in relation to the basis for the population of Annexes A, B and C to Part 3 of Schedule 4 of the Combined Franchise TAA and paragraph 1 of Part 5 of Schedule 4 of the Combined Franchise TAA; and
 - (B) the manner in which those annexes and part 5 of Schedule 4 are actually populated on the date that the Combined Franchise TAA becomes effective; and/or
 - (ii) there is a difference between:
 - (A) the assumptions made by the Franchisee in its Financial Model and Record of Assumptions applicable as at the date of the Franchise Agreement in relation to the basis for the population of Appendices 1 and 3 of Schedule 8 of the Combined Franchise TAA; and
 - (B) the manner in which those appendices of Schedule 8 are populated on the date that the Combined Franchise TAA becomes effective,

provided that, in each case, in agreeing or determining the Revised Inputs pursuant to this paragraph 1.2(s) no account shall be taken of any change to any aspect of the provisions of Schedule 4 and Schedule 8 of the Combined Franchise TAA to the extent that the benefit and/or risk associated with any such provisions is retained by the Secretary of State pursuant to paragraph 7 of Schedule 6.2 (TSGN Franchise Specific Provisions). The provisions of paragraph 7.1(c) of Schedule 6.2 (TSGN Franchise Specific Provisions) shall apply, mutatis mutandis, to the provisions of this paragraph 1.2(s); or
- (t) there is an increase or decrease in the Fixed Track Charges payable by the Franchisee to Network Rail under its Track Access Agreement and any such increase or decrease has arisen as a direct consequence of:
 - (i) the addition of the Passenger Services described in paragraph (b) of the definition of the TGN Franchise Services; or
 - (ii) the transfer of the operation of certain Passenger Services from the Franchisee to the LSER Franchisee at the direction of the Secretary of State contemplated to occur on or around January 2018.

For the purposes of this paragraph 1.2(t), **"Fixed Track Charges"** has the meaning given to it in the Track Access Agreement.

2. A Change shall occur if and whenever any of the events set out below in any of the following risk assumptions occur during the Franchise Term:
 - 2.1 the Secretary of State directs the Franchisee to agree and implement an amendment to, or terminate any LSER Thameslink Trading Agreement pursuant to paragraphs 8.1(a)(ii) or 8.1(a)(iii) of Schedule 6.2 (TSGN Franchise Specific Provisions);
 - 2.2 the Secretary of State directs the Franchisee to agree and implement an amendment to, or terminate the Class 377 Sub Lease (as such term is defined in paragraph 8.4(a) of Schedule 6.2 (TSGN Franchise Specific Provisions)) pursuant to paragraphs 8.4(d)(ii) or 8.4(d)(iii) of Schedule 6.2 (TSGN Franchise Specific Provisions);
 - 2.3 the Secretary of State exercises his rights under paragraph 8.3(a) of Schedule 6.2 (TSGN Franchise Specific Provisions) to require the Franchisee to enter into leases in respect of the Transfer Stations on a date that is earlier or later than 21 December 2014;
 - 2.4 the Secretary of State exercises his rights under:
 - (a) paragraph 8.4(a) of Schedule 6.2 (TSGN Franchise Specific Provisions) to require the Franchisee to enter into the Class 377 Sub Lease (as such term is defined in paragraph 8.4(a) of Schedule 6.2 (TSGN Franchise Specific Provisions)) on a date that is earlier or later than the Passenger Change Date occurring on or about December 2017; or
 - (b) paragraph 8.4(c) to require the Franchisee to enter into the Class 377 Sub Lease on terms which are inconsistent with any of the principles specified in paragraph 8.4(b) of Schedule 6.2 (TSGN Franchise Specific Provisions).
- For the purposes of the Change referred to in this paragraph 2.4 no account shall be taken of any costs or expenses incurred by the Franchisee in connection with or arising out of the negotiation, preparation and execution of the Class 377 Sub Lease (including any costs relating to the negotiation, preparation and execution of any of the amendments required to be made to the Rolling Stock Lease and/or the Technical Support and Spares Supply Agreement in relation to the Class 377 units as a consequence of the entry into the Class 377 Sub Lease); or
- 2.5 the Secretary of State exercises his rights under paragraph 8.4(e) of Schedule 6.2 (TSGN Franchise Specific Provisions) to require the Franchisee to incur further costs or liabilities as a term of consent or agree to any amendment, variation or supplement to the proposed terms of the Class 377 Sub Lease; or
- 2.6 the Secretary of State directs the Franchisee to agree and implement an amendment to, or terminate any Southern Trading Agreement pursuant to paragraphs 9.1(b) or 9.1(c) of Schedule 6.2 (TSGN Franchise Specific Provisions);
- 2.7 there is a material change to the actual implementation plans (including the relevant timescales for the delivery of such plans) adopted by Network Rail in respect of the ERTMS Programme when compared to the plans as specified in the Proposed ERTMS Implementation Plan and, as a result, after taking into account any compensation that the Franchisee is entitled to claim whether under Schedule 4 of the Track Access Agreement, Condition G.2 of the Network Code or otherwise (and for these purposes it shall be assumed that the Track Access

Agreement complies with the requirements of paragraph 6.3 of Schedule 6.2 (TSGN Franchise Specific Provisions)), the Franchisee is financially better off than would otherwise have been the case; or

- 2.8 The Franchisee is directed by the Secretary of State pursuant to any of paragraphs 2.1 or 2.2 of Schedule 5.9 (ITSO Certified Smartmedia) (as the case may be) to enter into the Southern SEFT Deed or the TGN SEFT Deed on terms which are materially inconsistent with:
- (a) in the case of the Southern SEFT Deed, the assumptions contained in the document in the agreed terms marked **SSD**; or
 - (b) in the case of the TGN SEFT Deed, the assumptions contained in the document in the agreed terms marked **TSD**.

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SCHEDULE 9.4

Component of FAT: Definition of Threshold Amount

Franchisee Year	FAT Amount ³⁵
Year 1 (part year)	£[Insert Amount]
Year 2	£[Insert Amount]
Year 3	£[Insert Amount]
Year 4	£[Insert Amount]
Year 5	£[Insert Amount]
Year 6	£[Insert Amount]
Year 7	£[Insert Amount]
Year 8 (part year)	£[Insert Amount]
First year of up to 26 Reporting Periods Extension	£[Insert Amount]
Second year of up to 26 Reporting Periods Extension	£[Insert Amount]

³⁵ This amount to be calculated as 0.1% of operating costs (i.e. the amounts for the components of FXD, VCRPI and VCAWE as specified in the table in Schedule 8.2) **less** regulatory charges (i.e. the Track Access Charges (including Fixed Track Access and Variable Track Charges)) and the Long Term Charges payable under the Station Access Agreements and Depot Access Agreements).

SCHEDULE 9.5

Variations to the Franchise Agreement and Incentivising Beneficial Changes

1. **Variations to the Franchise Agreement and Incentivising Beneficial Changes**
- 1.1 The terms of the Franchise Agreement may be varied as follows but not otherwise:
 - (a) by the Secretary of State as contemplated (where relevant) in the Invitation to Tender, in relation to:
 - (i) any aspect of the Franchise Services; and/or
 - (ii) any provision of the Franchise Agreement other than those provisions specified in paragraph 1.2,by service of a notice on the Franchisee referring to this paragraph 1.1(a) and setting out the variation to the terms of the Franchise Agreement; and
 - (b) in relation to any other provision of the Franchise Agreement, by agreement in writing between the parties to that effect,

(each a "**Variation**").
- 1.2 Without prejudice to the Secretary of State's rights under paragraph 1.1(a), the terms of each of:
 - (a) clause 4 (Term) of this Agreement;
 - (b) Schedules 8 (Payments), 9 (Changes), 10 (Remedies and Termination), 12 (Financial Obligations and Covenants), 14 (Preservation of Assets), 18 (Additional Reporting Periods) and Schedule 19 (Other Provisions); and
 - (c) the definitions set out at clause 2 (Definitions) of this Agreement insofar as such affect the respective rights and obligations of the Secretary of State and the Franchisee pursuant to the provisions referred to at (a) and (b) above,shall not be varied at any time other than in accordance with the terms of this Agreement or with the agreement of the parties.
- 1.3 The Secretary of State shall, to the extent reasonably practicable, allow the Franchisee a reasonable opportunity to make representations to the Secretary of State concerning any Variation to be made in accordance with paragraph 1.1(a), prior to making any such Variation.
- 1.4 The Secretary of State may:
 - (a) issue, revise and withdraw from time to time procedures that he requires to be followed for the purposes of orderly consideration of Variations. This will include for the purpose of establishing in relation to any Change whether it is a Qualifying Change; and

- (b) require the Franchisee to provide any information that the Secretary of State reasonably requires for this purpose (including in relation to prospective change to profit, costs and revenue as a consequence of proceeding with the Variation).
- 1.5 Procedures issued pursuant to paragraph 1.4 may provide for indicative iterations of Runs of the Financial Model in relation to one or more Changes that the Secretary of State is considering and may also provide for any number of Changes to be grouped together as a single Change for the purposes of agreeing or determining Revised Inputs and then performing a Run of the Financial Model.
- 1.6 Procedures issued pursuant to paragraph 1.4 shall have contractual effect between the parties in accordance with their terms.
- 1.7 The Franchisee may notify the Secretary of State of any proposal for a Variation by notice setting out the proposed method of implementing such Variation including:
- (a) the timescale for doing so;
 - (b) the effect (if any) on the timing of the performance of its other obligations under the Franchise Agreement;
 - (c) the impact of effecting the proposed Variation on the provision of the Franchise Services and the Franchisee's proposals as to how to minimise such impact; and
 - (d) the financial consequences of implementing the Variation proposed by the Franchisee in terms of the Revised Inputs that the Franchisee considers the Variation would require.
- 1.8 Not used.
- 1.9 Where the Franchisee proposes a Variation in sufficient detail for it to be apparent that its implementation is likely to result in an increase in the overall profitability of the Franchisee through costs saving measures (a "**Protected Proposal**"), the Secretary of State may not proceed with the Protected Proposal or seek to implement the substance of it by proposing a Variation of his own without complying with the provisions of paragraph 5.3 of Appendix 2 (Agreement or Determination of Revised Inputs) to Schedule 9.1 (Financial and Other Consequences of Change
- 1.10
- (a) The Franchisee and the Secretary of State acknowledge that the Franchisee may during the Franchise Term identify actions that could be taken by the Franchisee to achieve savings and improved financial performance and that such actions may if implemented give rise to a Change under the terms of this Agreement which, if it is a Qualifying Change, will give a financial benefit to the Secretary of State. It is further acknowledged that it is appropriate for the Franchisee to seek to identify such actions for the purposes of improving the cost effective delivery of railway passenger services.
 - (b) To incentivise the Franchisee to seek to identify such actions it is agreed that the Franchisee may approach the Secretary of State with a proposal to take an action that would constitute a Change on the basis that if such

a Change occurred and was a Qualifying Change in agreeing or determining the Revised Inputs the parties or the Secretary of State would effect such change (if any) to the amount attributable to profit as they agree or the Secretary of State reasonably determines:

- (i) fairly rewards the Franchisee for proposing the Change; and
 - (ii) reasonably incentivises the Franchisee to propose further Changes that achieve savings and/or improved financial performance by sharing with the Franchisee a reasonable amount of the additional profit that is expected to arise from implementing the relevant Change.
- (c) The Secretary of State shall have an unfettered discretion as to whether or not to agree such a proposal but if he does so agree and a Qualifying Change in consequence occurs then in agreeing or determining Revised Inputs the provisions referred to in sub paragraph (b) above shall apply.

2. **Capital Expenditure**

Capital Expenditure Threshold

2.1 The Franchisee shall notify the Secretary of State promptly if it reasonably expects that a Change to which paragraph 1 relates would require it to incur, singly or in aggregate with other Changes from time to time, Capital Expenditure in excess of one per cent. of its annual Turnover as disclosed by its latest available Annual Audited Accounts and, when so notified, the Secretary of State shall either:

- (a) withdraw the Change;
- (b) undertake to meet the excess through additional funding as and when such Capital Expenditure is incurred; or
- (c) direct the Franchisee to use all reasonable endeavours to borrow or otherwise raise the money required to fund any Change on commercial terms and at rates which are consistent with market conditions at the time, unless borrowing or otherwise raising such money would result in the Franchisee failing to comply with the financial covenants contained in Schedule 12 (Financial Obligations and Covenants).

Franchisee to Seek Finance

2.2 If the Secretary of State elects to require the Franchisee to use all reasonable endeavours as described in paragraph 2.1(c) then the Franchisee shall:

- (a) seek finance from a representative range of lending institutions and other financial institutions including those which at that time provide finance to the Franchisee and the Parent;
- (b) if it is unable to raise funding, provide the Secretary of State with all information the Secretary of State may reasonably require in relation to the efforts made by the Franchisee and the reasons for a failure to raise additional finance;
- (c) so far as it is able (having used all reasonable efforts to do so), the Franchisee shall provide to the Secretary of State letters from lenders and

financiers it has approached for finance stating their reasons for refusing to provide it and if the Secretary of State so requires, arrange and attend meetings with them for the Secretary of State to discuss those reasons; and

- (d) if funding is not available, or is not available on terms that the Secretary of State considers to be commercial terms or at rates which are consistent with market conditions at that time the Secretary of State may:
 - (i) withdraw the Change; or
 - (ii) undertake to fund the Capital Expenditure as and when such Capital Expenditure is incurred.

Treatment of Borrowings in Revised Inputs

- 2.3 In calculating the Revised Inputs for the purposes of any Change referred to in this paragraph 2, the Franchisee shall account for the Capital Expenditure in accordance with GAAP, taking into account the basis on which such Capital Expenditure has been financed.

Meaning of Capital Expenditure

- 2.4 The expression Capital Expenditure when used in this Schedule 19 refers to the nature of the expenditure incurred by the Franchisee and, accordingly, does not include expenditure incurred under operating leases.

SCHEDULE 10

Remedies, Termination and Expiry

- Schedule 10.1: Remedial Plans and Remedial Agreements**
- Schedule 10.2: Termination and Expiry**
- Schedule 10.3: Events of Default and Termination Events**
- Schedule 10.4: Force Majeure**
- Schedule 10.5: Liability**

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SCHEDULE 10.1

Remedial Plans and Remedial Agreements

1. Remedies for Contraventions of the Franchise Agreement

1.1 If the Secretary of State is satisfied that the Franchisee is contravening or is likely to contravene any term of the Franchise Agreement he may serve a notice on the Franchisee requiring it to propose such steps as the Franchisee considers appropriate for the purpose of securing or facilitating compliance with the term in question (a "**Remedial Plan Notice**").

Contents of Remedial Plan Notices

1.2 Each Remedial Plan Notice shall specify the following:

- (a) the term or terms of the Franchise Agreement that the Secretary of State is satisfied that the Franchisee is contravening or is likely to contravene (each a "**Relevant Term**"); and
- (b) the time period within which the Secretary of State requires the Franchisee to provide an appropriate plan for the purpose of facilitating or securing compliance with any Relevant Term (a "**Remedial Plan**").

Contents of Remedial Plans

1.3 If the Secretary of State issues a Remedial Plan Notice, the Franchisee shall submit a Remedial Plan to the Secretary of State within the period specified in such Remedial Plan Notice.

1.4 Each Remedial Plan shall set out:

- (a) the Relevant Term which has caused a Remedial Plan to be required;
- (b) an explanation of the reasons for the contravention or likely contravention of the Relevant Term;
- (c) the steps proposed for the purposes of securing or facilitating compliance with the Relevant Term; and
- (d) the time period within which the Franchisee proposes to implement those steps.

Remedial Agreements

1.5 If the Secretary of State is satisfied that the matters referred to in paragraph 1.4(c) and (d) are appropriate (with or without further modification as the parties may agree) he may require the Franchisee to enter into a supplemental agreement (the "**Remedial Agreement**") with the Secretary of State to implement those matters.

1.6 It is a term of the Franchise Agreement that the Franchisee (at its own cost) complies with the Remedial Agreement in accordance with its terms.

Effect of Force Majeure Event

- 1.7 Without prejudice to the operation of paragraph 3.2 of Schedule 10.4 (Force Majeure), the following provisions shall apply in relation to Force Majeure Events affecting performance of a Remedial Agreement:
- (a) the Franchisee shall give written notice to the Secretary of State promptly after it becomes aware (and in any event within 24 hours after becoming aware) of the occurrence or likely occurrence of a Force Majeure Event which will or is likely to affect the Franchisee's ability to comply with a Remedial Agreement within the period specified therein;
 - (b) each notice submitted in accordance with paragraph 1.7(a) shall state the extent or likely extent of the relevant Force Majeure Event and, in the case of a Force Majeure Event which has not occurred at such time, the reasons why the Franchisee considers it likely to occur;
 - (c) the Franchisee shall use, and shall continue to use, all reasonable endeavours to avoid or reduce the effect or likely effect of any Force Majeure Event on its ability to comply with any Remedial Agreement; and
 - (d) subject to the Franchisee having complied with its obligations under paragraphs 1.7(a) to 1.7(c) (inclusive) the Franchisee shall be entitled to a reasonable extension of the remedial period applicable to a Remedial Agreement in order to take account of the effect of a Force Majeure Event which has occurred on the Franchisee's ability to comply with any Remedial Agreement.

Occurrence of a Contravention

- 1.8 Following the occurrence of a contravention of the Franchise Agreement, the Secretary of State may at his option (but shall not be obliged to) commence or increase the level and/or frequency of monitoring (whether by inspection, audit or otherwise) of the Franchisee's performance of any relevant obligations until such time as the Franchisee demonstrates, to the Secretary of State's reasonable satisfaction, that it is capable of performing and will perform such obligations as required by the Franchise Agreement.
- 1.9 The Franchisee shall co-operate fully with the Secretary of State in relation to the monitoring referred to in paragraph 1.8.
- 1.10 The results of such monitoring will be reviewed at each Franchise Performance Meeting held pursuant to Schedule 11 (Agreement Management Provisions).
- 1.11 The Franchisee shall compensate the Secretary of State for all reasonable costs incurred by the Secretary of State in carrying out such monitoring.

SCHEDULE 10.2

Termination and Expiry

1. Termination Notices

1.1 The Secretary of State may, on and at any time after the occurrence of:

- (a) (subject to paragraphs 1.2 and 1.3) an Event of Default which:
 - (i) is unremedied or continuing; and
 - (ii) the Secretary of State considers to be material; or
- (b) a Termination Event specified in paragraph 3.1(a) of Schedule 10.3 (Events of Default and Termination Events) which is unremedied or continuing; or
- (c) a Termination Event specified in any of paragraphs 3.1(b) to 3.1(d) of Schedule 10.3 (Events of Default and Termination Events),

terminate the Franchise Agreement by serving a Termination Notice on the Franchisee. The Franchise Agreement shall terminate with effect from the date specified in any such Termination Notice.

1.2 The Secretary of State may not serve a Termination Notice in respect of an Event of Default in relation to which a Remedial Plan Notice has been issued until the period has expired within which the Franchisee is required to deliver to the Secretary of State the Remedial Plan specified in such Remedial Plan Notice.

1.3 The Secretary of State may not serve a Termination Notice in respect of an Event of Default for which the Franchisee is implementing a Remedial Agreement in accordance with its terms.

2. Consequences of Termination or Expiry

2.1 Upon termination of the Franchise Agreement (whether through default or effluxion of time or otherwise) the obligations of the parties shall cease except for:

- (a) any obligations arising as a result of any antecedent contravention of the Franchise Agreement;
- (b) any obligations which are expressed to continue in accordance with the terms of the Franchise Agreement; and
- (c) any other obligations which give effect to such termination or to the consequences of such termination or which otherwise apply (expressly or impliedly) on or after such termination.

2.2 Nothing in this paragraph 2 shall prevent the Secretary of State from bringing an action against the Franchisee in connection with the termination of the Franchise Agreement prior to the expiry of the Franchise Term.

SCHEDULE 10.3

Events of Default and Termination Events

1. Provisions Relating to Events of Default

Contravention

- 1.1 The occurrence of an Event of Default shall constitute a contravention of the Franchise Agreement by the Franchisee.

Notification of Event of Default

- 1.2 The Franchisee shall notify the Secretary of State as soon as reasonably practicable on, and in any event within 24 hours of, it becoming aware of the occurrence of an Event of Default or an event which is likely to result in the occurrence of an Event of Default. The Franchisee shall take such action or steps as the Secretary of State may require to remedy any Event of Default or potential Event of Default.

Consequences of Event of Default

- 1.3 On the occurrence of an Event of Default, the provisions of Schedule 10.1 (Remedial Plans and Remedial Agreements) shall apply.

2. Events of Default

Each of the following is an Event of Default:

Insolvency

2.1

- (a) **Administration:** Any step being taken by any person with a view to the appointment of an administrator to the Franchisee or the Parent or any Bond Provider;
- (b) **Insolvency:** Any of the Franchisee or the Parent or Bond Provider stopping or suspending or threatening to stop or suspend payment of all or, in the reasonable opinion of the Secretary of State, a material part of (or of a particular type of) its debts, or being unable to pay its debts, or being deemed unable to pay its debts under Section 123(1) or (2) of the Insolvency Act 1986 except that in the interpretation of this paragraph the words "it is proved to the satisfaction of the court that" in sub-section (1)(e) and sub-section (2) of Section 123 shall be deemed to be deleted;
- (c) **Arrangements with Creditors:** The directors of the Franchisee or the Parent or any Bond Provider making any proposal under Section 1 of the Insolvency Act 1986, or any of the Franchisee or the Parent or any Bond Provider proposing or making any agreement for the deferral, rescheduling or other readjustment (or proposing or making a general assignment or an arrangement or composition with or for the benefit of creditors) of all or, in the reasonable opinion of the Secretary of State, a material part of (or of a particular type of) its debts, or a moratorium being agreed or declared in respect of or affecting all or, in the reasonable

opinion of the Secretary of State, a material part of (or of a particular type of) its debts;

- (d) **Security Enforceable:** Any step being taken to enforce security over or a distress, execution or other similar process being levied or served against any property of the Franchisee or the whole or a substantial part of the assets or undertaking of the Franchisee, the Parent or any Bond Provider, including the appointment of a receiver, administrative receiver, manager or similar person to enforce that security;
- (e) **Stopping Business/Winding-Up:** Any step being taken by the Franchisee, the Parent or any Bond Provider with a view to its winding-up or any person presenting a winding-up petition or any of the Franchisee or the Parent or any Bond Provider ceasing or threatening to cease to carry on all or, in the reasonable opinion of the Secretary of State, a material part of its business, except for the purpose of and followed by a reconstruction, amalgamation, reorganisation, merger or consolidation on terms approved by the Secretary of State before that step is taken;
- (f) **Railway Administration Order:** A railway administration order being made in relation to the Franchisee under Sections 60 to 62 of the Act; and
- (g) **Analogous Events:** Any event occurring which, under the Law of any relevant jurisdiction, has an analogous or equivalent effect to any of the events listed in this paragraph 2.1,

subject, in the case of any relevant event occurring in relation to a Bond Provider where no such other Event of Default has occurred and is unremedied or continuing at such time, to a period of 20 business days having elapsed in order to allow the Franchisee to replace the relevant Bond Provider.

Non-payment

- 2.2 The Franchisee failing to pay to the Secretary of State any amount due under the Franchise Agreement within 28 days of the due date for such payment.

Change of Control

- 2.3 Otherwise than in accordance with a prior consent of the Secretary of State given under paragraph 4 of this Schedule 10.3, a change occurring in the identity of any one person, or two or more persons acting by agreement, who may Control the Franchisee on and from the date of the Franchise Agreement and during the Franchise Term, which shall include a person, or two or more persons acting by agreement, ceasing to Control the Franchisee at any time during the Franchise Term, whether or not any other person Controls the Franchisee at the same time (any such change a "**Change of Control**") and for the purposes of this paragraph 2.3, two or more persons shall be deemed to be acting by agreement in relation to the Franchisee if, assuming the Franchisee was a target company as defined in the Companies Act 2006, such persons would be under an obligation to disclose an interest in shares in such company by virtue of an agreement between such persons.

Revocation of Licence

- 2.4 Revocation of any Licence required to be held by the Franchisee in order to comply with its obligations under the Franchise Agreement.

Safety Certificate and Safety Authorisation

- 2.5 The Safety Certificate and/or Safety Authorisation of the Franchisee being withdrawn or terminated.

Passenger Service Performance

- 2.6 Except in respect of any Reporting Period falling within a No Breach Reporting Period, the Franchisee's performance in relation to any Benchmark exceeds (that is, is equal to or worse than) the Default Performance Level for that Benchmark for
- (a) any three consecutive Reporting Periods;
 - (b) any four Reporting Periods within a period of 13 consecutive Reporting Periods; or
 - (c) any five Reporting Periods within a period of 26 consecutive Reporting Periods.

Remedial Agreements and Enforcement Orders

- 2.7
- (a) Non-compliance by the Franchisee with a Remedial Agreement, where such non-compliance is reasonably considered by the Secretary of State to be material.
 - (b) Non-compliance by the Franchisee with:
 - (i) a provisional order;
 - (ii) a final order;
 - (iii) a penalty; or
 - (iv) any other order made relating to contravention of either a relevant condition or requirement (as defined in Section 55 of the Act) or another order,in each case made by the Secretary of State under the Act.

TRSP Documents

- 2.8 Notice is served on the Secretary of State or the Secretary of State has reasonable grounds for considering that notice will be served by any other party to the TRSP Documents to terminate any such TRSP Document on the grounds of breach or default by the Franchisee of any of the terms and conditions of such TRSP Document.

Financial Ratios

- 2.9 Breach by the Franchisee of either or both of the financial ratios specified in paragraph 2 of Schedule 12 (Financial Obligations and Covenants).

Breach of Law

2.10

- (a) It becoming unlawful for the Franchisee to provide all or, in the reasonable opinion of the Secretary of State, a material part of the Passenger Services or to operate all or, in the reasonable opinion of the Secretary of State, a material number of the Stations or Depots (except to the extent not required so to do under the Franchise Agreement).
- (b) The Franchisee or any of the directors or senior managers of the Franchisee being convicted of manslaughter, fraud or any other indictable criminal offence in each case relating directly to the provision and operation of the Franchise Services.
- (c) The Franchisee being, in the reasonable opinion of the Secretary of State, in material non-compliance with a prohibition or enforcement order (or the equivalent thereof) issued by the ORR pursuant to its safety functions. If the Franchisee makes an appeal against such prohibition or enforcement order (or such equivalent thereof) in accordance with its terms, no Event of Default shall have occurred under this paragraph 2.10(c) until such appeal has been determined to be unsuccessful.

Contravention of Other Obligations

2.11 The occurrence of the following:

- (a) the Franchisee contravening to an extent which is reasonably considered by the Secretary of State to be material any one or more of its obligations under the Franchise Agreement (other than such non-performance or non-compliance as may constitute an Event of Default under the provisions of this Schedule 10.3 other than this paragraph 2.11);
- (b) the service by the Secretary of State on the Franchisee of a written notice specifying:
 - (i) such contravention; and
 - (ii) to the extent the contravention is capable of being remedied, the reasonable period within which the Franchisee is required to so remedy; and
- (c) the Franchisee contravening such obligation or obligations again to an extent which is reasonably considered by the Secretary of State to be material or permitting the contravention to continue or, if the contravention is capable of remedy, failing to remedy such contravention within such period as the Secretary of State has specified in the notice served pursuant to paragraph 2.11(b)(ii).

Non-membership of Inter-Operator Schemes

2.12 The Franchisee ceasing to be a member of, or ceasing to participate in or to be party to, any of the Inter-Operator Schemes, or having its membership or participation therein suspended.

Bonds

2.13

- (a) Any Performance Bond or Season Ticket Bond ceasing to be a legal, valid and binding obligation on the relevant Bond Provider (other than in accordance with its terms) or it otherwise becoming unlawful or impossible for any Bond Provider to perform its obligations thereunder;
- (b) A failure by the Franchisee to procure the provision to the Secretary of State of a Performance Bond (or Performance Bonds provided pursuant to paragraph 4.9 of Schedule 12 (Financial Obligations and Covenants)) which individually or in aggregate fulfil the requirements of Schedule 12 (Financial Obligations and Covenants); or
- (c) A failure by the Franchisee to procure the provision to the Secretary of State of a Season Ticket Bond which fulfils the requirements of Schedule 12 (Financial Obligations and Covenants).

Key Contracts

2.14 Termination of any Key Contract, or the failure by the Franchisee to take all reasonable steps to enter into an appropriate replacement contract prior to the scheduled expiry date of any Key Contract, except where requested by the Secretary of State or to the extent that the Franchisee has demonstrated to the reasonable satisfaction of the Secretary of State that for the duration of the Franchise Term:

- (a) it is no longer necessary for it to be party to such Key Contract; or
- (b) it has made adequate alternative arrangements in order to be able to continue to provide and operate the Franchise Services.

Funding Deed

2.15 A failure by the Franchisee or the Parent to comply with their respective obligations under the Funding Deed.

3. Termination Events

3.1 The Secretary of State may terminate the Franchise Agreement in accordance with Schedule 10.2 (Termination and Expiry) if:

- (a) any Force Majeure Event continues with the effect of preventing the Franchisee from delivering, wholly or mainly, the Passenger Services for more than six consecutive months; or
- (b) the warranty given by the Franchisee pursuant to paragraph 6 of Schedule 12 (Financial Obligations and Covenants) is materially untrue; or
- (c) the Franchisee commits a material breach of its obligation to notify the Secretary of State of any Occasion of Tax Non-Compliance as required by paragraph 6.2(a) of Schedule 12 (Financial Obligations and Covenants); or
- (d) the Franchisee fails to provide details of proposed mitigating factors as required by paragraph 6.2(b) of Schedule 12 (Financial Obligations and

Covenants) which in the reasonable opinion of the Secretary of State, are acceptable,

each a "**Termination Event**".

4. **Facilitation Fee**

- 4.1 The Franchisee may, at any time, apply in writing to the Secretary of State for his consent to a Change of Control (as such term is defined pursuant to paragraph 2.3).
- 4.2 The Secretary of State may require the Franchisee to pay a fee in consideration of the grant of such consent (the "**Facilitation Fee**").
- 4.3 The Secretary of State may require the Franchisee to pay an additional fee in respect of the staff, professional and other costs incurred by the Secretary of State in connection with the Franchisee's application (the "**Administration Fee**"). The Administration Fee shall be payable whether or not the Secretary of State consents to the proposed Change of Control.
- 4.4 On or after submitting such application to the Secretary of State, the Franchisee will provide, and will procure that the seller and the buyer provide, the Secretary of State with such documentation and information as the Secretary of State may require to assess such application and the amount of the Facilitation Fee. Without limiting paragraphs 4.9 or 4.10, it shall be deemed to be reasonable for the Secretary of State to delay or withhold consent to the Change of Control where any such documentation is not provided.
- 4.5 The Facilitation Fee shall be a sum equal to the greater of:
- (a) pounds sterling one million (£1,000,000); or
 - (b) where the Estimated Profit Stream is greater than the Bid Profit Stream 5% of the difference between the Bid Profit Stream and the Estimated Profit Stream.
- 4.6 The Administration Fee shall be determined by the Secretary of State on the basis of:
- (a) the aggregate time spent by officials within the Secretary of State's Department on matters relating to such application;
 - (b) the Secretary of State's hourly scale rates for such officials, as varied from time to time; and
 - (c) the aggregate costs and disbursements, including where applicable VAT and professional costs, incurred by the Secretary of State in connection with such application.
- 4.7 Any determination by the Secretary of State for the purposes of paragraphs 4.5 or 4.6 shall in the absence of manifest error be final and binding as between the Secretary of State and the Franchisee (but without prejudice to the requirement of the Secretary of State to reasonably determine the Estimated Profit Stream).
- 4.8 Any consent by the Secretary of State to a Change of Control may be given subject to such conditions as the Secretary of State sees fit and the Franchisee

shall, as applicable, comply with, and/or procure that the seller and/or the buyer comply with, any such conditions.

- 4.9 The Secretary of State shall have absolute discretion as to the grant of consent to any Change of Control and may accordingly refuse such consent for any reason he sees fit.
- 4.10 The Secretary of State shall have no liability whatever to the Franchisee in respect of any refusal of consent to a Change of Control, any delay in providing such consent, or any condition of such consent.

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SCHEDULE 10.4

Force Majeure

1. Force Majeure Events

The following events shall constitute Force Majeure Events, subject to the conditions specified in paragraph 2 being satisfied:

- (a) the Franchisee or any of its agents or subcontractors is prevented or restricted by Network Rail (including by virtue of the implementation of any Contingency Plan) from gaining access to any section or part of track (including any track running into, through or out of a station). For the purposes of this paragraph 1:
 - (i) references to a party being prevented or restricted from gaining access to any section or part of track shall mean that such party is not permitted to operate any trains on the relevant section or part of track, or is only permitted to operate a reduced number of trains from that which it was scheduled to operate;
 - (ii) the period of such prevention or restriction shall be deemed to commence with effect from the first occasion on which the Franchisee is prevented or restricted from operating a train on such section or part of track;
 - (iii) references in paragraphs 1(a)(i) and (ii) to the operation of trains include scheduled empty rolling stock vehicle movements; and
 - (iv) “**Contingency Plan**” means a contingency plan (as defined in the Railway Operational Code or where the Railway Operational Code ceases to exist such other replacement document of a similar or equivalent nature which contains a definition of contingency plan similar to that contained in the Railway Operational Code) implemented by and at the instigation of Network Rail, or such other contingency or recovery plan as the Secretary of State may agree from time to time;
- (b) the Franchisee or any of its agents or subcontractors is prevented or restricted by Network Rail or any Facility Owner (other than a Facility Owner which is an Affiliate of the Franchisee) from entering or leaving:
 - (i) any station or part thereof (excluding any prevention or restriction from gaining access to any section or part of track running into, through or out of a station); or
 - (ii) any depot or part thereof (including the movement of trains on tracks within any depot but excluding any prevention or restriction from gaining access to any track outside such depot running into or out of that depot);
- (c) any of the following events occurs:

- (i) a programme of Mandatory Modifications commences;
- (ii) any Rolling Stock Units are damaged by fire, vandalism, sabotage or a collision and are beyond repair or beyond economic repair; or
- (iii) a government authority prevents the operation of Rolling Stock Units on the grounds of safety,

and, in each case, the greater of two Rolling Stock Units and ten per cent. of all rolling stock vehicles used by the Franchisee in the provision of the Passenger Services in relation to any Service Group are unavailable for use in the provision of the Passenger Services as a result of the occurrence of such event;

- (d) the Franchisee prevents or restricts the operation of any train on safety grounds provided that:

- (i) the Franchisee has, either before or as soon as reasonably practicable after initiating such prevention or restriction, sought the confirmation of the ORR in exercise of its safety functions, or any relevant other body with statutory responsibility for safety in the circumstances, of the necessity of such prevention or restriction; and
- (ii) if and to the extent that the ORR, or other relevant body with statutory responsibility for safety in the circumstances, in exercise of its safety functions indicates that such prevention or restriction is not necessary, then no Force Majeure Event under this paragraph 1(d) shall continue in respect of that restriction or prevention after the receipt of such indication from the ORR or other relevant body;

- (e) act of God, war damage, enemy action, terrorism or suspected terrorism, riot, civil commotion or rebellion (together "**Emergency Events**") or the act of any government instrumentality (including the ORR but excluding the Secretary of State) in so far as the act of government instrumentality directly relates to any of the Emergency Events, provided that there shall be no Force Majeure Event under this paragraph 1(e) by reason of:

- (i) the suicide or attempted suicide of any person that does not constitute an act of terrorism;
- (ii) the activities of the police, fire service, ambulance service or other equivalent emergency service that are not in response to acts of terrorism or suspected terrorism; or
- (iii) an act of God which results in the Franchisee or its agents or subcontractors being prevented or restricted by Network Rail from gaining access to any relevant section or part of track; and

- (f) any strike or other Industrial Action by any or all of the employees of the Franchisee or any or all of the employees of:

- (i) Network Rail;

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

or of the agents or sub-contractors of any such person listed in paragraphs 1(f)(i) to (iii) and for the purposes of this paragraph Industrial Action shall include any concerted action taken in connection with the employment of such employees (whether or not that action involves any breach of such employees' conditions of employment, and including any action taken in furtherance of a dispute, or with a view to improving the terms of employment of the relevant employees or by way of support for any other person) subject always, in the case of any unofficial Industrial Action, to the Franchisee being able to demonstrate the occurrence of such unofficial Industrial Action to the reasonable satisfaction of the Secretary of State.

2. **Conditions to Force Majeure Events**

2.1 The occurrence, and continuing existence of a Force Majeure Event shall be subject to satisfaction of the following conditions:

- (a) in relation to an event occurring under paragraph 1(a), that event has continued for more than 12 consecutive hours;
- (b) the Franchisee notifies the Secretary of State within two business days of it becoming aware or, if circumstances dictate, as soon as reasonably practicable thereafter, of:
 - (i) the occurrence or likely occurrence of the relevant event; and
 - (ii) the effect or the anticipated effect of such event on the Franchisee's performance of the Passenger Services;
- (c) at the same time as the Franchisee serves notification on the Secretary of State under paragraph 2.1(b), it informs the Secretary of State of the steps taken and/or proposed to be taken by the Franchisee to prevent the occurrence of, and/or to mitigate and minimise the effects of, the relevant event and to restore the provision of the Passenger Services;
- (d) the relevant event did not occur as a result of:
 - (i) any act or omission to act by the Franchisee or its agents or subcontractors, save that in respect of the occurrence of Industrial Action in accordance with paragraph 1(f), the provisions of paragraph 2.2 apply; or
 - (ii) the Franchisee's own contravention of, or default under, the Franchise Agreement, any Access Agreement, Rolling Stock Related Contract, Property Lease or any other agreement;
- (e) the Franchisee used and continues to use all reasonable endeavours to avert or prevent the occurrence of the relevant event and/or to mitigate

and minimise the effects of such event on its performance of the Passenger Services and to restore the provision of the Passenger Services as soon as reasonably practicable after the onset of the occurrence of such event; and

- (f) the Franchisee shall, to the extent reasonably so requested by the Secretary of State, exercise its rights and remedies under any relevant agreement to prevent the occurrence or recurrence of any such event and to obtain appropriate redress and/or compensation from any relevant person.

2.2 Where:

- (a) Industrial Action in accordance with paragraph 1(f) occurs as a result of an act or omission to act by the Franchisee or its agents or subcontractors;
- (b) the Secretary of State reasonably believes that it was reasonable for the Franchisee, its agents or subcontractors (as the case may be) so to act or omit to act; and
- (c) the other conditions specified in paragraph 2.1 have been satisfied, such occurrence shall be a Force Majeure Event.

3. **Consequences of Force Majeure Events**

On Obligations

- 3.1 The Franchisee shall not be responsible for any failure to perform any of its obligations under the Franchise Agreement, nor shall there be any contravention of the Franchise Agreement if and to the extent that such failure is caused by any Force Majeure Event.
- 3.2 If any Force Majeure Event continues, with the effect of preventing the Franchisee from delivering, wholly or mainly, the Passenger Services for more than six consecutive months, it shall be a Termination Event in accordance with paragraph 3.1(a) of Schedule 10.3 (Events of Default and Termination Events).

3.3 **Business Continuity**

First BCP

- (a) Within 1 month following the Start Date the Franchisee shall produce and provide to the Secretary of State a written Business Continuity Plan in respect of the Franchise Services and the people, facilities and assets used to provide them, that is adequate to minimise the effect of and deal promptly and efficiently with any Disaster which will as a minimum:
 - (i) reflect the degree of skill, care, foresight and prudence which can reasonably be expected from a highly experienced and competent operator of railway passenger services;
 - (ii) use what the industry would (at the relevant time) regard as the best generally accepted processes, techniques and materials; and

- (iii) comply with all Laws.

Obligation to maintain the BCP

- (b) The Franchisee shall, at all times, maintain and comply with the Business Continuity Plan, and ensure that it is, at all times, able to implement the Business Continuity Plan immediately upon an event occurring which the Business Continuity Plan is expressed to cover, or reasonably can be expected to cover.
- (c) The Franchisee shall update the Business Continuity Plan at least once during each Franchisee Year.
- (d) The Franchisee will, on request, provide a copy of such plan to the Secretary of State and will provide to the Secretary of State any other information that the Secretary of State may reasonably require in relation thereto.
- (e) Nothing in this paragraph 3 will relieve the Franchisee from its obligations under this Franchise Agreement to create, implement and operate the Business Continuity Plan. Accordingly, if a Force Majeure Event affecting the Franchisee occurs which is an event or circumstance that is within the scope of the Business Continuity Plan, or would have been had the Franchisee and/or Business Continuity Plan complied with this paragraph 3.3, then paragraph 3.1 will only apply to that Force Majeure Event to the extent that the impacts of that Force Majeure Event would have arisen even if the Business Continuity Plan had complied with paragraph 3.3 and had been fully and properly implemented and operated in accordance with paragraph 3.3 and the terms of the Business Continuity Plan in respect of that Force Majeure Event.

On Payments

- 3.4 Subject to paragraph (q) of the definition of Change, following the occurrence of a Force Majeure Event, the payment of Franchise Payments shall continue unaffected.

SCHEDULE 10.5

Liability

1. Exclusion of Liability

Liability with respect to Passengers and Third Parties

- 1.1 The Franchisee hereby acknowledges that the Secretary of State will not be responsible for the actions of the Franchisee or any Affiliate of the Franchisee and that, except as expressly provided in the Franchise Agreement, the Franchisee shall provide and operate the Franchise Services at its own cost and risk without recourse to the Secretary of State or government funds or guarantees.
- 1.2 The Franchisee, on demand, shall hold the Secretary of State fully protected and indemnified in respect of all losses, liabilities, costs, charges, expenses, actions, proceedings, claims or demands incurred by or made on the Secretary of State in connection with any death, personal injury, loss or damage suffered by passengers or by any third party using or affected by the Franchise Services which is caused or contributed to by the Franchisee, any Affiliate of the Franchisee, or any employee, agent, contractor or sub-contractor of the Franchisee or of any Affiliate of the Franchisee.

Liability of the Secretary of State

- 1.3 Neither the Secretary of State nor any of his officers, agents or employees shall in any circumstances be liable to the Franchisee for any loss or damage caused by the negligent exercise of any powers reserved to the Secretary of State under the Franchise Agreement, except to the extent that such negligence also constitutes a contravention of an obligation of the Secretary of State under the Franchise Agreement. The Franchisee may not recover from the Secretary of State or any of his officers, agents, or employees any amount in respect of loss of profit or consequential loss.

2. Review or Monitoring by the Secretary of State

- 2.1 The Secretary of State may for his own purposes (whether under the Franchise Agreement or under any other arrangement or otherwise and whether before or after the date of the Franchise Agreement) monitor or review any proposals, plans or projects (or any aspect thereof) of the Franchisee under the Franchise Agreement, but no review, enquiry, comment, statement, report or undertaking, made or given by or on behalf of the Secretary of State during such review or monitoring (and no failure to undertake, make or give any review, enquiry, comment or statement) shall operate to exclude or relieve either party from or reduce or otherwise affect the obligations of such party under the Franchise Agreement.
- 2.2 The exercise by or on behalf of the Secretary of State of (or, as the case may be, any failure to exercise) any of his functions, rights or obligations in respect of any review or monitoring process shall not in any way impose any liability, express or implied, on the Secretary of State to any other party save to the extent that the exercise (or failure to exercise) of any of such functions, rights or obligations results in a contravention by the Secretary of State of an express provision of the Franchise Agreement and the Secretary of State does not make

or give any representation or warranty, either express or implied, as to whether any proposal, plan or project will enable either party to comply with its obligations under the Franchise Agreement.

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SCHEDULE 11

Agreement Management Provisions

1. **Not Used**

2. **Identification of Key Personnel and Provision of Organisation Chart**

2.1 The Franchisee shall identify and provide to the Secretary of State a schedule of Key Personnel who shall be employed by the Franchisee in the performance of the Franchise Agreement. This shall include but not be limited to the following persons:

- (a) a managing director whose role will include the overall management of the operation of the Franchise Services;
- (b) a Thameslink project manager who shall be a director of the Franchisee and whose role will include the overall management of the operation of the Thameslink Programme Office (as such term is defined in paragraph 7.2 of Schedule 6.3 (TLP/TRSP Related Provisions));
- (c) a mobilisation and business change manager whose role will include responsibility for ensuring that the Franchisee complies with its obligations under Schedule 6.4 (Integration of the Southern Franchise Services) and that business continuity is maintained for the duration of the Franchise Term;
- (d) a train service delivery manager, whose role will include responsibility for ensuring compliance by the Franchisee with Schedule 7.1 (Performance Benchmarks);
- (e) a safety manager, whose role will include responsibility for ensuring that the Franchisee complies with its legal obligations in relation to the Franchise Services including the Safety Certificate;
- (f) a finance manager, whose role will include responsibility in relation to the Financial Model; and
- (g) a Contract Manager.

2.2 On or before the Start Date the Franchisee shall provide to the Secretary of State an organisation chart detailing the responsibilities and reporting lines of each of the Key Personnel and shall update such chart (and provide a copy to the Secretary of State promptly thereafter) as and when any changes occur.

3. **Not Used**

4. **Franchise Performance Meetings**

4.1

- (a) The parties shall hold a Franchise Performance Meeting at least once in each Reporting Period (or such other interval as the Secretary of State may notify to the Franchisee in writing) at a time and location notified to the Franchisee by the Secretary of State.

- (b) Not used.
 - (c) Not used.
 - (d) Not used.
 - (e) The Franchisee shall ensure that each of its representatives at all Franchise Performance Meetings have full power and authority delegated to them by the Franchisee to act and to make binding decisions on behalf of the Franchisee and shall include such directors and/or senior managers of the Franchisee and the Parent as the Secretary of State may require.
- 4.2 Not used.
- 4.3 Not used.
- 4.4 The Franchisee shall prepare and present such reports to each Franchise Performance Meeting as the Secretary of State may reasonably request. The Franchisee's obligations under this paragraph 4.4 are subject to the Franchisee receiving at least 28 days' notice of the requirement to prepare and present any such report.
- 4.5 No comment or failure to comment nor any agreement or approval, implicit or explicit by the Secretary of State at such meetings will relieve the Franchisee of any of its obligations under the Franchise Agreement.
5. **Right of Assessment or Inspection**
- 5.1 The Franchisee shall, if requested by the Secretary of State, allow the Secretary of State and his representatives and advisers:
- (a) to inspect and copy any records referred to in Schedule 13 (Information and Industry Initiatives) and the Secretary of State may verify any such records; and
 - (b) to inspect and copy at any reasonable time any books, records and any other material kept by or on behalf of the Franchisee and/or its auditors and any assets (including the Franchise Assets) used by the Franchisee in connection with the Franchise Services.
- 5.2 The Franchisee shall make available to the Secretary of State, his representatives and advisers the information referred to in paragraph 5.1 and grant or procure the grant of such access (including to or from third parties) as the Secretary of State, his representatives and advisers shall reasonably require in connection therewith. The obligation of the Franchisee under this paragraph 5.2 shall include an obligation on the Franchisee to grant or procure the grant of such access to premises (including third party premises) where the information referred to in paragraph 5.1 is kept by or on behalf of the Franchisee.
- 5.3 The Secretary of State, his representatives and advisers shall be permitted to take photographs, film or make a video recording, or make any other kind of record of any such inspection.
- 5.4 If any inspection reveals that information previously supplied to the Secretary of State was, in the reasonable opinion of the Secretary of State, inaccurate in any material respect or if such inspection reveals any other contravention of the Franchisee's obligations under the Franchise Agreement which the Secretary of

State considers to be material, the costs of any such inspection shall be borne by the Franchisee.

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SCHEDULE 12

Financial Obligations and Covenants

Schedule 12:

Financial Obligations and Covenants

Appendix 1: Form of Performance Bond

Appendix 2: Form of Season Ticket Bond

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SCHEDULE 12

Financial Obligations and Covenants

1. Obligations

Except to the extent that the Secretary of State may otherwise agree from time to time, the Franchisee shall not:

- (a) incur any liability or financial indebtedness except in the ordinary course of providing and operating the Franchise Services;
- (b) make any loan or grant any credit, or have or permit to subsist any loan or any credit, to any person (other than the deposit of cash with a Bank as permitted under paragraph 1(d) or to an employee in the ordinary course of its business);
- (c) create or permit to subsist any Security Interest over any of its assets or property or give any guarantee or indemnity to or for the benefit of any person or otherwise assume liability or become obliged (actually or contingently) in respect of any obligation of any other person, in each case other than in the ordinary course of the business of providing and operating the Franchise Services; or
- (d) create or acquire any subsidiary or make or have any investment in any other entity, except for the deposit of cash with a Bank.

2. Financial Ratios

2.1 The Franchisee covenants that as at the end of each Reporting Period during the Franchise Term:

- (a) the ratio of its Modified Revenue to its Actual Operating Costs during the Preceding 13 Reporting Periods of the Franchise Term (or, prior to the end of the thirteenth such Reporting Period, during all preceding Reporting Periods) will equal or exceed the ratio of 1.050:1; and
- (b) the ratio of its 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 Term, for all such remaining Reporting Periods) will equal or exceed the ratio of 1.050:1; and
- (c) For the purposes of this paragraph 2 "**Preceding 13 Reporting Periods**" means the Reporting Period just ended and the preceding 12 Reporting Periods of the Franchise Term.

2.2 If:

- (a) in respect of any Reporting Period, the Franchisee fails pursuant to paragraph 3.3(b) of Schedule 13 (Information and Industry Initiatives) to provide a statement of calculation of performance against the covenants set out in paragraph 2.1(b) for each of the next 13 Reporting Periods (or, where there are less than 13 Reporting Periods remaining in the Franchise Term, for all such remaining Reporting Periods) following any such Reporting Period; or

- (b) the Secretary of State reasonably considers that any particular item of Forecast Modified Revenue or Forecast Operating Cost used for the purposes of determining the Franchisee's performance against the covenants set out in paragraph 2.1(b) has not been accounted for on a reasonable basis (including where the accounting treatment looks to the form rather than the substance),

then the Secretary of State may:

- (i) in the circumstances referred to in paragraph 2.2(a) above reasonably determine the ratio of the Forecast Modified Revenue and Forecast Operating Cost on the basis of information available to him; or
- (ii) in the circumstances referred to in paragraph 2.2(b) above require any such particular item of Forecast Modified Revenue or Forecast Operating Cost to be adjusted in a manner which is fair and reasonable and, so far as reasonably determinable, on the basis on which such particular item of Forecast Modified Revenue or Forecast Operating Cost should have been accounted for by the Franchisee as reasonably determined by the Secretary of State,

in either case after having exercised his rights under paragraph 3.13 of Schedule 13 (Information and Industry Initiatives) to the extent that he considers appropriate in the circumstances for the purpose of making any such reasonable determination.

3. **Breach of Financial Ratios**

3.1 The Franchisee shall not during any Lock-up Period, do any of the following without the Secretary of State's consent:

- (a) declare or pay any dividend (equity or preference) or make any other distribution including surrendering any taxable losses to any of its Affiliates or pay any of its Affiliates in respect of taxable losses that they wish to surrender to the Franchisee, without the prior written consent of the Secretary of State;
- (b) pay management charges to any of its Affiliates in excess of those specified in the Initial Business Plan; or
- (c) make payment under any intra-group borrowings.

3.2 **Lock-up Period** means any period from the time when either of the ratios referred to in paragraphs 2.1(a) and 2.1(b) falls below the ratio of 1.070:1 until the time at which the Secretary of State is satisfied that the relevant ratio is again at or above the ratio of 1.070:1.

3.3 Failure by the Franchisee at any time to comply with either of the ratios referred to in paragraph 2.1 shall be an Event of Default under paragraph 2.9 of Schedule 10.3 (Events of Default and Termination Events).

4. **Performance Bond**

4.1

- (a) The Franchisee shall procure that there shall be a valid and effective Performance Bond in place with effect:
 - (i) from the date of the Franchise Agreement;
 - (ii) throughout the Franchise Term; and
 - (iii) for a period of seven Reporting Periods after the end of the Franchise Period;
- (b) The Performance Bond that the Franchisee shall procure is in place pursuant to paragraph 4.1(a) and any replacement Performance Bonds shall:
 - (i) be substantially in the form of Appendix 1 (Form of Performance Bond) to this Schedule 12;
 - (ii) have a value equal to the amount determined under paragraph 4.4; and
 - (iii) have a duration of three years except where a Performance Bond is to be renewed and the period of time from the date from which such Performance Bond is to be put in place until the date seven Reporting Periods after the end of the Franchise Term is less than three years, the duration of such Performance Bond shall be from the date of such renewal until the date seven Reporting Periods after the end of the Franchise Term.

Provision of Replacement Performance Bond

- 4.2 The Franchisee may replace the Performance Bond at any time, provided that the Secretary of State receives a replacement Performance Bond:
 - (a) substantially in the form of Appendix 1 to this Schedule 12 (or in any other form acceptable to the Secretary of State in his discretion);
 - (b) duly executed and delivered by a Bond Provider acceptable to the Secretary of State; and
 - (c) in an amount determined in accordance with paragraph 4.4.
- 4.3 The Franchisee shall replace any Performance Bond at least six months prior to its scheduled expiry with a replacement that complies with the requirements of paragraph 4.2.

Amount of Performance Bond

- 4.4 The amount of any Performance Bond shall be as follows:
 - (a) £20,000,000 (pounds sterling twenty million) in relation to the first Performance Bond;

- (b) in relation to the second Performance Bond an amount which is £20,000,000 (pounds sterling twenty million) x RPI;
- (c) in relation to each subsequent Performance Bond an amount which is the amount of the Performance Bond that it is replacing x RPI,

and for the purpose of this paragraph 4.4 RPI shall be the quotient of the Retail Prices Index for the month for which the Retail Prices Index has most recently been determined on the date on which the Franchisee is to replace the Performance Bond divided by the Retail Prices Index for the month in which the Performance Bond that is being replaced was required to be delivered to the Secretary of State.

Demands under the Performance Bond

4.5

- (a) The Performance Bond shall be on terms that it is payable without further enquiry by the Bond Provider to the Secretary of State in full in London on first written demand by the Secretary of State on the Bond Provider, certifying as to any one or more of the following:
 - (i) that the Franchise Agreement has:
 - (A) either terminated or expired and, in either case, there are liabilities or obligations outstanding from the Franchisee to the Secretary of State; and/or
 - (B) terminated solely as a consequence of the occurrence of one or more Events of Default or a Termination Event of such type as described in any of paragraphs 3.1(b) to 3.1(d) (as the case may be) of Schedule 10.3 (Event of Default and Termination Events) in circumstances where the Secretary of State has incurred or expects to incur additional costs in connection with early termination of the Franchise;
 - (ii) that a railway administration order has been made in relation to the Franchisee pursuant to Sections 60 to 62 of the Act;
 - (iii) the occurrence of an Event of Default:
 - (A) under paragraph 2.13(a) of Schedule 10.3 (Events of Default and Termination Events) in relation to the Performance Bond; or
 - (B) under paragraph 2.13(b) of Schedule 10.3 (Events of Default and Termination Events),

whether or not the Franchise Agreement is, or is to be, terminated as a result thereof;
 - (iv) that the Franchisee has failed to perform or comply with its obligations under any Supplemental Agreement;

- (v) that the Franchisee has failed to provide a replacement Performance Bond complying with this paragraph 4 at least six months prior to the scheduled expiry of the existing Performance Bond; or
 - (vi) that the Franchisee has failed to procure the execution and delivery of a new Performance Bond by a Bond Provider acceptable to the Secretary of State when required to do so in accordance with paragraph 4.8.
- (b) If the Secretary of State makes a demand under the Performance Bond, he shall, within a reasonable period, account to the Franchisee for the proceeds of such Performance Bond less the amount of the losses, liabilities, costs or expenses which, in the reasonable opinion of the Secretary of State, the Secretary of State or a Successor Operator has incurred or suffered or may be reasonably likely to incur or suffer including as a result of:
- (i) early termination of the Franchise Agreement; and/or
 - (ii) any failure by the Franchisee to perform or comply with any of its obligations to the Secretary of State under the Franchise Agreement or to a Successor Operator under the Supplemental Agreement.
- (c) Nothing in paragraph 4.5(b) shall oblige the Secretary of State to account to the Franchisee for the proceeds of such Performance Bond in the circumstances described in paragraph 4.5(a)(iii), (v) or (vi) until such time as the Franchisee has procured a replacement Performance Bond which complies with the requirements of this paragraph 4.

Characteristics of Performance Bond Provider

- 4.6 In determining whether a Bond Provider under any replacement Performance Bond is acceptable, the Secretary of State may exercise his discretion and shall not be obliged to accept a Bond Provider accepted under any previous Performance Bond.
- 4.7 The Franchisee shall provide such information relating to any Bond Provider or proposed Bond Provider as the Secretary of State may require from time to time.
- 4.8 If at any time the Secretary of State reasonably considers the Bond Provider under the then current Performance Bond to be unacceptable, the Secretary of State may require the Franchisee within 20 business days to procure the execution and delivery of a new Performance Bond by a Bond Provider acceptable to the Secretary of State. This applies:
- (a) notwithstanding the other provisions of this paragraph 4; and
 - (b) irrespective of the scheduled expiry date of the then current Performance Bond.

Provision of more than one Performance Bond

- 4.9 The Franchisee shall be permitted subject to the prior consent of the Secretary of State (such consent not to be unreasonably withheld or delayed) to meet its obligations to provide a valid and effective Performance Bond by providing up to

three valid and effective Performance Bonds the aggregate value of which at all times is equal to the value determined under paragraph 4.4. With the exception of the value of each individual Performance Bond the provisions of the Franchise Agreement in relation to the Performance Bond shall be deemed to apply separately in relation to each such Performance Bond. Where more than one Performance Bond is provided the Secretary of State shall have a discretion as to whether to make a demand under some or all of such Performance Bonds and the extent to which he accounts for the proceeds of each such Performance Bond in accordance with the provisions of paragraph 4.5(b).

5. **Season Ticket Bond**

Provision of Season Ticket Bond

5.1 The Franchisee shall procure that, for each Franchisee Year throughout the Franchise Term and during the relevant call period specified in clauses 4 and 5 of the Season Ticket Bond, there shall be in place a valid and effective Season Ticket Bond substantially in the form of Appendix 2 (Form of Season Ticket Bond) to this Schedule 12.

Provision of Replacement Season Ticket Bond

5.2 No later than one Reporting Period before the expiry of each Bond Year, the Franchisee shall provide to the Secretary of State (or procure that the Secretary of State receives) a Season Ticket Bond for the following Bond Year:

- (a) substantially in the form of Appendix 2 to this Schedule 12 (or in any other form acceptable to the Secretary of State in his discretion);
- (b) duly executed and delivered by a Bond Provider acceptable to the Secretary of State; and
- (c) in an amount determined in accordance with paragraph 5.3.

Amount of Season Ticket Bond

5.3 The amount of any Season Ticket Bond shall vary for each Reporting Period during the Bond Year to which the Season Ticket Bond relates in accordance with the following formula:

$$STBA = STL \times \frac{((RPI \times 100) + k)}{100} \times Z$$

where:

STBA equals the amount of the Season Ticket Bond in the relevant Reporting Period;

STL equals, in respect of such Reporting Period:

- (a) the maximum amount which would be payable by the Franchisee in respect of Season Ticket Fares under and in accordance with a Supplemental Agreement and paragraph 3.3 of Schedule 15.4 (Provisions Applying on and after Termination) and the rights and liabilities of the Franchisee relating to an obligation of carriage under the terms of any Season Ticket Fares which were transferred under a Transfer

Scheme relating to that Supplemental Agreement to a Successor Operator at that time: and

- (b) the Stored Credit Balance which would be held by the Franchisee

if the Franchise Agreement were to terminate on any day during the Reporting Period (the "**relevant Reporting Period**") falling 13 Reporting Periods before such Reporting Period,

provided that for these purposes only:

- (i) Season Ticket Fares shall mean any Season Ticket Fare which expires more than seven days after it first comes into effect;
- (ii) the Start Date shall be assumed, where relevant, to have occurred before the commencement of the relevant Reporting Period; and
- (iii) if STL cannot reasonably be determined at the time at which the Franchisee is required under paragraph 5.4 to provide its estimate of the amount of the relevant Season Ticket Bond (including because the relevant Reporting Period has not yet occurred), the relevant Reporting Period shall be the Reporting Period falling 26 Reporting Periods before the Reporting Period in the relevant Bond Year;

RPI equals the quotient of the Retail Prices Index for the month for which the Retail Prices Index has most recently been determined at the time the Franchisee is required under paragraph 5.4 to provide its estimate of the amount of the relevant Season Ticket Bond divided by the Retail Prices Index for the month falling 12 months before such month, provided that, for the first Franchisee Year, RPI shall be one;

k has the value attributed to it in Schedule 5 (Fares) for the Fare Year in which the Reporting Period in the relevant Bond Year falls; and

Z equals +1 or, if the relevant Reporting Period falls 26 Reporting Periods before such Reporting Period, an amount equal to:

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

where RPI and k are determined for the 12 months and the Fare Year preceding the 12 months and the Fare Year for which RPI and k are respectively determined above.

5.4 The Franchisee shall supply to the Secretary of State, not later than three Reporting Periods before the end of each Bond Year, its estimate of the amount of the Season Ticket Bond for each Reporting Period during the following Bond Year and shall supply such details as the Secretary of State may request in connection therewith.

5.5 The Franchisee and the Secretary of State shall endeavour to agree the amount of such Season Ticket Bond by no later than two Reporting Periods before the end of each Bond Year. If the parties are unable to agree the amount of the Season Ticket Bond in respect of any Reporting Period during the following Bond

Year, the matter shall be resolved in accordance with the Dispute Resolution Rules.

- 5.6 If the amount of the Season Ticket Bond for each Reporting Period during a Bond Year has not been agreed two Reporting Periods before the end of the preceding Bond Year, then, until the amount is agreed or determined in accordance with the Dispute Resolution Rules, the amount thereof shall be the amount determined by the Secretary of State.
- 5.7 The Secretary of State and the Franchisee may agree to increase or reduce the amount covered or required to be covered under a Season Ticket Bond from time to time.

Demands under the Season Ticket Bond

5.8

- (a) The Season Ticket Bond shall be on terms that it is payable without further enquiry by the Bond Provider to the Secretary of State in full in London on first written demand by the Secretary of State on the Bond Provider, certifying as to any one or more of the following:
- (i) that the Franchise Agreement has terminated or expired;
 - (ii) that a railway administration order has been made in relation to the Franchisee pursuant to Sections 60 to 62 of the Act; or
 - (iii) that an Event of Default:
 - (A) under paragraph 2.13(a) of Schedule 10.3 (Events of Default and Termination Events) in relation to the Season Ticket Bond; or
 - (B) under paragraph 2.13(c) of Schedule 10.3 (Events of Default and Termination Events),has occurred (whether or not the Franchise Agreement is, or is to be, terminated as a result thereof).
- (b) If the Secretary of State makes a demand under the Season Ticket Bond, he shall account to the Franchisee for the proceeds of such Season Ticket Bond remaining following settlement of all liabilities or obligations of the Franchisee in respect of any Season Ticket Fares and/or Stored Credit Balance that may be transferred or is transferred whether under a Transfer Scheme (or otherwise) to a Successor Operator.

Characteristics of Season Ticket Bond Provider

- 5.9 In determining whether a Bond Provider under any replacement Season Ticket Bond is acceptable, the Secretary of State may exercise his discretion and shall not be obliged to accept a Bond Provider accepted under any previous Season Ticket Bond.
- 5.10 The Franchisee shall provide such information relating to any Bond Provider or proposed Bond Provider as the Secretary of State may require from time to time.

5.11 The Secretary of State agrees that, subject to receipt of a Season Ticket Bond in an amount determined in accordance with paragraph 5.3 in respect of any Bond Year, he shall release the relevant Bond Provider from any liability under the Season Ticket Bond provided in relation to the preceding Bond Year on the expiry of such Bond Year, provided that no Event of Default has occurred and is unremedied or continuing.

Meaning of Reporting Period

5.12 References in this paragraph 5 to a Reporting Period shall be construed, where the Franchisee so requests and the Secretary of State consents (such consent not to be unreasonably withheld) to be references to each consecutive seven-day period (or such other period as may be agreed) during such Reporting Period. The Franchisee may only make such a request in respect of a maximum of two Reporting Periods in each Bond Year and only where the amount of the Season Ticket Bond over any such period would, in the reasonable opinion of the Franchisee, differ materially if determined by reference to such seven-day periods.

6. Tax Compliance

6.1 The Franchisee represents and warrants that as at the Start Date, it has notified the Secretary of State in writing of any Occasions of Tax Non-Compliance or any litigation that it is involved in that is in connection with any Occasions of Tax Non-Compliance.

6.2 If, at any point during the Franchise Term, an Occasion of Tax Non-Compliance occurs, the Franchisee shall:

- (a) notify the Secretary of State in writing of such fact within 5 business days of its occurrence; and
- (b) promptly provide to the Secretary of State:
 - (i) details of the steps which the Franchisee is taking to address the Occasion of Tax Non-Compliance and to prevent the same from recurring, together with any mitigating factors that it considers relevant; and
 - (ii) such other information in relation to the Occasion of Tax Non-Compliance as the Secretary of State may reasonably require.

6.3 For the purposes of this paragraph 6 (Tax Compliance), the following defined terms shall have the following meanings:

- “Occasion of Tax Non-Compliance”**
- (a) any tax return of the Franchisee submitted to a Relevant Tax Authority on or after 1 October 2012 is found to be incorrect as a result of:
 - (i) a Relevant Tax Authority successfully challenging the Supplier under the General Anti-Abuse Rule or the Halifax Abuse Principle or under any tax rules or legislation that have an effect

equivalent or similar to the General Anti-Abuse Rule or the Halifax Abuse Principle;

(ii) the failure of an avoidance scheme which the Franchisee was involved in, and which was, or should have been, notified to a Relevant Tax Authority under the DOTAS or any equivalent or similar regime; and/or

(b) the Franchisee's tax affairs give rise on or after 1 April 2013 to a criminal conviction in any jurisdiction for tax related offences which is not spent at the Start Date or to a penalty for civil fraud or evasion;

"DOTAS"

means the Disclosure of Tax Avoidance Schemes rules which require a promoter of tax schemes to tell HM Revenue & Customs of any specified notifiable arrangements or proposals and to provide prescribed information on those arrangements or proposals within set time limits as contained in Part 7 of the Finance Act 2004 and in secondary legislation made under vires contained in Part 7 of the Finance Act 2004 and as extended to National Insurance Contributions by the National Insurance Contributions (Application of Part 7 of the Finance Act 2004) Regulations 2012, SI 2012/1868 made under s.132A Social Security Administration Act 1992;

"General Anti-Abuse Rule"

means:

(a) the legislation in Part 5 of the Finance Act 2013; and

(b) any future legislation introduced into parliament to counteract tax advantages arising from abusive arrangements to avoid national insurance contributions;

"Halifax Abuse Principle"

means the principle explained in the CJEU Case C-255/02 Halifax and others; and

"Relevant Tax Authority"

means HM Revenue & Customs, or, if applicable, a tax authority in the jurisdiction in which the Franchisee is established.

APPENDIX 1 TO SCHEDULE 12

Form of Performance Bond

[DOCUMENT "PB" - PERFORMANCE BOND]

Dated

20[•]

[BOND PROVIDER]

Performance Bond

*Secretary of State for Transport
33 Horseferry Road
London SW1P 4DR*

To: Secretary of State for Transport
33 Horseferry Road
London
SW1P 4DR
(the "**Secretary of State**")

We are informed that you have entered into a franchise agreement dated [_____] (the "**Franchise Agreement**") with [*name of Franchisee*] (the "**Franchisee**") under which the Franchisee will provide certain railway passenger services.

We are further informed that the Franchise Agreement requires that the Secretary of State receives a duly executed performance bond in the amount of [*To be populated in for the duration of the Bond in accordance with 4.4*] (the "**Bond Value**") to secure the performance by the Franchisee of and its compliance with its obligations under the Franchise Agreement and any Supplemental Agreement.

Accordingly:

We hereby unconditionally and irrevocably undertake to pay to you in full in London, immediately upon receipt of your first written demand on us in the form set out in the Schedule and, without further enquiry, the sum specified therein. Such written demand shall state:

- (a) the Call Event (as defined in clause 2 hereof) that has occurred; and
- (b) the date of occurrence of such Call Event.

You may call on us for the whole or part of the amount of our liability hereunder and you may make any number of calls on us up to a maximum aggregate amount of the Bond Value. All sums payable hereunder shall be paid free of any restriction or condition and free and clear of and (except to the extent required by law) without any deduction or withholding, whether for or on account of tax, by way of set-off or otherwise.

1. The undertaking given by us above shall operate provided that:

- (a) our maximum liability shall be limited to a sum or sums not exceeding in the aggregate the amount of the Bond Value or such lesser amount as you may notify us of from time to time in writing, separately from any demand, shall constitute the Bond Value of this Bond; and
- (b) notwithstanding anything contained herein, our liability hereunder shall expire on the earlier of:
 - (i) the date falling six months after the date on which any railway administration order is made in relation to the Franchisee pursuant to Sections 60 to 62 of the Railways Act 1993; and
 - (ii) the later of:
 - (A) the date falling one month after the determination of the Purchase Price (as defined in any Supplemental Agreement) under each relevant Supplemental Agreement; and

- (B) the date falling seven Reporting Periods after the end of the Franchise Period; and
- (C) the end of the Franchise Term; and
- (iii) [date],³⁶

except in respect of any written demand for payment complying with all the requirements hereof which is received by us on or before such date for either the Bond Value, or for such lesser amount which, when aggregated with any previous demands, amounts to the Bond Value or less, after which date this undertaking shall be void whether returned to us or not.

2. **Call Event** means, in this Bond, any of:

- (a) the termination or expiry of the Franchise Agreement in circumstances where there are liabilities or obligations outstanding from the Franchisee to the Secretary of State;
- (b) the termination of the Franchise Agreement solely as a consequence of the occurrence of one or more Events of Default or a Termination Event of such type as described in any of paragraphs 3.1(b) or 3.1(d) (as the case may be) of Schedule 10.3 (Events of Default and Termination Events) in circumstances where the Secretary of State has incurred or expects to incur additional costs in connection with termination of the [*name of franchise*] franchise;
- (c) the making of a railway administration order in relation to the Franchisee pursuant to Sections 60 to 62 of the Railways Act 1993;
- (d) the occurrence of an Event of Default under the Franchise Agreement in respect of:
 - (i) paragraph 2.13(a) of Schedule 10.3 (Events of Default and Termination Events) of the Franchise Agreement in relation to the Performance Bond; or
 - (ii) paragraph 2.13(b) of Schedule 10.3 (Events of Default and Termination Events) of the Franchise Agreement, whether or not the Franchise Agreement is, or is to be, terminated as a result thereof;
- (e) the failure by the Franchisee to perform or comply with its obligations under any Supplemental Agreement;
- (f) the failure by the Franchisee to provide the Secretary of State with a replacement Performance Bond which complies with paragraph 4 of Schedule 12 (Financial Obligations and Covenants) of the Franchise Agreement; or
- (g) the failure by the Franchisee to procure the execution and delivery of a new Performance Bond by a Bond Provider in favour of and acceptable to

³⁶ Such date to be consistent with the obligations of the Franchisee pursuant to paragraph 4.1(b)(iii) of Schedule 12 of the Franchise Agreement.

the Secretary of State when required to do so in accordance with paragraph 4.8 of Schedule 12 (Financial Obligations and Covenants) of the Franchise Agreement.

3. This undertaking is made to you, your successors and your assigns.
4. This undertaking shall not be discharged or released by time, indulgence, waiver, alteration or release of, or in respect to, the obligations of the Franchisee under the Franchise Agreement or any Supplemental Agreement or any other circumstances that might operate as a release of a guarantor at law or in equity.
5. You may make demand or give notice to us under this Bond in writing by hand or facsimile transmission to us as follows:

Address: [Bond Provider's address]

Facsimile Number: [Bond Provider's fax number]

6. References in this Bond to the Franchise Agreement and the Supplemental Agreement are to the Franchise Agreement and any Supplemental Agreement as amended from time to time.
7. Where used in this Bond, capitalised terms have the same meanings as in the Franchise Agreement.
8. This Bond shall be governed by and construed in accordance with the laws of England and Wales.

Executed as a deed this [day and month] of [year].

SCHEDULE TO THE PERFORMANCE BOND

SPECIMEN DEMAND NOTICE

To: [name and address of Bond Provider]
[date of demand notice]

We refer to the performance bond issued by you on [date of Bond] (the "**Performance Bond**") in connection with the franchise agreement (the "**Franchise Agreement**") entered into between the Secretary of State for Transport (the "**Secretary of State**") and [name of Franchisee] (the "**Franchisee**") on [Franchise Agreement signature date].

We hereby notify you that the following Call Event (as defined in the Performance Bond) occurred on [date of occurrence of Call Event]: [delete as appropriate].

[The Franchise Agreement has [terminated/expired] on [date of termination/expiry] in circumstances where there are liabilities or obligations outstanding from the Franchisee to the Secretary of State.]

[The Franchise Agreement has terminated solely as a consequence of the occurrence of one or more Events of Default on [date of termination] in circumstances where the Secretary of State has incurred or expects to incur additional costs in connection with the termination of the [name of franchise] franchise.]

[A railway administration order has been made in relation to the Franchisee pursuant to Sections 60 to 62 of the Railways Act 1993.]

[That an Event of Default under the Franchise Agreement has occurred under:

[(a) paragraph 2.13(a) of Schedule 10.3 (Events of Default and Termination Events) of the Franchise Agreement in relation to the Performance Bond; or]

[(b) paragraph 2.13(b) of Schedule 10.3 (Events of Default and Termination Events) of the Franchise Agreement.]]

[The Franchisee has failed to perform or comply with its obligations under any Supplemental Agreement.]

[The Franchisee has failed to provide a replacement Performance Bond (as described in the Franchise Agreement) complying with paragraph 4 of Schedule 12 (Financial Obligations and Covenants) of the Franchise Agreement at least six months prior to the scheduled expiry of the existing Performance Bond.]

[The Franchisee has failed to procure the execution and delivery of a new Performance Bond by a Bond Provider acceptable to the Secretary of State when required to do so in accordance with paragraph 4.8 of Schedule 12 (Financial Obligations and Covenants) of the Franchise Agreement.]

We hereby demand immediate payment from you of [specify alternative amount if not Bond Value] or the Bond Value, whichever is smaller.

Please arrange for immediate payment of the relevant amount as follows:

[account details to which Bond monies to be paid into]

Where used in this Notice, capitalised terms have the same meanings as in the Franchise Agreement.

For and on behalf of
Secretary of State for Transport

DRAFT

APPENDIX 2 TO SCHEDULE 12

Form of Season Ticket Bond

DOCUMENT "STB" - SEASON TICKET BOND

Dated

20[•]

[BOND PROVIDER]

Season Ticket Bond

*Secretary of State for Transport
33 Horseferry Road
London SW1P 4DR*

To: Secretary of State for Transport
33 Horseferry Road
London
SW1P 4DR
(the "**Secretary of State**")

We are informed that you have entered into a franchise agreement dated [_____] (the "**Franchise Agreement**") with [*name of Franchisee*] (the "**Franchisee**") under which the Franchisee will provide certain railway passenger services.

We are further informed that the Franchise Agreement requires that the Secretary of State receives a duly executed season ticket bond to secure the performance by the Franchisee of and its compliance with certain of its obligations under the Franchise Agreement and any Supplemental Agreement.

Accordingly:

We hereby unconditionally and irrevocably undertake to pay to you in full in London, immediately upon receipt of your first written demand on us in the form set out in Schedule 1 and, without further enquiry, the sum specified therein. Such written demand shall state:

- (a) the Call Event (as defined in clause 2) that has occurred; and
- (b) the date of occurrence of such Call Event.

You may call on us for the whole or part of the amount of our liability hereunder and you may make any number of calls on us up to a maximum aggregate amount of the Bond Value (as defined in clause 3). All sums payable hereunder shall be paid free of any restriction or condition and free and clear of and (except to the extent required by law) without any deduction or withholding, whether for or on account of tax, by way of set-off or otherwise.

1. The undertaking given by us above shall operate provided that:

- (a) our maximum liability shall be limited to a sum or sums not exceeding in the aggregate the amount of the Bond Value on the date of occurrence of the Call Event stated in your written demand on us; and
- (b) you may only call on us (whether on one or more occasions) in relation to one Call Event, such Call Event to be determined by reference to the first written demand which is received by us in the form set out in Schedule 1.

2. Call Event means, in this Bond, any of:

- (a) the termination or expiry of the Franchise Agreement;
- (b) the making of a railway administration order in relation to the Franchisee pursuant to Sections 60 to 62 of the Railways Act; or
- (c) the occurrence of an Event of Default under paragraph 2.13(a) (in relation to a Season Ticket Bond) or 2.13(c) of Schedule 10.3 (Events of Default and Termination Events) of the Franchise Agreement (whether or not the Franchise Agreement is, or is to be, terminated as a result thereof).

3. Bond Value shall mean, in respect of any date, the amount specified in Schedule 2 as being the value of this Bond for such date (provided that for these purposes the date of occurrence of the Call Event specified in clause 2(c) shall be deemed to be the last date for which a Bond Value is assigned under Schedule 2 of this Bond).
4. Notwithstanding anything contained herein, but subject to clause 5, our liability hereunder in respect of any Call Event shall expire no later than the end of the Franchise Term and:
 - (a) in relation to a Call Event specified in clauses 2(a) and (b), at noon (London time) on the date falling three business days after the date of occurrence of such Call Event (business day being a day on which banks are open for business in the City of London); and
 - (b) in relation to any other Call Event, on the day falling one month after the last date for which a Bond Value is assigned under Schedule 2 of this Bond unless you notify us in writing prior to the relevant expiry time that the relevant Call Event has occurred (whether or not you call on us at the same time under this Bond).
5. If you do notify us under clause 4 our liability shall expire on:
 - (a) if the Call Event in respect of which you may call on us under this Bond is the termination of the Franchise Agreement, the date falling one month after the determination of the Purchase Price (as defined in the Supplemental Agreement) under each relevant Supplemental Agreement;
 - (b) if the Call Event in respect of which you may call on us under this Bond is the making of a railway administration order in relation to the Franchisee pursuant to Sections 60 to 62 of the Railways Act 1993, the date falling three months after the making of such railway administration order; or
 - (c) if the Call Event in respect of which you may call on us under this Bond is the occurrence of an Event of Default under paragraph 2.13(a) (in relation to a Season Ticket Bond) or paragraph 2.13(c) of Schedule 10.3 (Events of Default and Termination Events) of the Franchise Agreement (whether or not the Franchise Agreement is, or is to be, terminated as a result thereof), the date falling one month after your notification to us under clause 4,

except, in each case, in respect of any written demand for payment complying with all the requirements hereof which is received by us on or before the relevant date, after which date this undertaking shall be void whether returned to us or not.
6. This undertaking is made to you, your successors and your assigns.
7. This undertaking shall not be discharged or released by time, indulgence, waiver, alteration or release of, or in respect to, the obligations of the Franchisee under the Franchise Agreement or any Supplemental Agreement or any other circumstances that might operate as a release of a guarantor at law or in equity.
8. You may make demand or give notice to us under this Bond in writing by hand or facsimile transmission to us as follows:

Address: [Bond Provider's address]

Facsimile Number: [Bond Provider's fax number]

9. References in this Bond to the Franchise Agreement and the Supplemental Agreement are to the Franchise Agreement and the Supplemental Agreement as amended from time to time and terms defined therein shall have the same meaning in this Bond.
10. Where used in this Bond, capitalised terms have the same meanings as in the Franchise Agreement.
11. This Bond shall be governed by and construed in accordance with the laws of England and Wales.

Executed as a deed this [day and month] of [year].

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SCHEDULE 1 TO THE SEASON TICKET BOND

SPECIMEN DEMAND NOTICE

To: [Name and address of Bond Provider]
[date of demand notice]

We refer to the season ticket bond issued by you on [date of Bond] (the "**Season Ticket Bond**") in connection with the franchise agreement (the "**Franchise Agreement**") entered into between the Secretary of State for Transport (the "**Secretary of State**") and [*name of Franchisee*] (the "**Franchisee**") on [*Franchise Agreement signature date*].

We hereby notify you that the following Call Event (as defined in the Season Ticket Bond) occurred on [date of occurrence of Call Event]: [delete as appropriate].

[The Franchise Agreement [terminated][expired] on [date of [termination][expiry]].

[A railway administration order has been made in relation to the Franchisee pursuant to Sections 60 to 62 of the Railways Act 1993.]

[An Event of Default occurred under paragraph 2.13(a) (in relation to a Season Ticket Bond) or paragraph 2.13(c) of Schedule 10.3 (Events of Default and Termination Events) of the Franchise Agreement.]

We hereby demand immediate payment from you of [specify alternative amount if not Bond Value] or the Bond Value, whichever is smaller.

Please arrange for immediate payment of the relevant amount as follows:

[account details to which Bond monies to be paid into]

Where used in this Notice, capitalised terms have the same meanings as in the Franchise Agreement.

For and on behalf of
Secretary of State for Transport

SCHEDULE 2 TO THE SEASON TICKET BOND

BOND VALUE

Call Event occurring in Reporting Period	Bond Value
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[Dates to be specified]

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SCHEDULE 13

Information and Industry Initiatives

- Schedule 13:**
- Information and Industry Initiatives**
 - Appendix 1: Efficient Franchisee**
 - Appendix 2: Key Assets**
 - Appendix 3: Operational Information**
 - Appendix 4: Ticket and Revenue Information**
 - Appendix 5: Environmental Impact Monitoring Dataset**

SCHEDULE 13

Information and Industry Initiatives

1. General Information

Corporate Information

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

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

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

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

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

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

Maintenance of Records

1.5 The Franchisee shall maintain true, up to date and complete records of all of the information required to be provided by the Franchisee under the Franchise Agreement.

1.6 Each record required to be maintained by the Franchisee in accordance with this Schedule 13 shall be held for a period of six years following the date on which such record was required to be created.

1.7 References to records in this Schedule 13 shall include records maintained under any Previous Franchise Agreement to the extent that such records relate to the

Franchise Services and the Franchisee has access to them (which it shall use all reasonable endeavours to secure).

- 1.8 The Franchisee shall not be responsible for any records maintained under any Previous Franchise Agreement, as referred to in paragraph 1.7, being true, complete and up to date. As soon as reasonably practicable after becoming aware that any such records are not true, complete and up to date, the Franchisee shall take all reasonable steps to remedy any such deficiency, and shall thereafter maintain such records in accordance with paragraph 1.5.

Information to the Passengers' Council and Local Authorities

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

2. Business Plans

Initial Business Plan

- 2.1 On or prior to the Start Date, the Franchisee shall deliver to the Secretary of State its Initial Business Plan, describing its planned activities for each Franchisee Year during the Franchise Term, which shall include:
- (a) a description as to how the Franchisee will be able to meet its obligations under the Franchise Agreement for the Franchise Term, supported by operational plans demonstrating this;
 - (b) to facilitate the agreement or determination of the amount of Assumed Revenue for each Franchisee Year during the Franchise Term and the "Season Factor" percentages for each Reporting Period in each such Franchisee Year as contemplated in paragraph 3 of Schedule 8.1 (Franchise Payments), the Franchisee's view of the forecast Revenue for each Franchisee Year during the Franchise Term and the "Season Factor" percentages for each such Reporting Period in each such Franchisee Year together with a list of assumptions on the basis of which the Revenue forecast and the "Season Factor" percentages have been prepared (including such supporting information as the Franchisee considers reasonably necessary (or as the Secretary of State may reasonably require) for the purposes of demonstrating such view of forecast Revenue or the "Season Factor" percentages;
 - (c) details of any investments proposed to be made or procured by the Franchisee in relation to the Franchise Services during the Franchise Term;
 - (d) in accordance with paragraph 4.2 of Schedule 6.2 (TSGN Franchise Specific Provisions), details of any interim changes required to the Marketing Plan (including any expenditure specified therein); and
 - (e) a profit and loss forecast, cash flow forecast and forecast balance sheet for each of the first 13 Reporting Periods following the Start Date, together with a list of assumptions on the basis of which each such forecast has been prepared.

Updated Business Plans

- 2.2 Within one Reporting Period prior to the start of each Franchisee Year (other than the first Franchisee Year) the Franchisee shall deliver to the Secretary of State an Updated Business Plan in respect of that Franchisee Year and for the remainder of the Franchise Term:
- (a) in substantially the same form as the immediately preceding Business Plan delivered to the Secretary of State in accordance with the Franchise Agreement, revised to include the information available to the Franchisee as at the date of its delivery, describing the Franchisee's planned activities for each Franchisee Year during the remainder of the Franchise Term;
 - (b) containing a statement of the differences between such Updated Business Plan and the immediately preceding Business Plan delivered to the Secretary of State in accordance with the Franchise Agreement, together with an explanation of such differences;
 - (c) containing a statement of any updates to the Revenue forecasts and the "Season Factor" percentages as specified in the Initial Business Plan pursuant to paragraph 2.1(b) together with an explanation of the differences from the preceding Business Plan;
 - (d) containing the updates and review of the Marketing Plan as required pursuant to paragraphs 4.2 and 4.3 of Schedule 6.2 (TSGN Franchise Specific Provisions);
 - (e) containing a statement of all the Qualifying Changes that have occurred in the previous 13 Reporting Periods;
 - (f) containing details of any Business Action Plan notified to the Secretary of State and any progress made in respect of such Business Action Plans; and
 - (g) containing a revised profit and loss forecast, cash flow forecast and forecast balance sheet for each of the 13 Reporting Periods in that Franchisee Year and each subsequent Franchisee Year of the Franchise Term.

Further Updated Business Plans

- 2.3 The Franchisee shall:
- (a) notify the Secretary of State as soon as reasonably practicable if the business outlook or prospective financial results of the Franchisee are likely to be materially different from those specified in the most recent Business Plan; and
 - (b) within one month of any request by the Secretary of State following receipt of a notification in accordance with paragraph 2.3(a), supply the Secretary of State with a revised Updated Business Plan for the remainder of the Franchise Term which reflects the latest view of its business.

Provisions relating to Business Plans

- 2.4 The Franchisee shall:

- (a) comply with any guidance issued by the Secretary of State from time to time as to his reasonable requirements for the format and content of any Business Plan or Business Action Plan. The contents and assumptions to be included in any Business Plan shall, unless the parties otherwise agree, be consistent with the Record of Assumptions. The profit and loss forecast, cash flow forecast and forecast balance sheet contained in any Business Plan shall be in the formats set out in the document in the agreed terms marked **FF**;
 - (b) attend such meetings and make such presentations as the Secretary of State shall request in connection with any Business Plan or Business Action Plan; and
 - (c) provide verification in respect of any information contained in a Business Plan as the Secretary of State may require.
- 2.5 The Franchisee shall not be relieved of any of its obligations under the Franchise Agreement as a result of any comment or failure to comment by the Secretary of State on any Business Plan or any agreement with or approval, implicit or explicit, of any Business Plan by the Secretary of State at any time.
- 2.6 The Secretary of State may at any time require the Franchisee to produce a Business Action Plan in respect of any aspect of the Business Plan. Such Business Action Plan may include steps relating to:
- (a) timetable and service pattern development;
 - (b) Station facility improvement;
 - (c) performance management improvement;
 - (d) customer service improvement; and
 - (e) improvements in the quality of service delivery or the efficiency of delivery of the Franchise Services.
- 2.7 The Franchisee shall comply with any guidance issued by the Secretary of State about how and with whom any consultation on the content of a Business Action Plan is to take place.
- 2.8 Any proposal in a Business Action Plan shall only be implemented if and to the extent that the Secretary of State decides it is appropriate to do so and subject to any conditions which he may impose.
- 2.9 The Secretary of State shall be permitted to carry out indicative Runs of the Financial Model for the purpose of considering whether or not to implement any proposal in a Business Action Plan.

3. **Financial And Operational Information**

Accounting Records

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

Reporting Period Financial Information

3.2 The Franchisee shall deliver to the Secretary of State, within two weeks of the end of each Reporting Period:

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

3.3 The Management Accounts shall also set out:

- (a) sufficient information to enable the Secretary of State to calculate Actual Operating Costs and Modified Revenue on a cumulative basis for the previous thirteen Reporting Periods;
- (b) the ratio of the Franchisee's:
 - (i) Total Modified Revenue to its Total Actual Operating Costs; and
 - (ii) Total Forecast Modified Revenue to its Total Forecast Operating Costs,together with supporting information showing how the Franchisee has calculated such ratios including a breakdown of the Modified Revenue, Forecast Modified Revenue, Actual Operating Cost and Forecast Operating Costs for each of the Reporting Periods used for the purposes of the calculation of the ratios pursuant to this paragraph 3.3(b);
- (c) a comparison of the Franchisee's performance during such period against the forecast provided by the Franchisee in the then current Business Plan;
- (d) a comparison of the Franchisee's cumulative performance during the Franchisee Year in which such period occurs against the forecast referred to in paragraph 3.3(c);
- (e) a detailed statement and explanation of any material difference between such Management Accounts and the forecast referred to in paragraph 3.3(c); and
- (f) where the level of financial performance reported in the Management Accounts is, in the reasonable opinion of the Secretary of State,

materially worse than forecast by the Franchisee in its current Business Plan, the Secretary of State may require the Franchisee to prepare and submit to him, as soon as reasonably practicable, a Financial Action Plan to ensure that the level of financial performance forecast in its current Business Plan for the remainder of the currency of that Business Plan is achieved and the Franchisee shall use all reasonable endeavours to implement such Financial Action Plan.

Quarterly Financial Information

- 3.4 Within four weeks after the end of the third, sixth, ninth and twelfth Reporting Periods in each Franchisee Year, the Franchisee shall deliver to the Secretary of State the following information:
- (a) an updated version of the profit and loss forecast, cash flow forecast and forecast balance sheet provided in accordance with paragraph 2.1(e), for each of the following 13 Reporting Periods; and
 - (b) a statement of calculation demonstrating the Franchisee's performance against each of the financial covenants in paragraph 2 of Schedule 12 (Financial Obligations and Covenants) at the beginning of each Reporting Period and a forecast of performance against such covenants for each of the following 13 Reporting Periods.
- 3.5 Where any Reporting Period falls partly within one Franchisee Year and partly within another, the results for each section of such Reporting Period falling either side of such Franchisee Year end shall be prepared on an accruals basis for each such section of such Reporting Period.

Annual Financial Information

- 3.6 Within three weeks of the end of each Franchisee Year, the Franchisee shall deliver to the Secretary of State its Annual Management Accounts for that Franchisee Year.
- 3.7 The Franchisee shall deliver to the Secretary of State:
- (a) in respect of any Franchisee Year other than the final Franchisee Year, its Annual Financial Statements for that Franchisee Year within three Reporting Periods of the end of that Franchisee Year; and
 - (b) in respect of the final Franchisee Year, its Annual Financial Statements for the period from the start of that Franchisee Year to the end of the Franchise Period within three Reporting Periods of the end of the Franchise Period,
- each together with a reconciliation to the Management Accounts for the same period.
- 3.8 Not used.
- 3.9 Within four Reporting Periods after the end of each Franchisee Year, the Franchisee shall deliver to the Secretary of State the following information:
- (a) certified true copies of its annual report and Annual Audited Accounts for that Franchisee Year, together with copies of all related directors' and auditors' reports;

- (b) a reconciliation to the Management Accounts for the same period; and
- (c) a statement from the Franchisee's auditors confirming compliance with the financial covenants in paragraph 2 of Schedule 12 (Financial Obligations and Covenants).

Accounting Standards and Practices

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

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

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

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

Parent Accounts

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

Secretary of State Audit of calculations provided pursuant to paragraph 3.3(b) of Schedule 13 (Information and Industry Initiatives)

- 3.13 Without prejudice to paragraph 2.2 of Schedule 12 (Financial Obligations and Covenants) or to any other rights of the Secretary of State under the Franchise Agreement, the Secretary of State and his representatives shall be permitted to inspect at any time the books, records and any other material kept by or on behalf of the Franchisee in order to check or audit any item contained in or relating to the Management Accounts in so far as they relate to the statement of calculations required by paragraph 3.3(b) of this Schedule 13 and any other matter in connection with the Franchisee's obligations under paragraph 2 of Schedule 12 (Financial Obligations and Covenants).
- 3.14 The Franchisee shall make available to the Secretary of State and his representatives such information and grant such access or procure the grant of such access (including to or from third parties) as they shall reasonably require in connection with any audit to be carried out pursuant to paragraph 3.13. If any audit carried out pursuant to paragraph 3.13 reveals, in the reasonable opinion of the Secretary of State, any material inaccuracy in the Management Accounts (but only in so far as such accounts relate to the statement of calculations required by paragraph 3.3(b)) then the Secretary of State may exercise its rights as described in paragraphs 2.2 (i) or 2.2(ii) of Schedule 12 (Financial Obligations and Covenants) and the Franchisee shall pay all reasonable costs of any such audit as a monitoring cost pursuant to paragraph 1.11 of Schedule 10.1 (Remedial Plans and Remedial Agreements).

4. Safety Information

Safety

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

5. Further Information

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

its dealings with the Franchisee in connection with the Franchisee's performance of its obligations under the Franchise Agreement.

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

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

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

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

6. **Contraventions of the Franchise Agreement**

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

6.2 The Franchisee shall deliver to the Secretary of State, or procure the delivery to the Secretary of State of, such information, records or documents as the Secretary of State may request within such period as the Secretary of State may reasonably require for the purpose of determining the existence, likelihood, nature or scope of any contravention of, Event of Default or Termination Event under, the Franchise Agreement.

7. **Information from Third Parties**

7.1 The Franchisee shall, if the Secretary of State so requests, use all reasonable endeavours to ensure that the Secretary of State has direct access to any information, data or records relating to the Franchisee which is or are maintained by third parties and to which the Secretary of State is entitled to have access, or of which the Secretary of State is entitled to receive a copy under the Franchise Agreement.

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

8. **Compatibility of Information**

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

9. **Development of Industry Systems**

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

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

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

11. **Cooperation with Network Rail and Alliancing**

- 11.1 The Franchisee shall use all reasonable endeavours to work with Network Rail to identify ways in which cooperation between the Franchisee and Network Rail can be enhanced, costs can be reduced and closer working and alignment of

incentives can improve value for money within the parameters of the Franchise Agreement.

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

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

11.3 The Franchisee shall provide such information, updates and reports on the progress of its negotiation with Network Rail as the Secretary of State shall reasonably require and meet with the Secretary of State to discuss the progress of the negotiations when reasonably requested to do so.

11.4 On reaching agreement in principle with Network Rail on the terms of an Alliance Agreement the Franchisee shall present the draft Alliance Agreement to the Secretary of State for approval and shall not enter into any such agreement without the prior written consent of the Secretary of State (which he shall have an unfettered discretion to withhold).

11.5 The Franchisee agrees that any approval of an Alliance Agreement shall (without prejudice to the unfettered discretion of the Secretary of State to refuse to consent to such an alliance) be conditional upon:

- (a) the Secretary of State being satisfied that such Alliance Agreement is consistent with the provisions of paragraph 11.2 above;
- (b) the Franchisee agreeing to a fair and reasonable allocation of the gain from such alliance being passed to the Secretary of State (whether through profit share or otherwise) consistent with the role of the Secretary of State in funding the railway network; and
- (c) the Franchisee entering into a deed of amendment to the Franchise Agreement in a form reasonably determined by the Secretary of State.

12. **Sustainable Construction**

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

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

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

13. **Environmental Management and Sustainability Accreditation**

The Franchisee shall by no later than the date which is 18 months after:

- (a) the Start Date attain and at all times thereafter maintain accreditation pursuant to ISO14001 and ISO50001 or equivalent standards in relation to the TGN Franchise Services; and
- (b) the Combined Effective Date attain and at all times thereafter maintain accreditation pursuant to ISO14001 and ISO50001 or equivalent standards in relation to the Southern Franchise Services.

14. **Community Rail Partnerships**

14.1 The Franchisee shall, at the request of the Secretary of State, co-operate with the Secretary of State, Network Rail, the 'Association of Community Rail Partnerships', the relevant Community Rail Partnership and/or any other person as the Secretary of State may nominate in the development of the Secretary of State's initiatives in relation to options for a more cost effective delivery of the railway passenger services operated on any Community Rail Route.

- 14.2 The Franchisee shall become a member of any new Community Rail Partnership that is established during the Franchise Term.
- 14.3 The Franchisee shall from the Start Date invest at least £25,000 (pounds sterling twenty five thousand) to support any initiatives developed in conjunction with local Community Rail Partnerships and which encourage adoption of Stations by local groups for the purpose of improving the care and condition of Stations.
- 14.4 The Franchisee shall continue to be a member of the Sussex Community Rail Partnership and in addition to its obligations in paragraph 2, shall from the Combined Effective Date until the end of the Franchise Term, invest at least £40,000 (pounds sterling forty thousand) in each Franchisee Year on projects, payment of the salary for the partnership officer and other administration costs relating to the Sussex Community Rail Partnership. Any such amounts not invested at the end of each Franchisee Year shall be required to be invested in the following Franchisee Year and any outstanding investment must be paid to the Sussex Community Rail Partnership by the end of the Franchise Term.

15. **Station Investment**

- 15.1 The Franchisee shall at all times during the Franchise Term, co-operate with the Secretary of State and any third party nominated by the Secretary of State and notified to the Franchisee in developing opportunities for financing investment at Stations and Franchisee Access Stations in order to improve the station environment at such stations.
- 15.2 In co-operating with the Secretary of State and/or any nominated third party in developing any such financing opportunities, the Franchisee shall:
- (a) attend meetings with the Secretary of State and/or such third party to discuss such opportunities;
 - (b) provide the Franchisee's opinion on those opportunities;
 - (c) review and comment on implementation timetables and programmes for any such opportunities; and
 - (d) use all reasonable endeavours to achieve any necessary amendments to any Station Leases in order to facilitate the implementation of those opportunities.

16. **Small and Medium-sized Enterprises**

- 16.1 The Franchisee shall at all times keep accurate and complete records of its use of and interaction with SMEs in delivering the Franchise Services.
- 16.2 By no later than 31 January in each year (and within one month of the end of the Franchise Period) the Franchisee shall deliver to the Secretary of State a breakdown of the number of SMEs used by the Franchisee in providing the Franchise Services during the calendar year (or part thereof) which ended on the immediately preceding 31 December or at the end of the Franchise Period (as applicable).

17. **Apprenticeships**

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

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

18. **Development of Business Cases**

The Franchisee shall co-operate in good faith with the Secretary of State in the development of business cases connected with the improvement of the Franchise (including the development of initiatives which enhance revenue earning potential, deliver additional passenger benefits and enhance the future value of the Franchise including by improving efficiency or reducing costs).

19. **Environmental impact monitoring, data collection and contractual targets**

19.1 The Franchisee shall, by no later than 3 months:

- (a) after the Start Date, in relation to the TGN Franchise Services; and
- (b) after the Combined Effective Date, in relation to the Southern Franchise Services,

provide a report to the Secretary of State setting out:

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

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

19.2 The Secretary of State may require:

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

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

19.3 Where the Franchisee is:

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

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

19.4 With effect from the date which is 3 months after:

- (a) the Start Date, in respect of the TGN Franchise Services; and
- (b) the Combined Effective Date, in respect of the Southern Franchise Services,

the Franchisee shall measure, collect and provide to the Secretary of State in accordance with this paragraph 19, that data included on the Initial Dataset so as to allow the Secretary of State and the Franchisee to understand the current environmental performance of the Franchise and any potential for improvement in terms of environmental impact.

19.5 The Franchisee may, in its discretion, measure and collect additional data provided that the minimum required Initial Dataset is adhered to and the Franchisee will co-operate with the Secretary of State to seek to identify improvements in the efficiency and/or cost effectiveness of the collection of the data in the Dataset.

19.6 The Franchisee shall ensure that the form of measurement of the Initial Dataset enables it to report a consolidated quarterly or annual (as applicable) usage figure to the Secretary of State for each reporting quarter or Franchisee Year (as applicable).

19.7 The Franchisee shall submit to the Secretary of State a report setting out the result of the of the data collection required by paragraph 18 within four weeks following the end of each (i) reporting quarter during the Franchise Period and (ii) Franchisee Year (as applicable).

19.8 For the purpose of this paragraph 19 "**reporting quarters**" are 1st April to 30th June, 1st July to 30th September, 1st October to 31st December and 1st January

to 31st March. The first reporting quarter of the Franchise Period for the purpose of the report shall begin on the Start Date and end on the last day of the reporting quarter in which the Start Date falls, and the final quarter shall end on the last day of the Franchise Period.

19.9 The Franchisee shall submit the report required by paragraph 19.7 above to the Secretary of State in such format as the Secretary of State may (acting reasonably) from time to time specify. Such report will include the actual quarterly or annual results (as applicable) and, with effect from:

- (a) the first reporting quarter which commences at least 15 months after the Start Date; and
- (b) in respect of any measure which, as a result of an amendment to the Initial Dataset, the Franchisee subsequently becomes obliged to report against, the first reporting quarter which commences at least 12 months after the date on which the Franchisee first became obliged to report against that measure,

the average of the results for the relevant reporting quarter and the previous three reporting quarters ("**Moving Annual Average**").

19.10 The Franchisee shall procure a suitably qualified independent body (such independent body to be appointed only with the prior written approval of the Secretary of State) to undertake an annual independent audit of the data provided and the collection methodology in respect of each Franchisee Year.

19.11 The Franchisee shall procure that the independent audit report contains:

- (a) a retrospective assessment (covering the Franchisee Year to which the audit relates) of the Franchisee's data collection methodology and level of data granularity carried out in accordance with paragraph 19;
- (b) a verification of the accuracy of past data submissions made in accordance with paragraph 19.7 above; and
- (c) an assessment of the Franchisee's proposed data collection methodology and level of data granularity for the following Franchisee Year's data collection.

In each case where the independent audit report states that there are errors or concerns with any of the items described in paragraphs 19.11(a) to 19.11(c) above, the Franchisee shall procure that the independent auditor specifies whether these are material or minor errors or concerns.

19.12 The Franchisee shall submit a copy of the independent audit report covering the relevant Franchisee Year to the Secretary of State at the same time as the data for the last reporting quarter in that Franchisee Year is submitted in accordance with paragraph 18.7 above.

19.13 Where the independent audit report highlights errors or concerns with any of the items described in paragraphs 18.11(a) to 18.11(c) above, the Franchisee shall:

- (a) in the case of minor errors within past data which are capable of rectification without significant resource or significant expenditure, rectify those flaws and resubmit the relevant report to the Secretary of State as soon as reasonably practicable following submission of the independent

audit report so that there is a complete and accurate record of the data in question;

- (b) in the case of material errors within past data which are capable of rectification, rectify those flaws and resubmit the relevant report to the Secretary of State as soon as reasonably practicable following submission of the independent audit report so that there is a complete and accurate record of the data in question; and
- (c) in the case of concerns in relation to the Franchisee's proposed data collection methodology and level of data granularity for the forthcoming Franchisee Year's data collection, make such changes to that proposed methodology so as to address those concerns.

19.14 Within eighteen months following the:

- (a) Start Date, in respect of the TGN Franchise Services; and
- (b) Combined Effective Date, in respect of the Southern Franchise Services,

the Franchisee shall propose to the Secretary of State annual targets for future Franchisee Years against the measures listed below or, if such measures are Excluded Data, against such alternate measures included in the Initial Dataset as the Secretary of State may specify, that demonstrate a reasonable improvement compared with the first Moving Annual Average which is reported in line with paragraph 19.9:

- (i) Traction energy:
 - (A) Kwh ppkm
 - (B) kWh or litres/vehicle mile
- (ii) Non-traction energy:
 - (A) Total non-traction KWh
- (iii) Carbon emissions:
 - (A) Traction (kg CO₂) and
 - (B) Non traction (kg CO₂)
- (iv) Water consumption: Water consumption (m³)
- (v) Waste: Waste to landfill (tonnes)

19.15 The Franchisee must as soon as reasonably practicable following notification of the annual targets described in paragraph 19.14 above produce an implementation plan which, in the opinion of the Secretary of State, is capable of achieving the annual targets notified to the Secretary of State in accordance with paragraph 19.14. The Franchisee shall use all reasonable endeavours to implement that plan.

19.16 In the event that an annual target is not met, the Franchisee must as soon as reasonably practicable produce a revised implementation plan, which, in the reasonable opinion of the Secretary of State, is capable of achieving the annual

targets. The Franchisee shall use all reasonable endeavours to implement that plan.

19.17 The Franchisee shall review the annual targets, and provide to the Secretary of State a revised implementation plan after 5 years (5 years after the original annual targets were agreed), and after every 5 years thereafter.

19.18 The Franchisee shall publish any annual targets notified to the Secretary of State pursuant to paragraph 19.14 above and the Franchisee's performance against those targets in widely accessible forms including, as a minimum, publishing them on its website.

19.19 If:

- (a) the Secretary of State has required the Franchisee to propose targets against alternate measures pursuant to paragraph 19.14; and
- (b) subsequently, the relevant item of Excluded Data is included in the Initial Dataset,

the Secretary of State may require the Franchisee to propose, within 18 months of the date that the Secretary of State so requires, an annual target against the relevant measure listed in paragraph 19.14 that demonstrates a reasonable improvement compared with the first Moving Annual Average which is reported in respect of the relevant measure in line with paragraph 19.9.

APPENDIX 1 TO SCHEDULE 13

Efficient Franchisee

1. Information about the Efficiency of the Franchisee

1.1 The Franchisee shall:

- (a) at all times during the Franchise Term maintain records in relation to the areas and the information described in this Appendix 1; and
- (b) subject to paragraph 1.2, provide to the Secretary of State the information set out in the following tables at the frequency specified in the column of each such table headed "When information to be provided".

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

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

1.3 The following key shall apply to the tables in this Appendix 1:

- A = Information to be provided on or before any Passenger Change Date;
- B = Information to be provided for every Reporting Period within ten days of the last day of each Reporting Period;
- C = Information to be provided annually within ten days of the last day of each Franchisee Year; and
- D = Information to be provided whenever a change to the information contained in Appendix 3 (The Train Fleet) to the Franchise Agreement occurs.

Table 1 Rolling Stock Vehicles

Information to be provided	Class of Rolling Stock Vehicle			When information to be provided
	Class [aaa]	Class [bbb]	Class [xxx]	
Number of rolling stock vehicles in the Train Fleet	[number]	[number]	[number]	A

Information to be provided	Class of Rolling Stock Vehicle			When information to be provided
	Class [aaa]	Class [bbb]	Class [xxx]	
Number of rolling stock vehicles scheduled to be in service in peak hour as a percentage of the number of rolling stock vehicles in the Train Fleet	[%]	[%]	[%]	A
Number of rolling stock vehicles scheduled in service per Reporting Period as a percentage of the number of rolling stock vehicles in the Train Fleet x 24 x 28 (total rolling stock vehicle hours)	[%]	[%]	[%]	A
Total standard time scheduled preventative maintenance rolling stock vehicle hours per Reporting Period as a percentage of total rolling stock vehicle hours	[%]	[%]	[%]	A

Where trains operated by the Franchisee consist of locomotive(s) and coaches, the Franchisee shall separate the information provided for locomotive(s) and coaches.

Table 2 Information related to Efficiency of Operation

Information to be provided	When information to be provided
Total passenger journey kilometres divided by the total of staff hours and contractor hours	A
[Number of scheduled unit diagrams per Reporting Period divided by the number of drivers (employees and contractors)]	A
The number of depot maintenance employees [and contractors] (including train maintenance staff, depot drivers and supervisory and administrative staff at the relevant depot) divided by the number of rolling stock vehicles in the Train Fleet	A
[Scheduled driving/train crew in service time compared to total driver/train crew (employees and contractors) expressed as a percentage]	A
[Total number of employees (including contractors) divided by the number of rolling stock vehicles in the Train Fleet]	A
Number of indirect employees and contractors (head office, management and supervisory and administrative	A

Information to be provided	When information to be provided
staff) relative to the number of direct employees and contractors (drivers, train crew, station staff and train maintainers), expressed as a percentage	

Table 3 Financial Efficiency Ratio

Information to be provided	When information to be provided
Total cost of service operations (all Franchisee's costs excluding head office, management and supervisory and administrative staff costs and head office lease and facilities costs) divided by total scheduled vehicle miles	A
Total maintenance cost (including depot costs, spare parts replacement train maintenance staff [(including employees and contractors)] and depot supervisory costs, interior and exterior cleaning costs, depot maintenance costs excluding any vehicle fuel costs) divided by total scheduled vehicle miles	A
Total cost (sum of all Franchisee's costs) divided by total number of total passenger journey kilometres	A
Total cost of service operations (all Franchisee's costs excluding head office, management and supervisory and administrative staff costs and head office lease and facilities costs) divided by total passenger journeys	A
Administrative costs (head office, management and supervisory and administrative staff costs and head office lease and facilities costs) divided by total scheduled vehicle miles	A
Total fares revenue divided by the total number of total passenger journey kilometres	A
Ticket selling and revenue protection costs* as a percentage of total revenue	A
Percentage of ticket sales revenue collected by ticket office staff	A
Percentage of ticket sales revenue collected by on train staff	A
Percentage of ticket sales revenue collected by automatic ticket machines	A
Percentage of total revenue obtained from season tickets	A

**Ticket selling and revenue protection costs include ticket office staff costs, ticket machine and ticket validation equipment maintenance costs, ticket procurement and ticket costs, revenue protection staff costs (less penalty fare (if any) receipts), costs associated with RSP and Ticketing and Settlement Agreement compliance, and commissions paid to third parties in respect of ticket sales.*

Table 4 Safety

Information to be provided	When information to be provided
Accidents reported (staff and passengers) divided by the number of passenger journeys	C
Crime incidents reported (staff and passengers) divided by the number of passenger journeys	C

Table 5 HR Information

Information to be provided	When information to be provided
Evidence of Franchisee's vision, company goals and HR Strategy that supports it	C
Evidence of a human resource database capable of informing the operation of the Franchisee and supporting the production of a manpower plan	C
Evidence of a 5 year manpower plan, rolling forward and updated annually	C
Evidence of working towards "Investors in People" accreditation	C
Evidence of a performance management process applicable to all staff	C
Evidence of an objective, transparent and fair recruitment process	C
Evidence of analysis of employment and recruitment data by gender, ethnic category, disability function and grade	C
Evidence of analysis of turnover by cause, retirement, dismissal, redundancy, ill health retirement, death	C
Evidence of succession planning, identification of prospective "hot spots" and actions taken to address them	C
Evidence of a diversity plan and impact of implementing it	C
Evidence of historical and current data on salaries, earnings, hours of work, overtime worked, free day/rest day working, and other main terms and conditions for all key grade groups	C
Evidence of benchmark comparator data	C
Evidence of non-financial reward and recognition initiatives	C
Evidence of a competence framework in place based on national occupational standards	C
Evidence of an assessment and verification framework	C

Information to be provided	When information to be provided
to enable the delivery of NVQs and SVQs	
Evidence of a structured induction programme (supported by hard data) incorporating a railway industry perspective to all new entrants	C
Hard data (numbers / %) of staff with NVQs / SVQs (or equivalent externally recognised qualification) by grade against target	C
Evidence (supported by hard data (numbers / %)) of structured training and development for "Strategic", "Supervisory" and "Operational" managers as well as the wider workforce	C
Evidence of a collective "consultation and bargaining framework"	C
Hard data on people days lost through industrial action and a record of industrial action short of strike action	C
Evidence of an annual staff attitude survey	C
Evidence of actions taken arising from feedback received from the staff attitude survey	C
Evidence of company links to the community through its staff	C
Evidence of a company communication and briefing strategy	C
Evidence of a robust process of briefing, core briefing material and 2-way communication and feedback	C
Evidence of staff hours lost through sickness and other absence	C
Evidence of staff hours lost through training	C

APPENDIX 2 TO SCHEDULE 13

Key Assets

1. Information About Assets Used In The Franchise

- 1.1 The Franchisee shall at all times during the Franchise Term maintain (and shall provide copies to the Secretary of State when requested to do so from time to time) records covering the following information:
- (a) for each Primary Franchise Asset or other asset which is the subject of, or operated under, a Key Contract:
 - (i) the progress and completion of all work described in the maintenance schedules and manuals;
 - (ii) all operating manuals (including any safety related regulations); and
 - (iii) all permits, licences, certificates or other documents required to operate such asset; and
 - (b) a printed or electronic list of all assets owned or operated by the Franchisee from time to time (excluding, unless otherwise requested by the Secretary of State, any office furniture and consumable items).

APPENDIX 3 TO SCHEDULE 13

Operational Information

1. Information about the Performance of the Franchisee

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

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

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

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

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

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

B = information to be provided for every Reporting Period within 17 days of the last day of each Reporting Period; and

C = information to be provided annually within 10 days of the last day of each Franchisee Year.

1.5 For the purpose of this Appendix 3, a **business day** is any day between Monday to Friday (inclusive) excluding public holidays.

Table 1 Operational Information

Information to be provided	Information (format)	When information to be provided
Number of Passenger Services		
Number of Passenger Services in the Timetable	[number]	B
Number of Passenger Services in the Enforcement Plan of the Day	[number]	B
Number of Cancellations and Partial		

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

Information to be provided	Information (format)	When information to be provided
<p>the following:</p> <p>(a) the fact of such difference (together with an annotation showing whether the difference was initiated by Network Rail or the Franchise); and</p> <p>(b) the number of:</p> <p>(i) Passenger Services affected; and</p> <p>(ii) Cancellations or Partial Cancellations which would have arisen if the Timetable on that day had been the same as the Plan of the Day</p>		
<p>Where there is a difference between the Plan of the Day and the Enforcement Plan of the Day on any day:</p> <p>(a) the fact of such difference; and</p> <p>(b) the number of:</p> <p>(i) Passenger Services affected; and</p> <p>(ii) Cancellations or Partial Cancellations which would have arisen if the Plan of the Day had been the same as the Enforcement Plan of the Day</p>	[number]	B
<p>Number of Passenger Services in the Enforcement Plan of the Day which were the subject of a cancellation and which satisfied the conditions of the term Cancellation, except that such cancellations occurred for reasons attributable to the occurrence of a Force Majeure Event</p>	[number]	B
<p>Number of Passenger Services in the Enforcement Plan of the Day which were the subject of a partial cancellation and which satisfied the conditions of the term Partial Cancellation, except that such partial cancellations occurred for reasons attributable to the occurrence of a Force Majeure Event</p>	[number]	B
<p>Peak Short Formation</p>		
<p>Number of Peak Passenger Services that have less than the required Passenger Carrying Capacity specified in the Train Plan</p>	[number]	B
<p>Number of Peak Passenger Services that have less than the required Passenger Carrying</p>	[number]	B

Information to be provided	Information (format)	When information to be provided
Capacity specified in the Train Plan attributable to the Franchisee's implementation of a Service Recovery Plan		
Number of Peak Passenger Services that have less than the required Passenger Carrying Capacity specified in the Train Plan attributable to the occurrence of a Force Majeure Event	[number]	B
Minutes Delay and Punctuality		
Number of Minutes Delay attributable to the Franchisee	[minutes]	B
Number of Minutes Delay attributable to Network Rail	[minutes]	B
Number of Minutes Delay for such Reporting Period for which the attribution is in dispute between Network Rail and the Franchisee	[minutes]	B
Number of Minutes Delay for the 12 preceding Reporting Periods for which the attribution remains in dispute between Network Rail and the Franchisee	[minutes]	B
Number of Minutes Delay from the 12 preceding Reporting Periods for which disputed attribution has been resolved or determined since the Franchisee's previous report pursuant to paragraph 2.6 of Schedule 7.1 (Performance Benchmarks) and the number of such Minutes Delay attributed to each of the Franchisee and Network Rail as a result of such resolution or determination	[minutes]	B
Number of Minutes Delay attributed to the occurrence of a Force Majeure Event	[minutes]	B
Train Mileage		
Aggregate Train Mileage scheduled in the Timetable	[mileage]	A
Aggregate Train Mileage operated	[mileage]	B
Year to Date Loaded Train Miles (millions)	[mileage]	B

APPENDIX 4 TO SCHEDULE 13

Ticket and Revenue Information

1. Information about Ticket Sales, Revenue and Commission

- 1.1 The Franchisee shall at all times during the Franchise Term maintain records in relation to Revenue covering the areas and the information described in this Appendix 4. Such information shall include details as to the number of Fares sold in aggregate and by ticket type and the Revenue derived from the sale of tickets as allocated to the Franchisee by RSP or otherwise attributable to the sale of Fares in respect of passenger journeys made on the Passenger Services;
- 1.2 The Franchisee shall, subject to paragraph 1.3, provide to the Secretary of State the information set out in the following table at the frequency specified in the column of each such table headed "When information to be provided".
- 1.3 When so requested by the Secretary of State, the Franchisee shall, within such reasonable period as the Secretary of State may specify, make such information available for review by the Secretary of State by reference to:
- (a) such level of disaggregation (including by Route or Service Group) as is reasonably specified by the Secretary of State; and
 - (b) any particular day, week or other longer period as is reasonably specified by the Secretary of State.
- 1.4 The following key shall apply to the table in this Appendix 4:
- A = information to be provided on or before any Passenger Change Date;
 - B = information to be provided for every Reporting Period within 10 days of the last day of each Reporting Period; and
 - C = information to be provided annually within 10 days of the last day of each Franchisee Year.

Table Ticket Sales and Other Information

Information to be provided	Information (format)	When information to be provided
Revenue		
Total Revenue disaggregated by reference to revenue derived from the sale of Fares (" Ticket Revenue ") and all other Revenue (other than Ancillary Revenue)	[£]	B
Total Ticket Revenue by ticket type	[£]	B
Total Ticket Revenue by Route	[£]	B

Information to be provided	Information (format)	When information to be provided
Total Ticket Sales net of retail commission and net of ToD issuing commission	[£]	B
Penalty Fares		
Number of penalty fare notices issued	[number]	B
Number of penalty fare notices issued by Route	[number]	B
Value of penalty fares in respect of which penalty fares notices issued	[£]	B
Value of penalty fares in respect of which penalty fares notices issued by Route	[£]	B
Number of penalty fares that remain unpaid at the end of each Reporting Period	[number]	B
Excess Fares		
Number of excess fares issued	[number]	B
Number of excess fares issued by Route	[number]	B
Value of excess fares issued	[£]	B
Value of penalty fares issued by Route	[£]	B
Value of recorded Fares recoveries	[£]	B
Commission		
Total commission earned by the Franchisee through the sale of Fares for passenger journeys on railway passenger services other than the Passenger Services	[£]	B
Delay Repay Compensation		
The amount of the Delay Repay Compensation paid by the Franchisee to passengers in accordance with the Passenger Charter.	[£]	B
Ancillary Services		
The extent and nature of the Ancillary Services (other than the Passenger Services)	[description]	C
Revenue accruing to the Franchisee from the carrying out of Ancillary Services	[£]	C

Information to be provided	Information (format)	When information to be provided
Revenue accruing to the Franchisee from the carrying out of Ancillary Services by Ancillary Service	[£]	C
Advertising Revenue		
Advertising revenue accruing to the Franchisee from advertising on trains	[£]	C
Advertising revenue accruing to the Franchisee from advertising on Stations	[£]	C
Car Park Revenue		
Total car park revenue accruing to the Franchisee	[£]	C
Total car park revenue accruing to the Franchisee by Station car park	[£]	C

- 1.5 Where the information referred to in this Appendix 4 is held in a system operated by RSP (or any other system), the Franchisee may fulfil its obligations under paragraph 1.1 by procuring that the Secretary of State shall be granted access free of charge to such records in a readily accessible manner and in a format acceptable to the Secretary of State.
- 1.6 The Franchisee shall advise the Secretary of State of any changes made to its systems or processes or those of RSP which materially change or affect the continuity of the records maintained pursuant to this Appendix 4. Such advice shall include an assessment of the materiality of the relevant change.

APPENDIX 5 to SCHEDULE 13

Environmental Impact Monitoring Dataset

SUBJECT (UNIT)		GRANULARITY		FREQUENCY
TRACTION	EC4T (kWh)	Total/breakdown distinct fleet	per	Quarterly
	Gas-oil (kWh)	Total/breakdown distinct fleet	per	Quarterly
	Gas-oil (litres)	Total/breakdown distinct fleet	per	Quarterly
	Traction (kWh)	Total		Quarterly
	kWh or litres/vehicle mile	Total/breakdown distinct fleet	per	Quarterly
NON-TRACTION	Electricity (kWh) totals and per site	Total/breakdown individual site	per	Quarterly
	Gas (kWh)	Total/breakdown individual site	per	Quarterly
	Gas-oil (kWh)	Total/breakdown individual site	per	Quarterly
	Gas-oil (litres)	Total/breakdown individual site	per	Quarterly
	Total non-traction (kWh)	Total		Quarterly
ENERGY OUTPUTS	Traction (kWh ppj)	Total/breakdown distinct fleet	per	Quarterly
	Traction (kWh ppkm)	Total/breakdown distinct fleet	per	Quarterly
	Non Traction (kWh ppj)	Total/breakdown individual site	per	Quarterly
	Non Traction (kWh ppkm)	Total/breakdown individual site	per	Quarterly
	EPC rating	All locations		12 months after Start Date in respect of the TGN Franchise Services and 12 months after Combined Effective Date in respect of the Southern Franchise Services and then any changes
	kWh/m ²	All locations		Annual
CARBON	Carbon footprint (tonnes)	Total		Annual
	Scope 1 emissions (tonnes)	Total		Annual
	Scope 2 emissions (tonnes)	Total		Annual
	Traction (kg CO ₂)	Total		Quarterly
	Traction (kg CO ₂ ppj)	Total/breakdown distinct fleet	per	Quarterly
	Traction (kg CO ₂ ppkm)	Total/breakdown distinct fleet	per	Quarterly
	Non traction (kg CO ₂)	Total		Quarterly

	Non Traction (kg CO ₂ ppj)	Total/breakdown individual site	per	Quarterly
	Non Traction (kg CO ₂ ppkm)	Total/breakdown individual site	per	Quarterly
WATER	Mains Water consumption (m ³)	Total/breakdown individual site	per	Annual
	Water recycled including rainwater use(m ³)	Total/breakdown individual site	per	Annual
	Recycling rate (%)	Total/breakdown individual site	per	Annual
WASTE	Waste generated (tonnes)	Total/per individual site/per individual waste stream		Quarterly
	Waste recycled (tonnes)	Total/per individual site/per individual waste stream		Quarterly
	Recycling rate (%)	Total/per individual site/per individual waste stream		Quarterly
	Waste to landfill (tonnes)	Total/per individual site/per individual waste stream		Quarterly
ENVIRONMENTAL MANAGEMENT SYSTEM	Customer complaints for environmental issues	Customer complaints for environmental issues		Annual
	Environmental fines or prosecutions	Environmental fines or prosecutions		Annual
	Corrective actions in EMS audits	Corrective actions in EMS audits		Annual
	Average time to close out corrective actions	Average time to close out corrective actions		Annual
	Environmental incidents reported through EMS	Environmental incidents reported through EMS		Annual
	Environmental training records % personnel briefed/trained	Environmental training records % personnel briefed/trained		Annual
	Performance in benchmarking indices e.g. EFQM, BiTC, SD tool	Performance in benchmarking indices e.g. EFQM, BiTC, SD tool		Annual

SCHEDULE 14

Preservation of Assets

- Schedule 14.1: Maintenance of Franchise**
- Schedule 14.2: Maintenance of Operating Assets**
- Schedule 14.3: Key Contracts**
- Appendix: List of Key Contracts**
- Schedule 14.4: Designation of Franchise Assets**
- Appendix: List of Primary Franchise Assets**
- Schedule 14.5: Dealings with Franchise Assets**

SCHEDULE 14.1

Maintenance of Franchise

Maintenance as a going concern

1. The Franchisee shall maintain and manage the business of providing the Franchise Services so that, to the greatest extent possible and practicable:
 - (a) the Franchisee is able to perform its obligations under the Franchise Agreement; and
 - (b) a Successor Operator would be able to take over the business of providing the Franchise Services immediately at any time.
2. The Franchisee's obligation under paragraph 1 shall include an obligation to ensure that any computer and information technology systems of the Franchisee shared in whole or in part with Affiliates or third parties can be operated by a Successor Operator as a stand alone system without continued reliance on such Affiliates or other third parties immediately from the date of termination of the Franchise Agreement without any reduction in functionality or any increase in maintenance or support costs to the Successor Operator (this obligation being without prejudice to any requirement for the Franchisee to obtain consent to such arrangements relating to sharing computer and information technology systems from the Secretary of State).
3. The Franchisee shall use all reasonable endeavours to ensure that such Successor Operator would have immediate access to all Franchise Employees and Primary Franchise Assets for such purpose.
4. The Franchisee shall maintain and manage the business of providing the Franchise Services on the basis that such business will be transferred, in the manner contemplated under the Franchise Agreement, as a going concern at the end of the Franchise Period to, and continued immediately thereafter by, a Successor Operator.
5. The Franchisee shall use all reasonable endeavours to ensure that an appropriate number of employees (having sufficient skills, qualifications and experience) will transfer by operation of Law to any Successor Operator following the expiry of the Franchise Period.
6. The Franchisee shall comply with all reasonable requirements of the Secretary of State to obtain or maintain the property and rights that a Successor Operator would require, or that it would be convenient for it to have, on the basis that the same will transfer by operation of Law to any Successor Operator following the expiry of the Franchise Period.

Post-Franchise timetables

7. Both prior to and following the selection of a Successor Operator (whether a franchisee or otherwise and whether or not subject to the satisfaction of any conditions), the Franchisee shall:
 - (a) co-operate with, where a Successor Operator has been appointed, that Successor Operator, or where not, the Secretary of State; and

- (b) take such steps as may reasonably be requested by the Secretary of State,

so as to ensure the continuity of, and orderly handover of control over of the Franchise Services.

- 8. The steps that the Secretary of State may reasonably request the Franchisee to take pursuant to paragraph 7 include:

- (a) participating in any timetable development process that takes place during the Franchise Period, but which relates to any timetable period applying wholly or partly after the expiry of the Franchise Term ("**Successor Operator Timetable**"), including bidding for and securing any Successor Operator Timetable, whether or not:

- (i) the Successor Operator has been identified; or

- (ii) there is in place an Access Agreement relating to the period over which that Successor Operator Timetable is intended to be operated;

- (b) using reasonable endeavours to seek amendments to and/or extensions of Access Agreements which can be transferred to the Successor Operator on expiry of the Franchise Period;

- (c) assisting the Secretary of State or the Successor Operator (as the case may be) in the preparation and negotiation of any new Access Agreement relating to any Successor Operator Timetable; and/or

- (d) entering into that Access Agreement in order to secure the relevant priority bidding rights required by the Successor Operator to operate that Successor Operator Timetable, provided that the Franchisee shall not be required to enter into any such Access Agreement unless the Secretary of State has first provided to it confirmation in writing that he will include that Access Agreement in any Transfer Scheme pursuant to paragraph 3.1 of Schedule 15.4 (Provisions Applying on and after Termination).

SCHEDULE 14.2

Maintenance of Operating Assets

1. **Operating Assets**

- 1.1 The Franchisee shall maintain, protect and preserve the assets (including any intellectual property or intangible assets employed in the performance of its obligations under the Franchise Agreement (the "**Operating Assets**") in good standing or good working order, subject to fair wear and tear.
- 1.2 The Franchisee shall carry out its obligations under paragraph 1.1 so that the Operating Assets may be transferred at the end of the Franchise Period to a Successor Operator and used by such Successor Operator in the provision or operation of similar services to the Franchise Services.
- 1.3 Where any Operating Asset is lost, destroyed or otherwise beyond repair, the Franchisee shall replace the Operating Asset with property, rights or liabilities in modern equivalent form to the Operating Asset to be replaced. The Franchisee shall at all times maintain an appropriate volume of Spares, and/or an appropriate level of access to Spares from a third party, to enable it to perform its obligations under the Franchise Agreement.
- 1.4 The Secretary of State may at any time require the Franchisee to provide to the Secretary of State a schedule specifying the condition of any asset or class of assets that he specifies for this purpose. Such schedule shall cover such aspects of asset condition as the Secretary of State may reasonably require. If the parties are unable to agree the content of such schedule of condition, either party may refer the dispute for resolution in accordance with the Dispute Resolution Rules. Until such dispute is resolved, the Franchisee shall comply with the Secretary of State's requirements in respect of such schedule of condition.
- 1.5 The Franchisee shall keep vested in it at all times during the Franchise Period all Franchise Assets designated as such pursuant to Schedule 14.4 (Designation of Franchise Assets) as it may require in order to comply with:
- (a) the Licences;
 - (b) any contracts of employment with Franchise Employees;
 - (c) any relevant Fares;
 - (d) any Key Contracts; and
 - (e) any applicable safety legislation regulations or safety standards and the Safety Certificate,

in order to ensure that the Secretary of State may designate such assets as Primary Franchise Assets.

2. **Brand Licences And Branding**

Brand Licences

2.1 The Franchisee shall comply with its obligations under each of the Brand Licences.

Branding

2.2 Subject to any applicable obligations or restrictions on the Franchisee (including the terms of the Rolling Stock Leases), the Franchisee may apply registered or unregistered trade marks (including company names, livery and other distinctive get-up) to any assets owned or used by it in the operation and provision of the Franchise Services.

- (a) Subject to paragraphs 2.2(c) and (g), the Franchisee may:
- (i) in respect of unregistered Marks, provide or procure the provision of an irrevocable undertaking to any relevant Successor Operator to the effect that neither it nor the owner of the Marks will enforce such rights as it may have or may in the future have in respect of such Marks against such Successor Operator and its successors; and
 - (ii) in respect of registered Marks, grant or procure the grant of an irrevocable licence to use such Marks to such Successor Operator and its successors.
- (b) Any such licence or undertaking under paragraph 2.2(a) shall be in such form as the Secretary of State shall reasonably require except that the terms of any such licence and, to the extent appropriate, any such undertaking shall accord with the provisions of paragraph 8.3 of Schedule 15.4 (Provisions Applying on and after Termination).
- (c) Subject to paragraph 2.2(g), to the extent that:
- (i) the Franchisee does not provide a relevant undertaking or licence in accordance with paragraph 2.2(a);
 - (ii) the Secretary of State considers the relevant Marks to be so distinctive or otherwise such that a Successor Operator could not reasonably be asked to use the relevant assets to which the Marks are applied; or
 - (iii) the Franchisee has not otherwise removed or covered such Marks in such a way as may be reasonably acceptable to the Secretary of State prior to the expiry of the Franchise Period,

then the Franchisee shall pay to the relevant Successor Operator such amount as may be agreed between the Franchisee and such Successor Operator, as being the reasonable cost (including any Value Added Tax for which credit is not available under Sections 25 and 26 of the Value Added Tax Act 1994) of covering such Marks or otherwise removing all indications of or reference to the Marks in a manner reasonably acceptable to the Secretary of State. Such amount shall not in any event exceed the cost to the Successor Operator of replacing such Marks with its own. If the Franchisee and the relevant Successor Operator fail to

agree such cost within 28 days of the expiry of the Franchise Period, the Franchisee shall submit such dispute for resolution in accordance with such dispute resolution procedures as the Secretary of State may require.

- (d) The amount to be paid to a Successor Operator under paragraph 2.2(c) may include the reasonable cost of:
 - (i) removing or covering Marks from the exterior of any rolling stock vehicle;
 - (ii) removing or covering interior indications of the Marks including upholstery and carpets;
 - (iii) replacing or covering all station or other signs including bill boards; and
 - (iv) otherwise ensuring that such removal, covering or replacement is effected with all reasonable care and in such manner that the relevant assets may reasonably continue to be used by a Successor Operator in the provision of the Franchise Services.
- (e) The Franchisee shall, in addition to making a payment under paragraph 2.2(c) grant or procure the grant of a licence or undertaking complying with paragraphs 2.2(a) and (b) except that such licence shall only be for such period as may be agreed between the Franchisee and the Successor Operator as being reasonably required by the Successor Operator to remove the Marks from all relevant assets without causing excessive disruption to the operation of services similar to the Franchise Services provided by such Successor Operator. If such period cannot be agreed, the Franchisee shall submit such dispute for resolution in accordance with such dispute resolution procedures as the Secretary of State may require.
- (f) The Secretary of State shall determine at or around the end of the Franchise Period, and after consultation with the Franchisee, the maximum liability of the Franchisee under paragraph 2.2(c) and the maximum length of licence or undertaking under paragraph 2.2(e);
- (g) The provisions of paragraphs 2.2(a) to (f) shall not apply to the extent that the relevant asset is not to be used by a Successor Operator in the provision of services similar to the Franchise Services. The Secretary of State shall notify the Franchisee as soon as he becomes aware of whether or not any such asset is to be so used.

Non-designation of New Brands

- 2.3 The Secretary of State agrees not to designate as a Primary Franchise Asset any registered or unregistered trade mark which is developed by the Franchisee.

SCHEDULE 14.3

Key Contracts

1. Key Contracts

1.1 The provisions of this Schedule 14.3 apply to all contracts designated as Key Contracts from time to time.

1.2 The Key Contracts as at the date of the Franchise Agreement are set out in the Appendix (List of Key Contracts) to this Schedule 14.3. The Franchisee shall, in respect of any category of agreement, contract, licence or other arrangement which, by virtue of the provisions of this paragraph 1.2, is a Key Contract and to which the Franchisee, as at date of the Franchise Agreement, is not already a party:

- (a) inform the Secretary of State from time to time of any such agreement, contract, licence or other arrangement which it may be intending to enter into; and
- (b) the provisions of paragraph 5.1 shall apply in respect of any such agreement, contract, licence or other arrangement.

1.3 Without prejudice to the provisions of paragraphs 2, 3 and 4 of this Schedule 14.3, the Appendix (List of Key Contracts) to this Schedule 14.3 shall be amended as considered necessary from time to time to take account of any:

- (a) designation by the Secretary of State of any actual or prospective agreement, contract, licence or other arrangement or any category of agreement, contract, licence or other arrangement, to which or under which the Franchisee is (or may become) a party or a beneficiary pursuant to paragraph 2 of this Schedule 14.3; or
- (b) de-designation by the Secretary of State of any Key Contract pursuant to paragraph 3 of this Schedule 14.3; or
- (c) re-designation by the Secretary of State pursuant to paragraph 4 of this Schedule 14.3.

2. Designation of Key Contracts

2.1 Where the Secretary of State considers that it is reasonably necessary for securing the continued provision of the Franchise Services or the provision of services similar to the Franchise Services by a Successor Operator in accordance with the Franchise Agreement, he may make a designation pursuant to paragraph 2.2.

2.2 The Secretary of State may at any time, by serving notice on the Franchisee, designate as a Key Contract:

- (a) any actual or prospective agreement, contract, licence or other arrangement; and/or

- (b) any category of agreement, contract, licence or other arrangement, to which or under which the Franchisee is (or may become) a party or a beneficiary,

with effect from the date specified in such notice.

- 2.3 Key Contracts may include any agreement, contract, licence or other arrangement whether in written, oral or other form, whether formal or informal and whether with an Affiliate of the Franchisee or any other person and may include any arrangement for the storage of assets (including electronic systems or Computer Systems) or accommodation of employees.

3. **De-Designation of Key Contracts**

The Secretary of State may at any time, by serving a notice on the Franchisee, de-designate any Key Contract from continuing to be a Key Contract with effect from the date specified in such notice.

4. **Re-Designation of Key Contracts**

The Secretary of State may at any time, by serving notice on the Franchisee, re-designate as a Key Contract anything which has ceased to be designated as a Key Contract in accordance with paragraph 3 with effect from the date specified in such notice.

5. **Direct Agreements**

- 5.1 Unless the Secretary of State otherwise agrees, or unless directed to do so by the ORR, the Franchisee shall not enter into any prospective Key Contract unless the counterparty to that prospective Key Contract:

- (a) is a Train Operator; or
- (b) has entered into a Direct Agreement with the Secretary of State in respect of that prospective Key Contract, providing on a basis acceptable to the Secretary of State, amongst other things, for the continued provision of the Passenger Services and/or the continued operation of the Stations and Depots in the event of:
 - (i) breach, termination or expiry of such Key Contract;
 - (ii) termination or expiry of the Franchise Agreement; or
 - (iii) the making of a railway administration order in respect of the Franchisee.

- 5.2 Where the Secretary of State designates or re-designates as a Key Contract:

- (a) any agreement, contract, licence or other arrangement to which the Franchisee is already a party; or
- (b) any category of agreement, contract, licence or other arrangement where the Franchisee is already a party to a contract, licence or other arrangement which, by virtue of the Secretary of State's designation or re-designation, is classified in such category,

the Franchisee shall use all reasonable endeavours to assist the Secretary of State in entering into a Direct Agreement as envisaged by paragraph 5.1(b).

- 5.3 The Franchisee shall pay to the Secretary of State an amount equal to any losses, costs, liabilities, charges or expenses which may be suffered or incurred by the Secretary of State under the provisions of any Direct Agreement and which may be notified to the Franchisee as a result of, or in connection with:
- (a) any breach by the Franchisee of the terms of the Key Contract to which the relevant Direct Agreement relates; or
 - (b) any unsuccessful claim being brought by the Franchisee against the counterparty of any such Key Contract in relation to the termination of such Key Contract.

6. **Emergencies**

Where any emergency may arise in connection with the provision and operation of the Franchise Services, the Franchisee:

- (a) may enter into on a short-term basis such contracts, licences or other arrangements as it considers necessary or appropriate to deal with the emergency;
- (b) need not procure that the relevant counterparty enters into a Direct Agreement in respect of such contracts or use all reasonable endeavours to assist the Secretary of State in entering into the same;
- (c) shall promptly inform the Secretary of State of any such emergency and the contracts, licences or other arrangements which it proposes to enter into; and
- (d) shall take such action in relation to such emergency, contracts, licences or other arrangements as the Secretary of State may request.

7. **No Amendment**

The Franchisee shall not without the prior consent of the Secretary of State (which shall not be unreasonably withheld) vary, or purport to vary, the terms or conditions of any Key Contract at any time, unless directed to do so by the ORR.

8. **Replacement of Key Contracts**

The Franchisee shall, prior to the scheduled expiry date of any Key Contract (or, if earlier, such other date on which it is reasonably likely that such Key Contract will terminate), take all reasonable steps to enter into an appropriate replacement contract (whether with the counterparty to the existing Key Contract or not) and shall comply with the reasonable instructions of the Secretary of State in relation to such replacement contract.

9. **Termination of Key Contracts**

The Franchisee shall, to the extent so requested by the Secretary of State, exercise its right to terminate any Key Contract on the Expiry Date.

APPENDIX TO SCHEDULE 14.3

List of Key Contracts

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;
3. any Rolling Stock Related Contract including the Rolling Stock Leases listed in Table 1 and Table 2 of Schedule 1.7 (The Train Fleet);
4. any contract for the maintenance and renewal works at Stations including any framework delivery contracts for the provision of building and civil engineering works, mechanical and electrical works at Stations;
5. 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;
6. 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));
7. 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;
8. 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;
9. any contract or arrangement for the supply of spare parts or Spares;
10. any contract or arrangement for the maintenance of track and other related infrastructure;
11. any licences of Marks to the Franchisee;
12. any licence of any CRM System or Yield Management System; and
13. any contract or arrangement for the provision or lending of Computer Systems (other than the CRM System and Yield Management System) used by the Franchisee for the delivery of the Franchise Services.

SCHEDULE 14.4

Designation of Franchise Assets

1. Franchise Assets

- 1.1 Subject to paragraph 1.2, all property, rights and liabilities of the Franchisee from time to time during the Franchise Period shall be designated as Franchise Assets and shall constitute Franchise Assets for the purposes of Section 27(11) of the Act.
- 1.2 The rights and liabilities of the Franchisee in respect of the following items shall not be designated as Franchise Assets and shall not constitute franchise assets for the purposes of Section 27(11) of the Act:
- (a) any contracts of employment;
 - (b) the Franchise Agreement and any Transfer Scheme or Supplemental Agreement;
 - (c) the Ticketing and Settlement Agreement;
 - (d) any sums placed on deposit with a bank or other financial institution;
 - (e) such other property, rights and liabilities as the Franchisee and the Secretary of State may agree from time to time or as the Secretary of State may de-designate as Franchise Assets under paragraph 10.2; and
 - (f) any Rolling Stock Leases.

2. Primary Franchise Assets and Investment Assets

- 2.1 The following property, rights and liabilities shall (to the extent that they constitute Franchise Assets) be designated as Primary Franchise Assets with effect from the following dates:
- (a) the property, rights and liabilities listed as such in the Appendix (List of Primary Franchise Assets) to this Schedule 14.4 (which constitute Primary Franchise Assets agreed between the parties as at the date of the Franchise Agreement), on the Start Date;
 - (b) any additional property, rights and liabilities designated under paragraph 3 during the Franchise Period, on the date of such designation;
 - (c) any property or right which is vested in the Franchisee and used for the purpose of maintaining, replacing, repairing or renewing any property designated as Primary Franchise Assets and which forms or replaces part or all of such designated property on completion of such maintenance, replacement, repair or renewal, on the date of its use for such purpose;
 - (d) the rights and liabilities of the Franchisee under any Key Contract designated under paragraph 5, on the date of such designation;

- (e) the rights and liabilities of the Franchisee in respect of the terms of any Fare or Discount Card designated under paragraph 6, on the date of such designation;
- (f) any CRM Data and/or Yield Management Data and, to the extent that any CRM System and/or Yield Management System is the property of the Franchisee, such CRM System and/or Yield Management System on the later of the Start Date and:
 - (i) in relation to CRM Data or Yield Management Data, the date on which such CRM Data or Yield Management Data (as applicable) is collected; or
 - (ii) in relation to any such CRM System or Yield Management System, the date on which such CRM System or Yield Management System is created,

save, in relation to CRM Data and Yield Management Data, any data in respect of which the Data Subject has not consented to such data being disclosed and Processed by any Successor Operator and/or the Secretary of State; and
- (g) any licence of any CRM System and/or Yield Management System, on the date of such licence.

2.2 Investment Assets

- (a) On each Investment Asset Request Date the Franchisee shall provide to the Secretary of State a list of all Franchise Assets acquired since the Start Date (in the case of the first such list) or the previous Investment Asset Request Date (in the case of subsequent lists) which it wishes the Secretary of State to designate as Investment Assets. Such list shall clearly identify each relevant Franchise Asset, its purpose, specification, usual location, acquisition price, any ongoing charge payable by the Franchisee in relation to the Franchise Asset and any other asset upon which the operation of the Franchise Asset is dependent. The Franchisee shall provide such additional information as the Secretary of State shall reasonably request in relation to any such Franchise Asset.
- (b) The Franchisee shall not be permitted to nominate as Investment Assets without the prior written consent of the Secretary of State (which the Secretary of State shall have an unfettered discretion as to whether or not to give) Franchise Assets which:
 - (i) individually have an acquisition cost exceeding [pounds sterling • (£•)]³⁷;
 - (ii) when aggregated with the Franchise Assets already designated as Investment Assets in a Franchisee Year have an aggregate acquisition cost exceeding [pounds sterling • (£•)]³⁸ (apportioned proportionately where a Franchisee Year is less than 13 Reporting Periods);

³⁷ Bidders to give a view on what this amount should be.

³⁸ Bidders to give a view on what this amount should be.

- (iii) when aggregated with Franchise Assets already designated as Investment Assets during the Franchise Term have an aggregate acquisition cost exceeding [pounds sterling • (£•)]³⁹; or
 - (iv) are already designated as Primary Franchise Assets.
- (c) The Secretary of State shall designate any Franchise Asset nominated by the Franchisee as an Investment Asset within three months of the Investment Asset Request Date unless he serves notice on the Franchisee of designation of such Franchise Asset as a Primary Franchise Asset in accordance with paragraph 3 of this Schedule 14.4 or if in his reasonable opinion such Franchise Asset:
- (i) is an information technology or computer system which is of a specification which, in the reasonable opinion of the Secretary of State, materially limits its utility to a Successor Operator including because it is constructed to a bespoke specification of or otherwise intended to work with the systems of the Parent or any company of which the Parent has Control; or
 - (ii) has had branding applied to it which renders it unsuitable for continued use by a Successor Operator; or
 - (iii) is not reasonably appropriate for the purposes of delivering the Franchise Services in a reasonable, proper and cost effective manner.
- (d) The Franchisee acknowledges the definition of Franchise Assets and agrees not to put forward for designation as an Investment Asset any asset not falling within such definition including, without limitation, accounting entries and assets in which the Franchisee does not have title.
- (e) On the final Investment Asset Request Date the Franchisee shall in addition to the list referred to in paragraph 2.2(a) also provide an additional list in two parts confirming:
- (i) in part 1 of such additional list which Investment Assets that have already been designated as such should be designated as Primary Franchise Assets and not be capable of de-designation as such without the prior agreement of the Franchisee and which Investment Assets should not be capable of being designated as Primary Franchise Assets without the prior agreement of the Franchisee and the Secretary of State; and
 - (ii) in part 2 of such additional list which Franchise Assets which the Franchisee is proposing should be designated as Investment Assets should be designated as Primary Franchise Assets and not be capable of de-designation as such without the prior agreement of the Franchisee and which should not be capable of being designated as Primary Franchise Assets without the prior agreement of the Franchisee and the Secretary of State in both cases only if

³⁹ Bidders to give a view on what this amount should be.

such Franchise Assets are designated as Investment Assets in accordance with paragraphs 2.2(a) to 2.2(c).

- (f) The Secretary of State shall comply with the requirement of the Franchisee set out in the list referred to in paragraph 2(e)(i) above. The Secretary of State shall comply with the requirements of the Franchisee in the list referred to in paragraph 2(e)(ii) above in relation to any Franchise Assets on such list which are actually designated by the Secretary of State as Investment Assets in accordance with paragraphs 2.2(a) to 2.2(c) but not otherwise. This paragraph is without prejudice to the other rights of the Secretary of State to designate Franchise Assets as Primary Franchise Assets.

3. **Designation of Additional Primary Franchise Assets**

Subject to paragraph 2.2(f) the Secretary of State may at any time and from time to time during the Franchise Period, by serving notice on the Franchisee, designate any or all of the Franchise Assets as Primary Franchise Assets. Such designation shall take effect from the delivery of such notice and may refer to all or certain categories of property, rights or liabilities. Any such notice shall specify the reasons for such designation. On or before designation of any Franchise Asset as a Primary Franchise Asset, the Secretary of State may agree not to subsequently de-designate such Primary Franchise Asset without the prior written consent of the Franchisee. If the Secretary of State so agrees, the notice designating the relevant Franchise Asset as a Primary Franchise Asset shall state that the Secretary of State shall not de-designate such Primary Franchise Asset without the prior written consent of the Franchisee.

4. **Designation during last 12 Months of Franchise Period**

If the Secretary of State designates a Franchise Asset as a Primary Franchise Asset under paragraph 3 at any time during the last 12 months of the Franchise Period then, within 28 days of such designation, the Secretary of State may de-designate such Primary Franchise Asset by serving notice on the Franchisee provided that, in relation to any Primary Franchise Asset in respect of which the Secretary of State agreed pursuant to paragraph 3 that he would not de-designate without the prior written consent of the Franchisee, such consent has been obtained. Such de-designation shall take effect upon delivery of such notice.

5. **Designation of Key Contracts as Primary Franchise Assets**

The Secretary of State shall, subject to paragraphs 1.2(b) and 7, be entitled to designate any Key Contract as a Primary Franchise Asset at any time during the Franchise Period by serving notice on the Franchisee. Such designation shall take effect from delivery of such notice.

6. **Designation of Fares and Discount Cards**

The Secretary of State may designate any Fare or Discount Card as a Primary Franchise Asset at any time during the Franchise Period by serving a notice on the Franchisee. Such designation shall take effect from delivery of such notice.

7. **Rights and Liabilities**

The Secretary of State, in designating the rights and liabilities of the Franchisee (whether under a particular contract or other arrangement) as a Primary

Franchise Asset may, in his discretion, elect to designate some but not all of the rights and liabilities under a particular contract or other arrangement, or to designate only those rights and liabilities arising after or otherwise relating to a period after a particular time (including the period after the expiry of the Franchise Period) or to those relating only to the Franchise Services or a particular part thereof.

8. Disputes over Designation

- 8.1 The Franchisee may object in writing to the Secretary of State to any designation pursuant to paragraph 3 or 4.
- 8.2 Such objection may be made solely on the grounds that the designation of the relevant property, rights or liabilities specified in the objection is not, in the Franchisee's opinion, reasonably necessary to secure the continued provision of the Franchise Services by a Successor Operator on the expiry of the Franchise Period on a basis reasonably acceptable to the Secretary of State or to facilitate the transfer to such Successor Operator of the provision of the Franchise Services at such time.
- 8.3 Any such objection may only be made within 28 days of a designation made more than 12 months prior to the end of the Franchise Period or 14 days of a designation made during the last 12 months of the Franchise Period.
- 8.4 The Secretary of State shall respond to any such objection as soon as reasonably practicable and shall take account of any representations made by the Franchisee regarding the use of the relevant Primary Franchise Asset otherwise than in the provision and operation of the Franchise Services.
- 8.5 If the Franchisee's objection cannot be resolved by agreement within a period of 14 days from the date of submission of that objection, the Franchisee may refer the dispute for resolution in accordance with the Dispute Resolution Rules.
- 8.6 Any body duly appointed to resolve such dispute shall determine whether or not the designation of the relevant property, rights or liabilities was reasonably necessary for securing that the Franchise Services may continue to be provided by a Successor Operator on the expiry of the Franchise Period on a basis reasonably acceptable to the Secretary of State or otherwise facilitating the transfer of the provision of the Franchise Services at such time, and accordingly whether or not they should cease to be so designated.
- 8.7 If any dispute as to any designation pursuant to paragraph 3 remains outstanding on the expiry of the Franchise Period, then such dispute shall be deemed to cease immediately before the expiry of the Franchise Period and the relevant Franchise Assets shall continue to be designated as Primary Franchise Assets on and after the expiry of the Franchise Period.

9. Provision of Information to the Secretary of State

- 9.1 The Franchisee shall provide such information as the Secretary of State may reasonably require in order to satisfy the Secretary of State that any Franchise Assets which are to be designated as Primary Franchise Assets after the Start Date under this Schedule 14.4 will at the time of such designation be vested in the Franchisee. Such information may include details of any Security Interests over such property, rights and liabilities.

9.2 The Franchisee shall further provide such information as to the property, rights and liabilities of the Franchisee as the Secretary of State may reasonably require in connection with the designation of Primary Franchise Assets. Such information shall be supplied to the Secretary of State within such timescale as the Secretary of State may reasonably require.

10. **De-Designation of Franchise Assets and Primary Franchise Assets**

10.1 The Secretary of State and the Franchisee may agree in writing at any time during the Franchise Period that a Franchise Asset shall cease to be so designated as a Franchise Asset or that a Primary Franchise Asset shall cease to be so designated as a Primary Franchise Asset, and the relevant Franchise Asset or Primary Franchise Asset (as the case may be) shall cease to be designated upon such agreement coming into effect.

10.2 The Secretary of State may in addition at any time during the Franchise Period, by serving notice on the Franchisee, cause a Franchise Asset which is not a Primary Franchise Asset to cease to be so designated as a Franchise Asset. Such Franchise Asset shall cease to be so designated on the date specified in such notice.

10.3 The Secretary of State may in addition, at any time during the Franchise Period, by serving notice on the Franchisee, cause a particular Primary Franchise Asset to cease to be designated as such provided that, in relation to any Primary Franchise Asset in respect of which the Secretary of State agreed pursuant to paragraph 3 that he would not de designate without the prior written consent of the Franchisee, such consent has been obtained. Such Primary Franchise Asset shall cease to be so designated on the date specified in such notice. Such right may be exercised, in respect of any rights and liabilities in respect of a Fare or Discount Card, at any time and, in respect of any other Primary Franchise Asset, no later than one year prior to the expiry of the Franchise Term.

11. **Amendment of the Appendix to this Schedule 14.4**

The Appendix (List of Primary Franchise Assets) to this Schedule 14.4 shall be amended as the Secretary of State considers necessary or desirable from time to time to take account of designation and de-designation of Primary Franchise Assets pursuant to this Schedule 14.4.

12. **Spares**

The obligation of the Franchisee to maintain, preserve and protect Primary Franchise Assets under this Schedule 14.4 shall, in respect of Spares, include the obligation to replace any Spare which has been designated as a Primary Franchise Asset, which subsequent to its designation ceases to be part of the stock of Spares available to the Franchisee for use in the provision of the Franchise Services, with an equivalent Spare of equal or better quality than the Spare so replaced.

APPENDIX TO SCHEDULE 14.4

List of Primary Franchise Assets

Description of Primary Franchise Asset	Commitment not to de-designate
Mock-Up (as such term is defined in the MDCTA)	Yes
Operator Owned Spares (as such term is defined in the MDCTA)	Yes
Operator Owned Special Tools (as such term is defined in the MDCTA)	Yes
Integrated Laboratory Equipment (as such term is defined in the MDCTA)	Yes

SCHEDULE 14.5

Dealing with Franchise Assets

1. **Assets not Designated as Primary Franchise Assets**

1.1 This paragraph 1 relates to any Franchise Assets that are property or rights and are not designated as Primary Franchise Assets.

1.2 For the purposes of Section 27(3) of the Act, the Secretary of State consents to the Franchisee:

- (a) transferring or agreeing to transfer any such Franchise Assets or any interests in, or right over, any such Franchise Assets; and
- (b) creating or extinguishing, or agreeing to create or extinguish, any interest in, or right over, any such Franchise Assets.

2. **Liabilities not Designated as Primary Franchise Assets**

2.1 This paragraph 2 relates to any liabilities which are not designated as Primary Franchise Assets.

2.2 For the purposes of Section 27(3) of the Act, the Secretary of State consents to the Franchisee entering into any agreement under which any such liability is released or discharged, or transferred to another person.

3. **Franchise Assets and Primary Franchise Assets**

3.1 This paragraph 3 relates to Franchise Assets (whether or not designated as Primary Franchise Assets) which are property or rights.

3.2 The Secretary of State hereby consents to the installation of Spares which have been designated as Primary Franchise Assets on any rolling stock vehicles. Any Spare which is so installed shall cease to be so designated on such installation.

3.3 For the purposes of Section 27(3) of the Act, the Secretary of State hereby consents to the Franchisee creating or agreeing to create any Security Interest over any of these Franchise Assets to the extent that the terms of any such Security Interest provided that:

- (a) if the relevant Franchise Asset becomes the subject of a transfer scheme made under Section 12 and Schedule 2 of the Railways Act 2005, it shall be fully and automatically released from the relevant Security Interest immediately before the coming into force of such transfer scheme;
- (b) if the relevant Franchise Asset is assigned, novated or otherwise transferred to another person pursuant to and in accordance with the Franchise Agreement, it shall be fully and automatically released from the relevant Security Interest immediately before such assignment, novation or transfer; and
- (c) such Security Interest shall not be enforced or enforceable until the date on which such Franchise Asset ceases to be designated as a Franchise Asset.

4. **Prohibition on Other Security Interests**

The Franchisee shall not create or agree to create a Security Interest over any Franchise Asset except on the terms permitted under paragraph 3.3.

5. **Miscellaneous**

The Franchisee shall promptly inform the Secretary of State of any Security Interest arising at any time over any of its property or rights and shall provide the Secretary of State with such information in relation thereto as he may reasonably require.

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SCHEDULE 15

Obligations Associated with Termination

- Schedule 15.1: Reletting Provisions**
- Schedule 15.2: Last 12 or 13 Months of Franchise Period**
- Schedule 15.3: Handover Package**
Appendix: Form of Handover Package
- Schedule 15.4: Provisions Applying on and after Termination**
Appendix 1: Form of Transfer Scheme
Appendix 2: Form of Supplemental Agreement

SCHEDULE 15.1

Reletting Provisions

1. Reletting of Franchise

- 1.1 The Franchisee acknowledges that the Secretary of State may wish, at or before the expiry of the Franchise Period, either to invite persons to tender for the right to provide all or some of the Passenger Services under a franchise agreement or alternatively to enter into a franchise agreement in respect of the Passenger Services without having gone through a tendering process.
- 1.2 The Franchisee further acknowledges that the Secretary of State has in certain circumstances a duty under Section 30 of the Act to secure the continued provision of the Passenger Services on expiry or termination of the Franchise Agreement. The Franchisee accordingly accepts and agrees to the restrictions and obligations imposed on it under Schedule 1.6 (Franchise Services), Schedule 14 (Preservation of Assets) and this Schedule 15.

2. Preparation for Reletting

- 2.1 The Franchisee shall, if so requested by the Secretary of State:
- (a) provide the Secretary of State and his representatives and advisers with access to officers, the Franchise Employees and all books, records and other materials kept by or on behalf of the Franchisee in connection with the Franchise Services (including electronic or magnetic records, any CRM System and any Yield Management System) for the purpose of assisting such representatives and advisers:
- (i) to prepare reports or other documents in connection with any invitation to potential Successor Operators to tender for the right and obligation to operate all or any of the Franchise Services;
- (ii) to prepare invitations to other potential franchisees to tender for the right and obligation to provide any other railway passenger services or operate any other additional railway asset; or
- (iii) to enter into any franchise agreement or other agreement (including any agreement entered into by the Secretary of State in fulfilment of his duties under section 30 of the Act) relating to the Franchise Services, without undergoing a tendering process,
- provided that the exercise of such access rights by the Secretary of State and his representatives and advisers shall not unduly interfere with the continuing provision and operation of the Franchise Services by the Franchisee; and
- (b) at its own cost, publish and display such publicity and promotional material and notices as the Secretary of State may provide to the Franchisee for the purposes of informing passengers of any matters relating to the process described in paragraph 1.1 and/or any intention by

the Secretary of State to enter into a franchise agreement or other agreement (including for the purposes of the fulfilment of his duties under section 30 of the Act) relating to the Franchise Services without having gone through a tendering process ("**Tendering/Reletting Process**") including:

- (i) the commencement of any Tendering/Reletting Process;
 - (ii) making passengers aware of any consultation being undertaken by the Secretary of State in relation to any such Tendering/Reletting Process; and
 - (iii) informing passengers of the outcome of any Tendering/Reletting Process.
- (c) The obligation to publish and display pursuant to paragraph 2.1(b) shall mean making the relevant publicity and promotional material and notices available to passengers by such means as the Secretary of State may reasonably require including by displaying publicity and promotional material and notices at Stations and on trains, publishing relevant information in any reports published to passengers or including such information in any leaflets, newspapers or other promotional material published to passengers by the Franchisee from time to time.

2.2

- (a) The Franchisee shall make available to the Secretary of State and his representatives and advisers such Data Site Information (as defined at paragraph (e)) as they shall reasonably require in connection with the matters referred to in paragraph 2.1.
- (b) The Franchisee shall prepare and present such information in such manner (including in disaggregated form) as the Secretary of State may require, and shall provide such assistance as the Secretary of State may require in connection with the verification of such information.
- (c) The Franchisee shall provide such confirmation in relation to the accuracy of:
 - (i) the contents of the documents referred to in paragraph 2.1; and
 - (ii) any Data Site Information uploaded to such electronic data site as the Secretary of State may require pursuant to paragraph 2.2(d),

in each case, as the Secretary of State shall require from time to time.

- (d) The Franchisee shall upload such Data Site Information as the Secretary of State may require to such electronic data site as he may specify and shall make a sufficient number of appropriate staff available for that purpose. The Franchisee shall ensure that such staff are trained in the use of such data site (such training to be at the expense of the Secretary of State). For the avoidance of doubt, the Data Site Information required by the Secretary of State under this paragraph may cover the entire Franchise Period or any part of it.

- (e) **"Data Site Information"** means information relating to any of the following:
- (i) the Franchise or the Franchisee, any Affiliate of the Franchisee or their respective businesses (including their audited and management accounts, asset registers and contract lists);
 - (ii) past and present demand for the Franchise Services or any similar services (including passenger count data, Yield Management Data and CRM Data);
 - (iii) information required to be provided by the Franchisee pursuant to Schedule 1.5 (Information about Passengers);
 - (iv) the total revenue (being all revenue whatsoever from any source obtained from any commercial or non-commercial activity or undertaking of the Franchisee) received or which the Franchisee expects to receive during the Franchise Period;
 - (v) the Franchisee's safety authorisation, safety certificate or safety management system (in each case as defined in the Safety Regulations);
 - (vi) any other safety matter;
 - (vii) the arrangements contained within the Railways Pension Scheme, the Pension Trust, the Franchise Sections, or any other pension arrangement in respect of employees of the Franchisee or employees of any person who was a franchisee or franchise operator in relation to a Previous Franchise Agreement;
 - (viii) the management structure of the Franchisee's business (including organograms and any planned changes);
 - (ix) employees and contractors (including details of responsibilities, job title, remuneration, grade, qualifications and any other personnel records);
 - (x) terms and conditions of employment and human resources policies;
 - (xi) public and working timetables;
 - (xii) driver, other train crew and rolling stock diagrams;
 - (xiii) rolling stock (including train and vehicle miles, restrictions of use, fleet examinations and servicing, fleet performance, casualty data and any relevant reports);
 - (xiv) any station (including any leases, documents of title, maintenance arrangements, station facilities, plans and contingency or security plans relating to any station);
 - (xv) health and safety and environmental information;

- (xvi) copies of contracts (including Access Agreements, policies of insurance, property, rolling stock and other leases, catering contracts, contracts for outsourced services, and rolling stock maintenance and spares contracts);
- (xvii) Network Rail charges and requirements (including rules of the route/plan);
- (xviii) any information technology system (hardware or software) used or owned by the Franchisee or any Affiliate of the Franchisee (including any software licences);
- (xix) performance data;
- (xx) customer service (including staffing levels, call volumes and opening hours);
- (xxi) fares and fares baskets;
- (xxii) relationships with stakeholders (including minutes of meetings with unions, Passenger Transport Executives, local authorities or Transport for London); or
- (xxiii) any other matter which the Secretary of State may specify from time to time,

and in this paragraph (e) the term "employee" includes any person engaged by the Franchisee pursuant to a contract of personal service.

(f) The Franchisee shall:

- (i) comply with its obligations under paragraph 2.1 or this paragraph 2.2 promptly and in any case in accordance with any reasonable timetable with which the Secretary of State requires the Franchisee by notice in writing to comply;
- (ii) where the Secretary of State raises with the Franchisee any query in relation to any Data Site Information, make a full and substantive response to such query within 5 working days. Such response shall include any further information requested by the Secretary of State in relation to such query; and
- (iii) nominate a person to whom:
 - (A) all queries or requests for information pursuant to paragraph 2.2(f)(ii);
 - (B) requests for access to premises pursuant to paragraph 4; and
 - (C) requests for access to employees,

shall be addressed and who shall be personally responsible for complying with any such queries or requests for information and such requests for access to employees and premises. The Franchisee shall notify the Secretary of State

(his representatives and advisers) of the name and contact details of such person.

- 2.3 In connection with any proposal (whether or not yet finalised) to enter into separate franchise agreements and/or other agreements with more than one Successor Operator, each relating to some only of the Franchise Services (whether or not together with other railway passenger services) at or following the end of the Franchise Period, the Franchisee agrees and acknowledges that the Secretary of State may require:
- (a) that the Franchisee provides the Secretary of State with additional information and reports and analysis in respect of such Service Groups as the Secretary of State may specify. This may include:
 - (i) information relating to the operational and financial performance of the Franchisee in relation to such Service Groups; and
 - (ii) identification of those employees, assets and liabilities which relate to such Service Groups together with an indication of the extent to which the same are shared between the operation of different Service Groups; and
 - (b) subject to paragraph 2.4, that the Franchisee reorganises the business of providing the Franchise Services in order to facilitate the transfer anticipated by this Schedule 15.1 on an ongoing basis of the business of providing the Franchise Services within each of such Service Groups to separate Successor Operators. This may include, to the extent reasonably practicable:
 - (i) the re-organisation of personnel such that an appropriate number of employees (having sufficient skills, qualifications and experience) will transfer by operation of Law to each Successor Operator of each such Service Group; and/or
 - (ii) entering into additional or clarificatory contractual or other arrangements so that the Successor Operator of each such Service Group will have the necessary assets and rights to operate the Franchise Services within that Service Group; and
 - (c) that the Franchisee uploads Data Site Information to more than one data site.
- 2.4 Subject to paragraph 2.5, the Secretary of State shall reimburse any reasonable out-of-pocket expenses that the Franchisee may incur in complying with its obligations under this paragraph 2.
- 2.5 Without prejudice to any other rights the Secretary of State may have (under the Franchise Agreement or otherwise) in respect of any contravention by the Franchisee of its obligations under this paragraph 2, if the Secretary of State is of the reasonable opinion that the Franchisee does not have sufficient resources to enable its compliance with its obligations under this paragraph 2 he may:
- (a) require the Franchisee (at its own cost) to employ; or
 - (b) after notification to the Franchisee, employ,

such suitable additional resource as may be required to ensure that the Franchisee can comply with its obligations under this paragraph 2. The Franchisee shall reimburse to the Secretary of State, by way of adjustment to Franchise Payments, any proper costs (including staff costs) incurred by him in the employment of any such additional resource pursuant to paragraph 2.5(b).

- 2.6 To the extent reasonably practicable, prior to taking any of the actions referred to in paragraph 2.5, the Secretary of State shall allow the Franchisee a reasonable opportunity to make representations to him concerning the exercise by the Secretary of State of his rights under paragraph 2.5 but the Secretary of State shall not be obliged by those representations to refrain from exercising any of the actions specified under paragraph 2.5.

3. **Non-Frustration of Transfer to Successor Operator**

- 3.1 The Franchisee shall take no action or steps which is or are designed, directly or indirectly:

- (a) to prevent, prejudice or frustrate the transfer as a going concern of the business of providing the Franchise Services at the end of the Franchise Period to a Successor Operator; or
- (b) to avoid, frustrate or circumvent any provision of the Franchise Agreement (including in particular the provisions of Schedule 14 (Preservation of Assets) and this Schedule 15) which is included in whole or in part for the purpose of preventing any such preventive, prejudicial or frustrating action or steps.

- 3.2 Subject to the restrictions set out in paragraph 3.1 and the other provisions of the Franchise Agreement, the Franchisee may take such action as it may require for the purposes of bidding to become, or becoming, a Successor Operator.

4. **Inspection Rights at premises used for the provision of the Franchise Services**

- 4.1 Without limiting any other rights of the Secretary of State under the Franchise Agreement and subject to paragraph 4.2, the Franchisee shall, if so requested by the Secretary of State, permit the Secretary of State (or his nominee, which for these purposes shall include potential Successor Operators or potential bidders who have expressed an interest in tendering for the right and obligation to operate any or all of the Franchise Services) to have such access to premises owned or occupied by the Franchisee or any of its Affiliates (including Stations and Depots and which for these purposes shall include any premises used in connection with the provision of the Franchise Services by the Franchisee or any of its Affiliates) as the Secretary of State may reasonably require in connection with any Tendering/Reletting Process including for the purposes of inspecting such premises (including the taking of inventories) and undertaking such surveys as may be necessary or desirable for the purposes of ascertaining the condition of any such premises.

- 4.2 The Secretary of State shall use reasonable endeavours to ensure that any access rights required pursuant to paragraph 4.1 shall be undertaken so as not to unduly interfere with the continuing provision and operation of the Franchise Services by the Franchisee.

SCHEDULE 15.2

Last 12 or 13 Months of Franchise Period and other conduct of business provisions

1. Last 12 or 13 Month Period

1.1 Where reference is made in the Franchise Agreement to the last 12 or 13 months of the Franchise Period, such period shall be deemed to commence on the earliest of the following dates:

- (a) the date which is 12 or 13 months, as the case may be, prior to the Expiry Date or if the actual date of expiry of the Franchise Period is known the date which is 12 or 13 months prior to that date;
- (b) the date on which the Secretary of State notifies the Franchisee that such period of 12 or 13 months shall be deemed to commence on the grounds that the Secretary of State reasonably considers that an Event of Default may occur within the following 12 months; or
- (c) the date on which the Secretary of State notifies the Franchisee that such period of 12 or 13 months shall be deemed to commence on the grounds that the Secretary of State considers it reasonably likely that the Franchise Agreement will be terminated by agreement between the parties within such period.

1.2 Any such period (which may be longer or shorter than 12 or 13 months, as the case may be) shall expire on the Expiry Date or, if earlier:

- (a) in the case of periods commencing under paragraph 1.1(b) or (c), the date falling 12 or 13 months after the date of any notice under paragraph 1.1(b) or (c); or
- (b) such earlier date as the Secretary of State may determine.

2. Franchise Employees

Terms of Employment of Existing Employees

2.1 The Franchisee shall not, and shall secure that each other relevant employer shall not, without the prior consent of the Secretary of State (which shall not be unreasonably withheld), vary or purport or promise to vary the terms or conditions of employment of any Franchise Employee (in particular, the Franchisee shall not promise to make any additional payment or provide any additional benefit or vary any term or condition relating to holiday, leave or hours to be worked) where such variation or addition:

- (a) takes effect in the last 12 months of the Franchise Period unless it is in the ordinary course of business and, when aggregated with any other variation or addition which takes effect during such period, represents an increase in the remuneration of a Franchise Employee of no more than the amount determined in accordance with the following formula:

where:

MAWE is the change in the Average Weekly Earnings between March in the preceding 12 months and the corresponding March one year before, expressed as a percentage;

JAWWE is the change in the Average Weekly Earnings between June in the preceding 12 months and the corresponding June one year before, expressed as a percentage;

SAWE is the change in the Average Weekly Earnings between September in the preceding 12 months and the corresponding September one year before, expressed as a percentage; and

DAWWE is the change in the Average Weekly Earnings between December in the preceding 12 months and the corresponding December one year before, expressed as a percentage;

- (b) wholly or partly first takes effect after the end of the Franchise Period;
- (c) results in any such employment not being terminable by the Franchisee or other relevant employer within six months of the expiry of the Franchise Period;
- (d) relates to a payment or the provision of a benefit triggered by termination of employment;
- (e) relates to the provision of a benefit (excluding base salary) which any such employee will or may have a contractual right to receive after the expiry of the Franchise Period; or
- (f) prevents, restricts or hinders any such employee from working for a Successor Operator or from performing the duties which such employee performed for the Franchisee.

It is agreed that the Franchisee will be permitted to make a decrease in the remuneration of any Franchise Employee that takes effect in the last 12 months of the Franchise Period without first obtaining the consent of the Secretary of State in circumstances where such decrease is in the ordinary course of business and when aggregated with any other variation which takes effect during such period, represents a decrease in the remuneration of a Franchise Employee of no more than the amount determined in accordance with the formula contained in paragraph 2.1(a) where a calculation pursuant to such formula gives rise to a negative percentage. In any other circumstances the prior consent of the Secretary of State will be required to any decrease in the remuneration of a Franchise Employee in the last 12 months of the Franchise Period.

- 2.2 Without limiting the foregoing, the Franchisee shall consult the Secretary of State as soon as reasonably practicable in any circumstances in which the Secretary of State's consent under paragraph 2.1 may be required. Further, it shall always be deemed to be reasonable for the Secretary of State to withhold his consent to a variation or addition which is prohibited without such consent under paragraph 2.1(a) provided the Secretary of State:

- (a) makes an overall increase in Franchise Payments equal to the amount of the direct net losses suffered by the Franchisee on the days when the Passenger Services are affected by Industrial Action taken by the Franchise Employees which is a consequence of a refusal by the Secretary of State to agree to the variation or addition; and
- (b) agrees that, to the extent that the Franchisee would otherwise be in contravention of the Franchise Agreement as a consequence of the Industrial Action referred to in this paragraph 2.2, no such contravention shall have occurred, save where such contravention relates to safety requirements.

2.3 The expression "promise to vary" when used in paragraph 2.1 includes any offer or indication of willingness to vary (whether or not such offer or willingness is made conditional upon obtaining the Secretary of State's consent).

Terms of Employment of New Employees

2.4 The Franchisee shall not, and shall secure that each other relevant employer shall not, without the prior consent of the Secretary of State (which shall not be unreasonably withheld), create or grant, or promise to create or grant, terms or conditions of employment for any Franchise Employee where the employment of such Franchise Employee by the Franchisee or such other relevant employer may commence on or after the Start Date if and to the extent that:

- (a) such terms or conditions are, in the reasonable opinion of the Franchisee, materially different from the terms or conditions of employment of equivalent or nearest equivalent Franchise Employees at the date on which such employment is scheduled to commence; and
- (b) if such terms or conditions were granted to such equivalent Franchise Employees already employed by the Franchisee by way of variation to their terms or conditions of employment, the Franchisee would be in contravention of paragraph 2.1.

Changes in Numbers and Total Cost of Employees

2.5 Subject to and excluding any increase in the remuneration of Franchise Employees permitted under paragraph 2.1, the Franchisee shall not, and shall secure that each other relevant employer shall not, without the prior written consent of the Secretary of State (which shall not be unreasonably withheld) increase or decrease in the last 12 months of the Franchise Period the number of Franchise Employees such that:

- (a) the total number of Franchise Employees or the total cost per annum to the Franchisee and each other relevant employer of employing all Franchise Employees is increased; or
- (b) the total number of Franchise Employees is decreased,

in each case, by more than five per cent. during such period of 12 months provided that where the last 12 months or 13 months of the Franchise Period has been deemed to have commenced under paragraph 1.1 and the period of the restriction contemplated by this paragraph 2.5 lasts longer than 12 months such restriction shall apply in respect of the longer period.

3. **Restrictions in respect of Sale of Advance Purchase Train-specific Fares**

3.1

- (a) It is acknowledged that the Franchisee will make available for sale prior to the end of the Franchise Period Advance Purchase Train-specific Fares which are valid for travel after the end of the Franchise Period.
- (b) In making such Advance Purchase Train-specific Fares available for purchase the Franchisee shall not change its commercial practice in terms of the number of such Advance Purchase Train-specific Fares made available or the Passenger Services on which they are valid for use when compared with its previous commercial practice in respect of Advance Purchase Train-specific Fares valid for travel prior to the end of the Franchise Period.
- (c) The Franchisee will be permitted to take into account reasonable seasonal factors in determining its previous commercial practice. In assessing reasonableness, account will be taken of the Franchisee's practice in addressing such seasonal factors in the corresponding period in the previous year.

SCHEDULE 15.3

Handover Package

1. Handover Package Status

1.1 The Franchisee shall:

- (a) on or before the Start Date, provide to the Secretary of State:
 - (i) the Handover Package; and
 - (ii) a letter in a form approved by and addressed to the Secretary of State confirming the details of any insurer providing insurance to the Franchisee and authorising the insurer (and any relevant broker) to release any insurance-related information to any of the Secretary of State, a Successor Operator or its agent on demand;
- (b) maintain the Handover Package and update it at least every three Reporting Periods; and
- (c) in respect of the information required pursuant to paragraph 1.1(a)(ii), supply revised information and/or letters to the Secretary of State as and when required in order to ensure that such information and letters remain accurate and up to date.

1.2 The Franchisee shall ensure that any Successor Operator will have immediate access to the Handover Package on the expiry of the Franchise Period.

1.3 The Franchisee shall also ensure that the Key Contacts List is provided to the Secretary of State within 24 hours of the receipt of any Termination Notice.

2. Director's Certificate

Once in each Franchisee Year, the Franchisee shall provide to the Secretary of State a certificate signed by a nominated and duly authorised director of the Franchisee, addressed to the Secretary of State, which confirms that the Handover Package contains the information and objects specified in the Appendix (Form of Handover Package) to this Schedule 15.3 and that such information is accurate as at the date of the certificate.

APPENDIX TO SCHEDULE 15.3

Form of Handover Package

1. **Property**

A list of all property owned, leased, operated or occupied by the Franchisee which shall include the address and contact telephone number of each property. Where applicable, the list will also include the name, address and telephone number of the lessor and/or the party which has granted authority to use or occupy the property, and any relevant reference numbers applicable to that lease or occupation.

2. **Contracts**

A printed or electronic list (in a format acceptable to the Secretary of State) of all contracts (sales, purchases or otherwise including leases and licences) between the Franchisee and the counterparty or counterparties to each such contract, showing the name, address and telephone number of each counterparty; the contract reference number of the Franchisee and each counterparty (if any); and the contract price/value, term and expiry date. This requirement shall apply to all contracts unless otherwise agreed by the Secretary of State.

3. **Systems**

A list of the electronic systems in use by the Franchisee, together with the name, office address and telephone number of the Franchisee's Information Technology Manager (or the holder of any equivalent post) who is responsible for administration of each such system.

4. **Daily Operations**

A printed or electronic list (in a format acceptable to the Secretary of State) of all assets owned or operated by the Franchisee, together with their location.

5. **Insurance**

A list of the names, addresses and telephone numbers of all insurers and any relevant broker providing insurance to the Franchisee, together with the relevant policy numbers and other references and details of any outstanding claims or unresolved disputes.

SCHEDULE 15.4

Provisions Applying on and after Termination

1. **Novation of Access Agreements on Termination of the Franchise Agreement**

1.1 The Franchisee shall, to the extent so requested by the Secretary of State on termination of the Franchise Agreement, in relation to any Access Agreement to which it is a party, novate its interest under any relevant Access Agreement (and any related Collateral Agreement) to the Secretary of State or as he may direct.

1.2 Such obligation to novate shall be subject to the agreement of any counterparty to such Access Agreement or Collateral Agreement and, to the extent applicable, the ORR.

1.3 Such novation shall be on such terms as the Secretary of State may reasonably require, including:

- (a) that the Franchisee shall not be released from any accrued but unperformed obligation, the consequences of any breach of the relevant agreement which is the subject of arbitration or litigation between the parties or any liability in respect of any act or omission under or in relation to the relevant agreement prior to, or as at the date of, any such novation (except to the extent that the Secretary of State or his nominee agrees to assume responsibility for such unperformed obligation, such liability or the consequences of such breach in connection with the relevant novation); and
- (b) that neither the Secretary of State nor his nominee shall be obliged, in connection with such novation, to agree to assume responsibility for any unperformed obligation, liability or consequences of a breach referred to in paragraph 1.3(a),

but shall not, unless the Franchisee otherwise agrees, be on terms which release any counterparty to the relevant agreement from any liability to the Franchisee arising prior to the date of such novation.

1.4 The Franchisee shall, on the occurrence of any of the circumstances specified in paragraph 1.1 in relation to any other Train Operator who is a party to an Access Agreement to which the Franchisee is also party, agree to the novation of the relevant Train Operator's interest under the relevant Access Agreement to the Secretary of State or as he may direct, subject, to the extent applicable, to the consent of the ORR. The provisions of paragraph 1.3 shall apply to any such novation.

1.5 The Franchisee shall notify the Secretary of State on becoming aware of any circumstances which might lead to the Secretary of State being able to require the Franchisee to novate its interest or agree to the novation of another Train Operator's interest under this paragraph 1.

2. **Co-Operation with Successor Operator**

2.1 In order to ensure the continuity of, and an orderly handover of control over, the Franchise Services, the Franchisee shall co-operate with:

- (a) where a Successor Operator has been appointed, such Successor Operator; or
- (b) where a Successor Operator has not been so appointed, the Secretary of State,

and shall take such steps as may be reasonably requested by the Secretary of State in connection therewith.

2.2 In satisfaction of its obligations under paragraph 2.1, the Franchisee shall:

- (a) publish and display such publicity and promotional material as the Successor Operator may provide to the Franchisee for the purposes of providing information to passengers in connection with the handover of control over the Franchise Services from the Franchisee to the Successor Operator (including informing passengers of any new initiatives or change to the existing arrangements that are to be introduced by the Successor Operator). The obligation to publish and display pursuant to this paragraph 2.2(a) shall include the display of posters and other promotional material at Stations and on trains and the distribution of leaflets to passengers at Stations and on trains or the publication of such information in any reports published to passengers. The obligation of the Franchisee pursuant to this paragraph 2.2(a) is subject to the Successor Operator paying to the Franchisee the reasonable and proper costs incurred by the Franchisee in the publication and display of any such information.
- (b) make appropriately skilled and qualified Franchise Employees reasonably available to attend such meetings with the Secretary of State, the Successor Operator, Network Rail, any rolling stock lessor and/or and other relevant third party as are reasonably required in order to determine:
 - (i) those actions that are required in order to facilitate such continuity and orderly handover, in particular those actions arising under, but not limited to, the following agreements:
 - (A) Access Agreements;
 - (B) Property Leases;
 - (C) agreements in relation to Shared Facilities;
 - (D) Rolling Stock Leases;
 - (E) Rolling Stock Related Contracts;
 - (F) any other Key Contract; and
 - (ii) without prejudice to the Secretary of State's rights under this Schedule 15.4, those rights and liabilities as may be specified in any Transfer Scheme.

3. **Transfer of Primary Franchise Assets**

Option Arrangements

3.1

- (a) The Secretary of State hereby grants to the Franchisee the right to require the Secretary of State to make, and the Franchisee hereby grants to the Secretary of State the right to make, a Transfer Scheme in accordance with Section 12 and Schedule 2 of the Railways Act 2005 for the transfer of any or all Primary Franchise Assets on the expiry of the Franchise Period.
- (b) On or within 14 days before the expiry of the Franchise Period:
 - (i) either party may serve notice on the other party specifying the Primary Franchise Assets to be transferred; and
 - (ii) the other party may (within such timescale) serve a subsequent notice specifying any additional Primary Franchise Assets to be transferred.
- (c) The Secretary of State may (and shall if required by the Franchisee) make one or more such Transfer Schemes for the transfer of the Primary Franchise Assets specified in any such notice within 14 days after service of such notice (except in relation to any such Primary Franchise Assets which are, in accordance with Schedule 14.4 (Designation of Franchise Assets), de-designated as such prior to the end of the Franchise Period).
- (d) Any Franchise Assets or Primary Franchise Assets which are not so transferred shall cease to be designated as such 14 days after service of such notice.

Supplemental Agreement

- 3.2 Without prejudice to the duties, powers, rights and obligations of the Secretary of State under the Railways Act 2005 in respect of any Transfer Scheme, any Transfer Scheme shall impose on the Franchisee and the transferee an obligation to enter into an agreement substantially in the form of the Supplemental Agreement which shall provide for the determination of amounts to be paid in respect of the property, rights and liabilities which are transferred under such Transfer Scheme. The Franchisee shall enter into any such Supplemental Agreement and shall comply with its obligations thereunder.

Payment of Estimated Transfer Price

3.3

- (a) The Secretary of State may require the Franchisee to pay to any transferee under a Transfer Scheme, or may require any such transferee to pay to the Franchisee, on the day on which the Transfer Scheme comes into force such sum as the Secretary of State may determine should be so paid having regard to:
 - (i) his estimate of the sum likely to be paid under the relevant Supplemental Agreement in respect of the Primary Franchise

- Assets being transferred under the relevant Transfer Scheme;
- (ii) his estimate of any other sums likely to be paid thereunder;
 - (iii) the financial condition of the Franchisee and the transferee and whether any estimate so paid would be likely to be repaid, if in excess of the sums eventually payable thereunder; and
 - (iv) such other matters as the Secretary of State may consider appropriate.
- (b) The Franchisee shall pay to any such transferee the sum determined by the Secretary of State in accordance with paragraph 3.3(a) on the day on which the relevant Transfer Scheme comes into force.

Possession of Franchise Assets

- 3.4 On the coming into force of a Transfer Scheme, the Franchisee shall deliver up to the Secretary of State (or his nominee) possession of the Primary Franchise Assets transferred under such Transfer Scheme.

4. Associated Obligations on Termination

Assistance in Securing Continuity

4.1

- (a) In order to facilitate the continuity of the Franchise Services on expiry of the Franchise Period, the Franchisee shall take such steps, both before and after the expiry of the Franchise Period, as the Secretary of State may reasonably require, to assist and advise any Successor Operator in providing and operating the Franchise Services.
- (b) In particular, the Franchisee shall provide any Successor Operator with such records and information relating to or connected with the Franchise Services as the Secretary of State may reasonably require (other than confidential financial information but including all records relating to the Franchise Employees).

Access

- 4.2 On the expiry of the Franchise Period, the Franchisee shall grant the Secretary of State and his representatives such access as the Secretary of State may reasonably request to any property owned, leased or operated by the Franchisee at such time, for the purpose of facilitating the continued provision of the Franchise Services.

Key Contracts

4.3

- (a) The Franchisee shall provide such assistance to any Successor Operator as the Secretary of State may reasonably require in ensuring that, pursuant to any Direct Agreements, such Successor Operator may enter

into (or enjoy the benefit of) contracts equivalent to the relevant Key Contracts (or part thereof).

- (b) In satisfaction of its obligations under paragraph 4.3(a), the Franchisee shall terminate, surrender, cancel or undertake not to enforce its rights under any Key Contract (or part thereof) provided that nothing in this paragraph shall require the Franchisee to undertake not to enforce any rights under a Key Contract relating to the period prior to the expiry of the Franchise Period.

Change of Name

- 4.4 The Franchisee shall cease to use any trade marks which are licensed to the Franchisee under any of the Brand Licences forthwith upon expiry of the Franchise Period and shall take all necessary steps to change any company name which incorporates any such marks as soon as practicable.

Property Leases

4.5

- (a) The Franchisee shall, on the expiry of the Franchise Period, if requested by the Secretary of State, assign its interest under all or any Property Leases to the Secretary of State or as he may direct, subject where applicable to the agreement of any other party to such Property Lease or the ORR.
- (b) Such assignment shall be on such terms as the Secretary of State may reasonably require, including:
 - (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 the Property Leases or any liability in respect of any act or omission under or in relation to the Property Lease prior to, or as at the date of, any such assignment (except to the extent that the Secretary of State or his nominee agrees to assume responsibility 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 such assignment, to agree to assume responsibility for any unperformed obligation, liability or consequences of a breach referred to in paragraph 4.5(b)(i), and the Franchisee shall indemnify the Secretary of State or his nominee, as the case may be, on demand, on an after-tax basis against any costs, losses, liabilities or expenses suffered or incurred in relation thereto.
- (c) The Franchisee shall, on the occurrence of any of the circumstances specified in paragraph 4.5(a) in relation to any other Train Operator who is a party to a Property Lease to which the Franchisee is also party, agree to the assignment of such Train Operator's interest under the relevant Property Lease to the Secretary of State or as he may direct, subject, where applicable, to the consent of Network Rail. The provisions of paragraph 4.5(b) shall apply to any such assignment.

- (d) The Franchisee shall notify the Secretary of State on becoming aware of any circumstances which might lead to the Secretary of State being able to require the Franchisee to assign its interest or agree to the assignment of another Train Operator's interest under this paragraph 4.

5. Actions required immediately on Handover

5.1 The Franchisee shall immediately on the expiry of the Franchise Period make available to the Secretary of State:

- (a) information as to the status of each purchase order or contract, including its award date, anticipated delivery date, confirmation of receipt of goods or services and the payment records for each purchase order, together with any matters in dispute with the appointed subcontractor and, to the extent that the Franchisee is a subcontractor to another Train Operator, equivalent information in respect of that Train Operator; and
- (b) information concerning any contract necessary for the continued operation of the Franchise where a procurement or bidding process has been initiated.

5.2 The Franchisee agrees that the Secretary of State or his agents may have access to and use free of charge any information contained in any Computer System or in hard copy format as he sees fit (for the purposes of continuing the operation of the Franchise Services).

6. Maintenance Records

The Franchisee shall immediately on expiry of the Franchise Period provide to the Secretary of State:

- (a) records of the status of the maintenance of the rolling stock vehicles used in the provision of the Passenger Services;
- (b) records of the status of the maintenance of any lifting equipment;
- (c) a list of any deferred maintenance; and
- (d) records of the status of the maintenance of any depot or station which is a Franchise Asset,

including the extent of completion of examinations and the modification status of each such rolling stock vehicle

7. Ticketing Arrangements

The Franchisee shall provide immediately on expiry of the Franchise Period a statement certifying:

- (a) all ticketing transactions with the public or credit card agencies that are in process and not yet complete, together with any allocations on multi-modal travel with other agencies or local authorities;
- (b) the extent of any outstanding claims with ticketing settlement agencies;

- (c) refund arrangements (whether under the Passenger's Charter or not) with members of the public or other Train Operators or ticketing settlement agencies that are in process and not yet complete; and
- (d) commissions owed and/or due.

8. **Franchisee's Intellectual Property**

8.1

- (a) On the expiry of the Franchise Period, the Franchisee will grant to any Successor Operator licences of any intellectual property which:
 - (i) is owned by or licensed to the Franchisee;
 - (ii) was not owned by or licensed to it immediately prior to the Start Date;
 - (iii) has not been designated as a Primary Franchise Asset;
 - (iv) does not represent or constitute a Mark; and
 - (v) may, in the reasonable opinion of the Secretary of State, be necessary for any Successor Operator to operate the Franchise Services on an efficient and economic basis after the expiry of the Franchise Period.
- (b) When agreeing the terms on which intellectual property is to be licensed to it, the Franchisee shall use all reasonable endeavours to ensure that such terms include the right to sub-license such intellectual property in accordance with this paragraph 8.1. The Franchisee shall not enter into a licence that does not include such a provision without first obtaining the Secretary of State's prior written consent (such consent not to be unreasonably withheld).

8.2

- (a) Any such licence shall be granted to the relevant Successor Operator for such period as the Secretary of State may determine to be reasonably necessary for the purpose of securing continuity of the provision of the Franchise Services and shall be free of charge and royalty-free for a period of one month or less.
- (b) If such licence is for a period in excess of one month, the grant of the licence shall be subject to payment of a reasonable royalty (backdated to the expiry of the Franchise Period) on the basis of a willing licensor and licensee entering into a licence on comparable terms to similar licences of such intellectual property. If the Franchisee and the relevant Successor Operator are unable to agree such royalty, the Franchisee shall submit such dispute for resolution in accordance with such dispute resolution rules as the Secretary of State may require.

8.3 Any such licence shall be in such form as the Secretary of State shall reasonably determine and shall:

- (a) be non-exclusive and limited to use solely for the purposes of the provision and operation of the Franchise Services and will not provide for

any right to use such intellectual property for any other purpose (including its marketing or exploitation for any other purpose);

- (b) be terminable on material breach by the Successor Operator;
- (c) contain an indemnity from the Franchisee to the effect that to the best of its knowledge and belief it owns the relevant intellectual property or has the right to license it and the licensing of it and the subsequent use of the intellectual property will not infringe any third party intellectual property rights; and
- (d) require the Successor Operator, to the extent that it relates to any trade marks, to use such trade marks in such manner as may reasonably be required by the Franchisee provided that it shall not be reasonable for the Franchisee to require any such trade mark to be used in a manner materially different from its use during the Franchise Period.

9. **Information about Passengers**

The Franchisee shall immediately on the expiry of the Franchise Period make available to the Secretary of State and/or his nominee:

- (a) passenger numbers information specified in paragraph 1 of Schedule 1.5 (Information about Passengers), in such format and to such level of disaggregation as the Secretary of State and/or his nominee may reasonably require;
- (b) the CRM Data and Yield Management Data.

APPENDIX 1 TO SCHEDULE 15.4

Form of Transfer Scheme

Dated _____ 20[•]

**TRANSFER SCHEME
OF
THE SECRETARY OF STATE FOR TRANSPORT
MADE PURSUANT TO SCHEDULE 2 OF THE RAILWAYS ACT 2005**

**IN FAVOUR OF
[SUCCESSOR OPERATOR]**

**IN RESPECT OF
CERTAIN PROPERTY, RIGHTS AND LIABILITIES
OF
[FRANCHISEE]**

*Secretary of State for Transport
33 Horseferry Road
London SW1P 4DR*

Whereas:

- (A) [*Franchisee*] (the "**Transferor**") has been providing certain services for the carriage of passengers by railway and operating certain stations and light maintenance depots pursuant to a franchise agreement with the Secretary of State for Transport (the "**Secretary of State**") dated [_____] (the "**Franchise Agreement**").
- (B) The Franchise Agreement terminated or is to terminate on [_____] and [*Successor Operator*] (the "**Transferee**") is to continue the provision of all or part of such services or the operation of all or some of such stations and light maintenance depots under a new franchise agreement or in connection with the performance or exercise of the duties and powers of the Secretary of State to secure the provision of such services or the operation of such stations or light maintenance depots.
- (C) Certain property, rights and liabilities of the Transferor which were designated as franchise assets for the purpose of the Franchise Agreement are to be transferred to the Transferee under a transfer scheme made by the Secretary of State under Section 12 and Schedule 2 of the Railways Act 2005.

The Secretary of State, in exercise of the powers conferred on him by Schedule 2 of the Railways Act 2005, hereby makes the following scheme:

1. **Definitions and Interpretation**

In this Transfer Scheme functions has the meaning ascribed to it in the Railways Act 2005 and relevant enactment has the meaning ascribed to it in paragraph 6 of Schedule 2 of the Railways Act 2005.

2. **Transfer of Property, Rights and Liabilities**

With effect from [_____] the property, rights and liabilities of the Transferor specified or described in the Schedule shall be transferred to, and vest in, the Transferee.

3. **Statutory Functions**

Subject to any amendment to the relevant enactment which comes into force on or after the date on which this Transfer Scheme is made, there shall be transferred to the Transferee all the functions of the Transferor under any relevant enactments if and to the extent that any such relevant enactment:

- (a) relates to any property which is to be transferred by this Transfer Scheme; or
- (b) authorises the carrying out of works designed to be used in connection with any such property or the acquisition of land for the purpose of carrying out any such works.

4. **Supplemental Agreement**

Each of the Transferor and the Transferee shall enter into the Supplemental Agreement (as defined in the Franchise Agreement) on the coming into force of this Transfer Scheme.

5. **TRSP Documents**

5.1 [Each of the Transferor and the Transferee shall enter into the Deed of Operator Accession (as defined in the Umbrella Agreement) on the coming into force of this Transfer Scheme.] *[Delete if the TRSP Documents are to be transferred to a Successor Operator under the Transfer Scheme.]*

This Transfer Scheme is made by the Secretary of State on [_____. ____].

THE CORPORATE SEAL
OF THE SECRETARY OF
STATE FOR TRANSPORT
IS HEREUNTO AFFIXED:



.....
Authenticated by authority of the
Secretary of State for Transport

DRAFT

SCHEDULE TO THE TRANSFER SCHEME

[List relevant Franchise Assets to be transferred to Successor Operator]

DRAFT

APPENDIX 2 TO SCHEDULE 15.4

Form of Supplemental Agreement

Dated _____ 20[•]

[OUTGOING FRANCHISEE]

and

[SUCCESSOR OPERATOR]

SUPPLEMENTAL AGREEMENT

to the transfer scheme dated [•] made
by the Secretary of State for Transport in respect of
certain property rights and liabilities of
[OUTGOING FRANCHISEE]

*Secretary of State for Transport
33 Horseferry Road
London SW1P 4DR*

This Supplemental Agreement is made on [_____] 20[____]

BETWEEN

[*OUTGOING FRANCHISEE*] whose registered office is at [*registered office*] (the "**Transferor**"); and

[*SUCCESSOR OPERATOR*] whose registered office is at [*registered office*] (the "**Transferee**").

WHEREAS

- (A) The Transferor has been providing certain services and the carriage of passengers by railway and operating certain stations and light maintenance depots pursuant to a franchise agreement with the Secretary of State for Transport (the "**Secretary of State**") dated [_____] (the "**Franchise Agreement**").
- (B) The Franchise Agreement terminated or is to terminate on [_____] and the Transferee has been selected by the Secretary of State to continue the provision of all or part of such services pursuant either to a franchise agreement with the Secretary of State or arrangements made with the Secretary of State in connection with the Secretary of State's duties and powers.
- (C) Certain property, rights and liabilities of the Transferor are to be transferred to the Transferee pursuant to a transfer scheme made by the Secretary of State on [_____] under Section 12 and Schedule 2 of the Railways Act 2005 (the "**Transfer Scheme**").
- (D) This Agreement is supplemental to the Transfer Scheme and sets out certain terms between the Transferor and the Transferee in relation to the transfer of such property, rights and liabilities under the Transfer Scheme and the transfer of certain other property, rights and liabilities at the same time.

IT IS AGREED THAT

1. DEFINITIONS AND INTERPRETATION

Definitions

1.1 The following words and expressions shall have the following meaning:

"**Business**" means such of the undertaking or part of the undertaking of the Transferor prior to the Transfer Date as may be continued by the Transferee after the Transfer Date;

"**Credit**" has the meaning assigned to that term under the Ticketing and Settlement Agreement;

"**Debit**" has the meaning assigned to that term under the Ticketing and Settlement Agreement;

"**Estimated Completion Payment**" has the meaning ascribed to that term in clause 2.1;

"**Net Asset Statement**" means the statement to be drawn up pursuant to clause 2.2;

"Net Asset Value" means the aggregate of the amounts of the Relevant Franchise Assets, the Relevant Contract Liabilities, the Relevant Debits and Credits and the Relevant Employee Liabilities as shown in the Net Asset Statement agreed or determined pursuant to clause 2.2;

"Purchase Price" has the meaning ascribed to that term in clause 2.1;

"Relevant Contract Liabilities" means such rights and liabilities of the Transferor as may be transferred to the Transferee on the expiry of the Franchise Period in relation to any Licence, Access Agreement or Property Lease under paragraphs 1 and 4.5 of Schedule 15.4 (Provisions Applying on and after Termination) of the Franchise Agreement;

"Relevant Debits and Credits" means such Debits and Credits of the Transferor which relate to Fares sold before the Transfer Date and which may be received by the Transferee as a result of Clause 11-33 of the Ticketing and Settlement Agreement;

"Relevant Employee Liabilities" means such rights and liabilities of the Transferor (or any other relevant employer or person) under any contracts of employment relating to the Relevant Employees which have been or are to be transferred to the Transferee by virtue of the operation of Law (including the Transfer Regulations);

"Relevant Employees" means all persons employed in the Business immediately before the Transfer Date (whether employed by the Transferor or otherwise) whose contract of employment has been or is to be transferred to the Transferee by virtue of the operation of Law (including the Transfer Regulations) or any other person employed at any time in the Business in respect of whom liabilities arising from a contract of employment or employment relationship have or will be transferred by virtue of the operation of Law (including the Transfer Regulations);

"Relevant Franchise Assets" means such of the property, rights and liabilities that are legally or beneficially owned by the Transferor and which are or are to be transferred to the Transferee under the Transfer Scheme;

"Relevant TRSP Past Liabilities" means the liability (whether or not such liability has crystallised) as may be transferred to the Transferee under the Transfer Scheme or Deed of Accession (as the case may be):

(a)

- (i) in respect of the grant of a Permitted Delay (as such term is defined in the MDCTA) and/or recognition of any such Permitted Delay (including any liability to pay any applicable costs thereto) to the TMM in accordance with Schedule 13 of the TRSP MSA; and/or
- (ii) to pay liquidated damages to the Owner (as such term is defined in the MDCTA) if and when required to in accordance with the terms of the Replacement Lease (as such term is defined in the MDCTA) to be entered into by the Transferor and/or with the Umbrella Agreement after the Operator Succession Date (as such term is defined in the MDCTA) to the extent that such liability has arisen due to an act, omission, breach or default of the Transferor occurring before the Operator Succession Date,

in each case as contemplated in paragraph 7.2(a) of Schedule 2.1 of the Umbrella Agreement; and

- (b) to pay to the Owner any costs for undertaking remedial works in the circumstances specified under paragraph 6.30 of Schedule 2.1 of the Umbrella Agreement;

"Reporting Accountants" means such firm of accountants as may be selected by agreement between the parties within four weeks of the preparation of the Net Asset Statement or, in the absence of such agreement, selected by the Secretary of State upon the request of either party;

"Season Ticket Fare" means a Fare which entitles the purchaser to make an unlimited number of journeys in any direction during the period for which, and between the stations and/or the zones for which, such Fare is valid;

"Stored Credit Balance" means any monetary amount held by the Franchisee which a passenger can apply at a future date to the purchase of a Fare (stored in any medium);

"Taxation" comprises all forms of taxation, duties, contributions and levies of the United Kingdom whenever imposed and (except in so far as attributable to the unreasonable delay or default of the Transferee) all penalties and interest relating thereto;

"TOGC" has the meaning assigned to that term in clause 6.2;

"Transfer Date" means the date and, where relevant, the time on or at which the Transfer Scheme comes into force;

"Transfer Regulations" means the Transfer of Undertakings (Protection of Employment) Regulations 2006 (as amended, replaced or substituted from time to time);

"Transferring Assets and Liabilities" has the meaning assigned to that term in clause 2.1; and

"Undisclosed Employee" has the meaning assigned to that term in clause 7.1(d).

Construction and Interpretation

- 1.2 In this Agreement terms and expressions defined in the Franchise Agreement shall have the same meaning and the terms "contract of employment", "collective agreement", "employee representatives" and "trade union" shall have the same meanings respectively as in the Transfer Regulations.

2. Transfer Price

Amount and Payment

- 2.1 The price for the transfer of:

- (a) the Relevant Franchise Assets;
- (b) the Relevant Contract Liabilities;

- (c) the Relevant Debits and Credits;
- (d) the Relevant Employee Liabilities; and
- (e) the Relevant TRSP Past Liabilities,

(together the "**Transferring Assets and Liabilities**") shall (subject to adjustment as expressly provided in this Agreement) be an amount equal to the Net Asset Value (the "**Purchase Price**"). The sum of £[amount], as determined under paragraph 3.3 of Schedule 15.4 (Provisions Applying on and after Termination) of the Franchise Agreement (the "**Estimated Completion Payment**") shall be paid in immediately available funds by the Transferor to the Transferee, or by the Transferee to the Transferor, as determined under paragraph 3.3 of Schedule 15.4 (Provisions Applying on and after Termination) of the Franchise Agreement, on the Transfer Date. On determination of the Purchase Price a balancing payment (if any) shall be made by the Transferor to the Transferee or the Transferee to the Transferor (as the case may be) in accordance with clause 2.5.

Net Asset Statement

- 2.2 The Transferee shall procure that, as soon as practicable and in any event not later than two months following the Transfer Date, there shall be drawn up a statement showing a true and fair view of the aggregate of the amount of each separate asset and liability of the Transferring Assets and Liabilities as at the Transfer Date.
- 2.3 The Net Asset Statement shall be:
 - (a) drawn up in the manner described in the Schedule;
 - (b) prepared on such basis as would enable the Transferee's auditors, if so requested, to give an unqualified audit report thereon to the effect that it had been drawn up in accordance with the Schedule; and
 - (c) presented, initially as a draft, to the Transferor immediately following its preparation for review in conjunction with its auditors.
- 2.4 If the Transferor and the Transferee have failed to agree the Net Asset Statement within four weeks following such presentation, the matter shall be referred to the Reporting Accountants who shall settle and complete the Net Asset Statement as soon as practicable and shall determine the amount of the Net Asset Value as shown by the Net Asset Statement.

Adjustment of Price

- 2.5 If the Purchase Price exceeds or is less than the Estimated Completion Payment, the Transferee shall pay to the Transferor or, as the case may be, the Transferor shall pay to the Transferee, in either case within 14 days of the agreement or determination of the Net Asset Value, an amount equal to such excess or deficiency together in either case with interest thereon calculated from the Transfer Date at the Interest Rate.

3. **References to the Reporting Accountants**

Whenever any matter is referred under this Agreement to the decision of the Reporting Accountants:

- (a) the Reporting Accountants shall be engaged jointly by the parties on the terms set out in this Agreement and otherwise on such terms as shall be agreed, provided that neither party shall unreasonably (having regard, amongst other things, to the provisions of this Agreement) refuse its agreement to terms proposed by the Reporting Accountants or by the other party. If the terms of engagement of the Reporting Accountants have not been settled within 14 days of their appointment having been determined (or such longer period as the parties may agree) then, unless one party is unreasonably refusing its agreement to those terms, such accountants shall be deemed never to have been appointed as Reporting Accountants, save that the accountants shall be entitled to their reasonable expenses under clause 3(d), and new Reporting Accountants shall be selected in accordance with the provisions of this Agreement;
- (b) if the Reporting Accountants acting or appointed to act under this Agreement resign, withdraw, refuse to act, or are disqualified for any reason from performing their duties then, except as may be agreed between the parties, the parties shall appoint a replacement in accordance with the definition of Reporting Accountants;
- (c) the Reporting Accountants shall be deemed to act as experts and not as arbitrators;
- (d) the Reporting Accountants shall have power to allocate their fees and expenses for payment in whole or in part by any party at their discretion. If not otherwise allocated they shall be paid as to half by the Transferor and as to half by the Transferee;
- (e) each of the parties shall promptly on request supply to the Reporting Accountants all such documents and information as they may require for the purpose of the reference;
- (f) the decision of the Reporting Accountants shall (in the absence of objection on the grounds of any manifest error discovered within 14 days of the issue of their decision) be conclusive and binding (and in accordance with clause 3(g) below) and shall not be the subject of any appeal by way of legal proceeding or arbitration or otherwise; and
- (g) without prejudice to clauses 3(a) to 3(f) above, either party may, prior to or during the course of the reference to the Reporting Accountants, seek a declaration from the court on a relevant point of law, including but not limited to a point of legal interpretation. Upon such application for a declaration being issued and served all applicable time limits relative to the reference to the Reporting Accountant shall be stayed pending the outcome of such application (including any appeal). The Reporting Accountants are bound to make their determination in a manner consistent with the findings of the Court.

4. **WARRANTY**

The Transferor warrants and represents to the Transferee that the Relevant Contract Liabilities and the Relevant Franchise Assets are, to the extent they are

property or rights, transferring to the Transferee free and clear of all Security Interests.

5. **INTEREST**

If the Transferor or the Transferee defaults in the payment when due of any sum payable under this Agreement (whether determined by agreement or pursuant to an order of a court or otherwise) the liability of the Transferor or the Transferee (as the case may be) shall be increased to include interest on such sum from the date when such payment is due until the date of actual payment (after as well as before judgement) at a rate equal to the Interest Rate. Such interest shall accrue from day to day.

6. **VALUE ADDED TAX**

- 6.1 All amounts under this Agreement are expressed as exclusive of Value Added Tax where Value Added Tax is applicable.
- 6.2 The Transferor and the Transferee shall use all reasonable endeavours to secure that the transfer of the Transferring Assets and Liabilities is treated for Value Added Tax purposes as the transfer of a business as a going concern ("**TOGC**") and accordingly as neither a supply of goods nor a supply of services for the purposes of Value Added Tax.
- 6.3 If HM Revenue & Customs direct that the transfer of the Transferring Assets and Liabilities cannot be treated as a TOGC, the Transferor shall provide the Transferee with a copy of such direction within five days of receipt thereof by the Transferor.
- 6.4 The Transferee shall thereafter pay upon the receipt of a valid tax invoice the amount of any Value Added Tax which as a result of that direction may be chargeable on the transfer of the Transferring Assets and Liabilities. If the aforementioned direction was issued as a result of any action or inaction of the Transferee then the Transferee shall in addition to the Value Added Tax indemnify the Transferor for any penalties and interest that may be incurred upon receipt of such evidence from HM Revenue & Customs.
- 6.5 If the Transferee considers the direction issued by HM Revenue & Customs referred to in clause 6.3 to be incorrect then, without prejudice to the Transferee's obligation under clause 6.4 to pay to the Transferor the amount of any Value Added Tax which as a result such direction may be chargeable on the transfer of the Transferring Assets and Liabilities, the Transferee may, within 30 days of receipt of such direction by the Transferor, give notice to the Transferor that it requires the Transferor to appeal such direction. Upon requesting such an appeal the Transferee agrees to indemnify the Transferor for all reasonable costs that the Transferor may incur in taking such action upon receipt of evidence of those costs. If such an appeal is successful the Transferor agrees to reimburse the Transferee for such reasonable costs and penalties and interest to the extent that those costs have been reimbursed by HM Revenue & Customs.
- 6.6 If any amount paid by the Transferee to the Transferor in respect of Value Added Tax pursuant to this Agreement is subsequently found to have been paid in error the Transferor shall issue a valid tax credit note for the appropriate sum to the Transferee and promptly repay such amount to the Transferee.
- 6.7 If any amount is payable by the Transferor to the Transferee in respect of the transfer of the Relevant Franchise Assets, Relevant Contract Liabilities, Relevant

Debits and Credits and Relevant Employee Liabilities pursuant to this Agreement, clauses 6.3 to 6.6 inclusive shall apply mutatis mutandis to such payment substituting Transferor for Transferee and vice versa.

- 6.8 The Transferor shall on the Transfer Date deliver to the Transferee such of those records referred to in Section 49 of the Value Added Tax Act 1994 as relate exclusively to the Business on condition that the Transferee undertakes to preserve those records in such manner and for such periods as may be required by law.
- 6.9 Subject to HM Revenue & Customs so permitting, all of the records referred to in Section 49 of the Value Added Tax Act 1994 relating to the Business (being the purchase records) shall be retained by the Transferor and the Transferor shall undertake to the Transferee to:
- (a) preserve those records in such manner and for such periods as may be required by law; and
 - (b) give the Transferee as from the Transfer Date reasonable access during normal business hours to such records and to take copies of such records.

7. **EMPLOYEES**

Transfer Regulations

- 7.1 The parties accept that, to the extent that the undertaking or part of the undertaking of the Transferor is continued by the Transferee after the Transfer Date, this Agreement and the transfer of the Business which is effected in connection with the Transfer Scheme are governed by the Transfer Regulations and the following provisions shall apply in connection therewith:
- (a) the contract of employment of each of the Relevant Employees (save insofar as such contract relates to any occupational pension scheme) shall be transferred to the Transferee with effect from the Transfer Date which shall be the "time of transfer" under the Transfer Regulations and the Transferee shall employ each such Relevant Employee on the terms of those contracts of employment (save insofar as such contract relates to any occupational pension scheme) with effect from the Transfer Date;
 - (b) the Transferor shall perform and discharge all its obligations in respect of all the Relevant Employees for its own account up to and including the Transfer Date including, without limitation, discharging all wages and salaries of the Relevant Employees, all employer's contributions to any relevant occupational pension scheme and all other costs and expenses related to their employment (including, without limitation, any Taxation, accrued holiday pay, accrued bonus, commission or other sums payable in respect of service prior to the close of business on the Transfer Date) and shall indemnify the Transferee and keep the Transferee indemnified against each and every action, proceeding, liability (including, without limitation, any Taxation), cost, claim, expense (including, without limitation, reasonable legal fees) or demand arising from the Transferor's failure so to discharge;
 - (c) the Transferor shall indemnify the Transferee and keep the Transferee indemnified against each and every action, proceeding, cost, claim, liability (including, without limitation, any Taxation), expense (including, without limitation, reasonable legal fees) or demand which relates to or

arises out of any act or omission by the Transferor or any other event or occurrence prior to the Transfer Date and which the Transferee may incur in relation to any contract of employment or collective agreement concerning one or more of the Relevant Employees pursuant to the provisions of the Transfer Regulations or otherwise including, without limitation, any such matter relating to or arising out of:

- (i) the Transferor's rights, powers, duties and/or liabilities (including, without limitation, any Taxation) under or in connection with any such contract of employment or collective agreement, which rights, powers, duties and/or liabilities (as the case may be) are or will be transferred to the Transferee in accordance with the Transfer Regulations; or
 - (ii) anything done or omitted before the Transfer Date by or in relation to the Transferor in respect of any such contract of employment or collective agreement or any Relevant Employee, which is deemed by the Transfer Regulations to have been done or omitted by or in relation to the Transferee save where the thing done or omitted to be done before the Transfer Date relates to the Transferee's failure to comply with its obligations referred to in clause 7.4;
- (d) if any contract of employment or collective agreement which is neither disclosed in writing to the Transferee by the Transferor prior to the Transfer Date nor made available to the Secretary of State under Schedule 15.3 (Handover Package) of the Franchise Agreement prior to the Transfer Date shall have effect as if originally made between the Transferee and any employee (the "**Undisclosed Employee**") or a trade union or employee representatives as a result of the provisions of the Transfer Regulations (without prejudice to any other right or remedy which may be available to the Transferee):
- (i) the Transferee may, upon becoming aware of the application of the Transfer Regulations to any such contract of employment or collective agreement terminate such contract or agreement forthwith;
 - (ii) the Transferor shall indemnify the Transferee against each and every action, proceeding, cost, claim, liability (including, without limitation, any Taxation), expense (including, without limitation, reasonable legal fees) or demand relating to or arising out of such termination and reimburse the Transferee for all costs and expenses (including, without limitation, any Taxation) incurred in employing such employee in respect of his employment following the Transfer Date; and
 - (iii) the Transferor shall indemnify the Transferee in respect of any Undisclosed Employee on the same terms mutandis as the Transferor has indemnified the Transferee in respect of a Relevant Employee pursuant to the terms of clauses 7.1(b) and 7.1(c); and
- (e) the Transferor shall indemnify the Transferee and keep the Transferee indemnified against each and every action, proceeding, cost, claim, liability (including without limitation, any Taxation) expense (including,

without limitation, reasonable legal fees) or demand which relates to or arises out of any dismissal (including, without limitation, constructive dismissal) by the Transferor of any employee (not being a Relevant Employee) and which the Transferee may incur pursuant to the provisions of the Transfer Regulations.

Transferee's Indemnities

- 7.2 The Transferee shall indemnify the Transferor and keep the Transferor indemnified against each and every action, proceeding, liability (including, without limitation, any Taxation), cost, claim, loss, expense (including reasonable legal fees) and demand arising out of or in connection with:
- (a) any substantial change in the working conditions of the Relevant Employees to his or her detriment or any of them occurring on or after the Transfer Date;
 - (b) the change of employer occurring by virtue of the Transfer Regulations and/or the Franchise Agreement being significant and detrimental to any of the Relevant Employees;
 - (c) the employment by the Transferee on or after the Transfer Date of any of the Relevant Employees other than on terms (including terms relating to any occupational pension scheme) at least as good as those enjoyed prior to the Transfer Date or the termination of the employment of any of them on or after the Transfer Date; or
 - (d) any claim by any Relevant Employee (whether in contract or in tort or under statute (including the Treaty of the European Community or European Union and any Directives made under the Secretary of State of any such Treaty or any successor thereof)) for any remedy (including, without limitation, for unfair dismissal, redundancy, statutory redundancy, equal pay, sex or race discrimination) as a result of any act or omission by the Transferee after the Transfer Date.
- 7.3 The Transferee shall indemnify the Transferor and keep the Transferor indemnified against each and every action, proceeding, liability, cost, claim, loss, expense (including reasonable legal fees) and demand which arises as a result of it not providing or not having provided, in accordance with its obligations under the Transfer Regulations, the Transferor in writing with such information and at such time as will enable the Transferor to carry out its duties under Regulation 10(2)(d) and 10(6) of the Transfer Regulations concerning measures envisaged by the Transferee in relation to the Relevant Employees.

Details of Relevant Employees

- 7.4 The Transferor warrants to the Transferee that it has (to the extent not made available to the Secretary of State under Schedule 15.4 (Provisions Applying on and after Termination) of the Franchise Agreement prior to the Transfer Date) provided the Transferee prior to the Transfer Date with full particulars of:
- (a) each Relevant Employee, including name, sex, and the date on which continuity of employment began for each Relevant Employee for statutory purposes;
 - (b) terms and conditions of employment of each such person;

- (c) all payments, benefits or changes to terms and conditions of employment promised to any such person;
- (d) dismissals of Relevant Employees or termination of employment effected within 12 months prior to the Transfer Date including the Transfer Date;
- (e) all agreements or arrangements entered into in relation to the Relevant Employees between the Transferor, any Affiliate of the Transferor or any other relevant employer and any trade union or association of trade unions or organisation or body of employees including employee representatives and elected representatives; and
- (f) all strikes or other Industrial Action taken by any Relevant Employee within 12 months prior to the Transfer Date including the Transfer Date.

7.5 The Transferor and Transferee shall deliver to each of the Relevant Employees letters in an agreed form from the Transferor and Transferee as soon as is practicable after the execution of this Agreement (to the extent not already delivered prior to the Transfer Date).

8. MISCELLANEOUS PROVISIONS

Variations in Writing

8.1 No variation of this Agreement shall be effective unless in writing and signed by duly authorised representatives of the parties.

Partial Invalidity

8.2 If any provision in this Agreement shall be held to be void, illegal, invalid or unenforceable, in whole or in part, under any enactment or rule of law, such provision or part shall to that extent be deemed not to form part of this Agreement but the legality, validity and enforceability of the remainder of this Agreement shall not be affected.

Further Assurance

8.3 Each of the parties agrees to execute and deliver all such further instruments and do and perform all such further acts and things as shall be necessary or expedient for the carrying out of the provisions of this Agreement.

Notices

8.4 Any notice or other communication requiring to be given or served under or in connection with this Agreement shall be in writing and shall be sufficiently given or served if delivered or sent to the registered office of the recipient or:

(a) in the case of the Transferor to [name of Transferor] at:

[address]

[fax]

Attention: [name]

(b) in the case of the Transferee to [name of Transferee] at:

[address]

[fax]

Attention: [name]

- 8.5 Any such notice or other communication shall be delivered by hand or sent by courier, fax or prepaid first class post. If sent by courier or fax such notice or communication shall conclusively be deemed to have been given or served at the time of despatch. If sent by post such notice or communication shall conclusively be deemed to have been received two business days from the time of posting.

Counterparts

- 8.6 This Agreement may be executed in any number of counterparts each of which shall be deemed an original, but all the counterparts shall together constitute one and the same instrument.

Third Parties

- 8.7 This Agreement does not create any rights under the Contracts (Rights of Third Parties) Act 1999 which is enforceable by any person who is not a party to it.

Governing Law

- 8.8 This Agreement shall be governed by and construed in accordance with the laws of England and Wales and the parties irrevocably agree that the courts of England and Wales are to have exclusive jurisdiction to settle any disputes which may arise out of or in connection with this Agreement.

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

SIGNED FOR AND ON
BEHALF OF THE
[**TRANSFEROR**]

DIRECTOR:

DIRECTOR/SECRETARY:

SIGNED FOR AND ON
BEHALF OF THE
[**TRANSFeree**]

DIRECTOR:

DIRECTOR/SECRETARY:

DRAFT

SCHEDULE TO THE SUPPLEMENTAL AGREEMENT

Net Asset Statement

The Net Asset Statement shall be drawn up (except to the extent otherwise agreed by the Transferor and the Transferee) in accordance with accounting principles generally accepted in the United Kingdom and such that the Transferring Assets and Liabilities are valued on the following basis:

1. Rights and liabilities relating to an obligation of carriage under the terms of any Fare shall be valued in accordance with the following formula:

$$(C - D) \times \frac{A}{B} + E$$

where:

C equals the Credit (exclusive of any Valued Added Tax) received by the Transferor in respect of the Fare provided that:

- (a) such Credit shall be deemed not to include any reduction in respect of a discount allowed to the purchaser of the Fare pursuant to the Passenger's Charter or any other passenger's charter of the Transferor;
- (b) if the Fare is a Season Ticket Fare, such Credit shall be the New Credit (as defined in the Ticketing and Settlement Agreement) relating to that Season Ticket Fare on the Transfer Date if different to the Credit that was in fact received by the Transferor in respect of such Season Ticket Fare;
- (c) such Credit shall be net of any Private Settlement Credit (as defined in the Ticketing and Settlement Agreement) arising in respect of that Fare; and
- (d) such Credit shall be deemed to exclude any Credit received by the Transferor in respect of any commission due to it in respect of the sale of such Fare (provided that for these purposes the amount of such commission shall not exceed the National Standard Rate of Commission (as defined in the Ticketing and Settlement Agreement) in respect of the Fare);

D equals the Debit (exclusive of any Value Added Tax) received by the Transferor in respect of the commission due in respect of the sale of the Fare (provided that for these purposes the amount of such commission shall not exceed the National Standard Rate of Commission (as defined in the Ticketing and Settlement Agreement) in respect of the Fare);

$\frac{A}{B}$ equals

- (a) in the case of a Season Ticket Fare, the number of journeys which the purchaser of the Fare is estimated to make from (and including) the Transfer Date to (and including) the last day on which the Fare is valid (including any extensions to its original period of validity) divided by the total number of journeys which the purchaser of the Fare is estimated to

make with that Fare (as determined in each case in accordance with Schedule 28 of the Ticketing and Settlement Agreement);

- (b) in the case of any other Fare which entitles the holder thereof to make more than two journeys, the number of days for which the Fare continues to be valid after the Transfer Date (including any extensions to its original period of validity) divided by the total number of days for which such Fare is valid on issue (except to the extent that it can reasonably be estimated what proportion of the journeys which could be made on issue of the Fare have not been made prior to the Transfer Date); or
- (c) in the case of any other Fare, zero; and

E equals, if $\frac{A}{B}$ is greater than zero:

the amount of any discount to which it can be reasonably estimated that the purchaser of the Fare would be entitled pursuant to the Passenger's Charter or any other passenger's charter of the Transferor on purchasing an equivalent Fare on the expiry of the relevant Fare.

2. Rights and liabilities relating to an Excess Fare, Reservation or Upgrade (as such terms are defined in the Ticketing and Settlement Agreement) shall be valued at zero unless such Excess Fare, Reservation or Upgrade involves more than two journeys, in which case they shall be valued in accordance with paragraph 1 and references to Fare in paragraph 1 shall be construed accordingly.
3. Rights and liabilities under a Discount Card shall be valued in accordance with the following formula:

$$(C - D) \times \frac{A}{B}$$

where:

C equals the Credit (exclusive of any Value Added Tax) received by the Transferor in respect of the Discount Card;

D equals the Debit (exclusive of any Value Added Tax) received by the Transferor in respect of the commission due in respect of the sale of the Discount Card (provided that for these purposes the amount of such commission shall not exceed the National Standard Rate of Commission (as defined in the Ticketing and Settlement Agreement) in respect of the Discount Card); and

$\frac{A}{B}$ equals the number of days for which the Discount Card continues to be valid after the Transfer Date (including any extensions to its original period of validity) divided by the total number of days for which such Discount Card is valid on issue, or in the case of any Discount Card listed in Schedules 12 or 39 of the Ticketing and Settlement Agreement on the Start Date, zero,

and for these purposes a Credit or Debit shall be deemed to be received when the relevant Discount Card is Accepted for Clearing (as defined in the Ticketing and Settlement Agreement).

4. Relevant Debits and Credits shall be valued at the full amount of such Debits and Credits (inclusive of any Value Added Tax) but excluding any Debits and Credits arising in respect of Adjustment Amounts (as defined in the Ticketing and Settlement Agreement) which are received by the Transferee in respect of a change to the Credit which is used to value any relevant Season Ticket Fare under paragraph 1 of this Schedule to the extent such Adjustment Amounts relate to a period after the Transfer Date.
5. Rights and liabilities in respect of any contract, lease (including any Station Lease), licence or other equivalent arrangement (excluding rights and liabilities valued under paragraphs 1 to 4) shall be valued at nil except to the extent that the relevant rights and liabilities include matters specified in the left hand column of the following table, which shall be valued on the basis specified in the right hand column of the following table:

RIGHTS AND LIABILITIES	VALUE
Any accrued rights to receive payment	Monetary amounts so accrued, subject to any provision being made for payment not being received from any other person
Any right to receive payment in respect of goods and/or services provided by the Transferor prior to the Transfer Date where the due date for such payment is after the Transfer Date	Amount payable under such contract, lease, licence or other equivalent arrangement for the goods and/or services so provided by the Transferor, subject to any provision being made for payment not being received from any other person
Any accrued liabilities to make payment	Monetary amounts so accrued
Any liability to make payment in respect of goods and/or services provided to the Transferor prior to the Transfer Date where the due date for such payment is after the Transfer Date	Amount payable under such contract, lease, licence or other equivalent arrangement for the goods and/or services provided to the Transferor
Any rights in respect of which payment has already been made by the Transferor	Monetary amounts so paid, subject to any provision being made for such rights not being exercisable against any other person
Any liabilities in respect of which payment has already been received by the Transferor	Monetary amounts so received
Any liability resulting from any breach of or failure by the Transferor to comply with the terms of any such contract, lease, licence or other	Amount of such liability or, to the extent that such amount is not ascertained, the parties reasonable estimate of the amount of such

RIGHTS AND LIABILITIES	VALUE
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equivalent arrangement	liability
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6. CRM Data and Yield Management Data shall be valued at nil.
7. The Stored Credit Balance held by the Franchisee at the Transfer Date shall be valued at the monetary amount so held.
8. Any Relevant TRSP Past Liabilities shall be valued at the amount of such liability or to the extent that such amount is not ascertained, the parties reasonable estimate of the amount of such liability.
9. Each of any Operator Owned Spares, Operator Owned Special Tools, the Mock Up and the Integrated Laboratory Equipment as transferred by Transferor to Transferee pursuant to the Transfer Scheme shall be valued at nil. The terms Operator Owned Spares, Operator Owned Special Tools, the Mock Up [and the Integrated Laboratory Equipment] shall each have the meanings given to them under the MDCTA.
10. Any ITSO equipment (including smart card and ITSO Certified Smartmedia readers and ITSO database) transferred from the Transferor to the Transferee pursuant to the Transfer Scheme shall be valued at nil; and
11. Any other property, rights or liabilities shall be valued on the basis of a willing vendor and purchaser and ongoing usage within the railway industry.

SCHEDULE 16

Pensions

1. Franchise Sections

1.1 The Franchisee shall:

- (a) with effect from the Start Date, participate in and become the Designated Employer in relation to the First Capital Connect Shared Cost Section of the Railway Pension Scheme; and
- (b) in addition, with effect from the Combined Effective Date, participate in and become the Designated Employer in relation to the Southern Shared Cost Section of the Railway Pension Scheme,

(together to be known as the "**Franchise Sections**") and in each case in respect of the Franchise Services. Subject to paragraphs 1.2, 2 and 3.2(d) membership of a Franchise Section will be offered to each employee of a Franchisee only.

1.2 The Franchisee shall offer membership of a Franchise Section to New Employees as follows:

- (a) any New Employee whose role at the time at which membership of a Franchise Section is offered in accordance with the requirements of paragraph 1.1 is associated more closely to the TGN Franchise Services than the Southern Franchise Services shall be offered membership of the First Capital Connect Shared Cost Section;
- (b) any New Employee whose role at the time at which membership of a Franchise Section is offered in accordance with the requirements of paragraph 1.1 is associated more closely to the Southern Franchise Services than the TGN Services shall be offered membership of the Southern Shared Cost Section; and
- (c) where the role of any New Employee is not associated more closely with either of the TGN Franchise Services or the Southern Franchise Services than with the other then the Franchisee shall offer such New Employee membership of a Franchise Section in such a way as to ensure that as far as reasonably practicable the size of the total active membership of each of the First Capital Connect Shared Cost Section and the Southern Shared Cost Section are maintained in a similar proportion, as compared to the size of the total active membership of each such Franchise Sections as at the Combined Effective Date,

provided that should such offer not be accepted an offer of membership of the other Franchise Section shall not be made.

The Franchisee shall make an offer of membership of a Franchise Section to Transferring Employees who are not already members of one or other of the Franchise Sections at the time of their transfer into the employment of the Franchisee on the same basis and subject to the same proviso.

Where Transferring Employees are already members of one or other of the Franchise Sections at the time of their transfer into the employment of the

Franchisee, the Franchisee shall permit them to remain members of that Franchise Section and shall not offer them membership of the other one.

For the purposes of this paragraph 1.2:

"New Employee" means any person who becomes an employee of the Franchisee after the Combined Effective Date (other than a person whose contract of employment transfers to the Franchisee at the Start Date or the Combined Effective Date (as the case may be) by virtue of the operation of Law (including the Transfer of Undertakings (Protection of Employment) Regulations 2006));

"Transferring Employee" means any person whose contract of employment transfers to the Franchisee at the Start Date or the Combined Effective Date (as the case may be) by virtue of the operation of Law (including the Transfer of Undertakings (Protection of Employment) Regulations 2006); and

"Role at the time at which membership of a Franchise Section is offered" means the role which at that time it is intended the New Employee will carry out.

2. **Closed Schemes**

2.1 Subject to any requirements of Her Majesty's Revenue and Customs, the Franchisee shall take any necessary steps (including entering into any relevant deed of participation) to allow Closed Scheme Employees to continue in membership of the British Railways Superannuation Fund or the BR (1974) Pension Fund in accordance with their terms during the Franchise Period.

2.2 For the purposes of this paragraph 2, **"Closed Scheme Employees"** means such of the employees of the Franchisee who were, immediately prior to the commencement of their employment with the Franchisee, members of either of the British Railways Superannuation Fund or the BR (1974) Pension Fund.

3. **Variations in benefits, contributions and investment**

3.1 If a Franchisee is considering making a proposal that falls within the scope of paragraphs 3.2(a) to (g) inclusive, it shall promptly consult with the Secretary of State in relation to that proposal prior to putting such a proposal to the Pensions Committee of any Franchise Section, the Trustee of the Railways Pension Scheme (the **"Trustee"**), or to any trade union. The Franchisee must otherwise consult in good time with the Secretary of State in relation to any proposal falling within the scope of paragraphs 3.2(a) to (g) inclusive.

3.2 Separately and in addition to complying with its obligations under paragraph 3.1, the Franchisee shall not, without the prior written consent of the Secretary of State (which may be given on such terms and subject to such conditions as the Secretary of State thinks fit):

(a) restructure or change the composition of the earnings of employees of the Franchisee in such a way as to increase the part of those earnings which qualifies as pensionable earnings under the Rules applicable to any Franchise Section or take any action (or consent to the taking of any action) which could detrimentally affect the funding of any Franchise Section, including varying or providing different or additional benefits under that Franchise Section or promising to do so, unless this change:

(i) is required by Law; or

- (ii) only affects benefits payable in respect of past service of members of that Franchise Section and on or prior to the effective date of the change the Franchisee pays an additional cash payment to the Trustee which, in the opinion of the Actuary, meets in full the additional funding cost imposed on that Franchise Section; or
 - (iii) would not lead to substantial changes in the funding of any Franchise Section and is the result of the normal application of that Franchise Section's Rules in the ordinary day to day running of the business of the Franchise, for example, where individual employees are, from time to time promoted or transferred to higher paid or different employment which has a different composition of earnings;
- (b) make or consent to any proposal to change any of the provisions of the Pension Trust in respect of the Franchise Sections unless the change is required by Law;
 - (c) provide retirement, death or life assurance benefits in respect of any of its employees other than under any Franchise Section or as provided in paragraph 2;
 - (d) omit to provide the above-mentioned benefits in respect of its employees save that, without prejudice to any rights which any such employee may otherwise have, the Franchisee shall not under this Schedule 16 be obliged for the purposes of the Franchise Agreement to offer such benefits to any employee employed on a fixed term contract of 12 months or less;
 - (e) take any action (or consent to the taking of any action) which could affect the contributions payable by Participating Employers under any Franchise Section, including exercising any discretion allowed to the Franchisee as Designated Employer arising out of any actuarial valuation of a Franchise Section, and varying or providing different or additional benefits under the Franchise Sections in respect of future service, unless such action is required by Law;
 - (f) close a Franchise Section to new members; or
 - (g) take (or omit to take) any action which could result in any Franchise Section being wound up, in whole or in part.

3.3 The Franchisee shall consult with the Secretary of State on:

- (a) any proposal made by the Trustee to change the statement of investment principles applicable to any Franchise Section; and
- (b) any proposal to alter the rate of contributions payable by the Franchisee or its employees under a new schedule of contributions for the Franchise Section.

3.4 With respect to any proposal falling within the scope of paragraph 3.3(a) or (b), the Franchisee shall also consult with the Trustee on the basis of any response it receives from the Secretary of State in relation to any such proposal.

4. **Funding liabilities**

4.1 The Franchisee shall pay the employer contributions required under the schedule of contributions applicable to each Franchise Section (or either of the British Railways Superannuation Fund or the BR (1974) Pension Fund in which it participates) in respect of the Franchise Term subject to the provisions of paragraph 4.2 below.

4.2 Where, during the Franchise Term, either:

- (a) Franchise Services are aggregated or disaggregated by the Secretary of State (for example, as a result of remapping) and, as a consequence, a Franchise Section of which the Franchisee is the Designated Employer is required to accept a transfer in or to make a transfer out of members; or
- (b) the Secretary of State or the Trustee of the Railways Pension Scheme require one or more bulk transfer of the assets and liabilities of the Franchise Sections so that all of the assets and liabilities of the Franchise Sections become held in one section of the Railways Pension Scheme (such transfer(s) being a "**Franchise Section Merger**"),

the Secretary of State shall ensure that the Franchisee has no liability for any resulting deterioration immediately arising in the funding level of the Franchise Section measured in accordance with the Franchise Sections' technical provisions in Part 3 of the Pensions Act 2004, or for any amount arising under article 7(4) of the Railway Pensions (Protection and Designation of Schemes) Order 1994. Notwithstanding the above the Secretary of State shall have no liability for any future deterioration in the funding levels of the Franchise Section linked to such transfer in or out of members, assets or liabilities nor shall the Secretary of State have any liability for any of the costs or expenses of the Franchisee in arranging or implementing the Franchise Section Merger.

5. **Discharge of obligations**

5.1 The Secretary of State may at any time during the Franchise Term seek information from the Trustee with a view to satisfying himself that the Franchisee and the other Participating Employers (if any) have fully discharged their respective obligations under the Railways Pension Scheme, including their obligations in respect of the payment of contributions to any Franchise Section.

5.2 The Franchisee shall, at its expense, promptly provide such information in relation to any Franchise Section, including actuarial advice and information, as the Secretary of State may from time to time request and shall authorise and consent to the Trustee doing so.

5.3 The Franchisee shall, in respect of the Franchise Term, use all reasonable endeavours to provide to the Secretary of State:

- (a) within one month of the expiry of each Franchisee Year; and
- (b) at other times as soon as practicable following a request by the Secretary of State,

a certificate signed by the Trustee in relation to the Franchise Sections stating either that the Franchisee has fully complied with its obligations under the Railways Pensions Scheme, including its obligation to contribute to the Franchise Sections or, if it has not so complied, stating the extent to which it has not done

so. Where the certificate is given pursuant to paragraph 5.3(a), it shall cover the relevant Franchisee Year. Where the certificate has been given pursuant to paragraph 5.3(b), it shall cover such period as the Secretary of State shall specify.

- 5.4 If the Trustee does not certify under paragraph 5.3 in relation to the Franchise Sections that the Franchisee has fully complied with its obligations under the Railways Pension Scheme or if the Secretary of State otherwise reasonably considers that the Franchisee has not complied with such obligations, the Secretary of State may adjust Franchise Payments payable under Schedule 8 (Payments) by an amount which is, in his opinion, no greater than the amount of any contribution that the Franchisee has thereby failed to make or avoided making.
- 5.5 The Secretary of State may, under paragraph 5.4, continue to make such adjustments to Franchise Payments payable under Schedule 8 (Payments) until such time as he reasonably determines that the relevant contributions have been made in full by the Franchisee. Following that determination, any amounts so withheld by the Secretary of State shall become payable (without interest) on the next day on which a Franchise Payment becomes payable under Schedule 8, being a day which falls no less than seven days after such determination or, if there is no such day, 14 days after the date of such determination. To the extent that the Secretary of State has not so determined within four weeks after the expiry of the Franchise Period, the Franchisee's right to receive the amount so withheld under the Franchise Agreement shall lapse and the Secretary of State shall not be obliged to pay such amount.

6. **Termination of Franchise**

The Secretary of State shall at the end of the Franchise Period ensure that the Franchisee has no liability for any deficit in the Franchise Sections (other than for contributions due and payable by the Franchisee to the Franchise Sections for any period prior to the end of the Franchise Term) and shall have no right to benefit from any surplus which may exist in the Franchise Sections. For the avoidance of doubt, this paragraph 6 shall apply where the Franchise Services are either aggregated or disaggregated (for example, as a result of remapping) or transferred into one as described in paragraph 4.2(b).

7. **Definitions**

Unless otherwise defined in the Franchise Agreement, terms used in this Schedule 16 shall have the meanings given to them in the Railways Pension Scheme.

SCHEDULE 17

Confidentiality and Freedom of Information

1. Confidentiality

Subject to the provisions of the Act, the Transport Act, the Railways Act 2005, the Environmental Information Regulations, the Freedom of Information Act (and any code of practice or other guidance related to the same) and paragraphs 2 to 8 of this Schedule 17 inclusive, each party shall hold in confidence all documents, materials and other information, whether technical or commercial, supplied by or on behalf of the other party (including all documents and information supplied in the course of proceedings under the Dispute Resolution Rules or the rules of any other dispute resolution procedures to which a dispute is referred in accordance with the Franchise Agreement) (all together the "**Confidential Information**") and shall not, except with the other party's prior written authority, publish or otherwise disclose any Confidential Information otherwise than as expressly provided for in the Franchise Agreement unless or until the recipient party can demonstrate that any such document, material or information is in the public domain through no fault of its own and through no contravention of the Franchise Agreement, whereupon to the extent that it is in the public domain this obligation shall cease.

2. Disclosure of Confidential Information

Each party may disclose any data or information acquired by it under or pursuant to the Franchise Agreement or information relating to a dispute arising under the Franchise Agreement without the prior written consent of the other party if such disclosure is made in good faith:

- (a) to any Affiliate of such party or outside consultants or advisers of such Affiliate, upon obtaining from such Affiliate and/or such outside consultants or advisers of such Affiliate an undertaking of confidentiality equivalent to that contained in paragraph 1;
- (b) to any outside consultants or advisers engaged by or on behalf of such party and acting in that capacity, upon obtaining from such consultants or advisers an undertaking of confidentiality equivalent to that contained in paragraph 1;
- (c) to any lenders, security trustee, bank or other financial institution (and its or their advisers) from which such party is seeking or obtaining finance, upon obtaining from any such person an undertaking of confidentiality equivalent to that contained in paragraph 1;
- (d) to the extent required by Law or pursuant to an order of any court of competent jurisdiction or under the Dispute Resolution Rules or the rules of any other dispute resolution procedures to which a dispute is referred in accordance with the Franchise Agreement or the rules of a recognised stock exchange or a formal or informal request of any taxation authority;
- (e) to any insurer, upon obtaining from such insurer an undertaking of confidentiality equivalent to that contained in paragraph 1;

- (f) to any director, employee or officer of such party, to the extent necessary to enable such party to perform its obligations under the Franchise Agreement or to protect or enforce its rights under the Franchise Agreement; or
- (g) by the Franchisee, to the ORR, the Passengers' Council or a Local Authority.

3. Publication of Certain Information

3.1 Notwithstanding the provisions of paragraph 1, the Secretary of State may publish (whether to the press, the public or to one or more individuals, companies or other bodies, including to any prospective Successor Operator) in such form and at such times as he sees fit, the following (irrespective of whether the same was provided to the Secretary of State by the Franchisee or a third party):

- (a) any or all of the Franchise Documents provided that the Secretary of State will, prior to publishing the same, redact from any Franchise Document any information contained therein which the Secretary of State and the Franchisee agree or failing which the Secretary of State determines, in his absolute discretion, is exempt from disclosure in accordance with the provisions of the Freedom of Information Act and/or the Environmental Information Regulations.
- (b) the amount of any Franchise Payments payable under the Franchise Agreement and the aggregate amount of Franchise Payments paid in each year under the Franchise Agreement;
- (c) such information as the Secretary of State may consider reasonably necessary to publish in connection with the performance of his functions in relation to any Closure or proposed Closure;
- (d) the amounts of any payments by the Franchisee under the Passenger's Charter;
- (e) such information (including CRM Data and Yield Management Data) as may reasonably be required in connection with the Tendering/Reletting Process or the retendering or reletting of any other railway passenger services, provided that such information may only be published during the period of, or during the period leading up to, such retendering or reletting;
- (f) any reports and accounts delivered to him under Schedule 13 (Information and Industry Initiatives) including any analyses, statistics and other information derived from such reports and accounts;
- (g) the results of any monitoring or measurement of the performance of the Franchisee in the provision of the Franchise Services (including any information provided under Schedule 11 (Agreement Management Provisions));
- (h) the results, on a Service Group, Route, station or other comparable basis, of any calculation of passenger numbers under Schedule 1.5 (Information about Passengers);

- (i) the Franchisee's performance under Schedule 7.2 (PEM Regime) (including the Pass Rates and the Franchisee's performance against the QuEST Benchmarks, NPS Benchmarks and PEM Benchmarks);
- (j) the results of any assessment or inspection under Schedule 11 (Agreement Management Provisions);
- (k) details of the Franchisee's plans and performance in respect of safety;
- (l) not used;
- (m) such information as the Secretary of State may reasonably require to include in his annual report in respect of the Franchisee provided that, in preparing that report, the Secretary of State shall have regard to the need for excluding, so far as is practicable, the matters specified in paragraphs (a) and (b) of Section 71(2) of the Act for this purpose, taking references in those paragraphs to the ORR as references to the Secretary of State; and
- (n) such information as the Secretary of State may reasonably require to publish at or around the expiry or possible termination of the Franchise Period in order to secure continuity of the provision and operation of the Franchise Services.

3.2 Without prejudice to any other provision of this Schedule 17, the Secretary of State may publish any other information relating to the Franchisee if he has previously notified the Franchisee and the Franchisee does not demonstrate to the reasonable satisfaction of the Secretary of State within 14 days of such notification that the publication of such information would, in the reasonable opinion of the Franchisee, be materially detrimental to its business. If the Franchisee attempts so to demonstrate to the Secretary of State but he is not so satisfied, the Secretary of State shall allow seven more days before publishing the relevant information.

4. **Service Development Information**

Nothing in this Schedule 17 shall be deemed to prohibit, prevent or hinder, or render either party liable for, the disclosure by either party to Network Rail, the ORR, other Train Operators, any operators of services for the carriage of goods by rail, the Passengers' Council and/or any Local Authority of any information relating to the development of the Train Service Requirement in accordance with Schedule 1.1 (Service Development).

5. **Publication by Secretary Of State**

Nothing in this Schedule 17 shall be deemed to prohibit, prevent or hinder, or render the Secretary of State liable for, the disclosure of any information by the Secretary of State to the ORR, the Parliamentary Commissioner for Administration, a Minister of the Crown, any department of the government of the United Kingdom, the Scottish Parliament, the National Assembly for Wales, the Mayor of London, the Greater London Authority or any department or officer of any of them or of information which is otherwise disclosed for the purpose of facilitating the carrying out of his functions.

6. **Provision of Information to the ORR**

The Franchisee hereby authorises the Secretary of State to provide to the ORR, to the extent so requested by the ORR, such information as may be provided to the Secretary of State in relation to the Franchisee under the Franchise Agreement.

7. **Disclosure by Comptroller and Auditor General**

The parties recognise that the Comptroller and Auditor General may, in pursuance of his functions under the Exchequer and Audit Department Act 1921, the National Audit Act 1983 and the Government Resources and Accounts Act 2000, disclose information which he has obtained pursuant to those Acts and which a party to the Franchise Agreement would not be able to disclose otherwise than under this Schedule 17.

8. **Continuing Obligation**

This Schedule 17 (and any other provisions necessary to give effect hereto) shall survive the termination of the Franchise Agreement, irrespective of the reason for termination.

9. **Freedom of Information - General Provisions**

9.1 The Franchisee acknowledges and shall procure that its agents and subcontractors acknowledge that the Secretary of State is subject to the requirements of the Freedom of Information Act and the Environmental Information Regulations and accordingly the Franchisee shall and shall procure that its agents and subcontractors shall assist and co-operate with the Secretary of State to enable the Secretary of State to comply with his information disclosure obligations under the Freedom of Information Act and/or the Environmental Information Regulations.

9.2 The Franchisee shall and shall procure that its agents and subcontractors shall:

- (a) transfer to the Secretary of State any Requests for Information received by the Franchisee (or its agents or subcontractors) as soon as practicable and in any event within two working days of receiving any such Request for Information;
- (b) provide the Secretary of State with a copy of all information in its (or their) possession or power in the form that the Secretary of State requires within five working days of the Secretary of State's request (or within such other period as he may specify); and
- (c) provide all necessary assistance as reasonably requested by the Secretary of State to enable him to respond to any Request for Information within the time for compliance set out in section 10 of the Freedom of Information Act or regulation 5 of the Environmental Information Regulations as applicable.

9.3 The Secretary of State shall be responsible for determining in his absolute discretion, and notwithstanding any other provision in the Franchise Agreement or any other agreement, whether Confidential Information (as such term is defined in paragraph 1 of this Schedule 17) and/or any other information is exempt from disclosure in accordance with the provisions of the Freedom of Information Act and/or the Environmental Information Regulations.

9.4 The Franchisee shall not and shall procure that its agents and subcontractors shall not respond directly to any Request for Information unless expressly authorised to do so by the Secretary of State.

9.5 The Franchisee acknowledges and shall procure that its agents and subcontractors acknowledge that notwithstanding any provision to the contrary in the Franchise Agreement the Secretary of State may be obliged under the Freedom of Information Act and/or the Environmental Information Regulations and any related Code of Practice or other guidance to disclose information concerning the Franchisee and/or its agents and subcontractors:

- (a) in certain circumstances without consulting the Franchisee (or its agents and/or subcontractors where applicable); or
- (b) following consultation with the Franchisee and having taken its views into account (and the views of its agents and/or subcontractors where applicable),

provided always that where applicable the Secretary of State shall in accordance with the provisions of the Freedom of Information Act and/or the Environmental Information Regulations take reasonable steps where appropriate to give the Franchisee advance notice or failing that to draw the disclosure to the Franchisee's attention after any such disclosure.

10. **Redactions**

10.1 By no later than the date which is:

- (a) 4 weeks after the date of this Agreement (in respect of the Franchise Documents referred to in paragraph (a) of the definition thereof);
- (b) 30 days after the date on which the Certificate of Commencement is issued (in respect of the Franchise Documents referred to in paragraph (b) of the definition thereof); and
- (c) 30 days after the date of any document varying the terms of any Franchise Document,

the Franchisee will provide to the Secretary of State details of any provisions of the Franchise Documents or any such variation which the Franchisee believes are exempt from disclosure in accordance with the provisions of the Freedom of Information Act, the Environmental Information Regulations and/or Section 73(3) of the Act ("Redactions").

10.2 For each such Redaction the Franchisee should specify:

- (a) the exact text of the Franchise Document or variation that the Franchisee proposes is redacted;
- (b) whether the Franchisee proposes that the Redaction applies in relation to the publication of the relevant Franchise Document or variation on the website of the Department for Transport, on the register required to be maintained by the Secretary of State pursuant to Section 73 of the Act or on both such website and such register;

- (c) the reasons why the Franchisee believes that the proposed Redaction is justified in accordance with the Freedom of Information Act, the Environmental Information Regulations and/or Section 73(3) of the Act.

10.3 The Secretary of State shall consult with the Franchisee in relation to the Franchisee's proposed Redactions (provided that the same are provided to the Secretary of State in accordance with paragraph 10.1). If the Secretary of State and the Franchisee are unable to agree upon any proposed Redaction, the Secretary of State shall be entitled to determine, in his absolute discretion, whether or not to make such proposed Redaction. If the Franchisee does not provide its proposed Redactions to the Secretary of State in accordance with paragraph 10.1, the Franchisee shall be deemed to have consented to publication of the relevant document without any Redactions.

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SCHEDULE 18

Additional Reporting Periods

1. Additional 26 Reporting Periods

- 1.1 Subject to paragraph 1.2, the Franchise Agreement shall expire at 0159 on 19 September 2021.
- 1.2 If the Secretary of State gives notice to the Franchisee not less than three months before the date on which the Franchise Agreement is due to expire in accordance with Paragraph 1.1, the Franchise Agreement shall continue after such date on the terms set out in the Franchise Agreement for not less than one and not more than twenty-six (26) Reporting Periods, as the Secretary of State may stipulate.

Key Contracts

- 1.3 The Franchisee shall enter into any and all Key Contracts which are necessary for the Franchise Agreement to continue in accordance with Paragraph 1.2 of this Schedule 18.

SCHEDULE 19

Other Provisions

1. **Not Used**

2. **Rights Cumulative**

The rights of the Secretary of State under the Franchise Agreement are cumulative, may be exercised as often as he considers appropriate and are in addition to his rights under the general Law. The exercise of such rights shall not limit the Secretary of State's right to make payment adjustments, claim damages in respect of contraventions of the Franchise Agreement or pursue any available remedies under general Law.

3. **Disputes**

Disputes under the Franchise Agreement

3.1 Wherever the Franchise Agreement provides that the Secretary of State may reasonably determine any matter, the Franchisee may, unless the Franchise Agreement expressly provides otherwise, dispute whether a determination made by the Secretary of State is reasonable, but the Secretary of State's determination shall prevail unless and until it is agreed or found to have been unreasonable.

3.2 Where either party is entitled, pursuant to the terms of the Franchise Agreement, to refer a dispute arising out of or in connection with the Franchise Agreement for resolution or determination in accordance with the Dispute Resolution Rules, then such dispute shall, unless the parties otherwise agree and subject to any duty of the Secretary of State under Section 55 of the Act, be resolved or determined by arbitration pursuant to the Dispute Resolution Rules.

3.3 Where, in the absence of an express provision in the Franchise Agreement entitling it to do so, either party wishes to refer a dispute arising out of or in connection with the Franchise Agreement to arbitration pursuant to the Dispute Resolution Rules, the following process shall apply:

- (a) the party seeking to refer to arbitration shall serve a written notice upon the other party stating (i) the nature and circumstances of the dispute, (ii) the relief sought including, to the extent possible, an indication of any amount(s) claimed, and (iii) why it is considered that the dispute should be resolved by way of arbitration rather than litigation;
- (b) the other party shall respond within 20 working days of service of the notice confirming whether or not referral of the dispute to arbitration is agreed. In the absence of any response, the referral to arbitration shall be deemed not to have been agreed;
- (c) in the event that the parties agree to refer the dispute to arbitration then it shall be resolved or determined in accordance with the Dispute Resolution Rules;

- (d) in the event that the parties do not agree to refer to arbitration then it shall be resolved or determined in accordance with Clause 8 (Governing Law) of the Franchise Agreement; and
- (e) nothing in this paragraph 3.3 shall preclude either party from commencing, continuing or otherwise taking any step by way of litigation in pursuit of the resolution or determination of the dispute unless an agreement is reached to refer the dispute to arbitration.

3.4 The arbitrator in any dispute referred for resolution or determination under the Dispute Resolution Rules shall be a suitably qualified person chosen by agreement between the parties or, in default of agreement, chosen by the Disputes Secretary from a panel of persons agreed from time to time for such purposes between the Secretary of State and the Franchisee or, in default of agreement as to the arbitrator or as to such panel, selected on the application of any party by the President of the Law Society or the President of the Institute of Chartered Accountants in England and Wales from time to time (or such other person to whom they may delegate such selection).

Disputes under Other Agreements

3.5 The Franchisee shall notify the Secretary of State of any disputes to which it is a party under any Inter-Operator Scheme, Access Agreement, Property Lease or Rolling Stock Related Contract, or under any other agreement in circumstances where the relevant dispute could have an adverse effect on the Franchisee's ability to comply with its obligations under the Franchise Agreement or on the provision of the Franchise Services and which have been submitted for resolution either to the courts or to any other procedure for dispute resolution provided for under such agreements.

3.6 Such notification shall be made both:

- (a) at the time of such submission (and such notification shall include reasonable details of the nature of the dispute); and
- (b) at the time of the resolution of the dispute (whether or not subject to appeal) (and such notification shall include reasonable details of the result of the dispute, any associated award and whether it is subject to appeal).

3.7 The Franchisee shall provide such further details of any dispute referred to in paragraph 3.5 as the Secretary of State may reasonably request from time to time.

4. Notices

Notices

4.1

- (a) Any notice, notification or other communication under or in connection with the matters specified in Schedule 10.2 (Termination and Expiry) or any dispute under or in connection with the Franchise Agreement shall be in writing and shall be delivered by hand or recorded delivery or sent by pre-paid first class post to the relevant party at the address for service set out below, or to such other address in the United Kingdom as each party may specify by notice in writing to the other party:

Name: The Department for Transport
Address: 33 Horseferry Road, London SW1P 4DR
Facsimile: 020 7944 2177
E-mail: franchise.notices@dft.gsi.gov.uk
Attention: Director, Rail Commercial

Name: [•]
Address: [•]
Facsimile: [•]
E-mail: [•]
Attention: [•]

- (b) Any other notice, notification or other communication under or in connection with the Franchise Agreement shall be in writing and shall be delivered:
- (i) in accordance with paragraph 4.1(a);
 - (ii) by facsimile; or
 - (iii) by electronic data transfer,
- except that it shall be marked for the attention of the Contract Manager or the Franchise Manager.

Deemed Receipt

4.2 Any such notice or other communication shall be deemed to have been received by the party to whom it is addressed as follows:

- (a) if sent by hand or recorded delivery, when delivered;
- (b) if sent by pre-paid first class post, from and to any place within the United Kingdom, three business days after posting unless otherwise proven;
- (c) if sent by facsimile, upon sending, subject to confirmation of completed transmission to the intended recipient; and
- (d) if sent by electronic data transfer, upon sending, subject to receipt by the sender of a "delivered" confirmation (provided that the sender shall not be required to produce a "read" confirmation).

5. Assignment

The Franchisee shall not without the prior written consent of the Secretary of State assign, hold in trust for any other person, or grant a Security Interest in or

over, the Franchise Agreement or any part hereof or any benefit or interest or right herein or hereunder (other than any right of the Franchisee to receive monies under a Supplemental Agreement).

6. **Set-Off**

6.1 Save as otherwise expressly provided under the Franchise Agreement or required by law, all sums payable under the Franchise Agreement shall be paid in full and without any set-off or any deduction or withholding including on account of any counter-claim.

6.2 Notwithstanding paragraph 6.1 the Secretary of State shall be entitled to set-off against any amounts payable by him under the Franchise Agreement:

- (a) any amount or liability payable or due to him under or in relation to the Franchise Agreement (whether such amount or liability is present, contingent and/or future, liquidated or unliquidated); and
- (b) any monetary penalty payable under the Act.

7. **Miscellaneous Provisions**

Waivers

7.1

- (a) Either party may at any time waive any obligation of the other party under the Franchise Agreement and the obligations of the parties hereunder shall be construed accordingly.
- (b) No waiver by either party of any default by the other party in the performance of such party's obligations under the Franchise Agreement shall operate or be construed as a waiver of any other or further such default, whether of a like or different character. A failure to exercise or delay in exercising a right or remedy under the Franchise Agreement shall not constitute a waiver of any right or remedy or a waiver of any other rights or remedies and no single or partial exercise of any right or remedy under the Franchise Agreement shall prevent any further exercise of such right or remedy or the exercise of any other right or remedy.

Time Limits

7.2 Where in the Franchise Agreement any obligation of a party is required to be performed within a specified time limit (including an obligation to use all reasonable endeavours or best endeavours to secure a particular result within such time limit) that obligation shall be deemed to continue after the expiry of such time limit if such party fails to comply with that obligation (or secure such result, as appropriate) within such time limit.

Partial Invalidity

7.3 If any provision in the Franchise Agreement is held to be void, illegal, invalid or unenforceable, in whole or in part, under any enactment or rule of Law, such provision or part shall to that extent be deemed not to form part of the Franchise Agreement but the legality, validity and enforceability of the remainder of the Franchise Agreement shall not be affected.

Further Assurance

- 7.4 Each party agrees to execute and deliver all such further instruments and do and perform all such further acts and things as shall be necessary or expedient for the carrying out of the provisions of the Franchise Agreement.

Rights of Third Parties

7.5

- (a) A person who is not a party to the Franchise Agreement shall have no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Franchise Agreement except to the extent set out in this paragraph 7.5.
- (b) Any Successor Operator or potential Successor Operator nominated by the Secretary of State and notified to the Franchisee for the purposes of this paragraph 7.5 may enforce and rely on the provisions of Schedule 15 (Obligations Associated with Termination) to the same extent as if it were a party but subject to paragraphs 7.5(c) and (d).
- (c) The Franchise Agreement may be terminated, and any term may be amended or waived, in each case in accordance with the terms of the Franchise Agreement, without the consent of any person nominated under paragraph 7.5(b).
- (d) The person nominated under paragraph 7.5(b) shall only be entitled to enforce and rely on Schedule 15 (Obligations Associated with Termination) to the extent determined by the Secretary of State (whether at the time of nomination or at any other time) and, to the extent that any such person is entitled to enforce and rely on Schedule 15 (Obligations Associated with Termination), any legal proceedings in relation thereto must be commenced within one year of the expiry of the Franchise Period and any such person shall not be entitled to enforce or rely on Schedule 15 (Obligations Associated with Termination) to the extent that it has consented to any particular act or omission of the Franchisee which may constitute a contravention of Schedule 15 (Obligations Associated with Termination) or has been afforded a reasonable opportunity to indicate to the Franchisee that it is not so consenting and has not so indicated (the extent of such reasonable opportunity to be determined by the Secretary of State unless otherwise agreed).

Secretary of State's Consent or Approval

- 7.6 Where any provision of the Franchise Agreement provides for any matter to be subject to the consent or approval of the Secretary of State, then (subject only to the express terms of that provision as to the basis on which that consent or approval may be given or withheld) the Secretary of State shall be entitled to give that consent or approval subject to any condition or conditions as he considers appropriate, which may include the adjustment of any of the terms of the Franchise Agreement.

8. Enforcement Costs

The Franchisee shall compensate the Secretary of State for all reasonable costs incurred by the Secretary of State as a result of the Franchisee failing to perform

its obligations under the Franchise Agreement in accordance with their terms in the exercise of the Secretary of State's rights under Schedule 10 (Remedies, Termination and Expiry).

9. **Currency**

If at any time the Bank of England or other competent monetary authority of the United Kingdom or competent organ of HM Government of the United Kingdom recognises the Euro as lawful currency and tender of the United Kingdom, the Secretary of State may, by reasonable notice to the Franchisee and the Franchisee may by reasonable notice to the Secretary of State, elect that all payment obligations arising under the Franchise Agreement shall be denominated and/or constituted in Euros on the basis that all outstanding amounts and obligations previously denominated and/or constituted in pounds sterling shall be translated into Euros at the exchange rate applied or recognised by the United Kingdom authority or organ which granted recognition of the Euro for the purpose of such translation on the date on which it granted recognition of the Euro.

10. **Arm's Length Dealings**

The Franchisee shall ensure that every contract or other arrangement or transaction to which it may become party in connection with the Franchise Agreement with any person is on bona fide arm's length terms.

11. **Non discrimination**

11.1 The Franchisee will not discriminate in seeking offers in relation to, or in awarding, a contract for the purchase or hire of goods on the grounds:

- (a) of nationality, against a person who is a national of and established in a relevant State; or
- (b) that the goods to be supplied under the contract originate in another relevant State.

11.2 For the purpose of this Clause, "relevant State" has the meaning given in the Public Contracts Regulations 2006.