

Dated 17 February 2014

- (1) The Secretary of State for Transport
- (2) First Capital Connect Limited

FRANCHISE AGREEMENT (INTERIM) – THAMESLINK/GN

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THIS AGREEMENT is dated 17 February 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) **FIRST CAPITAL CONNECT LIMITED** (Company Number 05281077), whose registered office is at 50 Eastbourne Terrace, Paddington, London W2 6LG (the "**Franchisee**").

WHEREAS

- (A) The Secretary of State and First Capital Connect Limited are parties to the Previous Franchise Agreement pursuant to which First Capital Connect Limited as the Franchisee provided the Previous Passenger Services. The Previous Franchise Agreement expires at 01:59 on 1 April 2014 and pending the award of a new franchise agreement the parties have agreed that the Franchise Services will be provided by the Franchisee pursuant to this Franchise Agreement during the period from the Start Date until the Expiry Date.
- (B) The Secretary of State has issued direction under Section 26(1) of the Act that the person who is appointed as a franchisee to provide the Franchise Services under a franchise agreement need not be selected from among those who submit tenders in response to an invitation to tender.
- (C) The parties have agreed terms on which the Franchisee will provide the Franchise Services and wish to record their agreement.

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 this 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 this 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) **CFD** Commuter Fares Document;

(ii)	DL	Depot Lease;
(iii)	FD	Funding Deed;
(iv)	FM	Financial Model;
(v)	OM	Operational Model;
(vi)	PC	Passenger's Charter;
(vii)	PFD	Protected Fares Document;
(viii)	POA	Power of Attorney;
(ix)	RL	Replacement Lease;
(x)	ROA	Record of Assumptions;
(xi)	SC PL	Framework Stakeholder and Communications Plan;
(xii)	SL	Station Lease;
(xiii)	SLC	Service Level Commitment;
(xiv)	SQMS	Service Quality Management System;
(xv)	SQS	Service Quality Standards;
(xvi)	TP	Train Plan;
(xvii)	TRSP PL	TRSP Plan;

- (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 this 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 this 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.

2. DEFINITIONS

2.1 In this 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);
- "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:
- (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:
 - (i) amounts payable to the Secretary of State and Network Rail;
 - (ii) taxation;
 - (iii) shareholder distributions including dividends;
 - (iv) interest;
 - (v) capital expenditure (net of grants received); and

(vi) lease payments in relation to on-balance sheet leased assets,

(vii) but excluding any of the following expenses that are payable in that period:

(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,

(iii) 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 (iv) inclusive, provisions and deferred income balances; but

(B) exclude persons owed amounts by the Franchisee in respect of season ticket liabilities, 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 sub leased by the Franchisee under the Amended and Restated Electrostar Lot 10 A Sub Lease with painted numbers:
- 377.208;
- 377.209;
- 377.210;
- 377.213;
- 377.214; and
- 377.215;
- “Additional Passenger Services”** means such of the Passenger Services as the Franchisee is neither required to secure in the Timetable for purposes of complying with the Service Level Commitment nor required to operate pursuant to paragraph 6.1(a) of Schedule 1.2 (Operating Obligations);
- “Additional Timetable Development Rights”** means any Timetable Development Rights that the Franchisee does not require for purposes of securing a Timetable that complies with the Service Level Commitment and to operate the services contemplated thereby;
- “Administration Fee”** has the meaning given to it in paragraph 4.3 of Schedule 10.3 (Events of Default and Termination Event);
- “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 19 (Other Provisions)); 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;

"Amended and Restated Electrostar Lot 10 A Sub Lease"

has the meaning given to it in paragraph 3.1(b) of Schedule 6.2 (Thameslink/GN Franchise Specific Provisions);

"Ancillary Service"

means any service specified in paragraph 5 of Schedule 1.6 (Franchise Services);

"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 Business Plan"

means the plan to be provided by the Franchisee to the Secretary of State in accordance with paragraph 2.3 of Schedule 13 (Information and Industry Initiatives);

"Annual Financial Statements"

means the final draft financial statements 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 3.7 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 “RRPI” 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 Management Accounts” means the management accounts of the Franchisee which:

- (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 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;

“Assisted Passenger Reservation System” means the system known as the Assisted Passenger Reservation System as described in the Code of Practice as published in September 2010 (version 2 – valid from 1 September 2010);

“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, Capacity Benchmark and Service Delivery Benchmark
- “Benchmark Table”** means, in relation to:
- (a) any Cancellations Benchmark, the Cancellations Benchmark Table; and
 - (b) any Capacity Benchmark, the Capacity Benchmark Table;
 - (c) any TOC Minute Delay Benchmark, the TOC Minute Delay Benchmark Table;
- “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 Sum) 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 Annual 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;
- “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 trade marks;
- “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;
"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 2.7 of Schedule 13 (Information and Industry Initiatives));
"Business Plan"	means the Initial Business Plan or any Annual Business Plan, as the context requires, to be delivered in accordance with paragraphs 2.1 and 2.3 of Schedule 13 (Information and Industry Initiatives);
"Cancellation"	means a Passenger Service: <ul style="list-style-type: none"> (a) which is included in the Plan of the Day and which is cancelled and attributed to the Franchisee pursuant to its Track Access Agreement; (b) which is included in the Plan of the Day and which operates less than 50 per cent. of its scheduled mileage for reasons attributed to the Franchisee pursuant to its Track Access Agreement; or (c) which is omitted from the Plan of the Day, or included in it in a modified form that does not enable the Franchisee to operate more than 50 per cent. of such Passenger Service's scheduled mileage, without the Franchisee discharging its obligations under Schedule 1.2 (Operating Obligations) in relation thereto;
"Cancellations Benchmark"	means any of the performance levels in respect of Cancellations and Partial Cancellations set out in the Cancellations Benchmark Table;
"Cancellations Benchmark Table"	means the table set out in Appendix 1 (Cancellations Benchmark Table) of Schedule 7.1 (Performance Benchmarks);
"Capacity Benchmark"	means any of the performance levels in respect of the capacity operated in delivering the

Passenger Services set out in the Capacity Benchmark Table;

"Capacity Benchmark Table" means the table set out in Appendix 2 (Capacity Benchmark Table) of Schedule 7.1 (Performance Benchmarks);

"Capital Expenditure" has the meaning given to it in paragraph 2.4 of Schedule 19 (Other Provisions);

"Cash Commuter Fare" means any unrestricted single Fare and unrestricted Return Fare between any London Station and any other London Station where the Passenger Services call;

"Change" means if and whenever any of the following occurs:

(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:

(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,

in each case, only to the extent of the difference from the price quoted in Part 3 (Price in respect of the Priced Options) to Schedule 3 (Priced Options) caused by the difference in terms and/or the late timing of the 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 Service Level Commitment previously in force pursuant to the issue of an amended or new Service Level Commitment in accordance with paragraph 4.12 of Schedule 1.1 (Service Development);
- (f) a change to the railway passenger services required to be operated by another franchisee or franchise operator by direction of the Secretary of State which may reasonably be expected to have a material effect on the cost of and revenues derived from providing the Passenger Services that are required to be operated pursuant to the Service Level Commitment;
- (g) the Franchisee is required to take any action pursuant to paragraph 12.2(a) and/or paragraph 12.2(b) of Schedule 1.1 (Service Development);
- (h) the issue of any SLC (TDR) Amendments pursuant to paragraph 8.7 of Schedule 1.1 (Service Development) or, subject to paragraph 8.10(b) of Schedule 1.1, any SLC (TDR) Amendments ceasing to have effect in accordance with paragraph 8.9 of Schedule 1.1;
- (i) a change to the Secretary of State's standards in respect of alternative transport arrangements, as referred to in paragraph 8.2(b) of Schedule 1.2, from the Secretary of State's standards which are current as at the date of signature of the Franchise Agreement;
- (j) 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;
- (k) 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;

- (l) 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;
- (m) 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);
- (n) 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;
- (o) the Franchisee not being able to continue to lease Class 317 or Class 319 rolling stock in the circumstances described in paragraphs 5.1 and 5.2 of Schedule 18 (Additional Reporting Periods);
- (p) a Variation to the terms of the Franchise Agreement pursuant to paragraph 1 of Schedule 19 (Other Provisions); or
- (q) 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 19 (Other Provisions);

“Change of Control”

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

“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;

“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;
“Committed Obligations”	means any of the Franchisee’s obligations listed in Part 1 (Committed Obligations and Related Provisions) to Schedule 6.1 (Committed Obligations and Related Provisions);
“Committed Obligation Payment Adjustment”	means a payment adjustment made to Franchise Payments pursuant to Part 3 (Late/Non Completion 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: <ul style="list-style-type: none"> (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); and
- (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 the document in the agreed terms marked **CFD** 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;
“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 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;

“Control Point Accommodation”

has the meaning given to it in paragraph 12 of the Appendix (List of Key Contracts) to Schedule 14.3 (Key Contracts);

“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 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;

“Cross London Trains Limited”	means Cross London Trains Limited (company number 07813033);
“Current Franchisee Accounting Year”	has the meaning given to it in paragraph 3.4(a) of Schedule 8.1 (Franchise Payments);
“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;
“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 Lease”	means: <ul style="list-style-type: none"> (a) any lease of a depot to which the Franchisee is a party as at the Start Date; or (b) any other lease of a depot in relation to which the Franchisee becomes the Facility Owner at any time during the Franchise Period;
“Depot SPC”	means Siemens PLC;
“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 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: <ul style="list-style-type: none"> (a) each of the following discount fare schemes: <ul style="list-style-type: none"> (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, <p>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;</p>
“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 20(4), of the EA;
“Electrostar Lot 10A Units”	means 12 dual voltage class 377 four car units ordered by the Southern Franchisee pursuant to a Manufacture and Supply Agreement dated 8 th March 2002 as amended by the Electrostar Lease Amendment Agreement No3;
“Electrostar Lot 10B Units”	means 11 dual voltage Class 377 four car units ordered by the Southern Franchisee pursuant to a Manufacture and Supply Agreement dated 5 March 2008;
“Emergency Event”	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;
“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);
“Escrow Documents”	means those documents and other items referred to in paragraphs 1.1 and 1.2 of Schedule 9.2 (Identity of the Financial Model etc.);
“Estimated Profit Stream”	<p>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:</p> <p>(a) take into account all relevant circumstances and have due regard to the Financial Model, the profit and loss</p>

forecast in the Initial Business Plan and the most recent Annual 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)(iii) of the definition of "Relevant Profit" in 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);

“ETCS”	means the signalling control and train protection system known as the European Train Control System;
“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 as the Secretary of State may specify from time to time;
“Events of Default”	means any of the events set out in paragraph 2 of Schedule 10.3 (Events of Default and Termination Event);
“Expiry Date”	means the later of: <ul style="list-style-type: none"> (a) 01:59 on 14 September 2014; or (b) any other date to which the Franchise Agreement is extended in accordance with paragraph 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 Event);
“Facility Owner”	has the meaning given to the term facility owner in Section 17(6) of the Act;
“Fare”	means: <ul style="list-style-type: none"> (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;
"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 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 subsequently revised in accordance with Schedule 9.2 (Identity of the Financial Model etc.);
"Financial Services Authority"	means the independent non-governmental body given statutory powers by the Financial Services and Markets Act 2000;

"First Profit Share Threshold"	has the meaning given to it in paragraph 3 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 3.4 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 3.4 of Schedule 13 (Information and Industry Initiatives);
"Forecast Passenger Demand"	<p>means the forecast by the Franchisee pursuant to paragraph 4.1(a) of Schedule 1.1 (Service Development) and paragraph 1.4 of Schedule 1.5 (Information about Passengers) in respect of:</p> <ul style="list-style-type: none"> (a) the number of passengers travelling in each class of accommodation: <ul style="list-style-type: none"> (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, <p>for the period in respect of which the next Timetable is to apply and for five years following the date of the forecast, even if such five year period extends beyond the Franchise Term;</p>
"Franchise"	means the rights tendered by the Secretary of State to operate railway passenger services over the routes prescribed in paragraph 2.2 of Schedule 1.6 (Franchise Services);
"Franchise Agreement"	means this agreement as amended from time to time;

“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 the:

- (a) Franchise Agreement;
- (b) collateral agreement regulating the rights and obligations of the parties in the event that a legal challenge is successfully raised as a result of the entering into of the Franchise Agreement;
- (c) Service Level Commitment; and
- (d) any other agreements signed as part of the award of the Franchise as notified by the Secretary of State to the Franchisee as being required for publication;

“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 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 Agreement pursuant to 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 1 April and ending on 31 March, 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;

"Further Electrostar Units" means the three four car class 377/2 units sub leased by the Franchisee under the Further Electrostar Units Sub Lease with painted numbers:

377.207;

377.211; and

377.212;

"Further Electrostar Units Sub Lease" means a sub lease dated 2 December 2011 between the Franchisee and the Southern Franchisee for the Further Electrostar Units;

"Freedom of Information Act" means the Freedom of Information Act 2000;

"Funding Deed" means the deed to be entered into by the Secretary of State, the Franchisee and the Parent as contemplated in paragraph 3.4 of Schedule 12 (Financial Obligations and Covenants) in substantially the same terms as the document in the agreed terms marked "**FD**";

"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 Services 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;

"Handover Package" means a package containing the information and objects specified in the Appendix (Form of Handover Package) to Schedule 15.3 (Handover Package) and such other information and objects as the Secretary of State may reasonably specify from time to time;

“Hot Standby”	means any rolling stock vehicle specified in the Train Plan which: <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;
“Improvement Plan”	has the meaning given to it in paragraph 4.5 of Schedule 7.1 (Performance Benchmarks);
“Improvement Plan Performance Level”	means, in relation to a Benchmark for any Reporting Period, the number set out in column 2 of the Benchmark Table relating to that Benchmark and in the row of that table for that Reporting Period;
“Incremental Output Statement Charge”	means the charge to which that description is commonly given, first introduced into Relevant Agreements in April 2001;
“Independent Station”	has the meaning given to it in paragraph 2.6 of Schedule 8.4 (Track Access Adjustments and Station Charge Adjustments);
“Independent Station Access Conditions”	has the meaning given to it in the Access Agreement to which it relates;
“Individual Station Charge Adjustment”	has the meaning given to it in paragraph 2 of 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 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;

“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:

- (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;
- "IOP"** means ITSO on Prestige;
- "IOP Acceptance Date"** means the date that IOP is accepted under the provisions of the IOP Agreement;
- "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 the context may require) both:
- (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 (DfT); 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 and 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:

- (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 Bridge Blockade”

means the proposed "blockade" of London Bridge Station planned for the period between

December 2014 and January 2015 the consequences of which are anticipated to be:

- (a) the diversion of certain of the Passenger Services so that they do not call at London Bridge Station until completion of relevant infrastructure works, in both cases to facilitate the redevelopment of London Bridge Station as part of the Thameslink Programme; and
- (b) the transfer of the operation of all services currently operated jointly with LSER to sole operation by the Franchisee (in the event that the Franchise Term is extended under Schedule 18) with the exception of six trains per day Monday to Friday;

“London Bridge Works”

means the infrastructure works being carried out at and around London Bridge station during the Franchise Term pursuant to the Thameslink Programme;

“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;

“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 London Bridge, London King’s Cross and St Pancras International (Low Level) 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 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: <ul style="list-style-type: none"> (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 Limited or any government authority;
“Marks”	means such trade marks 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”	means the Master Definitions and Common Terms Agreement between (1) the Secretary of State (2) Cross London Trains Limited (the “Owner”) (3) Siemens PLC and (4) the 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 ¹ allocated by the Franchisee for the purpose of facilitating Minor Works at Stations to improve accessibility of the Stations to persons with disabilities for the duration of the Franchise Term (excluding any period of

¹ **Where text has been omitted from the document, this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.**

extension of the Franchise Term pursuant to Schedule 18 (Additional Reporting Periods);

"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, Network Rail 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, excluding:

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

Performance Bond;
and

(B) 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,

but so that the opening cash
balance shall include cash
drawn down, received and not
repaid under any loan or
funding arrangements
(including any Funding Deed)
entered into with an Affiliate;
and

(C) the amount of the
opening season
ticket liabilities
which relate to
Passenger Services
yet to be delivered;
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 Passenger Survey”	means a passenger satisfaction survey in respect of the Franchise Services to be carried out by Passenger Focus as described in paragraph 2 of Schedule 1.5 (National Passenger Surveys);
“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 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: <ul style="list-style-type: none"> (a) the network or any relevant facility: <ul style="list-style-type: none"> (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);
“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 "RRPI" 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;

"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);

"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 "RRPI" 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; and (c) 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;
“Other Relevant Activities”	means any preparation for, or actual implementation of, any change or relocation of activities, winding down or cessation of activities or transfer of activities, employees or contractors to providers in connection with the TRSP Suite of Documents in connection with the Hornsey and/or Bedford Depots and/or the service delivery centre staff at Croydon and West Hampstead and/or the project, operational and technical staff employed in connection with the TRSP and/or Thameslink Programme;
“Parent”	means: <ul style="list-style-type: none"> (a) in the context of Schedule 10.3 (Events of Default and Termination Event), paragraph 4 of Schedule 11 (Agreement Management Provisions) and paragraph 3.4 of Schedule 12 (Financial Obligations and Covenants), either FirstGroup plc (Company Number SC157176) or First Rail Holdings Limited (Company Number 05154485) (as the case may be); and (b) in the context of Schedule 13 (Information and Industry Initiatives) both of those persons;
“Partial Cancellation”	means a Passenger Service which is included in the 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; or
- (c) arrives at its final destination scheduled in the Timetable 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;

“Passenger Carrying Capacity” means, in relation to a Passenger Service, 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 13.5 of Schedule 1.1 (Service Development)) from which the Passenger Service is formed except that when used in Schedule 7.1 (Performance Benchmarks), it shall have the meaning given to it in paragraph 2.15(b);

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

“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 the Franchisee’s service commitments to its passengers in the agreed terms marked **PC**, as 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);

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

“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;

"PDPO Obligations"

has the meaning given to it in paragraph 9.1 of Schedule 6.2 (Thameslink/GN Franchise Specific Provisions);

"Peak"

means the Morning Peak and the Evening Peak;

"Peak Passenger Service"

means any Passenger Service operated in the Peak;

"Pension Trust"

means the pension trust governing the Railways Pension Scheme;

“Pensions Committee”	has the meaning given to it in the Railways Pension Scheme;
“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);
“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;
“Placed in Escrow”	means: <ul style="list-style-type: none"> (a) in respect of the Financial Model, delivery of the Financial Model: <ul style="list-style-type: none"> (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 and the date assumed to be the Start 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: <ul style="list-style-type: none"> (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 and the date assumed to be the Start 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, 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**;

“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 the franchise agreement dated 12 December 2005 and made between the Secretary of State and the Franchisee under which services equivalent to the Franchise Services (or a material proportion thereof) were provided by the Franchisee on or about the day prior to the Start Date;

“Previous Passenger Services”

means:

(a) any railway passenger services operated under a Previous Franchise Agreement that is the same or substantially the same as any Passenger Service in terms of departure and arrival times and stopping patterns; and

- (b) if no such railway passenger service is found under paragraph (a) such other railway passenger services operated under a Previous Franchise Agreement which is similar in terms of departure and arrival times and stopping patterns to the Passenger Services as the Secretary of State may reasonably determine;

“Previous Performance Level”

means the level of performance actually achieved in relation to the Previous Passenger Services;

“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;

“Priced Option”

means any of the options set out in Part 2 (List of Priced Options) to Schedule 3 (Priced Options);

“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;

“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, Managed Station Area Lease, 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;

“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 the document in the agreed terms marked **PFD**, 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 19 (Other Provisions);

“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) result 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 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 per cent; 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;

“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 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”	<p>has the meaning given to it in paragraph 6.1(a) of Schedule 5.7 (Changes to Fares and Fares Regulation);</p>
“Reference Flow”	<p>has the meaning given to it in paragraph 6.1(a) of Schedule 5.7 (Changes to Fares and Fares Regulation);</p>
“Reference Revenue”	<p>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);</p>
“Regulated Child Price”	<p>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);</p>
“Regulated Price”	<p>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);</p>
“Regulated Value”	<p>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);</p>

“Relevant Agreement”

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:

- (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,

then the Replacement Agreement shall be deemed to be a Relevant Agreement;

“Relevant Class 319 Units”

means three Class 319 electric multiple units leased by the Franchisee with painted numbers 319.361, 319.362 and 319.363;

“Relevant IR Matters”

means actual or threatened strike or other industrial action (within the meaning given to that term in Schedule 10.4 (*Force Majeure*) of the Terms) in connection with or in contemplation of the Other Relevant Activities whether during or after the end of the Franchise Term;

“Relevant Profit”

has the meaning given to it in paragraph 3 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 Term”

has the meaning given to it in paragraph 1.2 of Schedule 10.1 (Remedial Plans and Remedial Agreements);

“Relevant TRSP Past Liabilities”

means the liability as may be assumed under a relevant Replacement Lease (as such term is defined in the MDCTA) by the Successor Operator or as may be transferred to the Successor Operator under the Transfer Scheme or Deed of Accession (as such term is defined in the MDCTA)(as the case may be):

- (a) in respect of the grant of a Permitted Delay or a Permitted Depot Delay (as such terms are defined in the MDCTA) and/or recognition of any such Permitted Delay or Permitted Depot Delay (including any liability to pay any applicable costs thereto) to the TMM in accordance with Schedule 13 of the MSA or paragraph 4 of Schedule 12.1 to either or both of the DAfLs (as the case may be); and/or
- (b) to pay liquidated damages to the Owner 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 Transferee and/or 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 under paragraph 7.2(a) of Schedule 2.1 of the Umbrella Agreement;

“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 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:

- (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:

(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;

“Request for Proposal”

means the request for proposal dated 14 June 2013 issued by the Secretary of State to the Franchisee and which sets out the Secretary of State’s specification for the Franchise (as may be supplemented or updated by the Secretary of State);

“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;

“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 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 which the Franchisee has permission to operate the Passenger Services over 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;
“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:

- (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 3 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 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;
"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 Level Commitment"	means the service level commitment more particularly described in paragraph 1 of Schedule 1.1 (Service Development) as it may subsequently be amended or replaced in accordance with Schedule 1.1 (Service Development);
"Service Quality Audit Programme"	means the programme of auditing of the Service Quality Management System that has the characteristics set out in paragraph 3.1 of Schedule 7.2 (Service Quality Management);
"Service Quality Management System"	means the Franchisee's system that: <ul style="list-style-type: none"> (a) has, as a minimum, the characteristics set out in paragraph 2.1 of Schedule 7.2 (Service Quality Management) for ensuring and measuring the provision by it of a level of service quality across the Franchise that is consistent with the level specified in the Service Quality Standards; and (b) is as set out in the document in the agreed terms marked "SQMS";
"Service Quality Plan"	means the Franchisee's plan for ensuring that its future performance is at all times equal to or better than the benchmark set out in the Service Quality Management System in respect of which the requirement to submit such a plan under paragraph 4.1(e) of Schedule 7.2 (Service Quality Management) arose;
"Service Quality Reporting Period"	means any period of six consecutive Reporting Periods during the Franchise Term, the first such Service Quality Reporting Period commencing on the Start Date;
"Service Quality Standard"	means either of:

- (a) the Train Presentation Specification Standard; or
- (b) the Station Environment Specification Standard,

as set out in the document in the agreed terms marked "**SQS**";

"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;

“Siemens PLC”

Siemens PLC (company number 00727817);

“Significant Alterations”

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:

(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;

“SLC (TDR) Amendment”

has the meaning given in paragraph 8.7 of Schedule 1.1 (Service Development);

“SLTA”

means the consultative group consisting of the Franchisee, Siemens PLC, the Department for Transport and Network Rail with the purpose of providing assurance that all relevant designs are sufficiently aligned to enable the Thameslink Programme outputs to be delivered;

“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;

“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;

“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;

“Stakeholder”

means the Rail Passenger’s Council and any relevant Local Authority;

“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 01:59 on 1 April 2014;
- "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 2013 (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 Environment Specification Standard"** means the Service Quality Standard in respect of the environment of the Stations as at the date of the Franchise Agreement, or as amended by the Secretary of State and notified to the Franchisee from time to time in accordance with paragraph 2.8 of Schedule 7.2 (Service Quality Management);
- "Station Lease"** means:
- (a) any lease of a station that the Franchisee is a party to as at the Start Date; or
 - (b) a lease of any other station to which the Franchisee becomes the Facility Owner at any time during the Franchise Period;
- "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;
- "Strategy"** means any policy statement of the Secretary of State relating to his duties, functions and powers in respect of railways that he publishes and calls a "Strategy";
- "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);

“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);

“Systems Integrator”

means Network Rail in its role of managing Thameslink Programme systems integration on behalf of the Secretary of State;

"Target Passenger Demand"	<p>means:</p> <ul style="list-style-type: none"> (a) the greater of Actual Passenger Demand or Forecast Passenger Demand; or (b) as directed by the Secretary of State, either: <ul style="list-style-type: none"> (i) the lower of such levels of passenger demand; or (ii) any intermediate level of passenger demand;
"Taxation"	<p>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;</p>
"Technical Support Contract"	<p>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;</p>
"Tendering/Reletting Process"	<p>means either of the processes described in paragraph 1.1 and 1.2 of Schedule 15.1 (Reletting Provisions);</p>
"Termination Events"	<p>has the meaning given to it in paragraph 3 of Schedule 10.3 (Events of Default and Termination Event);</p>
"Termination Notice"	<p>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);</p>
"Thameslink Accommodation"	<p>has the meaning given to it in the Appendix to Schedule 14.4 (Designation of Franchise Assets);</p>
"Thameslink Programme"	<p>means the scheme promoted by Network Rail formerly known as 'Thameslink 2000', as described in its 2005 Transport and Works Act 1992 application, to enhance the network and relevant stations to allow the operation of 12-car trains and up to 24 trains per hour between Midland Mainline/Great Northern and London Bridge/Elephant & Castle, or such other capacity scheme derived from that specification as is agreed by the Secretary of State, Network Rail and all relevant stakeholders;</p>

"Thameslink Trading Agreements"	means any of the rolling stock sub-leases and other trading agreements referred to in paragraph 3 of Schedule 6.2 (Thameslink/GN Specific Provisions);
"Threshold Amount"	Where text has been omitted from the document, this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.
"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;
"Timetable"	<p>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:</p> <ul style="list-style-type: none"> (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"	<p>means all or any of the rights of the Franchisee under any Track Access Agreement to:</p> <ul style="list-style-type: none"> (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;
"TMM"	means Siemens PLC;
"TOC Minute Delay Benchmark Table"	means the table set out in Appendix 3 (TOC Minute Delay Benchmark Table) to Schedule 7.1 (Performance Benchmarks);
"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;
"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 13 of Schedule 1.1 (Service Development) 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 2.15(a) of Schedule 7.1 (Performance Benchmarks);

“Train Presentation Specification Standard” means the Service Quality Standard in respect of the condition of rolling stock vehicles when presented for railway passenger service as at the date of the Franchise Agreement, or as amended by the Secretary of State and notified to the Franchisee from time to time in accordance with paragraph 2.8 of Schedule 7.2 (Service Quality Management);

“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 (Provisions Applying on and after Termination), 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;
“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 Obligations”	has the meaning given to it in paragraph 8.2 of Schedule 6.2 (Thameslink/GN Franchise Specific Provisions);
“TRSP Plan”	means the TRSP Plan in the agreed terms marked TRSP PL provided by the Franchisee under the Previous Franchise Agreement and as referred to in paragraph 7.2 of Schedule 6.2 (Thameslink/GN Franchise Specific Provisions);
“TRSP Deed of Amendment”	means the TRSP Deed of Amendment between (1) the Secretary of State and (2) the Franchisee dated 27 June 2013;
“TRSP Suite of Documents”	means: <ul style="list-style-type: none"> (a) the MDCTA;

- (b) the Manufacture and Supply Agreement between (1) TMM (2) the Owner and (3) the Franchisee (the "**MSA**");
- (c) Train Services Agreement between (1) TMM (2) the Franchisee and (3) the Owner (the "**TSA**");
- (d) the rolling stock Lease between (1) the Owner and (2) the Franchisee (the "**Lease**");
- (e) the Depot Agreement for Lease (as defined in the MDCTA) in respect of the 'Three Bridges Depot' and 'Hornsey Depot' between (1) Network Rail (2) Siemens PLC (3) the Franchisee (4) TMM and (5) the Secretary of State (the "**DAFLs**");
- (f) the Payment Deeds in respect of the 'Three Bridges Depot' and 'Hornsey Depot' between (1) the Secretary of State (2) Siemens and (3) the Franchisee (the "**Payment Deeds**");
- (g) the Deeds of Undertakings in respect of the 'Three Bridges Depot' and 'Hornsey Depot' between (1) the Secretary of State (2) Siemens and (3) the Franchisee (the "**Deeds of Undertakings**");
- (h) the Connection Agreements in respect of the 'Three Bridges Depot' and 'Hornsey Depot' between (1) Network Rail (2) Depot SPC and (3) the Franchisee (the "**Connection Agreements**");
- (i) the Connection Agreement in respect of Tilgate Sidings and Three Bridges Depot between (1) Network Rail (2) Siemens (3) the Franchisee and (4) Southern Track Renewal Company Limited (the "**Tilgate Sidings Connection Agreement**");
- (j) the Umbrella Agreement between (1) the Secretary of State (2) the Owner (3) Siemens PLC and (4) the Franchisee (the "**Umbrella Agreement**");
- (k) the Conditions Precedent Agreement as such term is defined in the MDCTA;

- (l) the Eversholt NDA (the "**Operator**") as such term is defined in the MDCTA;
- (m) the EU Collateral Agreement (the "**EU Collateral Agreement**") as such term is defined in the MDCTA;
- (n) the Technical Support and Spares Supply Agreement ("**TSSSA**") 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 Depot Deeds of Undertaking in respect of 'Three Bridges Depot' and 'Hornsey Depot' as defined in the MDCTA;
- (w) the Hornsey Deed of Surrender (Existing Depot) between (1) Network Rail, and (2) the Franchisee;
- (x) the Licences to Underlet the 'Three Bridges Depot' and 'Hornsey Depot' between (1) Network Rail (2) Siemens PLC and (3) the Franchisee (the "**Licences**");
- (y) the Underleases (incorporating the Depot Access Conditions and the Annexes) of the 'Three Bridges Depot' and 'Hornsey Depot' between (1) Siemens PLC and (2) the Franchisee (the "**Underleases**");
- (z) the 'Three Bridges' and 'Hornsey' side letters from Network Rail addressed to the 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 (the "**Side Letters**");

- (aa) the Escrow Agreement relating to the Thameslink Project between the parties (including the Franchisee) whose names and addresses are set out in Schedule 1 to that agreement;
- (bb) the Deed of Indemnity in relation to the 'FX Hedges' by TMM for 'Foreign Currency Costs' in respect of the MSA for the project;
- (cc) 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; and
- (dd) together with any agreement which may be required to be entered into by Franchisee pursuant to any of the other documents above;

"TRSP Train Crew Activities" means, in relation to the train crew that would be required for the purposes of the "Thameslink Rolling Stock Project" ("**TRSP**") and which are in addition to the 15 drivers and three trainers provided for in the financial model (as such term is defined in the Previous Franchise Agreement) and referred to as the 'First Tranche', the following activities:

- (a) the recruitment and training of train crew trainers and train crew;
- (b) the provision of train crew, including provision for testing in the UK and Germany;
- (c) route and traction training;
- (d) resourcing the provision of existing services during training and related facilities; and
- (e) preparation for resourcing the enhanced train fleet resulting from the TRSP;

"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;
"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 sale of Fares and the receipt of Franchise Payments during such period;
"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 19 (Other Provisions);
"Weekday"	means any day other than a Saturday, a Sunday or a Bank Holiday;
"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"	<p>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:</p> <ul style="list-style-type: none"> (a) the number of passengers travelling upon any particular Passenger Service; (a) the ticket types held by such passengers; (b) the prices paid by such passengers for such tickets; and

- (c) 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 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 Agreement:

- (a) paragraphs 11 and 12 of Schedule 1.1 (Service Development) to the extent that the Secretary of State is exercising relevant rights in relation to the implementation of the Thameslink Programme;
- (b) paragraph 2 of Schedule 2.2 (Security of Access Agreements, Rolling Stock Leases, Station and Depot Leases);
- (c) paragraph 2 of Schedule 2.3 (Third Party Delivery of Passenger Services and Other Franchisees);
- (d) paragraph 4.3 of Schedule 4 (Persons with Disabilities and Disability Discrimination);
- (e) Schedule 5.1 (Purpose, Structure and Construction);
- (f) Schedule 5.3 (Allocation of Fares to Fares Baskets);
- (g) Schedule 5.7 (Changes to Fares and Fares Regulation);
- (h) paragraphs 2 and 7 to 15 of Schedule 6.2 (Thameslink/GN Franchise Specific Provisions);
- (i) Schedule 9 (Changes);
- (j) Schedule 10 (Remedies, Termination and Expiry);
- (k) paragraph 2 of Schedule 11 (Agreement Management Provisions);
- (l) paragraph 4 of Schedule 12 (Financial Obligations and Covenants);
- (m) paragraphs 1, 5, 6, 7 and 8 of Schedule 13 (Information and Industry Initiatives);

- (n) Schedule 14.3 (Key Contracts);
- (o) Schedule 15.1 (Reletting Provisions);
- (p) Schedule 17 (Confidentiality and Freedom of Information); and
- (q) Schedule 19 (Other Provisions).

3.2 The other provisions of this Agreement shall take effect and be binding upon the parties on and from the Start Date.

4. **TERM**

4.1 This Franchise Agreement shall terminate on the Expiry Date or on the date of any earlier termination pursuant to Schedule 10 (Remedies, Termination and Expiry).

5. **GENERAL OBLIGATIONS**

5.1 The Franchisee shall perform its obligations under this 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 of the Franchise.

5.2 Any obligation on the part of the Franchisee to use all reasonable endeavours shall extend to consequent obligations adequately to plan and resource its activities, and to implement those plans and resources, with all due efficiency and economy.

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 this 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 this Franchise Agreement.

6. **RELATIONSHIP WITH PREVIOUS FRANCHISE AGREEMENT**

6.1 Anything done or omitted to be done by the Franchisee under or in relation to or during the term of the Previous Franchise Agreement shall be regarded for the purpose of this Franchise Agreement as if it had been done or omitted to be done by the Franchisee under or in relation to and (only to the extent necessary to give effect to this Clause) during the term of this Franchise Agreement.

6.2 Without limiting the generality of Clause 6.1 any breach or contravention of the Previous Franchise Agreement shall be a breach or contravention of the Franchise Agreement, in so far as necessary to ensure that the Secretary of State shall have the same rights under and in respect of this Franchise Agreement in respect of that breach or contravention as it would have had under or in respect of the Previous Franchise Agreement had the Previous Franchise Agreement continued in force.

6.3 The Secretary of State agrees that he will not take any action to terminate the Franchise Agreement in respect of any Event of Default which may have existed or been alleged to exist at the Start Date.

7. **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.

8. **ENTIRE AGREEMENT/WARRANTY**

- 8.1 This Franchise Agreement contains all the terms which the parties have agreed in relation to the subject matter of this Franchise Agreement and supersedes all prior written or oral agreements, representations or understanding between the parties in relation to such subject matter.
- 8.2 The Franchisee hereby acknowledges that this Franchise Agreement has not been entered into wholly or partly in reliance on, nor has the Franchisee been given any warranty, statement, promise or representation other than as expressly set out in this Franchise Agreement. To the extent that any such warranties, statements, promises or representations have been given the Franchisee unconditionally and irrevocably waives any claims, rights or remedies which it might otherwise have had in relation to them.
- 8.3 Nothing in this Clause 8 will exclude any liability which one party would otherwise have to the other party in respect of any statements made fraudulently.
- 8.4 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" of the Request for Proposal.
- 8.5 The Franchisee represents and warrants to the Secretary of State subject only to the matters fairly disclosed to the Secretary of State in writing (and accepted by him) or expressly provided for under the terms of this Franchise Agreement that all information, representations or other matters of fact communicated in writing to the Secretary of State and/or his advisers by the Franchisee, its directors, officers, employees, servants or agents in connection with or arising out of the Franchisee's proposals in connection with entering into this Franchise Agreement were (at the date submitted to the Secretary of State) and remain, in all material respects true, accurate and not misleading.

9. **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. 8187

THE CORPORATE SEAL OF
**THE SECRETARY OF STATE FOR
TRANSPORT**

)
)
)

is hereunto affixed:

Paul Rogers

Authenticated by authority of the
Secretary of State for Transport

SIGNED FOR AND ON BEHALF OF
FIRST CAPITAL CONNECT LIMITED

)
)

Director: ***Jackie Townsend***

Director/Secretary: ***Chris Cornthwaite***

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

SCHEDULE 1.1

Service Development

1. Service Level Commitment - Purpose And Responsibility

- 1.1 A Service Level Commitment is the minimum specification of Passenger Services to be provided by the Franchisee.
- 1.2 The Service Level Commitment as at the date of the Franchise Agreement is in the agreed terms marked SLC, attached to the Franchise Agreement. Such Service Level Commitment shall remain in force unless and until amended or replaced pursuant to this Schedule 1.1.
- 1.3 A Service Level Commitment 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 - Purpose And Responsibility

- 2.1 A Train Plan is the means by which the Franchisee expresses its proposed allocation of the Passenger Carrying Capacity of its Train Fleet to meet passenger demand for the railway passenger services it is to operate.
- 2.2 The Franchisee shall submit to the Secretary of State a Train Plan in respect of:
 - (a) the Service Level Commitment and any Additional Passenger Services that it intends to operate; and
 - (b) subsequently, 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 Service Level Commitment.
- 2.4 The Train Plan for the Timetable as at the Start Date shall be submitted by the Franchisee to the Secretary of State by no later than the Start Date and, for the avoidance of doubt, the provisions of paragraphs 6, 11.2 and 11.3 of this Schedule 1.1 shall apply in respect of such Train Plan.
- 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;

- (e) the indicative formation of each such railway passenger service which has a Target Passenger Demand greater than 75 per cent. of its Passenger Carrying Capacity;
 - (f) its Actual Passenger Demand most recently determined in accordance with Schedule 1.5 (Information about Passengers); and
 - (g) its Forecast Passenger Demand.
- 2.6 A Train Plan shall be in any format that the Secretary of State may reasonably specify for this purpose.
3. **Train Fleet**
- 3.1 The Franchisee's Train Fleet as at the Start Date is as set out in Table 1 contained in Schedule 1.7 (The Train Fleet).
- 3.2 The Franchisee shall comply with its obligations under:
- (a) paragraph 13 of this Schedule 1.1 concerning changes to the composition and characteristics of the Train Fleet; and
 - (b) paragraph 2 of Schedule 2.2 (Security of Access Agreements, Rolling Stock Leases, Station and Depot Leases) with respect to the Train Fleet.
4. **Franchisee Opinions, Amended and New Service Level Commitment and Additional Timetable Development Rights**
- 4.1 As and when required whether for the purposes of considering alterations to the Service Level Commitment or otherwise, the Franchisee shall provide to the Secretary of State:
- (a) its informed estimate of Forecast Passenger Demand, in such format and to such level of disaggregation as the Secretary of State may reasonably require in order to assist the Secretary of State's decision-making on future service level commitments, infrastructure, station and rolling stock vehicle investment, the best use of the network and the alleviation of overcrowding;
 - (b) its informed opinion as to any changes to the current Service Level Commitment which:
 - (i) should be made in order to deliver an optimal range of railway passenger service patterns relative to Target Passenger Demand; and
 - (ii) could be implemented and operated without additional resources or an adjustment to the Franchise Payments;
 - (c) its informed opinion as to any changes to the current Service Level Commitment which:
 - (i) would deliver an optimal range of railway passenger service patterns relative to Target Passenger Demand; and

- (ii) could only be implemented and operated with additional resources and/or an adjustment to the Franchise Payments, together with an explanation as to:
 - (A) what additional resources and/or adjustments are necessary to make such changes; and
 - (B) why such additional resources and/or adjustments are necessary;
- (d) not used; and
- (e) a draft of the Train Plan that it considers that each set of proposed changes would require.

4.2 The Franchisee may at any time (and, if requested to do so by the Secretary of State, shall as soon as reasonably practicable after such request) propose amendment to the then current Service Level Commitment for the purpose of optimising the delivery of railway passenger service patterns relative to Target Passenger Demand (or, where proposed amendment to the then current Service Level Commitment is requested by the Secretary of State, for such other purpose as the Secretary of State may specify in such request). Any such proposal shall be provided with:

- (a) the Franchisee's reasons why it believes that the proposed amendment would optimise the delivery of railway passenger services relative to Target Passenger Demand or meet such other purpose as the Secretary of State may have specified in accordance with paragraph 4.2 (as applicable) and, unless the date is specified by the Secretary of State, the date upon which it proposes that such amended Service Level Commitment should take effect;
- (b) its informed opinion 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 amendments and any implications for Additional Timetable Development Rights and Additional Passenger Services;
- (c) not used;
- (d) a draft of the Train Plan that it considers that the proposed amendment would require;
- (e) its informed opinion as to the process required to implement the proposed amendment to the Service Level Commitment together with a plan for the implementation of the amendment to the Service Level Commitment (including all steps required to ensure that the Franchisee can deliver a Timetable compliant with such Service Level Commitment) prepared in accordance with procedural arrangements specified by the Secretary of State pursuant to paragraph 5.

4.3 The Secretary of State shall be permitted to carry out indicative Runs of the Financial Model for the purposes of considering the effects of amendments to the Service Level Commitment proposed by the Franchisee.

4.4 The Secretary of State will give consideration to proposals made by the Franchisee but shall be under no obligation to make any change to the Service

Level Commitment in consequence. If the Secretary of State agrees the proposed amendment he shall issue an amended Service Level Commitment pursuant to paragraph 4.12. The Secretary of State shall be permitted to incorporate amendments to the Service Level Commitment suggested by the Franchisee in any amended or new Service Level Commitment that he may subsequently propose.

- 4.5 The Franchisee agrees to co-operate with the Secretary of State in developing any amended or new Service Level Commitment in accordance with this Schedule 1.1.
- 4.6 Prior to issuing any amended or new Service Level Commitment the Secretary of State shall provide to the Franchisee his draft of any proposed amended or new Service Level Commitment stating the date upon which he proposes that such amended or new Service Level Commitment should take effect.

On receipt of any such draft of a proposed amended or new Service Level Commitment the Franchisee shall provide to the Secretary of State if so requested:

- (a) its informed opinion with supporting reasons as to the impact of the proposed amended or new Service Level Commitment on the delivery of an optimal range of railway passenger services patterns relative to Target Passenger Demand;
 - (b) its informed opinion 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 Service Level Commitment and any implications for Additional Timetable Development Rights and Additional Passenger Services;
 - (c) not used;
 - (d) a draft of the Train Plan that it considers that the proposed amended or new Service Level Commitment would require; and
 - (e) its informed opinion of the process to be required to implement the proposed amendment to the Service Level Commitment together with a plan for the implementation of the amendment to the Service Level Commitment (including all steps required to ensure that the Franchisee can deliver a Timetable compliant with such amended or new Service Level Commitment) prepared in accordance with procedural arrangements specified by the Secretary of State pursuant to paragraph 5.
- 4.7 There may be iterations of drafts of the proposed amended or new Service Level Commitment and the Franchisee shall to the extent required by the Secretary of State have the obligations described in this paragraph 4 in respect of all such iterations.
- 4.8 The Secretary of State shall be permitted to carry out indicative Runs of the Financial Model for the purposes of considering the effects of his proposed amended or new Service Level Commitment.
- 4.9 Processes contained in this paragraph 4 shall take place in accordance with procedural arrangements and timescales stipulated by the Secretary of State pursuant to paragraph 5.2.

- 4.10 Any opinions of the Franchisee provided pursuant to this paragraph 4 shall be provided with due regard to:
- (a) any Route Utilisation Strategy and any strategy published by the Secretary of State;
 - (b) the additional factors set out in the Appendix (Service Development Additional Factors) to this Schedule 1.1; and
 - (c) any other constraints or considerations (including affordability constraints and value for money considerations) that the Secretary of State has notified to it.
- 4.11 If and to the extent that the Franchisee reasonably considers that any Service Level Commitment issued by the Secretary of State pursuant to this Schedule 1.1 contains insufficient information to enable it to perform its obligations under this Schedule 1.1 it shall promptly notify the Secretary of State and the Secretary of State shall provide such further information as is reasonably required.
- 4.12 The Secretary of State may, in accordance with any stipulation made under paragraph 5.2, issue to the Franchisee any amended or new Service Level Commitment that he requires the Franchisee to operate. Such amended or new Service Level Commitment 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 Service Level Commitment. In the absence of the Secretary of State issuing any amended or new Service Level Commitment the existing Service Level Commitment will remain in full force and effect. The degree of variation from any Service Level Commitment specified when the Franchise Agreement was entered into in respect of any particular period and brought about by any amended or new Service Level Commitment issued pursuant to this paragraph 4.12 shall (where relevant) be of a magnitude no greater than that contemplated by the Request for Proposal.
- 4.13 Prior to seeking any Additional Timetable Development Rights, the Franchisee shall provide to the Secretary of State details of its proposals to seek such Additional Timetable Development Rights, including:
- (a) the existing or additional resources that the Franchisee intends to use in exercising such Additional Timetable Development Rights;
 - (b) the impact (if any) of operating any Additional Passenger Services on:
 - (i) its ability to deliver the current Service Level Commitment; and
 - (ii) the level of performance that it achieves in respect of the Passenger Services it currently operates.
- 4.14 At the same time as the Secretary of State provides the Franchisee with a draft of any proposed amended or new Service Level Commitment pursuant to paragraph 4.6, the Secretary of State shall also provide to the Franchisee:
- (a) his opinion of the effect of any Additional Timetable Development Rights that the Franchisee has or (to the extent known by the Secretary of State) that the Franchisee intends to seek;

- (b) his opinion on any changes that he reasonably considers are required to the Train Plan for such Train Plan:
 - (i) to satisfy the capacity requirements referred to in paragraph 6.3; or
 - (ii) to satisfy the capacity requirements referred to in paragraphs 6.4 and 6.5 if he reasonably considers that the capacity requirements referred to in paragraph 6.3 cannot be met.

5. Procedure

- 5.1 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.
- 5.2 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.
- 5.3 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 5.2.
- 5.4 Any stipulation by the Secretary of State pursuant to paragraph 5.2:
 - (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 19 (Other Provisions)) in conjunction with the Service Level Commitment; and
 - (c) may provide for iterations of drafts of any amended or new Service Level Commitment, Train Plan or Timetable and for indicative Runs of the Financial Model in relation thereto.
- 5.5 Any procedural arrangements and timescales stipulated by the Secretary of State pursuant to paragraph 5.2 shall have contractual effect between the Franchisee and the Secretary of State in accordance with the terms of such stipulation.

6. Considerations and Planning

6.1 Considerations

The Franchisee shall:

- (a) determine the extent to which it wishes to seek and retain Additional Timetable Development Rights; and
- (b) prepare its draft Train Plan,

each with due regard to:

- (i) any Route Utilisation Strategy and any Strategy published by the Secretary of State;
- (ii) the additional factors set out in the Appendix (Service Development Additional Factors) to this Schedule 1.1; and
- (iii) any other constraints or considerations (including affordability constraints and value for money considerations) that the Secretary of State has notified to it.

6.2 Planning to Operate the Train Plan in the Peak

The Franchisee shall prepare its Train Plan so as to operate the entire Train Fleet in delivering Passenger Services during each Peak, save for:

- (a) any additional rolling stock vehicles funded by Additional Rolling Stock Investment; and
- (b) any reasonable planning requirements for:
 - (i) the allocation of Hot Standbys; or
 - (ii) other rolling stock vehicles to be out of service due to maintenance requirements, Mandatory Modifications or any other reasons agreed with the Secretary of State (such agreement not to be unreasonably withheld).

6.3 Planning to meet Target Passenger Demand

The Franchisee shall also, in preparing its Train Plan, unless the Secretary of State otherwise agrees, 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.

6.4 Allocation of rolling stock if unable to meet capacity requirements of paragraph 6.3

If at the time it prepares its Train Plan, having exercised all reasonable endeavours, the Franchisee is unable to prepare a Train Plan having the Passenger Carrying Capacity referred to in paragraph 6.3, then the Train Plan shall specify the best allocation of 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.

6.5 **Proposals to address shortfalls in capacity**

Where paragraph 6.4 applies, the Franchisee shall propose to the Secretary of State:

- (a) such changes to the Service Level Commitment; and/or
- (b) any other actions,

that it considers would most efficiently address the shortfall in Passenger Carrying Capacity and meet Target Passenger Demand.

7. **Indicative Timetable and Consultation**

7.1 The Franchisee shall, as and when required pursuant to any stipulation made under paragraph 5.2, provide the Secretary of State with a summary (in such form as the Secretary of State may specify) of any material changes that it would expect there to be to the Passenger Services from the then current Timetable if any of the following were implemented:

- (a) the Secretary of State's Service Level Commitment issued pursuant to paragraph 4.6 or 4.12 and the Franchisee's proposed Train Plan;
- (b) any amended Service Level Commitment proposed by the Franchisee pursuant to paragraph 4.2; and/or
- (c) the Franchisee's proposals (if any) for operating Additional Passenger Services.

7.2 Notwithstanding any consultation the Secretary of State might separately undertake in respect of any amended or new draft Service Level Commitment issued pursuant to paragraph 4, the Franchisee shall in respect of changes to the Passenger Services proposed in any Timetable:

- (a) as soon as reasonably practicable after:
 - (i) first providing a summary to the Secretary of State, give all Stakeholders notice and consult them in respect of the changes to the Passenger Services specified in such summary; and

- (ii) sending or receiving any correspondence in respect of such notice or consultation, provide the Secretary of State with copies of such correspondence;
- (b) take due account of such bodies' views that are submitted to the Franchisee in accordance with the procedural stipulations pursuant to paragraph 5.2 and the guidance referred to in paragraph 7.2(d);
- (c) inform the Secretary of State of any material changes that it would expect there to be to the Passenger Services and/or Additional Passenger Services if the views of such bodies were accommodated; and
- (d) comply with such reasonable requirements and guidance as the Secretary of State may notify to it from time to time in respect of giving notice to and consulting such Stakeholders in accordance with this paragraph 7.2.

8. **Timetable Development Rights**

8.1 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 Service Level Commitment.

8.2 The Franchisee shall:

- (a) exercise its Timetable Development Rights; and/or
- (b) exercise or refrain from exercising its Additional Timetable Development Rights,

so as to secure a Timetable that enables it to operate railway passenger services that comply with the Service Level Commitment in accordance with its obligations under paragraph 10.

8.3 Unless the Secretary of State otherwise directs, the Franchisee shall, for the purposes of securing a Timetable that complies with the Service Level Commitment, 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.

8.4 Subject to the Franchisee complying with its obligations under paragraph 8.3, 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 Service Level Commitment, 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 8.1;
- (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.
- 8.5 If the Secretary of State does not consider that the Franchisee has taken sufficient steps under paragraph 8.3, he may require the Franchisee to exercise its rights referred to in paragraph 8.3 in such manner as he reasonably considers appropriate in the circumstances, including:
- (a) disputing any actual or proposed act or omission by Network Rail in respect of any Timetable Development Rights; and
 - (b) submitting such dispute to any relevant dispute resolution arrangements or procedures and appealing against any award or determination under such arrangements or procedures, including to the ORR.
- 8.6 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 paragraph 8.3 before requiring the Franchisee to take any action referred to in paragraph 8.5.
- 8.7 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 Service Level Commitment 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 may issue (and, provided that the Franchisee:
- (a) has exercised all reasonable endeavours to obtain the requisite timetable development rights in accordance with paragraph 8.1; and
 - (b) is relieved from liability for such failure to secure a Timetable that enables the Franchisee to operate railway passenger services that comply with the Service Level Commitment pursuant to paragraph 8.4,
- the Secretary of State shall issue) to the Franchisee such amendments to the Service Level Commitment ("**SLC (TDR) Amendment**") as the Secretary of State considers necessary such that the Franchisee is able to secure a Timetable in compliance with the Service Level Commitment as amended by the SLC (TDR) Amendments by exercise of the Timetable Development Rights that the Franchisee does have or the timetable development rights that the Franchisee would have had the Franchisee properly performed its obligations under the Franchise Agreement.
- 8.8 Following issue of any SLC (TDR) Amendment pursuant to paragraph 8.7 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 Service Level Commitment without such SLC (TDR) Amendment.
- 8.9 Any SLC (TDR) Amendment issued pursuant to paragraph 8.7 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 Service Level Commitment without any such SLC (TDR) Amendment; and

- (b) amount to a Change unless the SLC (TDR) Amendment has been issued in consequence of Network Rail exercising the rights referred to in paragraphs 8.4 (b) and 8.4(c) in which case there shall not be a Change.

8.10 With effect from the date on which any SLC (TDR) Amendment ceases to have effect in accordance with paragraph 8.9:

- (a) the Service Level Commitment without such SLC (TDR) Amendment shall thereafter apply; and
- (b) there shall be a further Change to the extent necessary so as, with effect from such date, to disapply the effect of the Change referred to in paragraph 8.9(b) in respect of such SLC (TDR) Amendment.

8.11 The Secretary of State shall be permitted to direct the Franchisee as to the manner in which it will exercise or not exercise Additional Timetable Development Rights for the purpose of altering, amending or deleting the Franchisee's proposals in respect of Additional Passenger Services where such Additional Passenger Services, if they were operated in the manner proposed by the Franchisee, would be likely to result in the Secretary of State being required to increase payments to any other Train Operator under another franchise agreement or result in the Secretary of State receiving reduced payments from any other Train Operator under another franchise agreement if the Additional Passenger Services were operated in the manner proposed by the Franchisee.

9. **Certification and Notification by Franchisee of Timetable Bids**

9.1 Before exercising any Timetable Development Right to bid for Train Slots, the Franchisee shall provide a certificate addressed to the Secretary of State confirming that its proposed exercise of that Timetable Development Right will be compliant with its obligation specified in paragraph 8.2 (subject as may otherwise be permitted under paragraph 8, in which case any such qualifications will be identified in reasonable detail).

9.2 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 9.1 is a true and accurate confirmation of compliance with its obligation specified in paragraph 8.2. The Secretary of State agrees that the certificate will be acceptable if:

- (a) such certificate confirms that the Franchisee has used timetable assurance processes approved by the Secretary of State; and
- (b) the Franchisee has demonstrated its compliance with the Service Level Commitment by using such assurance processes.

9.3 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 have a material bearing on the ability of the Franchisee to deliver the Service Level Commitment 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 9.3 and/or certification under paragraph 9.1 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.

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:

- 10.1 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;
- 10.2 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
- 10.3 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. **Finalising the Train Plan**

- 11.1 The Franchisee shall submit its 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.
- 11.2 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.
- 11.3 If the Franchisee considers that any of the revisions that the Secretary of State requires pursuant to paragraph 11.2(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 parties shall take such steps as are required to give effect to such determination.

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

12.1 The Franchisee shall be entitled to seek and/or exercise Additional Timetable Development Rights without the Secretary of State's consent, but it shall not seek and/or exercise any such rights where to do so would prevent or hinder it securing a Timetable that enables it to operate railway passenger services that comply with the Service Level Commitment.

12.2 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.

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

12.4 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.

12.5 If and to the extent that:

- (a) the Secretary of State exercises his rights pursuant to paragraph 12.2;
- (b) the Franchisee's compliance with the Secretary of State's requirements pursuant to paragraph 12.2 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.

13. Changes to the Train Fleet

13.1 Subject to paragraph 13.2, 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.

13.2 The Franchisee shall be entitled at any time without the agreement of the Secretary of State to:

- (a) procure rolling stock vehicles in order to provide Additional Passenger Services provided that the total amounts payable pursuant to the terms of all Rolling Stock Related Contracts entered into pursuant to this paragraph 13.2(a) do not exceed five per cent. of the total amounts payable under the terms of Rolling Stock Related Contracts for the existing Train Fleet in respect of the unexpired Franchise Term; and/or
- (b) discontinue the arrangements (including the leasing, maintenance support services or technical support services) in respect of any rolling stock vehicles used in the provision of Additional Passenger Services.

13.3 The Franchisee shall procure that the rolling stock vehicles specified in the Tables contained in Appendix 3 (The Train Fleet) to the Franchise Specific Agreement, with the capacity and other characteristics referred to there, are available for deployment in the provision of the Passenger Services during the periods referred to there.

13.4 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.

13.5 If any change is made to the Train Fleet in accordance with this paragraph 13, 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.

14. The Timetable and the Working Timetable

14.1 Any specification of railway passenger services in a Service Level Commitment 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.

- 14.2 Accordingly, the Franchisee's obligations specified in paragraph 8.2 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 Service Level Commitment provided for in the relevant Timetable.
- 14.3 The Franchisee shall ensure, for each period between two consecutive Passenger Change Dates during the Franchise Term, that the Timetable for such period is not materially different from the relevant working timetable issued by Network Rail at the conclusion of its timetable development process.

APPENDIX TO SCHEDULE 1.1

Service Development Additional Factors

1. The Franchisee, in formulating its service development opinion pursuant to paragraph 4.1 of Schedule 1.1 (Service Development), in addition to having regard to any Route Utilisation Strategy or any Strategy published by the Secretary of State and any other constraints or considerations notified to it pursuant to paragraph 6.1(iii) of Schedule 1.1, shall also have regard to:
 - (a) Actual Passenger Demand;
 - (b) the latest Forecast Passenger Demand;
 - (c) the revenue and cost consequences of operating railway passenger services on the Routes;
 - (d) opportunities to reduce the incidence of disruption caused by the Franchisee, Network Rail, other Train Operators, freight operators and/or other industry parties;
 - (e) operational constraints and measures that might be taken to address such constraints;
 - (f) the appropriateness of the Train Fleet to the Routes;
 - (g) service calling patterns and journey times;
 - (h) changes in circumstances local to the stations at which the Passenger Services call which may affect Forecast Passenger Demand;
 - (i) the effect of:
 - (i) the Service Level Commitment; or
 - (ii) any Additional Passenger Service,on the railway passenger services operated by other Train Operators and/or freight operators;
 - (j) interchange and inter modal opportunities;
 - (k) Stakeholder aspirations (including such aspirations as are expressed or are likely to be expressed in any "Local Transport Plans");
 - (l) the long-term interests of passengers in using railway passenger services on the Routes, and for the purposes of this paragraph 1(l), the Franchisee shall have regard to this additional factor as if it operated the Passenger Services in perpetuity, and not for the Franchise Term only;
 - (m) the likelihood of special events generating sufficient passenger demand to support the provision of railway passenger services by the Franchisee to or from such special events;

- (n) the impact of Restrictions of Use extending over the periods specified in condition D2.2.1 of the Network Code or other Restrictions of Use that may affect Forecast Passenger Demand; and
- (o) such other matters as the Secretary of State may notify to the Franchisee from time to time.

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, with at least the Passenger Carrying Capacity specified in the Train Plan for that Passenger Service.
- 1.2 The Franchisee agrees to use all reasonable endeavours to operate during the Peak the entire Train Fleet (other than any of the rolling stock vehicles sub leased from time to time to the LSER Franchisee or the successor of the LSER Franchisee pursuant to paragraphs 3.1(a) and 3.1(d) of Schedule 6.2 (Thameslink/GN Specific Provisions)) in delivering the Peak Passenger Services, save for:
- (a) any additional rolling stock vehicles funded by Additional Rolling Stock Investment; and
 - (b) any reasonable requirements:
 - (i) for the deployment of Hot Standbys; or
 - (ii) for other rolling stock vehicles to be out of service due to maintenance requirements, Mandatory Modifications or for any other reason agreed with the Secretary of State (such agreement not to be unreasonably withheld).
- 1.3 The Franchisee agrees to use all reasonable endeavours to operate the Train Fleet (other than any of the rolling stock vehicles sub leased from time to time to the LSER Franchisee or the successor of the LSER Franchisee pursuant to paragraphs 3.1(a) and 3.1(d) of Schedule 6.2 (Thameslink/GN Specific Provisions)) in accordance with the then current Train Presentation Specification Standard.
- 1.4 The Franchisee shall not remove any rolling stock vehicle from service with a view to distorting the results of any audit carried out pursuant to Schedule 7.2 (Service Quality Management).
- 1.5 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. 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. The Train Plan

- 2.1 References in this Schedule 1.2 to the Train Plan are to the Train Plan as issued by the Franchisee to the Secretary of State pursuant to paragraph 11.1 of Schedule 1.1 (Service Development), and as amended:

- (a) to comply with any requirements of the Secretary of State pursuant to paragraph 11.2 of Schedule 1.1 (Service Development); or
- (b) pursuant to paragraph 3.

3. **Amendments to the Train Plan**

3.1 The Franchisee shall use all reasonable endeavours to propose to the Secretary of State from time to time any amendments that it considers should be made to the Train Plan to better match the Passenger Carrying Capacity of the Train Fleet to Target Passenger Demand, having regard to:

- (a) any foreseeable differences that there may be between the Timetable and any Plan of the Day; and
- (b) any material alteration in Target Passenger Demand, subsequent to the issue of the Train Plan, that is:
 - (i) observable from the most recent determination of Actual Passenger Demand in accordance with paragraph 1 of Schedule 1.5 (Information about Passengers); and/or
 - (ii) attributable to seasonal or exceptional factors.

3.2 The Franchisee shall amend the Train Plan in accordance with the Secretary of State's response to its proposal.

3.3 Where there are short-notice factors or exceptional factors affecting passenger demand to which the Franchisee reasonably considers that it should respond before it is able to make a proposal to the Secretary of State in accordance with paragraph 3.1, it may amend the Train Plan prior to the submission of its proposal, but shall notify the Secretary of State as soon as reasonably practicable afterwards and shall subsequently amend the Train Plan in accordance with the Secretary of State's response to such amendment.

3.4 The obligation to use all reasonable endeavours to propose amendments to the Train Plan to better match the Passenger Carrying Capacity of the Train Fleet to Target Passenger Demand is an obligation to use all reasonable endeavours to propose amendments which would either:

- (a) provide for Passenger Carrying Capacity on each Passenger Service that is at least equal to the Target Passenger Demand for that Passenger Service; or
- (b) provide the best allocation of rolling stock vehicles to Passenger Services that is reasonably practicable so as to:
 - (i) minimise the amount by which Target Passenger Demand for any Passenger Service exceeds the provision of Passenger Carrying Capacity on such Passenger Service;
 - (ii) ensure, so far as is possible, that the excess of Target Passenger Demand is not unduly concentrated on any particular Route or Passenger Service; and
 - (iii) minimise the extent to which passengers are required to stand:

- (A) on boarding in respect of any Off-Peak Passenger Service; and
- (B) for more than 20 minutes after boarding (or such other time period as the Secretary of State may stipulate) in respect of any Peak Passenger Service.

3.5 If the Secretary of State does not consider that the Franchisee has exercised all reasonable endeavours to make proposals as required by paragraph 3.1, the Secretary of State may require the Franchisee to amend the Train Plan in accordance with his requirements.

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

4.1 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,

4.2 To the extent that any such decision or proposal may materially (having regard to both duration and scale) prejudice the Franchisee's ability to deliver the Timetable with the Passenger Carrying Capacity stipulated in a Train Plan which satisfies the capacity requirements of paragraphs 3.1 and 3.4, the Franchisee shall explain in such notification the way in which, in its opinion, such omission or rescheduling may materially prejudice the Franchisee's ability to deliver the Timetable with the Passenger Carrying Capacity stipulated in a Train Plan which satisfies the capacity requirements of paragraphs 3.1 and 3.4.

4.3 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 4.4.

4.4 Where the actual or proposed omission or rescheduling of Passenger Services is one which may materially prejudice the Franchisee's ability to deliver the Timetable with the Passenger Carrying Capacity stipulated in a Train Plan which satisfies the capacity requirements of paragraphs 3.1 and 3.4, 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.

- 4.5 If the Secretary of State does not consider that the Franchisee has taken sufficient steps under paragraph 4.4, the Secretary of State may require the Franchisee to exercise its rights referred to in paragraph 4.4 in such manner as the Secretary of State may consider appropriate in the circumstances, including:
- (a) disputing any actual or proposed act or omission by Network Rail in respect of any Timetable Development Rights; and
 - (b) submitting such dispute to any relevant dispute resolution arrangements or procedures and appealing against any award or determination under such arrangements or procedures, including to the ORR.
- 4.6 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 the exercise of any of its rights referred to in paragraph 4.4 before requiring the Franchisee to take any action referred to in paragraph 4.5.
- 4.7 The provisions of this paragraph 4 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.

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

- 5.1 The Franchisee agrees, subject to paragraph 5.2, 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.
- 5.2 Paragraph 5.1 shall not apply to the proposed:
- (a) addition, omission or rescheduling of any Additional Passenger Service provided that:
 - (i) the proposal's implementation would not:
 - (A) prevent or hinder the Franchisee from delivering those Passenger Services included in the Plan of the Day that are required by the Service Level Commitment; or
 - (B) be likely to result in the Secretary of State being required to increase payments to or decrease payments from any other Train Operator under another franchise agreement; and
 - (ii) in relation to any alteration, the proposal is made on terms such that it is certain to enable the Franchisee to provide, in

accordance paragraph 2.1 of Schedule 1.4 (Passenger Facing Obligations), not less than 7 days' notice to passengers of the alteration in advance of the alteration coming into effect; and

- (b) addition of railway passenger services to meet passenger demand that the Franchisee anticipates from special events (and any related omissions and/or rescheduling of Passenger Services) which:
 - (i) when operated, still permit the Franchisee to deliver the Timetable with the Passenger Carrying Capacity stipulated in a Train Plan which satisfies the capacity requirements of paragraphs 3.1 and 3.4; and
 - (ii) are compliant with any framework that the Secretary of State may issue for the planning and operation of railway passenger services.

5.3 The Franchisee shall use all reasonable endeavours to operate adequate railway passenger services to or from any special events:

- (a) which it has identified pursuant to paragraph 1(m) of the Appendix (Service Development Additional Factors) to Schedule 1.1 (Service Development);
- (b) which are not already provided for in the Plan of the Day; and
- (c) which comply with the requirements of paragraph 5.2,

to meet the passenger demand that is reasonably likely to arise from such special events and from the operation of such railway passenger services.

6. **Timetable changes requested by the Secretary of State**

6.1 Subject to paragraph 6.2, 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. The Franchisee shall, following a request by the Secretary of State to operate additional railway passenger services under this paragraph 6.1(a), provide to the Secretary of State a train plan which complies with the requirements of paragraph 2.5 and 2.6 of Schedule 1.1 (Service Development);
- (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.

6.2 The provisions of paragraph 6.1(b) and (c) shall apply in respect of Additional Passenger Services only to the extent of enabling the Secretary of State to require omission or rescheduling where he reasonably concludes that the Additional Passenger Services concerned are the cause of any increased payments to or decreased payments from any other Train Operator under another franchise agreement.

7. Additional Railway Passenger Services

7.1 The Franchisee agrees not to operate any railway passenger services other than those:

- (a) required or permitted pursuant to this Schedule 1.2; or
- (b) operated on behalf of any other Train Operator where the Secretary of State has approved the sub-contracting of the operation of such railway passenger services to the Franchisee.

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

8.1 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) use all reasonable endeavours to act in accordance with any Strategy or plan published or endorsed by the Secretary of State in relation to such disruption notified to it by the Secretary of State from time to time;
- (c) 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
- (d) use all reasonable endeavours to provide or secure the provision of alternative transport arrangements in accordance with paragraph 8.2.

8.2 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 8.1 to complete their intended journeys in accordance with this paragraph 8.2. 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) without prejudice to its obligations in paragraph 8.2(a), comply with any standards issued by the Secretary of State from time to time in respect of such alternative transport arrangements;
- (c) 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;
- (d) 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;
- (e) provide sufficient alternative transport capacity for the reasonably foreseeable demand for the disrupted Passenger Services; and
- (f) 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.

9. Obligation to use all reasonable endeavours

9.1 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 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 9.2; 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 9.4), having regard to all the circumstances.

9.2 The matters to which the Franchisee is to have regard pursuant to paragraph 9.1(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 in accordance with the then current Train Presentation Specification Standard; and
- (g) failures of rolling stock vehicles in service and contingency arrangements (including Hot Standbys and rescue traction).

9.3 For the purpose of taking measures in respect of any disruption to the Franchise Services in accordance with paragraph 9.1(b) and assessing the extent of any risk referred to in paragraph 9.1(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.

9.4 The steps to which paragraph 9.1(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 9.4(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 9.4(c)(i) and (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.
- 9.5 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).
- 9.6 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.
- 9.7 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 9.

SCHEDULE 1.3

Not Used

SCHEDULE 1.4

Passenger Facing Obligations

1. Publishing the Timetable

The First Timetable

1.1 The Franchisee shall publish on the Start 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.

Timetable Revisions and Alterations

1.2 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).

Other Train Operators' Timetables

- 1.4 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.

National Rail Timetable and National Rail Enquiry Scheme

- 1.5 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 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.
- 3.2 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).

- 3.3 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).

3.4 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 or Discount Card 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.

3.5 **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:
 - (i) do not sell or offer to sell any Fare or Discount Card with a validity of 13 or more months without the consent of the Secretary of State (such consent not to be unreasonably withheld); and
 - (ii) comply with the provisions of paragraph 3 of Schedule 15.2 (Last 12 or 13 Months of Franchise Period and other conduct of business provisions) to the extent they apply to the selling of Fares by the Franchisee.

3.6 **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.

3.7 **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.

3.8 Not used

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 **PC**; 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 Passenger Focus, 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; and
- (c) state the date of publication clearly on the front cover of the Passenger's Charter.

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 Passenger Focus 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, 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.

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 extensions to Fares;
- (b) provide all discounts on the price of Fares; and
- (c) use all reasonable endeavours to make passengers aware of their right to claim compensation pursuant to the Passenger's Charter when 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. **Not Used**

6. **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).

7. **Not Used**

8. **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).

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; and
- (b) the times of the day, week or year at which passengers travel,
(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 for determining the number of passengers travelling in each class of accommodation as follows:

- (A) not used;
- (B) the load determination equipment using infra red technology developed by Petards Joyce-Loebl (or such substitute system as the Franchisee may propose and the Secretary of State approve (such approval not to be unreasonably withheld)) which is fitted on: (i) 4 class 313 units; (ii) 2 class 317 units; (iii) 4 class 365 units; and (iv) 8 class 319 units; and
- (C) in relation to the Passenger Services operated on Routes where the Rolling Stock Units fitted with the load determination equipment listed in paragraphs 1.2(A) and 1.2(B) are not utilised, manual passenger counts carried out each Autumn that determine:
 - (i) passenger loadings for such key Passenger Services to be operated in the Peak as are agreed by the Secretary of State (such agreement not to be unreasonably withheld), disaggregated by class of travel; and
 - (ii) average Off-Peak passenger loadings.

1.3 The information specified in paragraph 1.1 shall be provided by the Franchisee:

- (a) in such format and to such level of disaggregation as the Secretary of State may reasonably require in order to assist the Secretary of State's decision-making on future service level commitments, infrastructure, station and rolling stock vehicle investment, the best use of the network and the alleviation of overcrowding; and
 - (b) within 14 days of any request by the Secretary of State pursuant to paragraph 1.1.
- 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.

2. **National Passenger Surveys**

- 2.1 The Franchisee agrees with the Secretary of State that:
- (a) Passenger Focus may measure the level of passenger satisfaction with the Franchise Services through National Passenger Surveys;
 - (b) Passenger Focus shall determine how, when (normally twice per annum) and where National Passenger Surveys are to be carried out;
 - (c) the Franchisee shall grant access on trains or at stations to Passenger Focus (or its representatives and agents) to carry out National Passenger Surveys;
 - (d) the Franchisee shall co-operate with Passenger Focus (in such manner as Passenger Focus may reasonably request or as the Secretary of State may reasonably direct) in order to enable Passenger Focus to carry out National Passenger Surveys; and
 - (e) Passenger Focus and/or the Secretary of State may, from time to time, publish the results of each National Passenger Survey.
- 2.2 The Secretary of State shall procure that:
- (a) the findings of any National Passenger Survey are made available by Passenger Focus to the Franchisee within a reasonable period of time after the completion of each such survey and shall use all reasonable endeavours to procure that those findings are made available in a timely manner to enable the Franchisee to make reasonable publicity arrangements (if required); 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.

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):

2.3 Main Routes (all inclusive)

(a) are between:

- (i) Cambridge Junction and Shepreth Branch Junction;
- (ii) Shepreth Branch Junction and King's Lynn;
- (iii) King's Cross and Peterborough North, via Welwyn Garden City and Huntingdon;
- (iv) Moorgate and Finsbury Park;
- (v) Wood Green Junction and Langley Junction via Hertford North;
- (vi) Bedford and Brighton via Luton, Kentish Town, Blackfriars, London Bridge, Forest Hill, East Croydon, Quarry Lines, Gatwick Airport, Haywards Heath and Burgess Hill;
- (vii) Blackfriars Junction and Norwood Junction via Herne Hill and Crystal Palace;
- (viii) Tulse Hill South Junction and Windmill Bridge Junction via Streatham and Selhurst;
- (ix) London Bridge Central and Spa Road Junction;
- (x) Stoats Nest Junction and Earlswood via Redhill;
- (xi) Streatham Junction and Sutton via Mitcham Junction;
- (xii) Streatham South Junction and Sutton via Wimbledon and St. Helier; and
- (xiii) London Bridge and Tulse Hill.

2.4 **Diversiory Routes (all inclusive)**

- (a) between:
 - (i) Tulse Hill and Spa Road Junction via Peckham Rye;
 - (ii) Keymer Junction and Brighton via Lewes;
 - (iii) Preston Park and Brighton via Hove; and
 - (iv) Carlton Road Junction and St. Pancras International (Platforms 1-4).

2.5 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.

2.6 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.

2.7 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 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 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) provided that this paragraph shall not apply in respect of any rolling stock vehicle subleased to the LSER Franchisee or any successor of the LSER Franchisee pursuant to paragraphs 3.1(a) and 3.1(d) of Schedule 6.2 (Thameslink/GN Franchise Specific Provisions);
- (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, 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,

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 or paragraph 3.3(a) of Schedule 6.2 (Thameslink/GN Franchise Specific Provisions);
- (e) subject always to paragraph 7 below, any heavy maintenance of rolling stock vehicles which does not fall within the Light Maintenance Services, carried out on behalf of any other person at the following Depot(s), subject to the number of persons engaged or employed in such activity not exceeding by more than ten per cent. the number so engaged or employed on the Start Date:
 - (i) Bedford Cauldwell Depot;
 - (ii) Bedford Midland Road Depot;
 - (iii) Hornsey Depot; and
 - (iv) Cricklewood;
- (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 (including the Thameslink Trading Agreements), 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) any buildings for the purposes of carrying out the Franchisee's head office functions; and
 - (ii) the driver training facilities at 'Hornsey Training Academy' and Bedford Midland Road;
- (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.

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.

7. Heavy Maintenance

If the Franchisee wishes to carry out any programmed (as opposed to one-off/ad hoc) heavy maintenance of rolling stock for third parties that is not assumed in the Financial Model, the Franchisee shall only be permitted to do so if it obtains the prior written consent of the Secretary of State. If consent is given by the Secretary of State to the carrying out of any such heavy maintenance services (which shall be at the unfettered discretion of the Secretary of State), this will (unless the Secretary of State agrees to the contrary) be on the basis that any net revenues earned will be shared 50/50 between the Franchisee and the Secretary of State and the definition of "Relevant Profit" in Schedule 8.1 shall be amended to the extent necessary to ensure that the additional income earned by the Franchisee in respect of such heavy maintenance services is taken into account in calculating the amounts payable under the profit share provisions in that Schedule 8.1.

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.
2. The Passenger Carrying Capacity of any rolling stock vehicles shall be determined by the Secretary of State in accordance with paragraph 13.5 of Schedule 1.1 (Service Development).

Table 1 (existing vehicles)

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 start / expiry date(s)
		Seats	Standing	Total	Standard Class		
313/0	44(132)	232	88	320	232	Eversholt	April 2014 to September 2014
317/1	12(48)	269	101	370	247	Angel	April 2014 to September 2014
317/7	2(8)	tbc	tbc	tbc	tbc	Angel	April 2014 to September 2014
365/5	40(160)	243	118	361	219	Eversholt	April 2014 to September 2014
319/0 Note 2	13(52)	316	106	422	315	Porterbrook	April 2014 to September 2014
319/2 Note 2	7(28)	241	158	399	222	Porterbrook	April 2014 to September 2014
319/3 Note 2	6(24)	303	109	412	303	Porterbrook	April 2014 to June 2014
319/3 Note 2	20 (80)	303	109	412	303	Porterbrook	April 2014 to September 2014
319/4 Note 2	40(160)	275	117	392	263	Porterbrook	April 2014 to September 2014
321	13(52)	299	100	399	271	Eversholt	April 2014 to September 2014
377/2	3(12)	242	130	372	217	Porterbrook (Sub-lease from the Southern Franchisee)	April 2014 to September 2014

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 start / expiry date(s)
		Seats	Standing	Total	Standard Class		
377/2 Note 1	6(24)	242	130	372	217	Porterbrook (Sub-lease from the Southern Franchisee)	April 2014 to September 2014
377/5	23(92)	242	130	372	217	Porterbrook (Sub-lease from the Southern Franchisee)	April 2014 to September 2014

Note 1 – 6 x 4 car units will be sub-leased from the Southern Franchisee for the period expressed, with the date that such units become part of the Train Fleet being in accordance with the relevant Rolling Stock Lease.

Note 2 – the number of Class 319 units is subject to reduction in accordance with the cascade arrangements under paragraph 13.2-13.3 of Part 1 of Schedule 6.1 (Committed Obligations and Related Provisions) and the terms of the relevant Rolling Stock Lease regarding the dates on which such units are scheduled to go off lease.

Table 2 (additional vehicles) – Not Used.

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		

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

SCHEDULE 2.1

Asset Vesting and Transfer

1. Vesting of Property Leases

- 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 As and when any of the relevant Property Leases expire during the Franchise Term, the Franchisee shall enter into the following applicable 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
 - (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.

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) and shall supply a copy of all draft and all executed Rolling Stock Related Contracts (including any agreement amending any Rolling Stock Related Contract) together with 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), the terms proposed by any person providing finance in relation to the relevant rolling stock (including cash flows), 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, 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, 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) to the Secretary of State. Where the information or documentation so requested by the Secretary of State 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.

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 each Station Lease and Depot Lease.
- 4.2 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.

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 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. **Not Used**

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.

SCHEDULE 3

Priced Options

Part 1	Priced Options
Part 2	List of Priced Options
Part 3	Price in respect of the Priced Options

Part 1 to Schedule 3

Priced Options

Not Used

Part 2 to Schedule 3

List of Priced Options

Not Used

Part 3 to Schedule 3

Price in respect of the Priced Options

Not Used

SCHEDULE 0

Persons with Disabilities and Disability Discrimination

Schedule 4

Persons with Disabilities and Disability Discrimination

Appendix 1: Minor Works

Appendix 2: Alternative Transport

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 Rail 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 (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.

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 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 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 0

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: PAYG Arrangements**

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:
- (a) Commuter Fares and Protected Fares are Created in accordance with the Ticketing and Settlement Agreement;
 - (b) appropriate restrictions are placed on the Franchisee's ability to Create Fares;
 - (c) the Franchisee is obliged to co-operate with Transport Trading Limited and other train operators in relation to PAYG Peak Fares, PAYG Off - Peak Fares and certain other Fares between London Stations; and
 - (d) the Franchisee accepts appropriate obligations and restrictions in relation to PAYG Peak Fares, PAYG Off-Peak Fares and certain other Fares between London Stations and that otherwise the terms of this Schedule 5 shall apply to such 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 + k per cent.; 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 + k + 2 per cent. per annum.

For the purposes of this paragraph 1.5, 'k' shall have the meaning given to it in paragraph 4.2 of Schedule 5.4 (Regulation of Fares Basket Value).

- 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 as well as further specific obligations in relation to Fares in PAYG Zones and between London Stations.
- 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 (PAYG Arrangements) sets out certain matters and obligations in relation to the PAYG Ancillary Agreement and IOP.

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 of 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 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 of 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 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.

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, 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 (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 Fare or Discount Card with a validity of 13 or more months without the consent of the Secretary of State (such consent not to be unreasonably withheld).

3. Fares between London Stations

- 3.1 The Franchisee shall negotiate during each Fares Setting Round with Transport Trading Limited as applicable and each other Train Operator or other licensed train operator that is a Lead Operator in respect of services that call at or operate between any London Stations on which Fares are to be set and in any case set and agree the prices to be charged for Single Fares, Return Fares and Season Ticket Fares for travel between (i) each station which is a London Station or a station (other than Watford Junction) in Zones 7, 8 and 9 as defined in the Pay As You Go Agreement and (ii) every other such station.
- 3.2 Unless otherwise agreed with the Secretary of State, in respect of Single Fares and Return Fares the price of which is to be set in accordance with paragraph 3.1, the price shall be set so that the same price shall apply for any journey which involves travel within or across the same Zone or Zones. The Franchisee shall:
- 3.3 use all reasonable endeavours to agree with such other Lead Operators, any terms and conditions necessary for those Fares or for those journeys, so that the same terms and conditions shall apply to journeys between any two London Stations; and
- 3.4 for those purposes, exchange such information as may be reasonably necessary for or associated with reaching and reviewing such agreement.
- 3.5 The Season Ticket Fares, Single Fares and Return Fares set in accordance with paragraphs 3.1 and 3.2 shall remain subject to the Fares regulation set out in this Schedule 5 (Fares).

4. Fares in PAYG Zones

- 4.1 The Franchisee shall negotiate during each Fares Setting Round with Transport Trading Limited as applicable and each other Train Operator or other licensed

train operator that is a Lead Operator in respect of services that call at or operate between any London Stations and agree the prices to be charged for PAYG Peak Fares and PAYG Off-Peak Fares and the terms and conditions and ancillary charges applicable to such PAYG Peak Fares and PAYG Off-Peak Fares as envisaged by the Pay As You Go Agreement.

- 4.2 The Franchisee shall set PAYG Peak Fares and PAYG Off-Peak Fares so that the same price, terms and conditions and ancillary charges shall apply for any rail journey (being a journey on railway passenger services operated by a Train Operator) which involves travel within or across the same PAYG Zone or PAYG Zones except to the extent that where such Fares are valid on Inter-Available Routes (as defined in the Through Ticketing (Non-Travelcard) Agreement) they are set in accordance with the terms of that Agreement. The Franchisee shall:
- 4.3 use all reasonable endeavours to agree with Transport Trading Limited as applicable and such other Lead Operators, any terms and conditions necessary for those Fares or for those rail journeys, including the time period to be designated "Off-peak", so that the same terms, conditions and (in the case of PAYG Off-Peak Fares) time restrictions shall apply to rail journeys within or across the PAYG Zone or PAYG Zones; and
- 4.4 for those purposes, exchange such information as may be reasonably necessary for or associated with reaching and reviewing such agreement.
- 4.5 The PAYG Peak Fares and PAYG Off-Peak Fares set in accordance with paragraphs 4.1 and 4.2 shall be subject to the Fares regulation set out in this Schedule 5 (Fares) in relation only to rail journeys (being journeys on railway passenger services operated by a Train Operator) within or across the Zones and shall not be subject to the restrictions set out in paragraphs 3.1(a) and (b) of Schedule 1.4 to the extent anticipated under the Pay As You Go Agreement.

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, 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).

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, which, in the case of a PAYG Peak Fare or a PAYG Off-Peak Fare until the end of the Fare Year 2012, is calculated as set out in paragraphs 3.2 and 3.2 and which is otherwise ascertained as follows

$$\frac{A}{B}$$

where:

A is the aggregate Gross Revenue recorded by RSP as attributable to sales of that Fare 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.

3.2 In the case of any PAYG Peak Fare the 2010 Nominal Ticket Sales will be calculated as the sum of:

- (a) 1.6 times the sum of the ratio A/B as defined in paragraph 3.1 above of all the Return Fares in the Commuter Fares Basket on 31st December 2009 (at the Price or Child Price as the case may be) in both directions between the stations in the origin Zone and the stations in the destination Zone between which such PAYG Peak Fare is valid; and

- (b) 0.6 times the sum of the ratio A/B as defined in paragraph 3.1 above of all Single Fares in the Commuter Fares Basket on 31st December 2009 (at the Price or Child Price as the case may be) in both directions between the stations in the origin Zone and the stations in the destination Zone between which such PAYG Peak Fare is valid.

3.3 In the case of any PAYG Off-Peak Fare the 2010 Nominal Ticket Sales will be calculated as the sum of:

- (a) 0.4 times the sum of the ratio A/B as defined in paragraph 3.1 above of all the Return Fares in the Commuter Fares Basket on 31st December 2009 (at the Price or Child Price as the case may be) in both directions between the stations in the origin Zone and the stations in the destination Zone between which such PAYG Off-Peak Fare is valid; and
- (b) 0.4 times the sum of the ratio A/B as defined in paragraph 3.1 above of all Single Fares in the Commuter Fares Basket on 31st December 2009 (at the Price or Child Price as the case may be) in both directions between the stations in the origin Zone and the stations in the destination Zone between which such PAYG Off-Peak Fare is valid.

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:

$$\text{PAI} = \frac{(100 \times \text{RPI}) + k}{100}$$

where:

PAI is the Permitted Aggregate Increase in that Fare Year;

RPI is an amount equal to:

$$\frac{\text{RPI-1}}{\text{RPI-2}}$$

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 in the definition of RPI-1; and

k is equal to 0 for Fare Year commencing on 1 January 2014, and is equal to +1 for any Fare Year thereafter.

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;
- (b) each Protected Fare included in the Protected Fares Basket; and
- (c) any Cash Commuter Fare,

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.

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 determined in accordance with the following formula:

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

where:

PII is the Permitted Individual Increase in that Fare Year;

RPI is an amount equal to:

$$\frac{\text{RPI-1}}{\text{RPI-2}}$$

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 in the definition of RPI-1; and

k is equal to 0 for Fare Year commencing on 1 January 2014, and is equal to +1 for any Fare Year thereafter.

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:
- (a) 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; and
 - (b) the Secretary of State may adjust Franchise Payments by an amount equivalent in his opinion to the sum of:
 - (i) any additional gross revenue accruing to the Franchisee or any person selling Fares on its behalf as a result of the Value of any Fares Basket exceeding its Regulated Value permitted under Schedule 5.4 (Regulation of Fares Basket Values); and
 - (ii) any costs incurred by the Secretary of State in determining the amount of such additional gross revenue.
- 1.2 Any adjustment to Franchise Payments by the Secretary of State pursuant to paragraph 1.1:
- (a) shall not be treated as a Change; and
 - (b) shall be without prejudice to any other rights or remedies of the Secretary of State under the Act or the Franchise Agreement in respect of such contravention.
- 1.3 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.
- 1.4 If and to the extent that the circumstances described in paragraph 1.3 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.

- 1.5 Where circumstances described in paragraph 1.3 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 from such date; and
- (b) the Secretary of State may adjust Franchise Payments by an amount equivalent in his opinion to the sum of:
 - (i) any additional gross revenue accruing to the Franchisee or any person selling Fares on its behalf as a result of the sale of Fares at Prices and/or Child Prices in excess of the relevant amounts permitted under Schedule 5.5 (Regulation of Individual Fares); and
 - (ii) any costs incurred by the Secretary of State in determining the amount of such additional gross revenue.

- 2.2 Any adjustment to Franchise Payments by the Secretary of State pursuant to paragraph 2.1:

- (a) shall not be a Change; and
- (b) shall be without prejudice to any other rights or remedies of the Secretary of State under the Act or the Franchise Agreement in respect of such contravention.

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 that the value of factors A and B 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;
 - (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;
 - (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;
 - (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.

3.4 Where, in accordance with paragraph 3.1(b) the Gross Revenue of Commuter Fares is recalculated by reference to a different reference period, the Secretary of State is not obliged to designate any PAYG Fares referred to in paragraph 2.1(b)(i) of Schedule 5.3 as Non-Fares Basket Fares.

4. **Changes to Prices**

The Franchisee may request permission from the Secretary of State from time to time 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 act reasonably in relation to any such request but shall not under any circumstances be obliged to accept any such request 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)). 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.

SCHEDULE 5.8

Fares Regulation Information and Monitoring

1. Information

- 1.1 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 the Commuter Fares or Protected Fares it is intending to set.
- 1.2 The Franchisee shall notify, or procure the notification to, the Secretary of State of any proposed increase to the Price or Child Price of any Commuter Fare or any Protected Fare and shall provide such details of any such proposal at such times (including before and during each Fares Setting Round) and in such form (including by electronic data transfer) as the Secretary of State may reasonably request from time to time.
- 1.3 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 for each such Fares Setting Round as the Secretary of State may reasonably request from time to time.

2. Monitoring

- 2.1 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 from time to time; and
 - (b) such further information as the Secretary of State may require for the purpose of determining the Gross Revenue of the Franchisee in relation to any particular Fare or Fares or any particular period.
- 2.2 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 is, in the reasonable opinion of the Secretary of State, in any material respect, untrue, inaccurate and/or misleading.
- 2.3 The Franchisee shall take such action as the Secretary of State may require following receipt of any details from the Franchisee pursuant to paragraph 1 in order to ensure that the Franchisee will comply with the provisions of Schedule 5.3 (Allocation of Fares to Fares Baskets) to this Schedule 5.8 (inclusive).

SCHEDULE 5.9

PAYG Arrangements

1. PAYG Ancillary Agreement

The Secretary of State shall comply with his obligations under Clause 3 of the PAYG Ancillary Agreement and acknowledges that the Franchisee from time to time has the right to enforce Clause 3 of the PAYG Ancillary Agreement against the Secretary of State in accordance with the provisions of the Contracts (Rights of Third Parties) Act 1999 provided that for the avoidance of doubt, this shall not mean that the Franchisee is entitled to receive any sum expressed to be payable by the Secretary of State to Transport Trading Limited thereunder, but only to enforce the Secretary of State's obligation to pay and noting that as between the parties to the PAYG Ancillary Agreement, they have reserved the right to rescind or vary the PAYG Ancillary Agreement without the consent of the Franchisee.

SCHEDULE 0

Committed Obligations and Franchise Specific Obligations

Schedule 6.1: Committed Obligations and Related Provisions

Schedule 6.2 Thameslink/GN Franchise Specific Provisions

SCHEDULE 6.1

Committed Obligations and Related Provisions

- Part 1:** **List of Committed Obligations**
- Part 2** **Miscellaneous Provisions**
- Part 3** **Late/Non Completion of Committed Obligations**

Part 1 to Schedule 6.1

List of Committed Obligations

1. Previous Committed Obligations

1.1 The Franchisee shall ensure that for the duration of the Franchise Term the Previous Committed Obligations Investments are properly maintained (allowing for reasonable wear and tear) and continue to be operational and effective in providing a service to passengers to the greatest extent reasonably practicable.

1.2 For the purposes of this paragraph 1.2, "Previous Committed Obligations Investments" means each of the following:

(a) each of the new additional shelters installed at 14 Stations pursuant to paragraph 2.2(a)(iii) of Part 1 to Appendix 11 of the Previous Franchise Agreement;

(b) the refurbished toilets at:

(i) Elephant and Castle;

(ii) Welwyn North

(iii) Hertford North;

(iv) Huntingdon; and

(v) St Neots,

pursuant to paragraph 2.2(a)(iv) of Part 1 to Appendix 11 of the Previous Franchise Agreement;

(c) the refurbished waiting rooms at:

(i) Stevenage;

(ii) Palmers Green;

(iii) Bedford;

(iv) Flitwick;

(v) Leagrave;

(vi) Harlington;

(vii) Hendon; and

(viii) Mill Hill,

pursuant to paragraph 2.2(a)(v) of Part 1 to Appendix 11 of the Previous Franchise Agreement;

- (d) the 167 new CCTV cameras installed at 24 Stations pursuant to paragraph 2.3(b) of Part 1 to Appendix 11 of the Previous Franchise Agreement;
- (e) the 78 additional Help Points installed at 36 Stations pursuant to paragraph 2.3(c) of Part 1 to Appendix 11 of the Previous Franchise Agreement;
- (f) the sixteen (16) 37 inch TFT monitors installed at each of the 11 Stations pursuant to paragraph 2.4(a) of Part 1 to Appendix 11 of the Previous Franchise Agreement;
- (g) the forty (40) CIS screens installed at 19 Stations, comprising of 23 double-sided and 17 single-sided CIS screen, pursuant to paragraph 2.4(b) of Part 1 to Appendix 11 of the Previous Franchise Agreement;
- (h) the two additional poster boards at each Station pursuant to paragraph 2.4(c) of Part 1 to Appendix 11 of the Previous Franchise Agreement;
- (i) the public address systems at:
 - (i) Bedford;
 - (ii) City Thameslink;
 - (iii) Drayton Park;
 - (iv) Elstree and Borehamwood;
 - (v) Essex Road;
 - (vi) Flitwick;
 - (vii) Harlington;
 - (viii) Harpenden;
 - (ix) Not used;
 - (x) Leagrave;
 - (xi) London Blackfriars;
 - (xii) Loughborough Junction;
 - (xiii) Luton;
 - (xiv) Luton Airport Parkway;
 - (xv) Radlett; and
 - (xvi) St Albans,

which was upgraded or installed pursuant to paragraph 2.10 of Part 1 to Appendix 11 of the Previous Franchise Agreement;

- (j) the improved or additional cycle parking which have been provided at 33 Stations pursuant to paragraph 2.12(a) of Part 1 to Appendix 11 of the Previous Franchise Agreement;
- (k) the additional direction signage at 33 Stations which is within 400 metres of the 'National Cycle Network' and which has have been installed pursuant to paragraph 2.12(b) of Part 1 to Appendix 11 of the Previous Franchise Agreement;
- (l) the 'Scheidt and Bachmann' chip and pin compliant ticket vending machines installed as replacements for the:
 - (i) 33 'Quickfare' ticket vending machines; and
 - (ii) two 'Ascom' ticket vending machines and 54 'Avantix' ticket vending machines,
- (m) pursuant to paragraph 2.14(a) of Part 1 to Appendix 11 of the Previous Franchise Agreement;
- (n) the 25 Scheidt and Bachmann chip and pin compliant self-service ticket vending machines installed at:
 - (i) Bedford;
 - (ii) Finsbury Park;
 - (iii) Flitwick;
 - (iv) P
 - (v) Hatfield;
 - (vi) Hertford North;
 - (vii) Hitchin;
 - (viii) Huntingdon;
 - (ix) Kings Cross GN;
 - (x) Letchworth;
 - (xi) Luton;
 - (xii) Luton Airport Parkway;
 - (xiii) Potters Bar;
 - (xiv) Royston;
 - (xv) St Albans;
 - (xvi) St Neots;
 - (xvii) Stevenage;

- (xviii) Welwyn Garden City; and
- (xix) Winchmore,

Stations pursuant to paragraph 2.14(b) of Part 1 to Appendix 11 of the Previous Franchise Agreement;

- (o) the new pay and display machines with integrated help points at 23 Stations and the improvements signage, pay and display machines, CCTV, lighting and traffic control measures acquired pursuant to paragraph 3.1 of Part 1 to Appendix 11 of the Previous Franchise Agreement;
- (p) the automatic ticket gate lines installed at:
 - (i) City Thameslink;
 - (ii) Cambridge;
 - (iii) Hertford North;
 - (iv) Hitchin;
 - (v) Huntingdon;
 - (vi) King's Cross Suburban;
 - (vii) London Blackfriars.
 - (viii) Potters Bar;
 - (ix) Royston;
 - (x) Welwyn Garden City; and
 - (xi) Stevenage,

or any other Stations pursuant to paragraphs 6.1 and 6.2 of Part 1 to Appendix 11 of the Previous Franchise Agreement;

- (q) the Zifa ticket checking stampers acquired pursuant to paragraph 6.4(a) of Part 1 to Appendix 11 of the Previous Franchise Agreement;
- (r) the Avantix 'Two' handheld terminals acquired as replacement for the Sportis portable ticket machines pursuant to paragraph 6.5 of Part 1 to Appendix 11 of the Previous Franchise Agreement;
- (s) the two driver simulators (including associated infrastructure and connections) acquired pursuant to paragraph 7.10 of Part 1 to Appendix 11 of the Previous Franchise Agreement;
- (t) the equipment for the provision of Wi-Fi at Stations acquired pursuant to paragraph 8.7(e) of Part 1 to Appendix 11 of the Previous Franchise Agreement;
- (u) the Oyster card readers installed at each of its Station within Zones 1-6 pursuant to paragraph 14.2(a) of Part 1 to Appendix 11 of the Previous Franchise Agreement;

- (v) the two dedicated double royal poster cases installed at all Thameslink route Stations pursuant to paragraph 15.7 of Part 1 to Appendix 11 of the Previous Franchise Agreement;
- (w) the six 42 inch enhanced display screens, one each installed at the following stations: (1) Blackfriars; (2) Farringdon; (3) Kentish Town; (4) City Thameslink; (5) Elephant and Castle and (6) St. Pancras International, pursuant to paragraph 15.8 of Part 1 to Appendix 11 of the Previous Franchise Agreement;
- (x) the double sided LED screen installed at the northern end of each platform at Farringdon station installed pursuant to paragraph 15.9 of Part 1 to Appendix 11 of the Previous Franchise Agreement;
- (y) the equipment acquired at Farringdon and Blackfriars Stations pursuant to paragraph 18.1 of Part 1 to Appendix 11 of the Previous Franchise Agreement; and
- (z) the Oyster/EMV/ITSO equipment installed at the New PAYG Stations (as defined in the Previous Franchise Agreement) pursuant to paragraph 20.3 of Part 1 to Appendix 11 of the Previous Franchise Agreement.

2. **Performance Improvement Measures**

- 2.1 From the Start Date, the Franchisee shall continue to operate a 'Performance Steering Group', which shall be chaired by its Managing Director and meet on a monthly basis to discuss the Franchisee's performance in respect of its operational obligations under this Agreement, in particular, those specified in Schedule 1.2 (Operating Obligations) and Schedule 7.1 (Performance Benchmarks) of the Terms.
- 2.2 On and from the Start Date, the Franchisee shall continue to maintain at the Franchisee's headquarters:
 - (a) an 'Incident Room' to support its control centre in instances of severe disruption; and
 - (b) a 'Service Status War Room' to act as a collection centre for performance information and to display such information. The Service Status War Room shall also provide the core facilities for the Incident Room.
- 2.3 During the Franchise Term the Franchisee shall:
 - (a) continue to employ an 'Area Operations Manager' for the Brighton line;
 - (b) deploy at the following stations: Bedford, Brighton, Hitchin (providing cover for Cambridge and Kings Lynn), London Blackfriars and London King's Cross:
 - (i) 18 driver standards managers; and
 - (ii) 8 service delivery managers,
 in each case to provide efficient management of train crew during Peak periods;
 - (c) maintain a 'Performance Training Academy' to train managers and other selected staff in higher standards of railway operation; and

- (d) designate members of staff as crowd control managers during Peak periods to reduce delays to the Passenger Services caused by passengers alighting and joining those services.

3. **Stations**

Security

3.1 The Franchisee shall for the duration of the Franchise Term:

- (a) continue to maintain a 'Central Control Centre' to centrally monitor 100 per cent. of all CCTV installed at Stations; and
- (b) maintain the Help Points at all Stations.

Station Cleaning

3.2 The Franchisee shall for the duration of the Franchise Term continue to maintain mobile cleaning teams to clean all Stations in accordance with the cleaning specification detailed in the SQMS.

Maintenance and decoration

3.3 The Franchisee shall for the duration of the Franchise Term continue to maintain a dedicated 'Facilities Management Team' to carry out painting, minor repairs and small maintenance jobs as and when required on an ongoing basis at Stations.

3.4 The Franchisee shall for the duration of the Franchise Term continue to maintain a helpdesk to which staff and customers can report maintenance and cleaning faults and failures. The location of the helpdesk shall be communicated to:

- (a) staff using internal communication channels (including staff notices, staff handbooks, station logbooks, management briefings, written communications on procedures, posters and the intranet); and
- (b) customers using posters, the Franchisee's website, timetables and customer magazines.

3.5 The Franchisee shall for the duration of the Franchise Term continue to maintain on an ongoing basis its rolling five-year programme of Station repainting required under the Previous Franchise Agreement under which each Station is repainted at least once every five years. That programme shall be limited to those Station areas which require painting as part of its ordinary maintenance obligations under the Station Leases and shall include:

- (a) waiting rooms;
- (b) platform areas;
- (c) Station buildings;
- (d) booking halls;
- (e) ticket offices;
- (f) shelters; and

- (g) lighting columns and stanchions.

Major Events Management

- 3.6 The Franchisee shall for the duration of the Franchise Term have and implement a strategy for special events' management.

4. Security/Safety

- 4.1 The Franchisee shall for the duration of the Franchise Term continue to employ a Head of Revenue Protection and a Crime Prevention Manager to formulate, lead and implement all security and revenue protection measures.

Station security

4.2

- (a) For the duration of the Franchise Term, the Franchisee shall:
- (i) fund the cost of two British Transport Police (BTP) sergeants, eight BTP constables and 19 'Police Community Support Officers', each to carry out security activities in relation to the relevant Franchise Services; and
 - (ii) work with the BTP to support the delivery of the Franchisee's security strategy.
- (b) Where under the contract between the BTP and the Franchisee, the BTP changes the nature or extent of the service it provides to the Franchisee through the resources referred to under paragraph 4.2(a)(i) without the Franchisee's consent, the Franchisee may propose to the Secretary of State an alternative means of security provision from that specified in paragraph 4.2(a).
- (c) The Secretary of State will not unreasonably withhold his consent to such proposal where that proposal does not result in a reduction in either the Franchisee's overall spend on security or the level of security afforded by the BTP prior to change.
- 4.3 For the duration of the Franchise Term, the Franchisee shall use all reasonable endeavours to maintain 'Secure Station Scheme' status at all Stations with that status on the Start Date.

Safety

- 4.4 For the duration of the Franchise Term, the Franchisee shall ensure that suitable safety management systems in accordance with 'HSG65' (or current equivalent) are deployed and maintained at Depots.

5. HR/Training

Investors in People

- 5.1 The Franchisee shall for the duration of the Franchise Term use all reasonable endeavours to continue to maintain Investors In People status and maintain such status during the Franchise Term.

Training and development

- 5.2 The Franchisee shall train existing and new staff over the full Franchise Term in accordance with training requirements and strategy developed under the Previous Franchise Agreement in accordance with its previous obligation under paragraph 7.5(b) of Part 1 to Appendix 11 of the Previous Franchise Agreement.

- 5.3 The Franchisee shall:

(a) implement the strategy referred to in paragraph 5.2 above in accordance with its terms subject to any reasonable changes identified following the analysis described in paragraph 5.3(b);

(b) in order to facilitate the efficient operation of the Franchisee where necessary, carry out further training needs analyses for those staff,

in each case, referring to, where appropriate, the latest National Passenger Survey results and other customer feedback; and

(c) carry out for all staff, annual appraisals in order to identify the training required to facilitate staff development.

- 5.4 The Franchisee shall:

(a) train and retrain existing staff and train new staff in accordance with the needs identified following the analysis carried out pursuant to paragraphs 5.3(b) of this Schedule 6.1 and 7.5(b) of Part 1 to Appendix 11 of the Previous Franchise Agreement; and

(b) to the extent not carried out pursuant to paragraph 5.4(a) train existing and new station and revenue protection staff to improve customer focus and efficiency; and

(c) require any new cleaning employee employed on a full time basis within 2 months of his appointment to attend 'British Institute of Cleaning Services' training courses; and

(d) use all reasonable endeavours to provide training identified pursuant to paragraph 5.3(c).

Vocational qualifications

- 5.5 The Franchisee shall for the duration of the Franchise Term provide to all Station and on board staff, the opportunity to achieve 'National Vocational Qualifications'.

Welcome and induction training

- 5.6 During the Franchise Term, the Franchisee shall require all staff to have attended welcome training to introduce staff to the Franchisee's vision, brand values and Parent ways of working.

- 5.7 The Franchisee shall ensure that all new staff receive training in elements of the Service Quality Standards where those standards form part of their normal operational role. All new staff will also receive appropriate safety briefings.

Simulators

- 5.8 During the Franchise Term, the Franchisee shall maintain two driver simulators (including associated infrastructure and connection works).

6. Quality

Rail Passengers' Council and User Groups

- 6.1 During the Franchise Term, the Franchisee shall liaise and cooperate with Passenger Focus and user groups, including 'London TravelWatch', to identify areas of quality improvement and shall:

- (a) hold forums every six months to update and discuss issues with a range of stakeholders;
- (b) invite community members to take part in quality improvement teams;
- (c) liaise and cooperate with the BTP and Passenger Focus to conduct joint visual audits of Stations and facilities across the Franchise; and
- (d) hold ad hoc, formal and informal discussions with those user groups.

- 6.2 During the Franchise Term, the Franchisee shall:

- (a) ensure that all information required to be published by this Agreement (such as information contained in information displays at stations, information pertaining to the Passenger Charter, and information contained on the website) contains the new contact details for Passenger Focus's passenger contact; and
- (b) provide a dedicated poster site for Passenger Focus information on every train.

7. Environmental

Environmental Manager

- 7.1 The Franchisee shall employ an 'Environmental Manager' throughout the Franchise Term.

Annual environmental plan

- 7.2 The Franchisee shall:

- (a) Maintain the environmental plan produced under the Previous Franchise Agreement or implement a revised environmental plan setting out its approach to managing its business in accordance with then current and anticipated legislation as instructed and approved by the Secretary of State;
- (b) produce an annual progress statement against that plan; and

- (c) provide that plan and statement to the Secretary of State, each within seven days of their respective completion

ISO14001

- 7.3 The Franchisee shall use its reasonable endeavours to maintain 'ISO14001' (or current equivalent) accreditation for the duration of the Franchise Term.

8. Social Inclusion

- 8.1 The Franchisee shall maintain a 'Community Support Policy' during the Franchise Term which will give sponsorship through financial assistance or provision of tickets, and practical support by staff to community organisations associated with routes served by the Franchise Services.

Access for All

- 8.2 The Franchisee shall for the duration of the Franchise Term maintain awareness of the Secretary of State's 'Access For All' fund (or its successor) through liaison with Network Rail, ATOC and DiPTAC and co-operate in the implementation of works at Stations designated for access improvements under the fund.
- 8.3 The Franchisee confirms that, if the Access for All fund permits enhancements in the level of staffing at particular Stations, it will co-operate with the Secretary of State in implementing any associated Variation.

9. Integration

Investments

- 9.1 The Franchisee shall for the duration of the Franchise Term promote transport integration measures to customers which may include:
- (a) the display, advertising and promotion of integrated tickets;
 - (b) liaison with local bus and coach operators;
 - (c) the leveraging of Transport for London or any 'Local Transport Fund' funding;
 - (d) the promotion of park and ride facilities;
 - (e) not used;
 - (f) staff training to ensure the Franchisee has informed and helpful staff to assist customers with their onward journey; and
 - (g) access integration, working closely with disability groups and organisations.

Integration and Partnership Manager

- 9.2 The Franchisee shall for the duration of the Franchise Term continue to have a dedicated 'Integration and Partnership Manager' in order to further such promotion and liaise with Local Authorities and other Stakeholders.

10. Passenger Information

The Franchisee shall maintain, for the duration of the Franchise Term, the load determination equipment using infra red technology developed by Petards Joyce-Loebl which is fitted on: (i) 4 class 313 units; (ii) 2 class 317 units; (iii) 4 class 365 units; and (iv) 8 class 319 units.

11. Secure Stations Accreditation

11.1 The Franchisee shall maintain throughout the Franchise Term the "Secure Stations Accreditation" achieved by the Train Operator under the Previous Franchise Agreement at each of the following Stations on the Start Date, including:

- (i) Finsbury Park;
- (ii) Hatfield;
- (iii) Hitchin;
- (iv) Hertford North;
- (v) Huntingdon;
- (vi) Kings Lynn;
- (vii) Potters Bar;
- (viii) Royston;
- (ix) St Neots;
- (x) Waterbeach; and
- (xi) Welwyn Garden City.

12. Car Parks Accreditation

The Franchisee shall maintain throughout the Franchise Term the 'Association of Chief Police Officers' 'Park Mark Safer Car Parking' accreditation at the 15 car parks achieved by the Train Operator under the Previous Franchise Agreement.

13. Rolling Stock Cascade

13.1 The Franchisee shall enter into the Amended and Restated Electrostar Lot 10 A Sub Lease on or before the date of this Franchise Agreement. Subject to and in accordance with the terms of the Amended and Restated Electrostar Lot 10 A Sub Lease the Franchisee shall work in good faith with the Southern Franchisee to effectively manage the commencement of the relevant hire of the Additional Electrostar Units to the Franchisee so that the Franchisee has received all of the Additional Electrostar Units on sub lease by the Passenger Change Date in May 2014 (or, if not possible, as soon as reasonably practicable thereafter) and all of them are available for use in delivering the Passenger Services from the Passenger Change Date in May 2014 (or, if not possible, as soon as reasonably practicable thereafter).

- 13.2 The Financial Model assumes that the Additional Electrostar Units are subleased by the Franchisee from the dates specified in Table 1 and that the Relevant Class 319 Units cease to be leased by the Franchisee from the dates specified in Table 2:

Table 1

Additional Electrostar Unit	Date from which Additional Electrostar Units are assumed to be sub leased by the Franchisee
377.208	1 April 2014
377.209	6 April 2014
377.210	13 April 2014
377.213	20 April 2014
377.214	27 April 2014
377.215	4 May 2014

Table 2

Relevant Class 319 Units	Date from which Relevant Class 319 Units are assumed to cease to be leased by the Franchisee
One of 319.361, 319.362 or 319.363	20 April 2014
One of 319.361, 319.362 or 319.363	27 April 2014
One of 319.361, 319.362 or 319.363	4 May 2014

The parties acknowledge that:

(i) the commencement of sub leasing of any Additional Electrostar Unit may occur on a different date to the date specified in Table 1; and

(ii) the dates in Table 2 are not consistent with the lease termination dates for such units in the relevant Rolling Stock Lease and that Relevant Class 319 Units may cease to be leased by the Franchisee on different dates,

and agree that if the Financial Modal assumptions reflected in Table 1 and Table 2 do not prove to be correct there shall be no Change or other consequent financial adjustment under the terms of the Franchise Agreement.

The parties further agree that they will both act reasonably for the purposes of:

(a) avoiding delays to the process of the Franchisee taking Additional Electrostar Units on sub lease in accordance with anticipated timescales;

(b) facilitating the leasing or sub leasing by a reasonable alternative lessee or sub lessee of Relevant Class 319 Units where they can reasonably be considered to be surplus to the requirements of the Franchisee at any time

and the Franchisee agrees that it shall not unreasonably fail to commence the sub leasing of any Additional Electrostar Unit that the Southern Franchisee has notified the Franchisee is available for sub lease.

- 13.3 In the event that the Franchisee is required under the terms of its relevant Rolling Stock Lease to return to the lessor a Relevant Class 319 Unit at a time when there has been delay to the commencement of sub leasing of Additional Electrostar Units so that the return of such Relevant Class 319 Unit would lead to a net reduction in the Train Fleet when compared to what was assumed as referred to in paragraph 13.2 the Secretary of State shall use all reasonable endeavours to exercise any right he may have to procure that such Relevant Class 319 Unit (or a reasonably appropriate substitute dual voltage electric multiple unit) is made available for sub lease to the Franchisee by the new lessee for a reasonable period, with the objective of avoiding any such net reduction.
- 13.4 Subject to the Franchisee complying with its obligations pursuant to paragraph 13.2 above, if in direct consequence of a Relevant Class 319 Unit ceasing to be leased in circumstances where paragraph 13.3 applies but no alternative arrangement is in place as contemplated in that paragraph, the Franchisee is unable to operate on a relevant day each of the Passenger Services as are set out in the Plan of the Day for that day, with at least the Passenger Carrying Capacity specified in the Train Plan for that Passenger Service, then the Franchisee shall be deemed to have used all reasonable endeavours to operate such Passenger Services and therefore shall not be in contravention of its obligations under paragraph 1.1 of Schedule 1.2 of the Franchisee Agreement. In such circumstances the Franchisee shall use all reasonable endeavours to mitigate the adverse impacts on the Passenger Services to the greatest extent reasonably practicable.

14. The Infrastructure Projects

- 14.1 The Franchisee shall from the Start Date until the completion of each Infrastructure Project (or the end of the Franchise Term, if earlier) co-operate with all relevant parties responsible for the delivery of such Infrastructure Project with the intention of assisting its timely, efficient and cost effective completion, insofar as that Infrastructure Project has an interface with the Franchise Services. To the extent that any Infrastructure Project leads to the Franchisee having rights under railway industry procedures including Network Change and Station Change the Franchisee shall not act in a way designed to directly or indirectly prevent, prejudice or frustrate the delivery of such Infrastructure Project and the Franchisee shall not unreasonably raise any objection under any railway industry procedure including Network Change or Station Change. The Franchisee shall throughout the Franchise Term allocate such appropriate Franchise Employees and other relevant resource as is reasonably required for the purposes of complying with its obligations in relation to all of the Infrastructure Projects pursuant to both this Agreement and Access Agreements to which it is a party.
- 14.2 The Franchisee shall provide within 15 working days of the end of each Reporting Period a detailed report complying with the reasonable requirements of the Secretary of State describing progress in relation to matters relating to each Infrastructure Project and identifying and quantifying the emerging risk position in relation to each such Infrastructure Project, in each case insofar as

the same relates to the Franchise Services and the Franchisee is aware of the same. The Franchisee shall provide such additional information as the Secretary of State shall reasonably request and if requested by the Secretary of State it shall develop such alternative and contingency plans as the Secretary of State may reasonably require for the purpose of mitigating relevant risk and ensuring that the adverse impacts on the Franchise Services of any relevant risk arising is mitigated to the greatest extent reasonable practicable.

14.3 For the purposes of this paragraph 14:

- (a) **"Infrastructure Project"** means the Crossrail Project together with such other infrastructure enhancement projects which impact on the routes over which the Passenger Services are operated and 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 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.

15. Gating Schemes

15.1 The Franchisee will maintain in operation a system of automatic ticket gates at each of the following locations (the **"New Gating Schemes"**):

Location	Minimum hours of operation on Weekdays	Minimum hours of operation on Saturday	Minimum hours of operation on Sunday
Leagrave	05:30 – 10:30 15:00 – 20:30	06:30 – 11:30 15:00 – 20:30	09:00 – 16:00
Harpenden	05:30 – 10:30 15:00 – 20:30	06:30 – 11:30 15:00 – 20:30	09:00 – 16:00
West Hampstead	06:00 – 12:30 14:00 – 20:30	07:00 – 13:30 14:00 – 20:30	09:00 – 15:30
Finsbury Park	06:00 – 21:00	06:00-21:00	06:00 – 21:00
Kings Lynn	05:45 – 12:00 14:00 – 20:30	06:45 – 13:00 14:00 – 20:30	08:15 – 14:30

16. New Year's Eve Services

16.1 If New Year occurs during the Franchise Term the Franchisee shall in relation to the early hours of New Year's day morning following New Year's Eve and subject to the availability of the network, include in the Timetable Passenger Services materially corresponding to those set out in the table below (it being acknowledged that while the number of services, their general pattern, formation and routes are not expected to change, the detailed timings may vary) or such alternative services as the Franchisee may propose to the

Secretary of State and the Secretary of State approve (such approval not to be unreasonably withheld or delayed):

SUTTON SERVICES

	Dep Wkg	Start Location	End Location	Arr Wkg	Formation
1	00:42	St Pancras	Sutton	01:22	4-car
2	01:12	St Pancras	Sutton	01:52	4-car
3	01:42	St Pancras	Sutton	02:22	4-car
4	02:12	St Pancras	Sutton	02:52	4-car
5	02:42	St Pancras	Sutton	03:22	4-car
6	03:12	St Pancras	Sutton	03:52	4-car
7	03:42	St Pancras	Sutton	04:22	4-car
8	04:12	St Pancras	Sutton	04:52	4-car
9	04:42	St Pancras	Sutton	05:22	4-car
10	05:12	St Pancras	Sutton	05:52	4-car

ST. ALBANS SERVICES

	Dep Wkg	Start Location	End Location	Arr Wkg	Units
1	02:00	St Pancras	St Albans	02:35	4-car
2	02:30	St Pancras	St Albans	03:05	4-car
3	03:00	St Pancras	St Albans	03:35	4-car
4	03:30	St Pancras	St Albans	04:05	4-car

16.2 Subject to paragraph 16.3, the Franchisee shall permit travel free of charge on New Year's Eve on its Passenger Services travelling in the direction away from London for passengers joining the relevant services after 23:45 on 31 December and before 04:30 on the immediately succeeding 1 January.

16.3 The free travel offer shall be on terms which does not permit season ticket or other ticket holders to claim any refund in connection with the free travel period and is otherwise subject to the National Conditions of Carriage and relevant railway by-laws and is wholly without prejudice to the entitlement of the Franchisee to charge for travel on its Passenger Services at any other times and on any other services.

17. **Rolling Stock Heavy Maintenance**

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

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

(a) **Where text has been omitted from the document, this is because the Director General Rail or Secretary of State has decided to**

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- (b) **Where text has been omitted from the document, this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.**
- (c) **Where text has been omitted from the document, this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.**
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Table 1

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Table 2

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

- 17.3 **Where text has been omitted from the document, this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.**
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Part 2 to Schedule 6.1

Miscellaneous Provisions

1. APPLICATION

- 1.1 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 established in accordance with its Committed Obligations throughout the remainder of the Franchise Term.
- 2.2 The Franchisee shall be treated as maintaining Committed Obligations notwithstanding temporary non-availability due to accidental damage or vandalism or maintenance, repair or replacement activities, or temporary staff absence, subject in each case to the Franchisee taking all reasonable steps to keep any such period of temporary non-availability to a minimum.
- 2.3 Where Part 1 (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

- 4.1 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, save in respect of any accrued payments owed pursuant to Part 3 (Late/Non-Completion of Committed Obligations) to this Schedule 6.1 but not yet paid.

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.

Part 3 to Schedule 6.1

Late/Non Completion of Committed Obligations

1. LATE COMPLETION OR NON-DELIVERY OF COMMITTED OBLIGATIONS

If the Franchisee fails to deliver in full a Committed Obligation in accordance with and by the timeframe specified for its delivery in Part 1 (List of Committed Obligations) to this Schedule 6.1, such late, partial or non-delivery shall constitute a contravention of the Franchise Agreement.

SCHEDULE 6.2

Thameslink/GN Franchise Specific Provisions

1. Introduction of ITSO Ticketing/Smartmedia Technology

- 1.1 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 (including the South East Flexible Ticketing Programme). 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.
- 1.2 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.
- 1.3 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, by the IOP Acceptance Date;
 - (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.
- 1.4 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 and revenue losses 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.

1.5 The Franchisee shall ensure, except to the extent that the Secretary of State may consent otherwise, that 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 and operating requirement (including any subsequent ITSO specification and operating requirement).

2. **THAMESLINK PROGRAMME AND OTHER INFRASTRUCTURE PROJECTS**

Project Director and other staff

2.1 Throughout the Franchise Term the Franchisee shall employ a 'Project Director' and two assistants at its cost to facilitate the carrying out of its obligations in respect of the Thameslink Programme and, subject to facilitating the carrying out of those obligations, to also facilitate the carrying out of the Franchisee's obligations in respect of other infrastructure projects that will have an impact on the Franchisee.

Thameslink Programme and the London Bridge Works

2.2 The Franchisee shall co-operate with Network Rail, the Secretary of State and/or any other third party relevant to the London Bridge Works and the Thameslink 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.

2.3 The Franchisee acknowledges and agrees that it shall co-operate fully and effectively with:

(a) Network Rail, the Southern Franchisee and the LSER Franchisee including in relation to the planning of the December 2014 timetable change; and

(b) the Successor Operator to ensure that the end of the Franchise does not have any adverse impacts on the Thameslink Programme or the London Bridge Works.

For the purposes of this paragraph 2.3 only, and without prejudice to paragraph 2.4, where there is a requirement on the Franchisee to "co-operate fully and effectively" with one or more other parties with regard to an objective, that requirement relates to the quality of cooperation to be provided by the Franchisee taking into account and subject to the response of the other parties concerned. It does not indicate an obligation on the Franchisee beyond cooperation, relating to the funding of detailed design and development of an infrastructure project, actual delivery or subsequent operation (including in each case performance, cost and revenue effects). It does indicate that the Franchisee shall participate actively in relation to the relevant objective 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 of the circumstances to be an appropriate use of its resources and effective to achieve the relevant objective.

- 2.4 In fulfilling its obligation to co-operate pursuant to paragraphs 2.2 and 2.3, the Franchisee shall, amongst other things:
- (a) make the employees specified in paragraph 2.1 and (where appropriate) other suitably-qualified personnel available from time to time to attend:
 - (i) meetings of the project team; or
 - (ii) such other meetings with Network Rail, the Secretary of State and/or any other third party relevant to the Thameslink Programme or the London Bridge Works as those parties reasonably require;
 - (b) procure that those employees are proactive in:
 - (i) seeking to identify solutions that minimise overall rail industry costs; and
 - (ii) communicating those solutions and the Franchisee's opinion on any other relevant matter regarding the Thameslink Programme or the London Bridge Works, including its opinion in respect of the Thameslink Programme's implementation timetable and schedule of works or any implementation timetable or schedule of works in respect of a particular element of that project;
 - (c) use all reasonable endeavours to agree in advance of any phase of the construction works comprising part of the Thameslink Programme:
 - (i) the costs associated with any such phase, where possible, on a fixed cost basis; and
 - (ii) suitable compensation arrangements with Network Rail or any relevant third party;
 - (d) provide to the Secretary of State as and when reasonably requested by him within such reasonable period as he may specify:
 - (i) passenger loading data, financial information on an open book basis and such other information as he requires in order to facilitate the planning of the Thameslink Programme and/or determine compensation requirements in respect thereof; and

- (ii) its assessment of the Thameslink Programme's impact on the Franchise;
 - (e) record the costs it incurs and the revenues it receives as a consequence of the implementation of the Thameslink Programme (including the London Bridge Works) on an open book basis; and
 - (f) not seek to subsequently challenge the agreed compensation arrangements on the basis that the compensation paid thereunder was inadequate given the actual level of disruption experienced or cost incurred, other than where appropriate under any agreed arrangements in respect of the pass through of actual costs incurred on an open book basis.
- 2.5 The Franchisee shall on reasonable notice grant access to any Stations to the persons identified in this paragraph 2 as is reasonably necessary in order to further the development of the Thameslink Programme.

3. Trading Arrangements

- 3.1 The Franchisee shall for the duration of the Franchise Term remain a party to the following sub leases:
- (a) with the LSER Franchise a sublease for the hire of Class 319 units;
 - (b) an amended and restated sublease between the Franchisee and the Southern Franchisee for the hire of Electrostar Lot 10A Units and six additional Class 377/2 units (the "**Amended and Restated Electrostar Lot 10 A Sub Lease**");
 - (c) with the LSER Franchisee a sub lease for the hire of class 377 units;
 - (d) a sublease with Southern Franchisee for the Further Electrostar Units; and
 - (e) a sublease with Southern Franchisee for the Electrostar Lot 10B Units.
- 3.2 Not used.
- 3.3 The Franchisee shall throughout the Franchise Term remain a party to the following trading arrangements:
- (a) with the LSER franchisee a train crew trading agreement pursuant to which the Franchisee provides train crew services to the LSER Franchisee; and
 - (b) with the LSER Franchisee a train crew trading agreement pursuant to which the LSER Franchisee provides train crew services to the Franchisee.
- 3.4 The Franchisee agrees and undertakes to:
- (a) observe and comply with all the conditions and obligations on its part contained in each Thameslink Trading Agreement;
 - (b) agree, and take all steps which may be required to implement, any amendment to any Thameslink 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 Thameslink Trading Agreement with the prior consent of the Secretary of State;

- (d) not vary, agree to vary, waive performance of, terminate or in any other way deal with or change the terms of any Thameslink Trading Agreement without the prior consent of the Secretary of State; and
- (e) enter into replacement 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 Southern Franchisee or the LSER Franchisee or the successor of either of them except to the extent that the Secretary of State otherwise directs.

3.5 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 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).

3.6 The Franchisee shall at the Secretary of State's request from time to time liaise and cooperate with the Secretary of State and (if and to the extent so requested by the Secretary of State) with the LSER Franchisee (or any successor operator to the LSER Franchisee) with a view to securing the planning, diagramming and operation of a Timetable which is in accordance with the SLC which envisages any Train Slots being operated partly by the Franchisee and partly by the LSER Franchisee (or any successor operator to the LSER Franchisee).

3.7

- (a) The Franchisee shall take such steps as are reasonably required to be compensated for any adverse cost and revenue impacts consequent upon the London Bridge Blockade by exercising its rights from time to time under industry mechanisms (including the Track Access Agreement or the Network Code). The Franchisee shall consult with the Secretary of State before exercising such rights and give the Secretary of State a reasonable opportunity to make representations.
- (b) If the Secretary of State considers that the Franchisee does not propose to take or has not taken appropriate steps in relation to obtaining compensation from Network Rail to compensate it for any adverse cost and revenue impacts consequent upon the London Bridge Blockade he may require the Franchisee to exercise its rights in such manner as the Secretary of State reasonably considers appropriate in the circumstances including disputing any proposed act or omission of Network Rail and subjecting any dispute to any relevant dispute resolution arrangements or procedures and appealing against any award or determination under such arrangements, including if relevant to ORR.

4. **Thameslink KO1 12 Car Strengthening**

The Franchisee shall ensure that all units sub leased by the Franchisee from the Southern Franchisee under the Further Electrostar Units Sub Lease are deployed in 12 car configuration and are planned to be operated by the Franchisee on diagrams which (when taken together with any other units planned to be operated by the Franchisee in 12 car configuration) cover the Passenger Services in the

Morning Peak and Evening Peak Monday to Friday which have the highest demand subject to any requirements that the Franchisee is required to comply with under the Further Electrostar Units Sub Lease.

5. **REBS**

Where participation in a Route Efficiency Benefit Share Mechanism is made available to the Franchisee under a Track Access Agreement as a consequence of a Charging Review implemented after the date of this Agreement, the Franchisee must elect not to participate in such mechanism for all of its routes. Should the Franchisee for any reason fail to comply with this requirement and participate in such a mechanism, then the Secretary of State reserves the right to fully recover from the Franchisee any financial benefits paid to it under the mechanism and the Franchisee agrees that the Secretary of State shall be entitled to receive details of those benefits from Network Rail or any other relevant party.

THAMESLINK ROLLING STOCK PROJECT

Unless the context otherwise requires or unless specifically defined, words and expressions used in paragraphs 7 to 15 of this Schedule 6.2 shall bear the meanings attributed to them in the MDCTA or the DAFLs (as applicable).

6. **Replacement Lease**

On or before the Start Date the Franchisee shall enter into the Replacement Lease in substantially the same form as the document in the agreed terms marked "**RL**".

7. **TRSP Suite of Documents/TRSP Plan**

7.1 The Franchisee shall during the Franchise Term perform its obligations under each of the TRSP Suite of Documents in the manner and to a standard that would reasonably be expected of an established train operating entity with appropriate experience as a franchised passenger train operator and with franchise commitments equivalent to those required to be provided or fulfilled by the Franchisee under this Agreement.

7.2 On or before 1 April 2014, the Franchisee shall submit to the Secretary of State an updated TRSP Plan, which shall be substantially in the same form as the TRSP plan provided under the Previous Franchise Agreement (such TRSP Plan being the document in the agreed terms marked "**TRSP PL**"). For the avoidance of doubt, the Franchisee shall ensure that the TRSP Plan:

(a) addresses, amongst other things, the activities to be undertaken by the Franchisee in fulfilment of its TRSP Obligations and PDPO Obligations (other than the PDPO Obligation to produce the TRSP Plan); and

(b) covers the period 1 April 2014 to 31 March 2015.

7.3 During the Franchise Term, the Franchisee shall implement the TRSP Plan in accordance with its terms.

7.4 The Franchisee shall from the Start Date until the end of the Franchise Term provide a project manager who shall work full time for the Franchisee on the acquisition of the Class 700 rolling stock units and the construction and enhancement of depots to facilitate the Thameslink Programme (which is to be referred to as "**Thameslink Rolling Stock Project**" or "**TRSP**"), managing the execution of the Franchisee's responsibilities and activities in accordance with

the TRSP Plan, the TRSP Suite of Documents and the PDPO Obligations, and working to coordinate activities with the Secretary of State, the Systems Integrator and other relevant project stakeholders (the "**Thameslink Project Manager**"). The Thameslink Project Manager's responsibilities will include:

- (a) arranging suitable attendance at all project progress meetings with all key project stakeholders;
- (b) monitoring the TRSP Plan, approval dates and major activities under the TRSP Suite of Documents, reporting any significant delays to the Secretary of State;
- (c) production and maintenance in connection with the Franchisee's activities relating to the TRSP Suite of Documents of project documentation, risk registers, plans and strategies;
- (d) developing and managing a change control management procedure and change log;
- (e) receiving from the TMM under the TRSP Suite of Documents its four weekly project report, forwarding a copy of the report to the Secretary of State, along with Franchisee comments, highlighting any claims or potential claims, any instances where any Unit, Associated Equipment or any other contract deliverable has been or is likely to be delivered later than its scheduled delivery date, any Permitted Delays, Force Majeure Events, key risks, non compliances and other potential delays.

7.5 The Franchisee shall in accordance with the TRSP Plan, report to the Secretary of State on progress against the TRSP Plan, including:

- (a) any aspects which it is considered are not reasonably likely to proceed in accordance with the TRSP Plan for any reason, including measures being taken to prevent, reduce the risk of or mitigate any such deviation; and
- (b) any implications for the TRSP Plan of any actual or reasonably anticipated Change, including its proposals for mitigation.

7.6 The Franchisee will, without limiting any other obligation it has or any rights of the Secretary of State:

- (a) 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 PDPO Obligations, howsoever caused, notify the Secretary of State 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 event(s) on the delivery of the TRSP Suite of Documents. Save in matters of urgency, such notification will be addressed as part of the regular reporting referred to in paragraph 7.4 above;
- (b) keep the Secretary of State informed of developments and update its mitigation proposals to reflect those developments;
- (c) make any such adjustments to such proposals as the Secretary of State may reasonably require; and
- (d) amend the TRSP Plan to reflect those proposals (as adjusted).

7.7

- (a) The TRSP Plan may be amended in connection with any Change as part of the operation of Schedule 9 (Changes) or in accordance with the agreement, in writing, of the Franchisee and the Secretary of State.
- (b) The Franchisee shall be permitted to make updates or changes to the TRSP Plan without the prior approval of the Secretary of State where they can reasonably be considered to be technical or administrative updates or changes which have no material direct or indirect adverse impact on the position of the Secretary of State. The Franchisee shall forthwith notify the Secretary of State of any such technical or administrative updates or changes that are made.

8. **TRSP Obligations**

- 8.1 The Secretary of State hereby designates the TRSP Suite of Documents as Key Contracts pursuant to the terms of this Agreement and agrees that paragraphs 3 and 8 of Schedule 14.3 (Key Contracts) of this Agreement shall not apply.
- 8.2 Without prejudice to the terms contained in paragraphs 7.2 to 7.7 (inclusive) of this Schedule 6.2, it is acknowledged that the Franchisee agrees with the relevant parties to the TRSP Suite of Documents to be bound by the obligations applicable to the Operator as set out in each of the TRSP Suite of Documents entered into by the Franchisee (the "**TRSP Obligations**") to the extent and for the duration that the Operator is a party to the TRSP Suite of Documents.
- 8.3 The Franchisee agrees that despite any summaries of TRSP Obligations contained within this Schedule 6.2 or in any version of the TRSP Plan, the contractual terms of the TRSP Obligations remain within the TRSP Suite of Documents and in the event of any inconsistency between the description of the TRSP Obligations under the TRSP Suite of Documents and the summaries in this Schedule 6.2 or in that TRSP Plan, the description in the TRSP Suite of Documents will prevail.
- 8.4 The Secretary of State undertakes to the Franchisee that in the case of the Secretary of State or any third party nominated under paragraph 10.1 exercising his entitlements and discretions under this Agreement and giving or withholding any consents or approvals which may be required by the Franchisee in connection with the TRSP Suite of Documents, he shall, and shall procure that any third party nominated by him under paragraph 10.1 shall, have full regard to the obligations on the Franchisee under the TRSP Suite of Documents and do so in a way which is consistent with and supports due performance of the TRSP Suite of Documents by the Franchisee. The Secretary of State shall ensure that where he or any such third party delays, qualifies or withholds any consent or approval or instruct the Franchisee to act in any particular manner or delay any response, the Franchisee is provided with a reasonable explanation.
- 8.5 Notwithstanding paragraph 8.2, obligations contained in paragraphs 7 to 15 of this Schedule 6.2 that are related to, but nonetheless additional to, the TRSP Obligations, including additional consultation obligations pursuant to paragraph 10, shall have full force and effect.

9. **Additional Thameslink Programme Delivery Partner For Operations Activities and Milestones**

- 9.1 The PDPO Obligations of the Franchisee are its obligations set out in the TRSP Plan, each as amended or supplemented from time to time, including where amended in accordance with paragraphs 7.6 and 7.7 of this Schedule 6.2 (the "**PDPO Obligations**"), including in relation to the manner and timing of performance of the PDPO Obligations.

Stakeholder and Communications Plan

- 9.2 The Franchisee shall:

- (a) on or before 30 April 2014, submit to the Secretary of State a reasonable, appropriate and fit for purpose stakeholder and communications plan in relation to the Thameslink Programme which, as a minimum:
- (i) is in substantially the same form as the framework stakeholder and communications plan in the agreed terms marked "**SC PL**";
 - (ii) has been agreed with the Secretary of State prior to its submission;
 - (iii) covers the period on and from the Start Date up to and including 31 March 2015;
 - (iv) is consistent with the stakeholder and communications plans of other stakeholders in the rail industry involved in the Thameslink Programme;
 - (v) details the Franchisee's consultation and stakeholder engagement obligations which have not been carried out as at the date of completion of such stakeholder and communications plan;
 - (vi) evidences that the Franchisee has consulted with the relevant stakeholders (and other interested parties) as at the date of completion of such stakeholder and communications plan; and
 - (vii) details the activities to be carried out by the relevant stakeholders to ensure that their views are considered in the development and implementation of the TRSP Suite of Documents,

(the "**Stakeholder and Communications Plan**"). In the event that the Secretary of State reasonably considers that the Stakeholder and Communications Plan is not fit for purpose, the Secretary of State shall reasonably determine the Stakeholder and Communications Plan; and

- (b) implement the Stakeholder and Communications Plan (including to the extent such Stakeholder and Communications Plan has been updated under paragraphs 9.3, 9.4, 9.6 and 9.8 below) in accordance with its terms to the extent relevant during the Franchise Term.

- 9.3 In addition to the Franchisee's obligations under paragraphs 9.4, 9.6 and 9.8 below, the Franchisee shall during the Franchise Term keep under review and

update the Stakeholder and Communication Plan as reasonably required from time to time to reflect changed and developing circumstances.

- 9.4 Following notification by the Secretary of State to the Franchisee of the identity of the Successor Operator, the Franchisee shall consult with the Successor Operator and the Secretary of State and update the existing Stakeholder and Communications Plan as agreed by the Secretary of State so as to ensure that such existing Stakeholder and Communications Plan:
- (i) remains fit for purpose and up to date in the context of developing circumstances;
 - (ii) reflects, as far as is reasonably practicable, the consultation undertaken by the Franchisee with the Successor Operator and the Secretary of State; and
 - (iii) evidences that the interface between the existing Stakeholder and Communications Plan and the Successor Operator's stakeholder and communications plan has been sufficiently considered,

(the "**Updated Stakeholder and Communications Plan**").

- 9.5 The Franchisee shall submit to the Secretary of State the Updated Stakeholder and Communications Plan within 28 days of notification of the identity of the Successor Operator.

- 9.6 No less than 28 days prior to the Expiry Date, the Franchisee shall:

- (a) if the identity of the Successor Operator has been notified by the Secretary of State to the Franchisee, consult with the Successor Operator for the purposes of further developing the Updated Stakeholder and Communications Plan so that it remains fit for purpose and up to date in the context of developing circumstances (the "**Handover Stakeholder and Communications Plan**");
- (b) submit to the Secretary of State the Handover Stakeholder and Communications Plan; and
- (c) deliver a presentation to the Secretary of State and the Successor Operator explaining the detail of the Handover Stakeholder and Communications Plan and the anticipated status of communications as at the Expiry Date, responding to any reasonable clarification queries raised by the Successor Operator in respect thereto.

- 9.7 If, in relation to the Franchisee's obligations under paragraph 9.6(c), the Franchisee has failed to comply with such obligations due to the Successor Operator's failure to co-operate with the Franchisee, the Franchisee shall not be in breach of its obligations under paragraph 9.6(c) where it can demonstrate to the reasonable satisfaction of the Secretary of State that it has used all reasonable endeavours to comply with its obligations under paragraph 9.6(c).

- 9.8 The Parties agree that if the Secretary of State gives notice to the Franchisee of his intention to continue the Franchise Agreement in accordance with paragraph 2 of Schedule 18 (Additional Reporting Periods), then no later than 30 September 2014, unless otherwise agreed by the Secretary of State, the Franchisee shall provide to the Secretary of State a copy of the latest

Stakeholder and Communications Plan in force at that time and provide evidence to the reasonable satisfaction of the Secretary of State that such latest Stakeholder and Communications Plan is up-to-date and remains fit for purpose in the context of developing circumstances.

Handover Plan

- 9.9 No less than 28 days prior to the Expiry Date, the Franchisee shall:
- (a) without prejudice to its obligations under paragraph 10.6 below, submit to the Secretary of State a reasonable, appropriate and fit for purpose handover plan which shall include, as a minimum:
 - (i) the next steps (if any) in relation to the Vehicle Change and Proposal for Change (as such terms are defined in the Network Code and Depot Access Conditions respectively) applications required to be progressed by the Franchisee under the TRSP Plan;
 - (ii) details of the Franchisee's obligations under the TRSP Plan and TRSP Suite of Documents which will need to be delivered by the Successor Operator on or immediately after the Transfer Date (as such term is defined in the Supplemental Agreement);
 - (iii) details of the documents, records and other materials in its possession or control relating to its performance of the TRSP Suite of Documents and fulfilment of the PDPO Obligations being provided to the Successor Operator as required by paragraph 10.6 below;
 - (iv) details of each of the TRSP Suite of Documents that have had their terms amended and the details of such amendment;
 - (v) details of any Permitted Delay and Permitted Depot Delay liabilities that have arisen under the TRSP Suite of Documents during the Franchise Period which will be transferred to the Successor Operator on and from the Transfer Date (as such term is defined in the Supplemental Agreement) in accordance with the terms of the Umbrella Agreement;
 - (vi) where known to the Franchisee, details of any circumstances that have arisen during the Franchise Period which will or may subsequently (including following the Expiry Date) give rise to a Permitted Delay Notification (whether such Permitted Delay is due to the Franchisee's act or omission or otherwise);
 - (vii) copies of the Handover Stakeholder and Communications Plan and the TRSP Plan; and
 - (viii) such other matters as may be reasonably requested by the Secretary of State or the Successor Operator (as the case may be),

(together the "**Handover Plan**"); and

- (b) deliver a presentation to the Secretary of State and/or the Successor Operator explaining the detail of the Handover Plan; and
 - (c) respond to all reasonable queries and questions raised by the Secretary of State and/or the Successor Operator in relation to the Handover Plan.
- 9.10 The Parties agree that if the Secretary of State gives notice to the Franchisee of his intention to continue the Franchise Agreement in accordance with paragraph 2 of Schedule 18 (Additional Reporting Periods), then no later than 30 September 2014, unless otherwise agreed by the Secretary of State, the Franchisee shall deliver to the Secretary of State a draft of the Handover Plan meeting the content requirements set out in paragraph 9.9 above, to the extent that it is reasonably practicable to meet such content requirements at that time.
- 9.11 The Franchisee shall further ensure that the Thameslink Project Manager is made available to the Secretary of State and the Successor Operator to discuss the content of the Handover Plan as and when reasonably requested by the Secretary of State and/or the Successor Operator.
- 9.12 If, in relation to the Franchisee's obligations under paragraphs 9.6(c), 9.9(b), 9.9(c) and/or 9.11 the Franchisee has failed to comply with such obligations due to the Successor Operator's failure to co-operate with the Franchisee, the Franchisee shall not be in breach of its obligations under paragraphs 9.6(c), 9.9(b), 9.9(c) and/or 9.11 where it can demonstrate to the reasonable satisfaction of the Secretary of State that it has used all reasonable endeavours to comply with its obligations under paragraphs 9.6(c), 9.9(b), 9.9(c) and/or 9.11 and in such circumstances failure due to the Successor Operator's failure to co-operate shall not prevent the Franchisee being treated as having fulfilled any corresponding Milestone Target or require the clawback of any relevant Milestone Incentive Payment and in such circumstances failure due to the Successor Operator's failure to cooperate shall not prevent the Franchisee being treated as having fulfilled any corresponding Milestone Target or require the clawback of any relevant Milestone Incentive Payment where the Franchisee has demonstrated to the reasonable satisfaction of the Secretary of State that it has used all reasonable endeavours to co-operate with the Successor Operator.

Temporary Driver Accommodation at Hornsey Depot

- 9.13 The Franchisee shall "accept" (as such term is defined in the applicable works contract) the temporary driver accommodation at Hornsey Depot by 8 August 2014 and shall notify the Secretary of State in writing on or immediately after 8 August 2014 that it has "accepted" the temporary driver accommodation and that such temporary driver accommodation is operational and in use by the drivers.

Depot Change

- 9.14 On or before 31 August 2014, the Franchisee shall submit a Proposal for Change (as such term is defined by the Depot Access Conditions) to relevant industry stakeholders in accordance with prescribed processes provided by Network Rail and the ORR and shall share such Proposal for Change with the Secretary of State and provide such updates on the progress of the Proposal of Change as may be reasonably requested by the Secretary of State from time to time.

Milestone Target

- 9.15 **Where text has been omitted from the document, this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.**
- (a) **Where text has been omitted from the document, this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.**
 - (b) **Where text has been omitted from the document, this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.**
 - (c) **Where text has been omitted from the document, this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.**
 - (d) **Where text has been omitted from the document, this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.**
 - (i) **Where text has been omitted from the document, this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.**
 - (ii) **Where text has been omitted from the document, this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.**
 - (e) **Where text has been omitted from the document, this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.**

Milestone Incentive Payment – Table 1

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

- 9.16 The Franchisee shall report to the Secretary of State on progress on the activities comprised in Table 1 above within two weeks of the end of each Reporting Period in accordance with paragraph 3.2(d) of Schedule 13 (Information and Industry Initiatives).

Evidencing the achievement of the Milestone Target

- 9.17 When a Milestone Target has, in the opinion of the Franchisee, been achieved or carried out, the Franchisee shall notify the Secretary of State and provide all

relevant evidence that such Milestone Target has been achieved or carried out and the date by which it was so achieved or carried out as the Secretary of State may reasonably require.

9.18 The Secretary of State shall have 10 Business Days from the date of notification under paragraph 9.17 to make a determination, and notify the Franchisee, as to whether the performance of the Milestone Target:

- (a) has been achieved or carried out in full;
- (b) has not been achieved or carried out in which case the Secretary of State shall also notify the Franchisee of:
 - (i) the further evidence that is required in order to make a final decision;
 - (ii) the elements of the Milestone Target which remain outstanding and will need to be performed,in either case, to the extent known or understood by the Secretary of State; or
- (c) requires further consideration as to whether or not it has been achieved or carried out in full, in which case the Secretary of State shall be entitled to postpone the making of a determination under paragraphs 9.18(a) or (b) for a further 10 Business Days.

9.19 The Franchisee will, without limiting any other obligation it has or any rights of the Secretary of State:

- (a) 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 Milestone Targets, howsoever caused, notify the Secretary of State and promptly provide to the Secretary of State its proposals for mitigating, to the extent reasonably possible and practicable to do so. Save in matters of urgency, such notification will be addressed as part of the regular reporting referred to in paragraph 9.16;
- (b) keep the Secretary of State informed of developments and update its mitigation proposals to reflect those developments; and
- (c) make any such adjustments to such proposals as the Secretary of State may reasonably require.

9.20 The Franchisee will take all reasonable steps within its control with a view to each Milestone Target being achieved as fully as practicable on the Target Date. In relation to any Milestone Target, subject to:

- (a) the Franchisee complying with its obligations under paragraph 9.16; and
- (b) the reduction in or loss of any Milestone Incentive Payment in accordance with paragraph 9.21,

it shall not be a contravention of this Agreement or an Event of Default where the Franchisee fails to deliver in full or on time, any Milestone Target. Notwithstanding this paragraph 9.20, if any such failure or delay is associated with a contravention to a material extent of any one or more of the Franchisee's other obligations under

this Agreement, this paragraph 9.20 shall not prevent that contravention of that other obligation being a breach or contravention of this Agreement and the provisions of paragraph 2.11 of Schedule 10.3 (Events of Default and Termination Event) may apply accordingly.

- 9.21 Where a Milestone Incentive Payment is made to the Franchisee pursuant to Milestone Targets 3 and/or 6 (in Table 1) in paragraph 9.15 above in circumstances where there is an extension to the Franchise and the Franchisee does not comply with its obligations under paragraphs 9.8 in respect of Milestone Target 3 or under paragraph 9.10 in respect of Milestone Target 6, the Secretary of State shall be entitled to deduct from the Franchise Payment the relevant Milestone Incentive Payment paid to the Franchisee in each respective case (the "Clawback Sum") (so that where there is a breach of paragraph 9.8 the Milestone Incentive Payment for Milestone Target 3 is clawed back and where there is a breach of paragraph 9.10 the Milestone Incentive Payment for Milestone Target 6 is clawed back, and no non-compliance is treated as applying where paragraphs 9.7 or 9.12 apply) on the next relevant Payment Date or until such time as all sums due to the Secretary of State pursuant to this paragraph 9.21 have been paid by the Franchisee in full. Where the Secretary of State is unable to recover all or part of the Clawback Sum from the Franchise Payment during the Franchise Period, the Franchisee shall, on receipt of a written demand from the Secretary of State for all or part of the Clawback Sum, pay to the Secretary of State the amount notified to it within 30 days of receipt of such written demand.
- 9.22 The Parties agree that where, in respect of any Milestones, the agreement of the Secretary of State is required, the Franchisee shall be responsible for applying for consent in reasonable time with suitable supporting information and the Secretary of State will not delay or withhold his agreement unreasonably.
- 9.23 In the event of any conflict between paragraphs 9.2 to 9.14 and Table 1 in paragraph 9.15, the provisions of paragraphs 9.2 to 9.14 shall take precedence.

10. Consultation

- 10.1 The Franchisee will in the course of performing its TRSP Obligations and PDPO Obligations during the Franchise Term, consult with, and/or obtain the approval of, the Secretary of State and/or any other party nominated by the Secretary of State and notified to the Franchisee, as the Secretary of State may require in his reasonable discretion taking into account the Franchisee's TRSP Obligations and PDPO Obligations.
- 10.2 Without limitation to the Secretary of State's rights to require the Franchisee to consult and/or obtain approval pursuant to paragraph 10.1, the parties have agreed that the general level of consultation and approval that will be required of the Franchisee is as follows:
- (a) for activities listed in Appendix 1 (Table A) to this Schedule 6.2, the Franchisee shall be required to consult as a member of SLTA prior to the commencement of the relevant activity and at regular intervals during the performance of the activity;
 - (b) for the activities listed in Appendix 1 (Table B) to this Schedule 6.2, the Franchisee will be required to consult with the Secretary of State prior to the commencement of the relevant activity and at regular intervals during the performance of the activity;

- (c) for the activities listed in Appendix 1 (Table C) to this Schedule 6.2, the Franchisee will be required to consult as a member of SLTA and the Secretary of State prior to the commencement of the relevant activity and at regular intervals during the performance of the activity;
 - (d) for the activities listed in Appendix 1 (Table D) to this Schedule 6.2, the Franchisee will be required to consult as a member of SLTA prior to the commencement of the relevant activity and at regular intervals during the performance of the activity and seek approval from the Secretary of State (any such approval to be provided in writing) prior to completion of the activity; and
 - (e) for the activities listed in Table Appendix 1 (Table E) to this Schedule 6.2, the Franchisee will be required to seek approval from the Secretary of State (any such approval to be provided in writing) prior to completion of the activity.
- 10.3 Where the Franchisee is required to undertake any consultation under paragraph 10.1 or paragraph 10.2 or consultation is referred to in the TRSP Plan, then save to the extent otherwise expressly agreed:
- (a) the consultation on any matter may be fulfilled by the provision of a brief report on the matter to be consulted on as soon as reasonably practicable in the context of the Contract Programme and the requirements of the TRSP Suite of Documents for consideration and response to the Franchisee. The report shall be prepared by the Franchisee so as to contain such information as it reasonably considers necessary for the consultation, having regard to other information available to the consultee and its engagement in the programme;
 - (b) the Franchisee will ensure that any consultation makes clear the deadline for any response, and allows a reasonable opportunity to consider the proposal and respond, without prejudicing the Franchisee's TRSP Obligations and PDPO Obligations;
 - (c) where a consultee requests reasonable additional information, the Franchisee will provide it, subject to the information being in its possession or under its control and having regard to the need to avoid prejudice to the wider requirements of the TRSP Plan;
 - (d) where a consultee responds within the timescales for response, the Franchisee will, as far as reasonably practicable, take into account the comments provided and will provide reasons if, having considered those comments, it chooses to adopt an alternative position; and
 - (e) the Franchisee shall not be required to wait for any consultation response before taking any action which is required to comply with its obligations under the TRSP Suite of Documents, provided that the Franchisee has complied with paragraph 10.3(b).
- 10.4 Where the Franchisee is required to secure a consent or approval under paragraph 10.1 or paragraph 10.2 or a requirement for securing a consent or approval is referred to in the TRSP Plan:
- (a) the request for consent or approval may be fulfilled by the provision of a brief report on the relevant matter, as soon as reasonably practicable in the context of the TRSP Plan and the requirements of the TRSP Suite of

Documents for consideration and response to the Franchisee. The report shall be prepared by the Franchisee so as to contain such information as it reasonably considers necessary to consider the request for consent or approval, having regard to other information available to the persons to give approval or consent and their engagement in the programme;

- (b) the Franchisee will ensure that any request for a consent or approval makes clear the deadline for any response, and allows a reasonable opportunity to consider the proposal and respond, without prejudicing the Franchisee's TRSP Obligations and PDPO Obligations;
 - (c) following an initial request for consent or approval, where a person which is to give consent or approval requests reasonable additional information, the Franchisee will provide such additional information, subject to the information being in its possession or under its control and having regard to the need to avoid prejudice to the wider requirements of the TRSP Plan;
 - (d) the Secretary of State shall, and shall procure that any relevant third party designated by it under paragraph 10.1 shall, as soon as reasonably practicable consider any request for approval or consent which is requested pursuant to this Schedule 6.2 and any related requests for further information, having regard to the timescales of the TRSP Plan and the requirements under the TRSP Suite of Documents; and
 - (e) provided that the Franchisee has complied with paragraph 10.4(b), the Franchisee shall not be required to act without the consent or approval being secured and for the purposes of this Agreement shall not be in contravention where any act, omission or delay is as a result of any refusal or delay in connection with any such approval or consent.
- 10.5 Provided that the Franchisee complies with paragraphs 10.3, 10.4 and 14.4, the Secretary of State shall in connection with the operation of this paragraph 10 and Part 3 indemnify the Franchisee and keep the Franchisee fully indemnified during and after the Franchise Term against each and every action, proceeding, liability, cost, claim, loss, expense (including any legal and other professional fees) and demand arising out of or in connection with the TRSP Suite of Documents in connection with:
- (a) any failure or delay of the Secretary of State or any third party nominated under paragraph 10.1 in granting any such approval or consent; or
 - (b) any refusal of approval or consent of the Secretary of State or any third party nominated under paragraph 10.1 to grant any approval or consent.

Provision of Information Obligations

- 10.6 In addition to the Secretary of State's rights to access and information under this Agreement and under the TRSP Suite of Documents, the Franchisee agrees that during the Franchise Term it will use its best endeavours to ensure that:
- (a) it runs briefings and site visits in connection with the aspects of the TRSP with which it is involved as reasonably required by the Secretary of State for all actual and (if relevant) bidders or Successor Operators in connection with the replacement franchise, subject to these requirements being managed so as not to detract from performance of the TRSP Suite of Documents and the PDPO Obligations or the wider performance by the Franchisee of this Agreement. It is acknowledged that it will be reasonable

for the Secretary of State to require support consistent with the resource costed in the Financial Model for this purpose, as further described in the Record of Assumptions; and

- (b) at the Expiry Date, it makes available the documents, records and other materials in its possession or control relating to its performance of the TRSP Suite of Documents and fulfilment of the PDPO Obligations, having maintained those documents and records such that the Successor Operator with appropriate resources and experience is in a position immediately following the Expiry Date and subject to its continuing to make available suitable resource, to continue to perform its obligations under the TRSP Suite of Documents and activities similar to the PDPO Obligations from the Expiry Date,

and without limitation, such endeavours will include the preparation of such documentation, and in the case of paragraph 10.6(b), 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).

- 10.7 Provision by the Franchisee of documents, records and materials under paragraph 10.6 shall be treated as satisfying its obligations under the Umbrella Agreement to hand over that information at the end of the Franchise Period.
- 10.8 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 6.2, 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 its absolute discretion provided that the Franchisee shall not thereby be required to breach any applicable legal or contractual obligation.

11. **Drivers and Engineering Function**

- 11.1 It is acknowledged that the Secretary of State may require TRSP Train Crew Activities to be undertaken by the Franchisee during the Franchise Term which are in addition to the recruitment of 15 drivers and three trainers as provided in the financial model (the "**Financial Model**" (as such term is defined in the Previous Franchise Agreement)) (the "**First Tranche**") in order that the Franchisee is in a position and is able to put a Successor Operator in a position to fulfil their respective obligations under the TRSP Suite of Documents on an efficient and compliant basis, and that Other Relevant Activities and Relevant IR Matters may also be required or arise. Consequently, the Franchisee shall for the duration of the Franchise Term:

- (a) liaise and cooperate with the Secretary of State regarding TRSP Train Crew Activities and any Other Relevant Activities which the Secretary of State considers are necessary or desirable to carry out during the Franchise Term; and
- (b) notify the Secretary of State of any actual or reasonably anticipated Relevant IR Matters and liaise and cooperate with the Secretary of State with a view to avoiding or mitigating them; and
- (c) undertake those TRSP Train Crew Activities and any Other Relevant Activities referred to in paragraph 11.1(a), which would not, in the

Franchisee's reasonable opinion, prejudice the continued delivery of the Franchise Services.

- 11.2 Where the Secretary of State determines that TRSP Train Crew Activities or Other Relevant Activities should be undertaken pursuant to paragraph 11.1, those activities shall, in each case, be negotiated and agreed between the parties, acting in good faith:
- (a) with a view to the Franchisee being in a position to carry out such activities and comply with the TRSP Suite of Documents; and
 - (b) in accordance with Schedule 9 (Changes) of this Agreement.
- 11.3 Where TRSP Train Crew Activities or Other Relevant Activities are notified by the Franchisee to the Secretary of State as being necessary but are not authorised by the Secretary of State to be undertaken, the Franchisee shall not be required to undertake them and shall not have any responsibility in relation to their not being undertaken, including where this results in any consequent Permitted Delay under the MSA or for any consequent effects on the level or performance of Passenger Services by the Franchisee or any Successor Operator.

12. **Customer Initiatives Investment Fund**

- 12.1 No later than 15 days after the Start Date, the Franchisee shall provide to the Secretary of State a statement in writing which clearly sets out the proceeds (if any) not expended by the Franchisee pursuant to paragraph 12 of Schedule 3 of the TRSP Deed of Amendment (the "**Residual Amount**"). The Franchisee shall be released from any commitment to refund the Residual Amount to the Secretary of State under the terms of that paragraph 12 but the Franchisee shall expend the Residual Amount during the Franchise Term on a range of projects designed to deliver customer initiatives to be approved by the Secretary of State. The Secretary of State shall not unreasonably withhold his consent to the Residual Amount being used to fulfil projects which were committed by the Franchisee during the Previous Franchise Agreement under the terms of that paragraph 12.
- 12.2 The Franchisee shall maintain an accurate record of its expenditure of the Residual Amount (including its internal costs and expenses and its costs and expenses in developing the projects) on projects approved by the Secretary of State under this paragraph 12 and provide access to those records to the Secretary of State at his reasonable request.
- 12.3 If at the end of the Franchise Period, the amount of expenditure incurred by the Franchisee on projects as recorded by the Franchisee under paragraph 12.2 is less than the Residual Amount, then the Franchisee shall within 30 days of the end of the Franchise Term refund to the Secretary of State the amount of the difference.

13. **Payments under the TRSP Suite of Documents**

- 13.1 It is acknowledged that the Financial Model and associated payment terms under this Agreement do not include funding for payments that the Franchisee would be required to make in connection with the TRSP Suite of Documents arising during the Franchise Term and it is agreed that where the Franchisee is required to make any such payments it should be funded to do so in advance

of the requirement to make such payment by the Secretary of State, and accordingly:

- (a) if the Franchisee becomes aware of any liability on it to make any such payment other than:
 - (i) any payment that has arisen as a result of any breach by the Franchisee of any of its obligations under the TRSP Suite of Documents (including (but subject as provided in paragraph 11.3) any payments consequent upon the occurrence of a Relevant Permitted Delay or Relevant Permitted Depot Delay); or
 - (ii) any payment, compensation or liquidated damages which arises as a result of any negligent or improper act or omission by the Franchisee or improper performance of its obligations under any of the TRSP Suite of Documents (including payments to the Owner pursuant to clauses 7.5 of the Lease and/or paragraphs 7.3 or 7.6 of the Lease to the extent that the obligation to make any such payment has arisen as a result of Relevant Permitted Delay (except in the circumstances referred to in paragraph 11.3)); or
 - (iii) any payment to which the Franchisee has already been funded or compensated under the Franchise Agreement whether pursuant to this paragraph 13.1 or otherwise or under the Previous Franchise Agreement,

(a "**Franchisee TRSP Agreement Payment**") whether before, at or after the end of the Franchise Term, it shall as soon as reasonably practicable after first becoming aware make the Secretary of State aware of the anticipated required amount and timing of that payment and the provisions of the relevant TRSP Suite of Documents under which it is payable;
- (b) the Secretary of State shall acknowledge receipt of that notification and confirm his acceptance of the timing and amount of the payment to be funded or, if he disagrees with the calculation of the amount or timing of the payment, shall notify the Franchisee of that fact together with the nature and grounds for such disagreement and details of any further information reasonably required from the Franchisee in order to confirm the liability on the Franchisee in relation to that payment. The parties shall work together to confirm as soon as reasonably practicable the amount and timing of the relevant payment (if any) required to be made under the relevant TRSP Suite of Documents;
- (c) the Secretary of State shall ensure payment to the Franchisee of an amount corresponding to the amount of any Franchisee TRSP Agreement Payment notified under this paragraph 13.1, with such amount to be paid by way of adjustment to the Franchise Payments so that cleared funds are received by the Franchisee on:
 - (i) the next Payment Date falling no less than 7 days prior to the due date for payment by the Franchisee under the relevant TRSP Suite of Documents (or if late timing of any notice by the Franchisee does not permit such advance payment, as soon as reasonably practicable in advance of the time payment is required to be made), where any such amount is not disputed

by the Secretary of State;
or

- (ii) the date agreed by the parties after the confirmation of any such amount, where the Secretary of State disagrees with the calculation of any such amount

and where such payment is required to be made after the end of the Franchise Term, such payment will be made by the Secretary of State to the Franchisee so as to be received by the Franchisee in advance of the due date for payment by the Franchisee of the relevant corresponding amount under the TRSP Suite of Documents;

- (d) without prejudice to the rights and obligations of the parties under this paragraph 13.1, it is acknowledged that the payments required to be funded by the Secretary of State under this paragraph 13.1 include (if and to the extent the liability to pay any such amount falls on the Franchisee):

- (i) payment for the Operator Owned Spares (clause 9.5 of the MSA);

- (ii) payments in respect of the Integration Laboratory Train Equipment (clause 9.8 of the MSA);

- (iii) any payments in connection with the Software Escrow Agreement (Schedule 22, paragraph 7 of the MSA);

- (iv) (except to the extent that any such amounts have arisen as a result of a Potential Permitted Delay falling within the definition of Relevant Permitted Delay or as result of a breach by the Franchisee of any of its obligations under any of the DAFLs), any amounts payable by the Franchisee in accordance with paragraphs 2.2 or 4.5 of Schedule 13 (*Permitted Delay Procedure*) of the MSA or paragraphs 2.2 or 4.6 of Schedule 12.1 (*Permitted Depot Delay Procedure*) of either or both of the DAFLs in connection with avoiding or reducing the effects or likely effects of, as appropriate, any Potential Permitted Delay or Potential Permitted Depot Delay, where in each case the Secretary of State has given his prior written consent to those amounts being paid by the Franchisee, (such consent not to be unreasonably withheld, and for these purposes where the obligation to make any payment is contingent on the Franchisee's consent this shall be subject to the Franchisee having first consulted with the Secretary of State and secured his approval to the grant of such consent and where the obligation is not contingent on the Franchisee's consent a payment shall be consented to by the Secretary of State where and to the extent it is required to be made under the terms of the relevant agreement); and

- (v) any payment made under paragraph 1.2 of Schedule 18 (*Pension Arrangements*) of the TSA.

13.2 For the purposes of this paragraph 13 references to:

- (a) "Relevant Permitted Delay" are to a Permitted Delay of the type referred to in paragraph (a) of the definition Permitted Delay; and

- (b) "Relevant Permitted Depot Delay" are to a Permitted Depot Delay of the type referred to in paragraph (a) of the definition of Permitted Depot Delay (as such term is defined in the MDCTA) in either or both of the DAFLs

but excluding any to the extent in relation to breach by the Secretary of State of his obligations.

14. Other TRSP Matters

- 14.1 It shall not be a contravention of this Agreement or an Event of Default where compliance by the Franchisee with any direction or instruction of the Secretary of State or any omission or delay by the Secretary of State or any such third party designated by it under paragraph 10.1 in providing any approval required under this Agreement results in any breach of the TRSP Suite of Documents or non-delivery of the PDPO Obligations.
- 14.2 If there is a breach of the Protected Depot Functionality as defined in the DAFLs which results in the Franchisee or any of its agents or sub-contractors being prevented or restricted from entering or leaving Hornsey Depot or any part thereof or from carrying out any of the activities usually carried out there in each case otherwise than as contemplated by the Contract Programme and the Depot Phasing Plan or at a level less than the applicable Existing Depot Functionality, then that shall be treated as a Force Majeure Event for the purposes of Schedule 10.4 (*Force Majeure*) of the Terms and for these purposes the contractors and sub-contractors under the TRSP Suite of Documents shall not be treated as agents or sub-contractors of the Franchisee.
- 14.3 If the works in connection with the Hornsey Depot contemplated in connection with the relevant DAFL result in more or different restrictions or disruption to that depot compared with what is contemplated under the Contract Programme and the Depot Phasing Plan, then:
 - (a) the Franchisee shall use all reasonable endeavours to minimise the effects on the Franchise Services consistent with the ongoing delivery of the TRSP; and
 - (b) to the extent such more extensive or different disruption or restriction is not due to the Franchisee not acting as a prudent and diligent Franchisee, the Secretary of State shall take into account the effect of those more extensive or different restrictions in assessing the compliance of the Franchisee with its obligations under this Agreement, including changes to the Train Plan and any impacts on the Franchisee's obligations under Schedule 7.2 (*Service Quality Management*), so that subject to compliance with paragraph 14.1 those effects shall not be treated as giving rise to a contravention.
- 14.4 The Franchisee shall upon becoming aware of any matters referred to in any of paragraphs 14.1 to 14.3 promptly:
 - (a) notify the Secretary of State (providing reasonable details) of such occurrence;
 - (b) consult with the Secretary of State to consider what action may properly be taken to mitigate such occurrence; and

- (c) use reasonable endeavours to mitigate (including any reasonable mitigation steps proposed by the Secretary of State pursuant to paragraph 14.4(b).

14.5 The obligations of the parties under this paragraph 14 shall survive the expiry or the termination of this Agreement for whatever reason.

15. **Limitation of Liability and Indemnity**

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

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

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

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

15.2 Nothing in paragraph 15.1 will operate to exclude or restrict the Franchisee's liability (if any):

- (a) for death or personal injury resulting from its negligence or the negligence of a person for whom it is vicariously liable (negligence being as defined in Section 1(1) Unfair Contract Terms Act 1977);
- (b) for its fraud or fraudulent misrepresentation or fraud or fraudulent misrepresentation by a person for whom it is vicariously liable.

15.3 The Secretary of State shall not be obliged to indemnify the Franchisee in relation to the Indemnified Liabilities to the extent that any such Indemnified Liabilities:

- (a) are recoverable by the Franchisee under another provision of the Franchise Agreement or the Previous Franchise Agreement;
- (b) arise solely out of events which occurred prior to the Start Date or after the Transfer Date (but this is without prejudice to any liability which the Secretary of State may have under the Previous Franchise Agreement to the Franchisee);
- (c) arise as a result of the wilful misconduct of the Franchisee or the wilful misconduct of any person for whom the Franchisee is vicariously liable; and/or
- (d) are matters against which the Franchisee should be insured under any insurance required to be obtained under any of the TRSP Suite of

Documents or any of its Licenses or Safety Certificate and accordingly are recoverable under insurance.

- 15.4 If the Franchisee becomes aware of any matter in respect of which it intends to call upon the indemnity provided by the Secretary of State to the Franchisee pursuant to paragraph 15.1 (a **"Relevant Claim"**):
- (a) it will promptly (and in any event within seven days) give written notice to the Secretary of State of that fact (stating in reasonable detail the nature of the Relevant Claim or matter and, if practicable, the amount claimed) and consult with the Secretary of State in respect of that Relevant Claim or matter that may give rise to a Relevant Claim. Failure to give a notice in accordance with this paragraph 15.4(a) in respect of a Relevant Claim will mean that the Secretary of State will have no liability under paragraph 15.1 in respect of that Relevant Claim;
 - (b) the Franchisee will not settle or compromise or make any admission of liability, agreement or compromise in relation to any matter that may give rise to a Relevant Claim without the prior written consent of the Secretary of State. The Franchisee will at all times disclose in writing to the Secretary of State all information and documents relating to the Relevant Claim or the matter that might give rise to a Relevant Claim;
 - (c) the Franchisee will take all such reasonable actions as the Secretary of State may request to dispute, resist, defend, appeal, settle, compromise, remedy or mitigate any Relevant Claim;
 - (d) if so requested by the Secretary of State, the Franchisee will allow the Secretary of State exclusive conduct of all proceedings in relation to the Relevant Claim in the name of and on behalf of the Franchisee, at the cost of the Secretary of State; and
 - (e) if the Secretary of State takes conduct of a Relevant Claim then the Secretary of State will give reasonable information on a reasonably regular basis to the Franchisee as to the progress of that Relevant Claim and will take account of reasonable representations by the Franchisee regarding the conduct of the claim to the extent that it relates to amounts within the Franchisee's cap on liability with a view to acting fairly and reasonably in defending and/or mitigating such liability having regard to the overall Relevant Claim.
- 15.5 The Secretary of State and Franchisee acknowledge and agree that on expiry or early termination of this Agreement the Franchisee's rights and liabilities in respect of the TRSP Suite of Documents shall be dealt with as set out in the Umbrella Agreement, and any accrued rights and liabilities transferring to the Successor Operator shall be valued in accordance with the terms of the Supplemental Agreement.
- 15.6 Paragraph 15.5 is without prejudice to:
- (a) the operation of paragraphs 15.1 to 15.4; and
 - (b) the application of the Previous Franchise Agreement in relation to matters arising in the period up to the Start Date.
- 15.7 For the purposes of this paragraph 15 **"Retained Liabilities"** means any accrued but unsatisfied liabilities of the Franchisee under or for any breaches

of, or defaults under any of the TSA, Lease or MSA or any of the DAfLs to the extent they relate to the period commencing on the Start Date and ending at 01:59 hours on the Transfer Date including any such liabilities that are valued pursuant to paragraph 5 of the Schedule to the Supplemental Agreement but excluding any Relevant TRSP Past Liabilities.

- 15.8 The Franchisee and the Secretary of State acknowledge that Relevant TRSP Past Liabilities which may be valued pursuant to paragraph 8 of the schedule to the Supplemental Agreement may include Relevant TRSP Past Liabilities which arose prior to the Start Date during the term of the Previous Franchise Agreement ("**Previous Franchise Agreement Relevant TRSP Past Liabilities**") and agree that the provisions of paragraph 7 of Appendix 13A (Thameslink Obligations) of the Previous Franchise Agreement (and not paragraph 15.1 of this Schedule 6.2) shall apply to such Previous Franchise Agreement Relevant TRSP Past Liabilities.
- 15.9 The Franchisee and the Secretary of State acknowledge that Relevant TRSP Past Liabilities which may be valued pursuant to paragraph 8 of the schedule to the Supplemental Agreement may include Relevant TRSP Past Liabilities which arose in consequence of the Secretary of State not authorising TRSP Train Crew Activities or Other Relevant Activities pursuant to paragraph 11.3. The Secretary of State shall indemnify the Franchisee against any such liability directly attributable to the Secretary of State not authorising TRSP Train Crew Activities or Other Relevant Activities pursuant to paragraph 11.3 and properly incurred to the Successor Operator pursuant to the Supplemental Agreement to the extent that the Franchisee is not compensated in relation to such liability pursuant to any of paragraph 7 of Appendix 13A (Thameslink Obligations) of the Previous Franchise Agreement, paragraph 15.1 of this Schedule 6.2 or paragraphs 1.3 or 1.4 of Schedule 9.3 (Secretary of State Risk Assumptions).
- 15.10 As soon as reasonably practicable and in any event within one month of the Start Date the Franchisee shall notify the Secretary of State as to whether there are any Previous Franchise Agreement Relevant TRSP Past Liabilities and if so the quantum of such Previous Franchise Agreement Relevant TRSP Past Liabilities. The Franchisee shall provide such supporting and additional information as the Secretary of State shall reasonably require for the purposes of verifying the amount of the Previous Franchise Agreement Relevant TRSP Past Liabilities.
- 15.11 The Franchisee shall within two weeks of the commencement of the penultimate Reporting Period of the Franchise Term provide to the Secretary of State a report with reasonable supporting evidence identifying Relevant TRSP Past Liabilities and Retained Liabilities that have accrued (separately identifying any that it believes are consequent upon the Secretary of State not authorising TRSP Train Crew Activities or Other Relevant Activities pursuant to paragraph 11.3) together with a reasonable assessment of the likely quantum of such Relevant TRSP Past Liabilities and Retained Liabilities at the end of the Franchise Term and the value of Relevant TRSP Past Liabilities pursuant to paragraph 8 of the schedule to the Supplemental Agreement. The Franchisee shall also identify amounts that it believes the Secretary of State will be required to indemnify the Franchisee in relation to by reference to relevant indemnity provisions. The Franchisee shall update such information within two weeks of the end of the Franchise Term. The Franchisee shall provide such supporting evidence and such additional information as the Secretary of State shall reasonably require for the purposes of verifying any such information provided by the Franchisee pursuant to this paragraph 15.11.

Appendix 1

Table A

CONSULT AS A MEMBER OF THE SLTA PRIOR TO COMPLETION

Consultation matter	Reference	Applicable Period
<p>Consult with the Engineering Safety Forum of the SLTA in relation to any changes to the Franchisee's Safety Management System relevant to the safety approval of interfacing systems which are undertaken to accommodate the new trains on Acceptance of the first Unit, to support the SLTA in its role of ensuring a consistent and coordinated approach between the relevant parties.</p>	<p>To facilitate MSA Schedule 6 in relation to Acceptance.</p>	<p>Ongoing during Franchise Period.</p>
<p>In relation to TRSP systems integration activities, including by attendance at all regular meetings in accordance with the TRSP Plan, including governance meetings, workshops, simulation activities and other activity where reasonably required by the Systems Integrator to support successful management of the rolling stock and railway system interfaces to deliver the programme outputs.</p>		<p>Ongoing during Franchise Period.</p>
<p>In relation to the Design Review Process, consult as a member of the SLTA (or with a relevant sub-group) on each Technical Feature Area and Systems Integration Review as described in Schedule 2.1 of the MSA where there is an issue of conflict with infrastructure or other non-compliance with the TTS or TIIS, using reasonable endeavours to resolve issues with the TMM and, where alternatives are available, to adopt compliant solutions which meet the SLTA's concerns.</p>	<p>Schedule 2.1 of the MSA.</p>	<p>Ongoing during Franchise Period.</p>

Table B

CONSULT WITH SECRETARY OF STATE PRIOR TO COMPLETION

Activity	Reference	Applicable Period
Not used		

Table C

CONSULT WITH THAMESLINK SYSTEMS INTEGRATOR AND CONSULT WITH SECRETARY OF STATE PRIOR TO COMPLETION

Activity	Reference	Applicable Period
Consult on the Franchisee role in rolling stock design review process, liaising and consulting with the Secretary of State and Systems Integrator on any non-compliances with the TTS and TIIS that are proposed by the TMM to obtain the views of the Systems Integrator, and highlight these to the Secretary of State.	As per TMM's Programme requirements. MSA clause 5, Schedule 2	Completion of design review – three months from Contract Award

Table D

CONSULT WITH THAMESLINK SYSTEMS INTEGRATOR AND SEEK AGREEMENT FROM SECRETARY OF STATE PRIOR TO COMPLETION

Activity	Reference	Applicable Period
Not used		

Table E

TRSP OBLIGATION ACTIVITIES – SEEK AGREEMENT FROM SECRETARY OF STATE PRIOR TO COMPLETION

Activity	Reference	Applicable Period
Exercise a Permitted Change in accordance with the provisions of the MSA as agreed with or directed by the Secretary of State. Request the Owner to exercise a Priced Option in accordance with the	MSA clause 27, Schedule 15 MSA clause 29, Schedule 17 (Priced Options)	Ongoing during Franchise Period

provisions of the MSA as agreed with or directed by the Secretary of State.		
Liaise and agree with the Secretary of State before granting any Permitted Depot Delay to the Depot SPC.	DAFL Schedule 12	Ongoing during Franchise Period
Liaise and agree with the Secretary of State before granting any delay (including Permitted Delay) to the TMM.	MSA Schedule 13	Ongoing during Franchise Period

SCHEDULE 0

Performance Benchmarks

- Schedule 7.1:** **Performance Benchmarks**
 Appendix 1: Cancellations Benchmark Table
 Appendix 2: Capacity Benchmark Table
 Appendix 2: TOC Minute Delay Benchmark Table
- Schedule 7.2:** **Service Quality Management**

SCHEDULE 7.1

Performance Benchmarks

1. Benchmarks

Location of Benchmarks

- 1.1 The Cancellations Benchmarks are set out in the table in Appendix 1 (Cancellations Benchmark Table) to this Schedule 7.1.
- 1.2 The Capacity Benchmarks are set out in the table in Appendix 2 (Capacity Benchmark Table) to this Schedule 7.1.
- 1.3 The TOC Minute Delay Benchmarks are set out in the table in Appendix 2 (TOC Minute Delay Benchmark Table) to this Schedule 7.1.

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 the total number of Cancellations or Partial Cancellations in that Reporting Period.
- 2.2 For each Reporting Period, 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 operated in that 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 Reporting Period which were caused by:
 - (i) the implementation of a Service Recovery Plan during that Reporting Period by the Franchisee or, at any time while any of the Thameslink Trading Agreements remains in force, by

the LSER Franchisee or any successor to the LSER Franchisee;
or

(ii) the occurrence or continuing effect of a Force Majeure Event, shall, if the Franchisee has complied with paragraph 4.6, be disregarded in determining such total number;

C is the total number of Passenger Services scheduled to be operated in that Reporting Period, disregarding, if the Franchisee has complied with paragraph 4.6, 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 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 12 preceding Reporting Periods.

Capacity Benchmarks

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 Passenger Services in that Reporting Period operated with less than the Passenger Carrying Capacity specified for each such Passenger Service in the Train Plan.

2.4 For each Reporting Period, the Secretary of State shall calculate a moving annual average of the Franchisee's performance against the Capacity 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 Passenger Services in that Reporting Period operated with less Passenger Carrying Capacity than the Passenger Carrying Capacity specified for each such Passenger Service in the Train Plan, disregarding, if the Franchisee has complied with paragraph 4.6, any such Passenger Services which were operated in that way as a result of:

(a) the implementation of a Service Recovery Plan during that Reporting Period by the Franchisee or, at any time while any of the Thameslink Trading Agreements remains in force, by the LSER Franchisee or any successor to the LSER Franchisee; or

- (b) the occurrence or continuing effect of a Force Majeure Event;
 - C is the total number of Passenger Services scheduled to be operated in that Reporting Period, disregarding, if the Franchisee has complied with paragraph 4.6, any Passenger Services operated with less Passenger Carrying Capacity than the Passenger Carrying Capacity specified for each such Passenger Service in the Train Plan as a result of:
 - (c) the implementation of a Service Recovery Plan during that Reporting Period by the Franchisee or, at any time while any of the Thameslink Trading Agreements remains in force, by the LSER Franchisee or any successor to the LSER Franchisee; or
 - (d) 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.
- 2.5 If and to the extent that any Passenger Service is operated with Passenger Carrying Capacity in excess of the Passenger Carrying Capacity specified for that Passenger Service in the Train Plan, the excess capacity shall be disregarded for the purposes of the calculation referred to in paragraph 2.4.
- 2.6 Any Passenger Service that is the subject of a Cancellation or a Partial Cancellation shall be disregarded altogether for the purposes of the calculations referred to in paragraph 2.4.

TOC Minute Delay Benchmarks

- 2.7 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:
- (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 2.7, 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.
- 2.8 For each Reporting Period, 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 the 12 preceding Reporting Periods;

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 the 12 preceding Reporting Periods.

2.9 In performing the calculation pursuant to paragraph 2.8, the Secretary of State shall disregard any Minutes Delay that are caused by the occurrence or continuing effect of a Force Majeure Event.

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 the Secretary of State shall, for the purpose of performing the calculation referred to in paragraph 2.8, allocate any disputed Minutes Delay between the Franchisee and Network Rail in the proportions of:

A to B

where:

A is the total number of undisputed Minutes Delay 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 the 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.

2.11 The Franchisee agrees with the Secretary of State to comply with the requirements of the Track Access Agreement in respect of Minutes Delay attribution.

First 12 Reporting Periods of the Franchise Term

2.12 For as long as fewer than 13 Reporting Periods have elapsed following the Start Date, the Secretary of State shall, for the purposes of performing the

calculations referred to in paragraphs 2.2, 2.4 and 2.8, assume performance at the Previous Performance Level in respect of the relevant Reporting Periods (up to a maximum of the 12 Reporting Periods) that precede the Start Date.

Calculations

- 2.13 The Secretary of State shall perform the calculations referred to in paragraphs 2.2, 2.4 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, 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 11.2 of Schedule 1.1 (Service Development) and which includes any amendments thereto:
- (a) pursuant to paragraphs 3.2 and 3.5 of Schedule 1.2 (Operating Obligations);
 - (b) pursuant to paragraph 4 of Schedule 1.2, where:
 - (i) such amendments are required as a consequence of Network Rail exercising its rights pursuant to the Track Access Agreement; and
 - (ii) the Franchisee has complied with the provisions of such paragraph in respect thereof; and
 - (c) pursuant to paragraph 3.3 of Schedule 1.2, where such amendments are agreed by the Secretary of State in accordance with such paragraph.

3. Not Used

4. Performance Levels

- 4.1 Not used.

Consequences for Poor Performance

- 4.2 The consequences of the Franchisee's performance exceeding (that is, equalling or being worse than) the Improvement Plan Performance Levels relating to each Benchmark are set out in paragraph 4.5 of this Schedule 7.1.
- 4.3 The Franchisee shall procure that in each Reporting Period the moving annual average of:
- (a) Cancellations and Partial Cancellations (calculated in accordance with paragraph 2.2 of this Schedule 7.1) does not exceed (that is, is neither equal to nor worse than) the Breach Performance Levels and the Default

Performance Levels specified in the cells relating to each such Reporting Period in the Cancellations Benchmark Table;

- (b) Passenger Services operated with less Passenger Carrying Capacity than the Passenger Carrying Capacity specified for such Passenger Service in the Train Plan (calculated in accordance with paragraph 2.4 of this Schedule 7.1), does not exceed (that is, is neither equal to nor worse than) the Breach Performance Levels and the Default Performance Levels specified in the cells relating to such Reporting Period in the Capacity Benchmark Table; and
- (c) the Minutes Delay occurring in respect of the Passenger Services which are attributable to the Franchisee (including in accordance with paragraph 2.10) per 1000 Train Miles actually operated (calculated in accordance with paragraphs 2.8, 2.9 and 2.10 of this Schedule 7.1) does not exceed (that is, is neither equal to nor worse than) the Breach Performance Levels and the Default Performance Levels specified in the cells relating to such Reporting Period in the TOC Minute Delay Benchmark Table.

- 4.4 Certain consequences of the Franchisee's performance exceeding (that is, equalling or being worse than) the Breach Performance Levels and Default Performance Levels relating to each Benchmark are set out in Schedule 10 (Remedies, Termination and Expiry).

Improvement Plans

- 4.5 If and whenever the Franchisee's performance:
- (a) in respect of a Reporting Period, calculated as a moving annual average in accordance with this Schedule 7.1, exceeds (that is, is equal to or worse than) the Improvement Plan Performance Level for any Benchmark, the Franchisee shall promptly notify the Secretary of State of that fact; and
 - (b) in relation to any Benchmark exceeds (that is, is equal to or worse than) the Improvement Plan Performance Level for that Benchmark for any two consecutive Reporting Periods the Franchisee shall:
 - (i) prepare and provide to the Secretary of State, for his comments, a plan that it proposes to implement to ensure that its future performance does not exceed (that is, is neither equal to or worse than) the Improvement Plan Performance Level (an "**Improvement Plan**"). The Franchisee shall have due regard to any comments provided by the Secretary of State in relation to the Improvement Plan and may amend the Improvement Plan as may be considered necessary (and consistent with its obligation under this paragraph 4.5(b)(i));
 - (ii) implement such Improvement Plan; and
 - (iii) advise the Secretary of State from time to time of the results of the implementation of such Improvement Plan.

4.6 Submission of Records Relating to the Implementation of a Service Recovery Plan

The Franchisee shall, within eight weeks of the end of each Reporting Period for which a Service Recovery Plan has been implemented (or such other period as

may be agreed by the 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.

APPENDIX 1 TO SCHEDULE 7.1

Cancellations Benchmark Table

Column 1		Column 2	Column 3	Column 4
Reporting Period		Improvement Plan Performance Level (%)	Breach Performance Level (%)	Default Performance Level (%)
Year 1	Period 1	2.02%	2.17%	2.26%
	Period 2	2.02%	2.17%	2.26%
	Period 3	2.02%	2.17%	2.25%
	Period 4	2.02%	2.16%	2.25%
	Period 5	2.02%	2.16%	2.25%
	Period 6	2.02%	2.16%	2.25%
	Period 7	2.01%	2.16%	2.25%
	Period 8	2.01%	2.16%	2.25%
	Period 9	2.01%	2.16%	2.25%
	Period 10	2.01%	2.16%	2.25%
	Period 11	2.01%	2.16%	2.25%
	Period 12	2.01%	2.16%	2.25%
	Period 13	2.01%	2.16%	2.25%

START OF THE FRANCHISE

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

APPENDIX 2 TO SCHEDULE 7.1

Capacity Benchmark Table

Column 1		Column 2	Column 3	Column 4
Reporting Period		Improvement Plan Performance Level (%)	Breach Performance Level (%)	Default Performance Level (%)
Year 1	Period 1	1.08%	1.15%	1.20%
	Period 2	1.08%	1.15%	1.20%
	Period 3	1.08%	1.15%	1.20%
	Period 4	1.08%	1.15%	1.20
	Period 5	1.08%	1.15%	1.20%
	Period 6	1.08%	1.15%	1.20%
	Period 7	1.08%	1.15%	1.20%
	Period 8	1.07%	1.15%	1.20%
	Period 9	1.07%	1.15%	1.20%
	Period 10	1.07%	1.15%	1.20%
	Period 11	1.07%	1.15%	1.20%
	Period 12	1.07%	1.15%	1.20%
	Period 13	1.07%	1.15%	1.20%

START OF THE FRANCHISE

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

APPENDIX 3 TO SCHEDULE 7.1

TOC Minute Delay Benchmark Table

Column 1		Column 2	Column 3	Column 4
Franchisee Year / Reporting Period		Improvement Plan Performance Level (TOC Minutes Delay/1000 Train Miles)	Breach Performance Level (TOC Minutes Delay/1000 Train Miles)	Default Performance Level (TOC Minutes Delay/1000 Train Miles)
Year 1	Period 1	13.39	14.33	14.95
	Period 2	13.39	14.33	14.95
	Period 3	13.38	14.32	14.94
	Period 4	13.38	14.32	14.94
	Period 5	13.37	14.30	14.92
	Period 6	13.37	14.30	14.92
	Period 7	13.37	14.29	14.92
	Period 8	13.35	14.29	14.91
	Period 9	13.35	14.28	14.91
	Period 10	13.34	14.28	14.89
	Period 11	13.34	14.27	14.89
	Period 12	13.34	14.27	14.88
	Period 13	13.34	14.26	14.88

START OF THE FRANCHISE

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

SCHEDULE 7.2

Service Quality Management

1. Introduction

This Schedule 7.2 provides for:

- (a) the Service Quality Management System arrangements to be put in place by the Franchisee for the management and delivery of service quality during the Franchise Term;
- (b) the responsibilities, including auditing, and reporting requirements of the Franchisee;
- (c) the audits that may be carried out by the Secretary of State;
- (d) the right of the Secretary of State to witness any audit carried out by the Franchisee;
- (e) the remedies available to the Secretary of State if the Franchisee underperforms against the measurement criteria set out in the Service Quality Management System; and
- (f) the remedies available to the Secretary of State if the Franchisee fails to submit a Service Quality Plan when required to do so or implement any Service Quality Plan in accordance with its terms.

2. Service Quality Arrangements

Service Quality Management System

- 2.1 The Service Quality Management System shall:
 - (a) be capable of measuring the Franchisee's compliance with the standards set out in the Service Quality Standards;
 - (b) contain distinct benchmarks against which the Franchisee's performance can be monitored each Reporting Period and any other performance criteria agreed between the parties;
 - (c) set out procedures, including in respect of the auditing requirements specified in paragraph 3, for identifying and rectifying failures against those benchmarks; and
 - (d) provide details of the resources allocated by the Franchisee, including any contractual arrangements in place, to ensure the provision by it of a level of service quality across the Franchise that is consistent with the level specified in the Service Quality Standards.
- 2.2 The Franchisee shall implement the Service Quality Management System in accordance with its terms.
- 2.3 The Franchisee shall review the effectiveness of the Service Quality Management System, including the Service Quality Audit Programme, at

reasonable intervals throughout the Franchise Term (each such interval being no more than 12 months), and propose changes to the Secretary of State as appropriate with a view to ensuring the level of service quality provided across the Franchise is consistent with the level specified in the Service Quality Standards. In considering changes to the Service Quality Audit Programme, the Franchisee shall have regard to the need to maintain a reasonable spread and frequency of audits across the Franchise and across those facilities that are the subject of the Service Quality Standards.

- 2.4 The prior consent of the Secretary of State (such consent not to be unreasonably withheld) must be obtained to any changes to either the Service Quality Management System or the Service Quality Audit Programme that the Franchisee considers appropriate in order to continue to provide the level of service quality referred to in paragraph 2.3.

Service Quality Plans

- 2.5 Any Service Quality Plan submitted under paragraph 4.1(e) requires approval by the Secretary of State. The Secretary of State and the Franchisee shall act in good faith to agree the Service Quality Plan and in the event that no such agreement can be reached, the Secretary of State shall reasonably determine the Service Quality Plan.
- 2.6 The Franchisee shall implement any Service Quality Plan agreed with or determined by the Secretary of State pursuant to paragraph 2.5 in accordance with its terms.

Service Quality at Franchisee Access Stations

- 2.7 The Franchisee shall:
- (a) use all reasonable endeavours to procure, including by:
 - (i) entering into new agreements with relevant third parties; and/or
 - (ii) varying existing agreements with relevant third parties; and
 - (b) enforce any rights it may have under any Access Agreement in respect of any Franchisee Access Station,
- 2.8 in order that any services equivalent to the Franchise Services that are provided by the Facility Owner at any Franchisee Access Station are provided at a level of service quality that is consistent with the level specified in the Service Quality Standards.

3. Auditing

- 3.1 The Service Quality Audit Programme shall provide for a reasonable spread and frequency of audits across the Franchise and across those facilities that are the subject of the Service Quality Standards in order to ascertain the extent to which the Franchisee is implementing the Service Quality Management System in accordance with its terms.
- 3.2 The Franchisee shall implement the Service Quality Audit Programme in accordance with its terms.

- 3.3 The Secretary of State, and his employees and agents on his behalf, shall have the right (at his own cost) to:
- (a) witness any audits carried out by the Franchisee under the Service Quality Audit Programme; and
 - (b) carry out his own independent audits of the extent to which the Franchisee implements the Service Quality Management System in accordance with its terms, in addition to any further independent audits he may carry out pursuant to paragraph 1.8 of Schedule 10.1 (Remedial Plans and Remedial Agreements).
- 3.4 The Franchisee shall cooperate with the Secretary of State, and his employees and agents on his behalf, in permitting the Secretary of State to exercise his rights under paragraph 3.3.
- 3.5 The Secretary of State shall use all reasonable endeavours to ensure that the persons employed in undertaking independent audits, carry out such audits diligently and objectively.
- 3.6 The Secretary of State shall use all reasonable endeavours to notify the Franchisee of the result of any independent audit that is undertaken within any Service Quality Reporting Period no later than the last day of such Service Quality Reporting Period where any such audit is conducted five days or more prior to the last day of such Service Quality Reporting Period. Otherwise, the Secretary of State shall notify the Franchisee as soon as reasonably practicable thereafter.
- 3.7 The Franchisee shall grant such access to the facilities under its control as is necessary to enable the Secretary of State and the Secretary of State's employees and agents on his behalf to witness any audits conducted by the Franchisee pursuant to the Service Quality Audit Programme and exercise his independent audit rights under paragraph 3.3(b).
- 3.8 In carrying out any independent audit, or witnessing any audits conducted by the Franchisee pursuant to the Service Quality Audit Programme, the Secretary of State shall, subject to paragraph 3.9, ensure that his employees or agents:
- (a) are appropriately trained and briefed with respect to any location-specific safety rules and regulations; and
 - (b) obey any location-specific rules and regulations in respect of security and access.
- 3.9 The Franchisee shall provide notice from time to time of current location-specific access, security and safety rules and regulations to the Secretary of State, his employees or agents for the purpose of ensuring that the Secretary of State, his employees and agents can carry out the Secretary of State's auditing rights in an efficient, secure and safe manner.

4. Reporting Arrangements for the Franchisee

- 4.1 The Franchisee shall:
- (a) calculate its performance every Reporting Period as a moving annual average against the benchmarks set out in the System Quality Management

System taking account of the results of any independent audits referred to in paragraphs 5.4 and 5.5;

- (b) self-certify the extent of its compliance against those benchmarks to the Secretary of State no later than seven days after each Service Quality Reporting Period, disaggregating the results of its performance by Service Group where required to do so from time to time by the Secretary of State;
- (c) promptly provide to the Secretary of State, following his request, copies of the records of any of the audits carried out pursuant to the Service Quality Audit Programme;
- (d) promptly notify the Secretary of State if and whenever its performance in any Reporting Period in respect of any standard set out in the Service Quality Standards, when expressed as a moving annual average, is worse than the benchmark relating to that standard; and
- (e) promptly submit to the Secretary of State a Service Quality Plan where it is required to notify the Secretary of State under paragraph 4.1(d).

4.2 Each Service Quality Plan shall detail:

- (a) the benchmark and standard in respect of which it has been submitted;
- (b) the remedial actions that the Franchisee intends to take, including the resources it intends to allocate, in order to ensure that its future performance in respect of that standard is once again better than that benchmark; and
- (c) the anticipated time it will take to achieve the objective referred to in paragraph 4.2(b).

5. Remedies Available to the Secretary of State

Contraventions

5.1 It shall be a contravention of the Franchise Agreement if:

- (a) the Franchisee fails to implement the Service Quality Audit Programme in accordance with its terms;
- (b) the Franchisee is required to notify the Secretary of State pursuant to paragraph 4.1(d);
- (c) the Franchisee fails to submit a Service Quality Plan in accordance with paragraph 4.1(e);
- (d) the Franchisee fails to implement a Service Quality Plan in accordance with its terms; or
- (e) there are material discrepancies which are favourable to the Franchisee between the results of any audit carried out pursuant to the Service Quality Audit Programme and the results of any independent audit relevant to it except where the Franchisee can demonstrate to the reasonable satisfaction of the Secretary of State that the results of that independent audit are inaccurate.

- 5.2 Without prejudice to the provisions of paragraph 2.11 of Schedule 10.3 (Events of Default and Termination Event), no Event of Default shall have occurred if any of the circumstances referred to in paragraph 5.1 occur.

Results of independent audits

- 5.3 Subject to paragraph 5.5, the results of any independent audits that are carried out in specific response to the occurrence of any of the circumstances described in paragraphs 5.1(a) to 5.1(d) inclusive shall be included in the calculation pursuant to paragraph 4.1(a) of the Franchisee's performance against the relevant benchmarks in the Service Quality Management System.
- 5.4 Subject to paragraph 5.5, the results of any independent audits that are carried out in specific response to the occurrence of the circumstance described in paragraph 5.1(e) shall be substituted for the results of any corresponding audit carried out pursuant to the Service Quality Audit Programme in the calculation pursuant to paragraph 4.1(a) of the Franchisee's performance against the relevant benchmarks in the Service Quality Management System.
- 5.5 Only the results of those independent audits:
- (a) carried out pursuant to paragraph 1.8 of Schedule 10.1 (Remedial Plans and Remedial Agreements) in specific response to the occurrence of any of the circumstances described in paragraphs 5.1(a) to 5.1(e) inclusive; and
 - (b) notified by the Secretary of State to the Franchisee by the end of the Service Quality Reporting Period during which they were conducted,
- 5.6 shall be included in the calculation in respect of those Reporting Periods that form part of that Service Quality Reporting Period pursuant to paragraph 4.1(a).

Franchisee right to make representations

- 5.7 The Franchisee shall have the right to:
- (a) inspect the results of any independent audit carried out by the Secretary of State pursuant to this Schedule 7.2; and
 - (b) make representations to the Secretary of State in respect of any of those results.
- 5.8 The Secretary of State shall have regard to, but not be bound by, any representation made by the Franchisee pursuant to paragraph 5.6(b).

SCHEDULE 0

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:

$$\text{£FP} = \text{PFP} + \text{TAA} + \text{SCA} + \text{MSAP} + \text{MIP} - \text{CBS}$$

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:

- (a) in respect of the first six Reporting Periods of the Franchisee Year, the aggregate number of days in those six Reporting Periods in which that Reporting Period occurs provided that in respect of any Reporting Period occurring during that six Reporting Periods if 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 the first six Reporting Periods of such Franchisee Year had such early termination not occurred; and
- (b) in respect of the seventh and any subsequent Reporting Period of the Franchisee Year, the number of days in the relevant individual Reporting Period provided that in respect of any such Reporting Period 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 that relevant individual Reporting Period had such early termination not occurred; and

AFP means:

- (a) in respect of the first six Reporting Periods of the Franchisee Year, the Annual Franchise Payment for those six Reporting Periods, as determined in accordance with Schedule 8.2 (Annual Franchise Payments); and

- (b) in respect of the seventh and each subsequent Reporting Period of the Franchisee Year, the Annual Franchise Payment for the relevant individual Reporting Period, as determined in accordance with Schedule 8.2 (Annual Franchise Payments);

- 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;
- MSAP means any payments made by the Franchisee to the TMM pursuant to paragraph 13 of Schedule 6.2 (Thameslink/GN Franchise Specific Provisions) in that Reporting Period;
- MIP means any Milestone Incentive Payment payable to the Franchisee under paragraph 9.15 of Schedule 6.2 (Thameslink/GN Franchise Specific Provisions) on that Reporting Period's Payment Date; and
- CBS means any Clawback Sum due to the Secretary of State in accordance with paragraph 9.21 of Schedule 6.2 (Thameslink/GN Franchise Specific Provisions) 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, TAA and SCA 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 9 (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.

3. Profit Share

For the purposes of this paragraph 3:

"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 each Franchisee Accounting Year	+	the amount of any Milestone Incentive Payment payable by the Secretary of State to the Franchisee pursuant to the provisions of paragraph 9.15 of Schedule 6.2 (Thameslink/GN Franchise
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Specific Provisions) in the relevant Franchisee Accounting Year,

where:

FPST means the First Profit Share Threshold for that Franchisee Accounting Year,

provided always that where the Franchise Agreement terminates:

(a) before the end of the sixth Reporting Period from and including the Start Date, the First Profit Share Threshold shall be the Adjusted FPST Amount:

$$\text{Adjusted FPST Amount} = \left(\begin{array}{c} \text{the amount} \\ \text{prescribed for these} \\ \text{purposes in} \\ \text{paragraph 1 of} \\ \text{Appendix 1 (Profit} \\ \text{Share Thresholds)} \\ \text{to this Schedule 8.1} \\ \text{in respect of each} \\ \text{Franchisee} \\ \text{Accounting Year} \end{array} \right) \times \frac{\text{FAY}}{\text{FAA}} + \begin{array}{c} \text{the amount of any} \\ \text{Milestone Incentive} \\ \text{Payment payable by} \\ \text{the Secretary of} \\ \text{State to the} \\ \text{Franchisee pursuant} \\ \text{to the provisions of} \\ \text{paragraph 9.15 of} \\ \text{Schedule 6.2} \\ \text{(Thameslink/GN} \\ \text{Franchise Specific} \\ \text{Provisions) in the} \\ \text{relevant Franchisee} \\ \text{Accounting Year} \end{array}$$

where:

FAY is the actual number of days in respect of that Franchisee Accounting Year up to the date of termination; and

FAA is the number of days there would have been in the first six Reporting Periods from and including the Start Date had the Franchise Agreement not terminated before the end of those first six Reporting Periods; and

(b) having been extended under paragraph 2.1 of Schedule 18 (Additional Reporting Periods), otherwise than at the end of a Reporting Period, the amount prescribed for these purposes in paragraph 1 of Appendix 1 (Profit Share Thresholds) to this Schedule 8.1 in respect of the Franchisee Accounting Year in which the Franchise Period ends shall be calculated as set out above save that the value taken into account in relation to the Reporting Period in which termination occurs shall be the Amended FPST Amount:

$$\text{Amended FPST Amount} = \left(\begin{array}{c} \text{is the amount} \\ \text{prescribed for these} \\ \text{purposes in} \\ \text{paragraph 1 of} \\ \text{Appendix 1 (Profit} \\ \text{Share Thresholds)} \\ \text{to this Schedule 8.1} \\ \text{in respect of the} \\ \text{Reporting Period} \\ \text{during which such} \\ \text{termination occurs} \end{array} \right) \times \frac{\text{ARPD}}{\text{RPD}}$$

where:

ARPD is the actual number of days in respect of that Reporting Period up to the date of termination; and

RPD is the number of days there would have been in that Reporting Period had the Franchise Agreement not terminated before the end of that Reporting Period.

“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,

where:

SPST means the Second Profit Share Threshold for that Franchisee Accounting Year,

provided always that where the Franchise Agreement terminates:

- (a) before the end of the sixth Reporting Period from and including the Start Date the amount prescribed for these purposes in paragraph 2 of Appendix 1 (Profit Share Thresholds) to this Schedule 8.1 in respect of the first six Reporting Periods in which the Franchise Period ends shall be the Adjusted SPST Amount:

$$\text{Adjusted SPST Amount} = \text{SPST} \times \frac{\text{FAY}}{\text{FAA}}$$

where:

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 first six Reporting Periods;

FAY is the actual number of days in respect of the first six Reporting Periods;

FAA is the number of days there would have been in the first six Reporting Periods from and including the Start Date had the Franchise Agreement not terminated before the end of those first six Reporting Periods.

- (b) having been extended under paragraph 2.1 of Schedule 18 (Additional Reporting Periods), otherwise than at the end of a Reporting Period, the amount prescribed for these purposes in paragraph 2 of Appendix 1 (Profit Share Thresholds) to this Schedule 8.1 in respect of the Franchisee Accounting Year in which the Franchise Period ends shall be calculated as set out in Appendix 1 save that the value taken into account in relation to the Reporting Period in which termination occurs shall be the Amended SPST Amount:

$$\text{Amended SPST Amount} = \text{SPST} \times \frac{\text{ARPD}}{\text{RPD}}$$

where:

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 Reporting Period during which such termination occurs;

ARPD is the actual number of days in respect of that Reporting Period up to the date of termination; and

RPD is the number of days there would have been in that Reporting Period had the Franchise Agreement not terminated before the end of that Reporting Period.

"Relevant Profit" means, subject to paragraph 3.4, 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) Franchise Payments;
 - (ii) the Franchisee's normal pension contributions in relation to the Franchisee Sections and any other pension schemes to the extent connected with the Franchise;
 - (iii) 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

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);

- (iv) any sums payable by or to the Franchisee pursuant to the terms of the Supplemental Agreement; and
 - (v) 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 Licence (including as a consequence of any penalty payment paid or payable pursuant to Section 57A of the Railways Act 1993);
 - (v) any profit share payments payable to the Secretary of State in relation to any Franchisee Accounting Year;
 - (vi) fees, remuneration and pension contributions in respect of any statutory director and officers of the Franchisee in excess of an amount to be determined as follows:

DFR

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);
 - (vii) all liabilities arising prior to the Start Date or in consequence (directly or indirectly) of the Franchisee being a party to the Previous Franchise Agreement including those liabilities identified in the final annual financial

statements and annual audited accounts prepared by the Franchisee in relation to the final franchisee year under the Previous Franchise Agreement. Such liabilities shall not include liabilities in relation to the Franchise Services arising after the start of the Franchise Term pursuant to agreements or arrangements entered into prior to the start of the Franchise Term;

- (viii) interest, finance income and finance charges (other than finance items recognised in respect of retirement benefits); and
- (ix) 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.

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.

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

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

3.3 Subject to paragraphs 3.5 and 3.6 below, payments due under paragraph 3.2 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.

3.4

- (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 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 3 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 3 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.
- (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 3.4(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 3.2 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.

3.5 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 3.1;
- (b) any items falling under paragraph 3.4(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).

- 3.6 Any profit share payment pursuant to paragraph 3.2 to be made in respect of the final Franchisee Accounting 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 profit share payment.
- 3.7 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 3 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.

APPENDIX 1 TO SCHEDULE 8.1

Profit Share Thresholds

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

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

Franchisee Accounting Year		
Year 1	Reporting Periods 1 – 6 inclusive	Where text has been omitted from the document, this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.
Up to 7 Reporting Periods Extension	Reporting Period 7	
	Reporting Period 8	
	Reporting Period 9	
	Reporting Period 10	
	Reporting Period 11	
	Reporting Period 12	
	Reporting Period 13	

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

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

Franchisee Accounting Year		
Year 1	Reporting Periods 1 – 6 inclusive	Where text has been omitted from the document, this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the
Up to 7 Reporting	Reporting Period 7	
	Reporting Period 8	

Periods Extension	Reporting Period 9	provisions within the Freedom of Information Act 2000.
	Reporting Period 10	
	Reporting Period 11	
	Reporting Period 12	
	Reporting Period 13	

APPENDIX 2 TO SCHEDULE 8.1

Components of AFA and DFR

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

Franchisee Accounting Year		
Year 1	Reporting Periods 1 – 6 inclusive	Where text has been omitted from the document, this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.
Up to 7 Reporting Periods Extension	Reporting Period 7	
	Reporting Period 8	
	Reporting Period 9	
	Reporting Period 10	
	Reporting Period 11	
	Reporting Period 12	
	Reporting Period 13	

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

Franchisee Accounting Year		
Year 1	Reporting Periods 1 – 6 inclusive	Where text has been omitted from the document, this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.
Up to 7 Reporting Periods Extension	Reporting Period 7	
	Reporting Period 8	
	Reporting Period 9	
	Reporting Period 10	
	Reporting Period 11	
	Reporting Period 12	
	Reporting Period 13	

SCHEDULE 8.2

Annual Franchise Payments

1. Annual Franchise Payments

The Annual Franchise Payment for any Franchisee Year is an amount equal to:

$$\text{AFP} = \text{FXD} + \text{VCRPI} + (\text{VCAWE} \times \text{AWE}) + \text{PRPI} + \text{RRPI}$$

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;

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 November which immediately precedes the commencement of the relevant Franchisee Year divided by the Average Weekly Earnings for November 2012, 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

RRPI 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

Column 1		Column 2	Column 3	Column 4	Column 5	Column 6
Franchisee Year		<p align="center">Where text has been omitted from the document, this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.</p>				
Year 1	Reporting Periods 1-6 inclusive					
Up to 7 Reporting Periods Extension	Reporting Period 7					
	Reporting Period 8					
	Reporting Period 9					
	Reporting Period 10					
	Reporting Period 11					
	Reporting Period 12					
	Reporting Period 13					

SCHEDULE 8.3

Miscellaneous Payment Provisions

The Secretary of State, in his discretion, may at any time decide to reimburse or ameliorate net losses of the Franchisee arising from Industrial Action (however caused and of whatever nature) in circumstances where the Franchisee has demonstrated to the satisfaction of the Secretary of State that it has taken all reasonable steps to avoid the Industrial Action and that, Industrial Action having nevertheless occurred, the Franchisee has taken all reasonable steps to mitigate its effects.

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, 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.

SCHEDULE 0

Changes

Introduction to Schedule 9

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

Not used

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 and/or the Benchmarks; and
 - (b) the process by which that adjustment to the Franchise Payments and/or the 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 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 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 19 (Other Provisions); 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 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 the 2013 periodic review carried out by the ORR in respect of the period 1 April 2014 to 31 March 2019 ("**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:
 - (i) PR2013 is or may be concluded prior to the date of the Franchise Agreement; and/or
 - (ii) any Relevant Agreement to which the Franchisee is a party to, 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).

2. **Timescales**

- 2.1 Where this Schedule 9.1 applies, any resulting restatement of the Annual Franchise Payment Components and/or the 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**

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 (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 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. 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 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**

- 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:
 - (1) meets the criteria for a Qualifying Change; or

(2) 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 have been agreed or determined in accordance with paragraph 5, the 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 - 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**

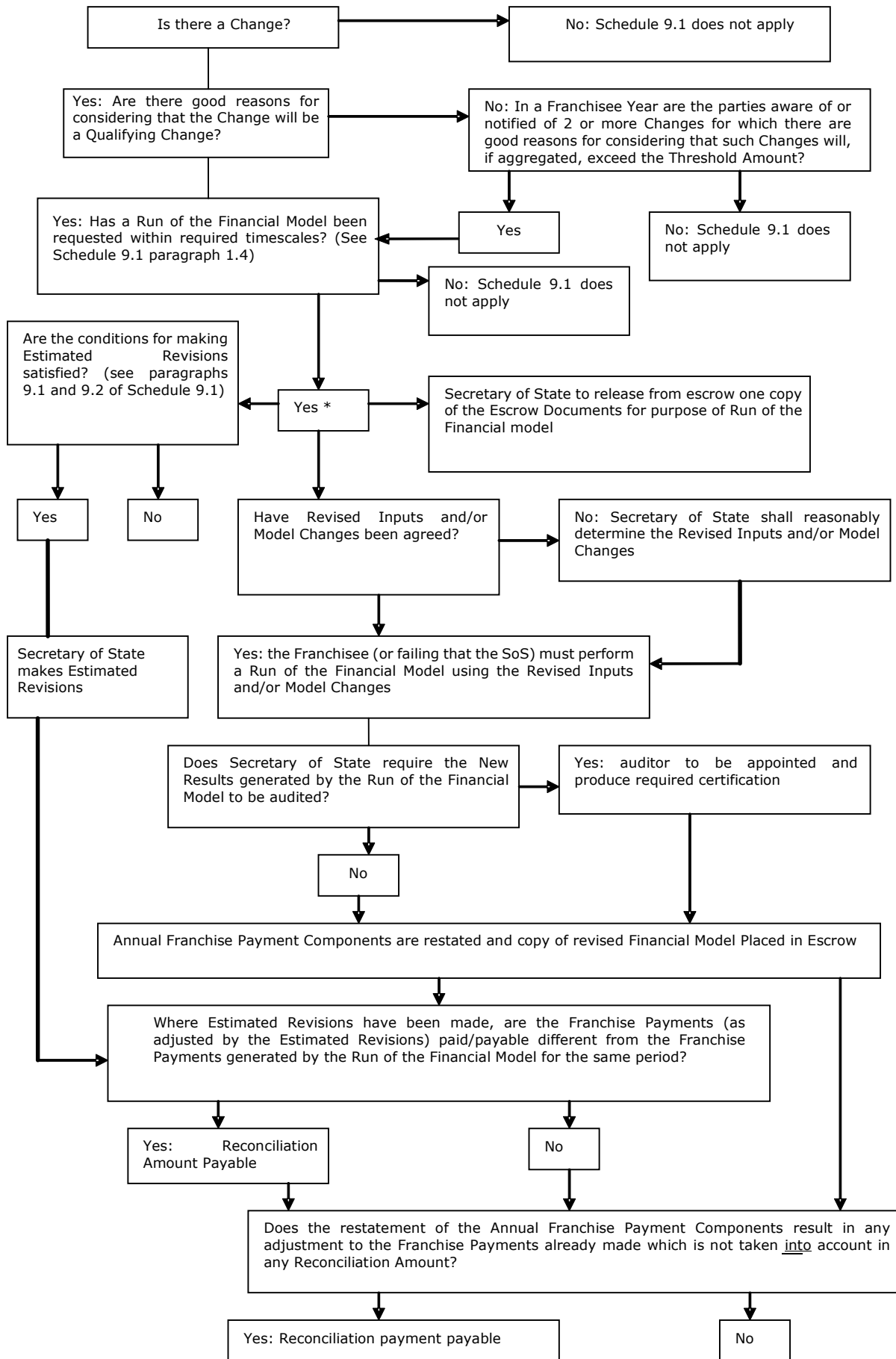
- 11.1 This paragraph deals with the costs incurred by the Franchisee in connection with any audit required by the Secretary of State pursuant to paragraph 7.
- 11.2 The costs of any audit required under paragraph 7.1(b) shall be met by the Secretary of State subject to the following:
- (a) the costs of the audit shall be met entirely by the Franchisee:
 - (i) not used; and
 - (ii) in the case of a Change falling within any of the following subparagraphs within the definition of Change:
 - (A) not used; and
 - (B) a Charge Variation;
 - (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.

APPENDIX 1 TO SCHEDULE 9.1

Summary Flow Chart

See next page

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 19 (Other Provisions).

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 No Revised Inputs shall be made to the extent that a Charge Variation relates, directly or indirectly and however it may be effected, to the amount payable (in pence per kWh or otherwise) for traction current consumed by rolling stock vehicles operated by or on behalf of the Franchisee unless and to the extent that paragraph 4.4 applies.

4.3 As at the date of the Franchise Agreement, the amount payable for traction current consumed is reflected in the component EFGjt referred to in paragraph

4 of Part 2 of Schedule 7 of the Track Access Agreement to which the Franchisee is a party on the Start Date.

- 4.4 The parties shall agree or the Secretary of State shall reasonably determine Revised Inputs to reflect any change in the basis of calculation of the margin or premium (if any) which the counterparty to the Relevant Agreement is entitled to charge in respect of traction current.

5. Revised Input for Profit

5.1

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

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

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

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

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

- 5.2 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) 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.

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**

No Revised Inputs will be made to reflect:

- (a) any amount payable by or to the Franchisee in respect of Efficiency Benefit Share; or
- (b) any change in the basis on which Efficiency Benefit Share is calculated or is to be paid (including any change which may require amounts in respect of Efficiency Benefit Share 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.

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 (other than the signing convention issue referred to in paragraph 3.2 below) 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.

3.2 The parties agree that in expressing the output of the Financial Model for the purposes of the statement of the Annual Franchise Payments pursuant to Schedule 8.2 of the Franchise Agreement the following signing convention should be used:

- (a) the numbers which relate to the components FXD, VCRPI, VCAWE and PRPI should be expressed as positive (so long as there are costs greater than any applicable credits); and
- (b) the numbers which relate to RRPI should be expressed as negative (so long as there are positive revenue receipts).

The table in the Appendix to Schedule 8.2 and the Record of Assumptions has been correctly populated with numbers shown as positives or negatives as the case may be. The corresponding table in the Record of Assumptions is consistent with the Franchise Agreement and has a note describing the issue in the Financial Model. When there is a Run of the Financial Model this issue may lead initially to numbers being wrongly shown as a positive or negative as the case may be. The parties agree that a consequent adjustment will be made to be consistent with the signing convention described in this paragraph.

Schedule 9.3

Secretary of State Risk Assumptions

1. A Change shall occur if and whenever any of the events set out in any of the following risk assumptions ("**Secretary of State Risk Assumptions**") occur during the Franchise Term:
 - 1.1 there is any variation or amendment to any of the TRSP Suite of Documents as originally executed for any reason or there is a termination of any of the TRSP Suite of Documents or any party's obligations under any of the TRSP Suite of Documents for any reason but only to the extent that such variation or amendment may reasonably be expected to have a material effect on the Franchisee's ability to comply with its obligations under the TRSP Suite of Documents. This Change includes whenever any of the following occur:
 - (a) any variation made using any of the change processes in any of the TRSP Suite of Documents or otherwise;
 - (b) any exercise of any Priced Option under the MSA;
 - (c) any refinancing of any of the TRSP Suite of Documents;
 - (d) the commissioning and testing of the Depot Works (as such term is defined in the MDCTA) (including any work associated with Introducing Into Operational Use (as such term is defined in the MDCTA)) is earlier than envisaged in the Contract Programme or the Depot Phasing Plans (as such terms are defined in the DAFLs) in the versions applicable on signing of the TRSP Suite of Documents or there is a Closure (as such term defined in the DAFL);
 - (e) any Permitted Delay (as such term is defined in the MDCTA) under or any Permitted Depot Delay (as such term is defined in the MDCTA) under any of the TRSP Suite of Documents. In this case, any such Change shall not take account of any costs consequent upon the occurrence of any Permitted Delay falling within limb (a) of the definition of Permitted Delay;
 - (f) any of the TRSP Suite of Documents is subject to a Force Majeure Event or there is any variation or termination as a consequence of a Force Majeure Event;
 - (g) any Change in Law (whether or not requiring a Mandatory Modification) which affects any of the TRSP Suite of Documents; and/or
 - (h) 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 Suite of Documents;
 - 1.2 Any party to any of the TRSP Suite of Documents (other than the Franchisee) does not comply with any of its obligations in accordance with the terms of those agreements. This Change includes where the Secretary of State exercises any of his rights under the Umbrella Agreement (as such term is defined in the MDCTA) which may include:

- (a) direction to the Franchisee to step into the obligations of any other party under any of the TRSP Suite of Documents;
 - (b) where the Franchisee is entitled to terminate any of the TRSP Suite of Documents under the terms of the relevant agreement, direction to the Franchisee not to terminate the agreement concerned;
 - (c) a TSSSA notice (as such term is defined in the MDCTA) being served in accordance with the Umbrella Agreement or the TSSSA is otherwise put into effect; and/or
 - (d) termination of either the TMM's obligations under the MSA under paragraph 4 of schedule 19.3 of the MSA or of the Owner's obligations under paragraph 2.1 of schedule 11 of the Lease (as such term is defined in this Agreement);
- 1.3 The Secretary of State directs the Franchisee to agree to implement an amendment to, or to terminate any Thameslink Trading Agreement or to implement any amendment to the agreed terms of any Thameslink Trading Agreement prior to that agreement being entered into or to make any change to the Reference Timetable;
- 1.4 The LSER Franchisee (or any successor to the LSER Franchisee) fails at any time to exercise its timetable development rights in a manner which is consistent with the Reference Timetable as defined in the Previous Franchise Agreement;
- 1.5 The Secretary of State:
- (a) does not during the Franchise Term, require (or having so required, waives or otherwise amends the requirement for):
 - (i) the Southern Franchisee and each successor operator to the Southern Franchisee with effect from its commencing as successor operator to the Southern Franchisee:
 - (aa) to be the lessee or owner of the Class 377 units to be leased to the Franchisee under the Thameslink Trading Agreements on terms which permit compliance with those agreements; and
 - (bb) to be a party to the Thameslink Trading Agreements or to enter into successor arrangements to those agreements in place of the Southern Franchisee; and
 - (ii) the LSER Franchisee, and each successor operator to the LSER Franchisee with effect from its commencing as successor operator, to be a party to the Thameslink Trading Agreements or to enter into successor arrangements to those agreements in place of the LSER Franchisee,

in respect of such successor operators, in each case as a condition of and upon that successor operator becoming the successor operator of the relevant franchise in succession directly or indirectly to the Southern Franchisee or the LSER Franchisee (as the case may be) and without any amendment to such transferred, novated or successor agreements except to record the change in identity of the successor operator and (if applicable) the extension of the term of those

arrangements until the earlier of the expiry of the Franchise Term and the end of the relevant successor operator's relevant franchise, such that the Franchisee is contractually assured of the continuation of all the Thameslink Trading Agreements throughout the Franchise Term without any amendment in price or terms save for any agreed by the Franchisee or directed pursuant to paragraph 3 of Schedule 6.2 (Thameslink/GN Franchise Specific Provisions) of the Franchise Agreement;

- 1.6 the Franchisee is not compensated for the net adverse cost and revenue impacts it suffers consequent upon the London Bridge Blockade under any Access Agreement, the Network Code or otherwise (including under Condition G2.2 of the Network Code and Schedule 4 of the Track Access Agreement). In determining net adverse cost and revenue impacts consequent upon the London Bridge Blockade:
- (a) adverse cost and revenue impacts shall be calculated solely by reference to costs, direct losses or expenses (including revenue loss) which can reasonably be expected to be incurred by the Franchisee as a consequence of the London Bridge Blockade and shall take into account cost and revenue impacts already provided for in the Financial Model or which are otherwise recoverable under this Franchise Agreement; and
 - (b) any financial benefit to the Franchisee arising from the London Bridge Blockade including any decrease in variable costs including in consequence of any reductions in any of train mileage, traction electricity charges, variable track usage charges and the capacity charge shall be set off against the adverse cost and revenue impacts referred to in sub paragraph (a).

Any Change pursuant to this paragraph 1.6 shall:

- (i) automatically be a Qualifying Change whether or not it meets the requirements of the definition of Qualifying Change but notwithstanding the provisions of paragraph 5 of Appendix 2 to Schedule 9.1 (Financial and Other Consequences of Change) where there is such a Qualifying Change no Revised Inputs in relation to profit shall provide for an increase in the amount of profit in any Franchisee Year but Revised Inputs may provide for a decrease in the circumstances specified in the said paragraph 5 of Appendix 2 to Schedule 9.1;
- (ii) take into account any financial benefit to the Franchisee arising from the London Bridge Blockade including any decrease in variable costs including in consequence of any reductions in any of train mileage, traction electricity charges, variable track usage charges and the capacity charge;
- (iii) take into account cost and revenue impacts already provided for in the Financial Model or which are otherwise recoverable under this Franchise Agreement; and
- (iv) not compensate the Franchisee in relation to adverse cost and revenue impacts incurred in consequence of it failing to exercise its rights against Network Rail (including on the basis that the London Bridge Blockade give rise to Network Change under the Network Code);

The parties acknowledge that they expect that the Franchisee will be fully compensated for the net adverse cost and revenue impacts consequent upon the London Bridge Blockade under any Access Agreement, the Network Code or otherwise so that no Qualifying Change will occur.

Schedule 9.4

Not Used

SCHEDULE 0

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 Event
Schedule 10.4	Force Majeure
Schedule 10.5	Liability

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) an Event of Default (subject to paragraphs 1.2 and 1.3) which is unremedied or continuing and the Secretary of State considers to be material; or
 - (b) a Termination Event which is unremedied or continuing,
- 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 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.

Other Franchises

- 2.8 Not used.

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.
- 2.15 Not used.

3. Termination Events

The Secretary of State may terminate the Franchise Agreement in accordance with Schedule 10.2 (Termination and Expiry) if:

- 3.1 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
- 3.2
 - (a) the warranty given by the Franchisee pursuant to paragraph 6 of Schedule 12 (Financial Obligations and Covenants) is materially untrue; or
 - (b) 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
 - (c) 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) one million pounds sterling (£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.

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;
- (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 if 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; and

- (g) at any time while any of the Thameslink Trading Agreements remains in force, any of the circumstances described in paragraphs (a) to (f) (inclusive) above applies in relation to the LSER Franchisee (or any successor operator to the LSER Franchisee) and such circumstances directly cause Cancellations, Partial Cancellations, shortfall in planned Passenger Carrying Capacity, Minutes Delay or other contravention of the Franchise Agreement in circumstances where the Franchisee has used all reasonable endeavours to exercise its contractual rights under any relevant Thameslink Trading Agreement.

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 of Schedule 10.3 (Events of Default and Termination Event).

On Payments

- 3.3 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.

SCHEDULE 0

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 train service delivery manager, whose role will include responsibility for ensuring compliance by the Franchisee with Schedule 7.1 (Performance Benchmarks);
- (c) 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;
- (d) a finance manager, whose role will include responsibility in relation to the Financial Model;
- (e) the 'Project Director' and two assistants referred to in paragraph 2.1 of Schedule 6.2 (Thameslink/GN Franchise Specific Provisions); and
- (f) the 'Thameslink Project Manager' referred to in paragraph 7.4 of Schedule 6.2 (Thameslink/GN Franchise Specific Provisions).

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 every quarter (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.

4.6 **Periodic Update Reports**

- (a) In addition to the obligation at paragraph 4.4 above, the Franchisee shall prepare and submit to the Secretary of State a periodic report in each Reporting Period containing such information as the Secretary of State may reasonably specify upon commencement of this Agreement or from time to time in accordance with paragraph 4.6(b) for the previous quarter, or such other period as may be reasonably required and disaggregated to the extent that the Secretary of State shall require).

- (b) The Franchisee's obligations under this paragraph 4.6 are subject to the Franchisee receiving at least 28 days' notice of:

- (i) the requirement to prepare any such report; and
- (ii) any amendments required to the contents of such report.

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.

SCHEDULE 0

Financial Obligations and Covenants

Schedule 12

Financial Obligations and Covenants

Appendix 1: Form of Performance Bond

Appendix 2: Form of Season Ticket Bond

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

For the purposes of this paragraph 2 "**preceding 13 Reporting Periods**" means the Reporting Period just ended and (subject as provided in paragraph 2.1(a)) 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 (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 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 Event).

Contingent Funding

3.4 If at any time during the Franchise Term:

- (a) the ratio of the Franchisee's Modified Revenue to its Actual Operating Costs during the preceding 13 Reporting Periods (or, prior to the end of the thirteenth such Reporting Period, during all preceding Reporting Periods) is less than 1.070:1; and
- (b) the ratio of Franchisee's Forecast Modified Revenue to its Forecast Operating Costs for the next 13 Reporting Periods (or, where there are less than 13 Reporting Periods remaining in the Franchise Period, for all such remaining Reporting Periods) will be less than 1.070:1,

the Parent may, for the purpose of ensuring that the relevant ratio remains at, or is increased above, 1.070:1, provide loan funding to the Franchisee. The Parent at its discretion may make such loan pursuant to a Funding Deed and if it does so the Franchisee shall enter into, and procure that the Parent enters into, a Funding Deed on or immediately after the date on which such loan is made available to the Franchisee. The terms of any such loan (whether or not made by way of Funding Deed) shall be consistent with the terms of this Franchise Agreement including paragraph 11 of Schedule 19 (Other Provisions).

- 3.5 Upon entry into any Funding Deed pursuant to paragraph 3.4, Schedule 10.3 (Events of Default and Termination Events) shall be amended to include the following event of default:

"2.15 A failure by the Franchisee or the Parent to comply with their respective obligations under the Funding Deed."

4. **Performance Bond**

- (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(a) and any replacement Performance Bonds shall:
 - (i) be substantially in the form of Appendix 1 (Form of Performance Bond) to this Schedule 12; and
 - (ii) have a value equal to the amount determined under paragraph 4.4.

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 ².

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 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 Event) in relation to the Performance Bond; or

(B) under paragraph 2.13(b) of Schedule 10.3 (Events of Default and Termination Event),

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

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

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.

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 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 Season Ticket Bond

- 5.2 No later than one Reporting Period before the Start Date the Franchisee shall provide to the Secretary of State (or procure that the Secretary of State receives) a Season Ticket Bond for the period until the end of the Franchise Term. Where notice of extension of the Franchise Term is issued under paragraph 2 of Schedule 18 (Additional Reporting Periods) no later than one Reporting Period before the commencement of the period of extension to the Franchise Term the Franchisee shall provide to the Secretary of State (or procure that the Secretary of State receives) a Season Ticket Bond for the period until the end of the extended Franchise Term. Any such Season Ticket Bond shall be

- (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;
- (c) in the case of the first Season Ticket Bond for an amount of ³;
- (d) in the case of any Season Ticket Bond required to be provided as a consequence of an extension of the Franchise Term for the same amount as in (c) above.

5.3 Not Used

5.4 Not used.

5.5 Not Used.

5.6 Not Used

- 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.

³ **Where text has been omitted from the document, this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.**

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 Event) in relation to the Season Ticket Bond; or
 - (B) under paragraph 2.13(c) of Schedule 10.3 (Events of Default and Termination Event),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 Not used.
- 5.12 Not used

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:

"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;

"Occasion of Tax Non-Compliance" means

- (a) any tax return of the Franchisee submitted to a Relevant Tax Authority on or after 1 October 2012 is found on or after 1 April 2013 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) any tax return of the Franchisee submitted to a Relevant Tax Authority on or after 1 October 2012 gives 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 civil penalty for fraud or evasion; 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**")

You have entered into:

a) a franchise agreement dated 12 December 2005 (the "**Original Franchise Agreement**") with First Capital Connect Limited (the "**Franchisee**") which is due to expire on 1 April 2014 at 01:59; and

b) an interim franchise agreement dated [_____] (the "**Interim Franchise Agreement**") with the Franchisee which is due to expire at 01:59 on 14 September 2014, subject to any later date to which it is extended in accordance with its terms,

under which the Franchisee will provide certain railway passenger services (together the "**Franchise Agreements**").

The Franchise Agreements require you to receive a duly executed performance bond in the amount of ⁴ with the amount reducing to ⁵ with effect from 02:00 on 1 April 2014 such reduction only to occur if the Interim Franchise Agreement has been entered into and has not terminated prior to 02:00 on 1 April 2014 (the "**Bond Value**") to secure the performance by the Franchisee of and its compliance with its obligations under the Franchise Agreements and any applicable Supplemental Agreement under either of the Franchise Agreements (together the "**Supplemental Agreements**").

Accordingly:

This duly executed performance bond (the "**New Performance Bond**") shall from the date of its execution replace and supersede the Performance Bond number 091215GT303CAUK provided to you in respect of the Original Franchise Agreement and last amended by a deed executed by us on 29th August 2013 (the "**Original Performance Bond**").

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 at the date of occurrence of the Call Event. All sums payable hereunder shall be paid free of any restriction or condition and free and clear of and (except to the extent required

⁴ **Where text has been omitted from the document, this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.**

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

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) where the Original Franchise Agreement has been terminated or expires and the Interim Franchise Agreement has either not been entered into or has been terminated before the Start Date under the Interim Franchise Agreement, the later of:
 - (A) the date falling one month after the determination of the Purchase Price (as defined in the Supplemental Agreement under the Original Franchise Agreement) under the Supplemental Agreement under the Original Franchise Agreement; and
 - (B) the date falling seven Reporting Periods after the end of the Franchise Period (as defined in the Original Franchise Agreement); and
 - (C) the end of the Franchise Term (as defined in the Original Franchise Agreement); and
 - (iii) where the Original Franchise Agreement has been terminated or expires and the Interim Franchise Agreement has either not been entered into or has been terminated before the Start Date under the Interim Franchise Agreement, [insert date that is 7 Reporting Periods after the Franchise Term (as defined in the Original Franchise Agreement)] October 2014;
 - (iv) where the Original Franchise Agreement has been terminated or expires and the Interim Franchise Agreement has been entered into and remains in force at its Start Date:
 - (A) the date falling one month after the determination of the Purchase Price (as defined in the Supplemental Agreement under the Interim Franchise Agreement) under the Supplemental Agreement under the Interim Franchise Agreement; and
 - (B) the date falling seven Reporting Periods after the end of the Franchise Period (as defined in the Interim Franchise Agreement); and

(C) the end of the Franchise Term (as defined in the Interim Franchise Agreement); and

(v) where the Original Franchise Agreement has been terminated or expired and the Interim Franchise Agreement has been entered into and remains in force at its Start Date, [*insert date that is 7 Reporting Periods after the Franchise Term (as defined in the Interim Franchise Agreement)* 31 March 2015]

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 (otherwise than by expiry) of the Original Franchise Agreement in circumstances where there are liabilities or obligations outstanding from the Franchisee to the Secretary of State;
- (b) the expiry of the Original Franchise Agreement in circumstances where there are liabilities or obligations outstanding from the Franchisee to the Secretary of State and the Interim Franchise Agreement has either not been entered into or has been terminated before the Start Date under the Interim Franchise Agreement;
- (c) the termination of the Original Franchise Agreement solely as a consequence of the occurrence of one or more Events of Default in circumstances where the Secretary of State has incurred or expects to incur additional costs in connection with termination of the Thameslink/GN franchise;
- (d) the termination or expiry of the Interim Franchise Agreement in circumstances where there are liabilities or obligations outstanding from the Franchisee to the Secretary of State;
- (e) the termination of the Interim Franchise Agreement solely as a consequence of the occurrence of one or more Events of Default or a Termination Event of a type described in paragraph 3.2 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 Thameslink/GN franchise;
- (f) the making of a railway administration order in relation to the Franchisee pursuant to Sections 60 to 62 of the Railways Act 1993;
- (g) the occurrence of an Event of Default under either Franchise Agreement in respect of:
 - (i) paragraph 2.13(a) of Schedule 10.3 (Events of Default and Termination Event) of the relevant Franchise Agreement in relation to the Performance Bond; or
 - (ii) paragraph 2.13(b) of Schedule 10.3 (Events of Default and Termination Event) of the relevant Franchise Agreement,

whether or not the relevant Franchise Agreement is, or is to be, terminated as a result thereof;

- (h) the failure by the Franchisee to perform or comply with its obligations under any applicable Supplemental Agreement under either of the Franchise Agreements;
 - (i) 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 relevant Franchise Agreement; or
 - (j) 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 the Secretary of State when required to do so in accordance with paragraph 4.8 of Schedule 12 (Financial Obligations and Covenants) of either of the relevant Franchise Agreements.
3. This undertaking is made to you, your successors and your assigns, subject to written notice of assignment being given to us.
 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 either Franchise Agreement or any applicable Supplemental Agreements 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, by post or by courier to us as follows:

Address: [Bond Provider's address]
 6. References in this Bond to the Franchise Agreements and the Supplemental Agreements are to the Franchise Agreements and any Supplemental Agreements as amended from time to time.
 7. Where used in this Bond, capitalised terms have the same meanings as in the respective Franchise Agreements.
 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 [Interim 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 termination (otherwise than by expiry) of the Original Franchise Agreement in circumstances where there are liabilities or obligations outstanding from the Franchisee to the Secretary of State;]

[the expiry of the Original Franchise Agreement in circumstances where there are liabilities or obligations outstanding from the Franchisee to the Secretary of State and the Interim Franchise Agreement has either not been entered into or has been terminated before the Start Date under the Interim Franchise Agreement;]

[the termination of the Original Franchise Agreement solely as a consequence of the occurrence of one or more Events of Default in circumstances where the Secretary of State has incurred or expects to incur additional costs in connection with termination of the Thameslink/GN franchise;]

[the termination or expiry of the Interim Franchise Agreement in circumstances where there are liabilities or obligations outstanding from the Franchisee to the Secretary of State;]

[the termination of the Interim Franchise Agreement solely as a consequence of the occurrence of one or more Events of Default or a Termination Event of a type described in paragraph 3.2 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 Thameslink/GN franchise;]

[the making of a railway administration order in relation to the Franchisee pursuant to Sections 60 to 62 of the Railways Act 1993;]

[the occurrence of an Event of Default under either Franchise Agreement in respect of:

- (i) paragraph 2.13(a) of Schedule 10.3 (Events of Default and Termination Event) of the relevant Franchise Agreement in relation to the Performance Bond; or
- (ii) paragraph 2.13(b) of Schedule 10.3 (Events of Default and Termination Event) of the relevant Franchise Agreement,

whether or not the relevant Franchise Agreement is, or is to be, terminated as a result thereof;]

[the failure by the Franchisee to perform or comply with its obligations under any applicable Supplemental Agreement under either of the Franchise Agreements;]

[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 relevant Franchise Agreement;]

[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 the Secretary of State when required to do so in accordance with paragraph 4.8 of Schedule 12 (Financial Obligations and Covenants) of either of the relevant Franchise Agreements;]

We hereby demand immediate payment from you of [specify alternative amount if not Bond Value] or the Bond Value (being the sum of ⁶), 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

⁶ **Where text has been omitted from the document, this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.**

APPENDIX 2 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**")

You have entered into:

a) a franchise agreement dated 12 December 2005 (the "**Original Franchise Agreement**") with First Capital Connect Limited (the "**Franchisee**") which is due to expire on 1 April 2014 at 01:59; and

b) an interim franchise agreement dated [_____] (the "**Interim Franchise Agreement**") with the Franchisee which is due to expire 01:59 on 14 September 2014, subject to any later date to which it is extended in accordance with its terms,

under which the Franchisee will provide certain railway passenger services (together the "**Franchise Agreements**").

The Franchise Agreements require you to receive a duly executed season ticket bond to secure the performance by the Franchisee of and its compliance with certain of its obligations under the relevant Franchise Agreement and any applicable Supplemental Agreement under either of the Franchise Agreements (together the "**Supplemental Agreements**").

Accordingly:

This duly executed Season Ticket Bond (the "**New Season Ticket Bond**") shall from the date of its execution replace and supersede the Season Ticket Bond QBE Bond Ref.: QBE558 dated 11 June 2013 provided to you in respect of the Original Franchise Agreement (the "**Original Season Ticket Bond**").

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 (otherwise than by expiry) of the Original Franchise Agreement
 - (b) the expiry of the Original Franchise Agreement in circumstances where the Interim Franchise Agreement has either not been entered into or has been terminated before the Start Date under the Interim Franchise Agreement;
 - (c) the termination or expiry of the Interim Franchise Agreement on or at any time after its Start Date;
 - (d) the making of a railway administration order in relation to the Franchisee pursuant to Sections 60 to 62 of the Railways Act; or
 - (e) the occurrence of an Event of Default under either Franchise Agreement in respect of:
 - (i) paragraph 2.13(a) of Schedule 10.3 (Events of Default and Termination Event) of the relevant Franchise Agreement in relation to the Season Ticket Bond; or
 - (ii) paragraph 2.13(c) of Schedule 10.3 (Events of Default and Termination Event) of the relevant Franchise Agreement,whether or not the relevant 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(e) 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 (as defined in the Interim Franchise Agreement) or, where the Interim Franchise Agreement has not been entered into or terminates before the end of the Franchise Term (as defined in the Original Franchise Agreement), the end of the Franchise Term as defined in the Original Franchise Agreement) and:
- (a) in relation to a Call Event specified in any of clauses 2(a) to (d) inclusive, 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 either the Original Franchise Agreement or the Interim Franchise Agreement, the date falling one month after the determination of the Purchase Price (as defined in the relevant Supplemental Agreement) under the relevant Supplemental Agreement; or
- (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 Event) of the Original Franchise Agreement (whether or not the Original 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; or
- (d) 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 Event) of the Interim Franchise Agreement (whether or not the Interim 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 any 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, by post or by courier to us as follows:

Address: [Bond Provider's address]
- 9. References in this Bond to the Franchise Agreements and the Supplemental Agreements are to the Franchise Agreements and the Supplemental Agreements 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 relevant 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].

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 original franchise agreement (the "**Original Franchise Agreement**") entered into between the Secretary of State for Transport (the "**Secretary of State**") and First Capital Connect Limited (the "**Franchisee**") on 12 December 2005 and the interim franchise agreement entered into between the Secretary of State and First Capital Connect Limited (the "**Interim Franchise Agreement**") on [].

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 termination (otherwise than by expiry) of the Original Franchise Agreement]

[the expiry of the Original Franchise Agreement in circumstances where the Interim Franchise Agreement has either not been entered into or has been terminated before the Start Date under the Interim Franchise Agreement]

[the termination or expiry of the Interim Franchise Agreement on or at any time after its Start Date]

[the making of a railway administration order in relation to the Franchisee pursuant to Sections 60 to 62 of the Railways Act]

[the occurrence of an Event of Default under the [Old/Interim] Franchise Agreement in respect of:

- (i) paragraph 2.13(a) of Schedule 10.3 (Events of Default and Termination Event) of the relevant Franchise Agreement in relation to the Season Ticket Bond; or
- (ii) paragraph 2.13(c) of Schedule 10.3 (Events of Default and Termination Event) of the relevant 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 (£)
12 - 2013/14	<p align="center">Where text has been omitted from the document, this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.</p>
13 - 2013/14	
1 - 2014/15	
2 - 2014/15	
3 - 2014/15	
4 - 2014/15	
5 - 2014/15	
6 - 2014/15	
7 - 2014/15	
8 - 2014/15	
9 - 2014/15	
10 - 2014/15	
11 - 2014/15	
12 - 2014/15	
13 - 2014/15	

SCHEDULE 0

Information and Industry Initiatives

Schedule 13

Information and Industry Initiatives

Appendix 1: Not Used

Appendix 2: Key Assets

Appendix 3: Operational Information

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 Passenger Focus 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 Passenger Focus and Local Authorities.

2. Business Plans

Initial Business Plan

- 2.1 On or before 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) details of any investments proposed to be made or procured by the Franchisee in relation to the Franchise Services during the Franchise Term;
 - (c) a summary of the Franchisee's plans for marketing and developing the Franchise Services; and
 - (d) 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.

- 2.2 Not used.

Annual Business Plans

- 2.3 The Franchisee shall, at all times during the Franchise Term, provide to the Secretary of State any annual business plan (in written or electronic form) that it provides to its Parent (or any other document or documents which individually or collectively can reasonably be considered to be an annual business plan) in relation to a Franchisee Year (other than the first Franchisee Year) and which describes the Franchisee's planned activities for such Franchisee Year or describes the manner in which the Franchisee will meet its obligations under the Franchise Agreement in respect of that Franchisee Year (the "**Annual Business Plan**"). Any such Annual Business Plan shall be provided to the Secretary of State within one month of submission of same to the Parent. Where the Franchisee does not produce an annual business plan it shall notify the Secretary of State of all the periodic plans that it does produce and:

- (a) the Secretary of State shall be entitled to copies of such periodic plans as he shall reasonably determine; and
 - (b) any such periodic plans shall be deemed to be Annual Business Plans for the purposes of this paragraph 2.3.
- 2.4 The Franchisee shall, at the same time as it submits the Annual Business Plan to the Secretary of State in accordance with paragraph 2.3 (or to the extent that no Annual Business Plan is submitted to the Parent in any Franchisee Year, not more than three Reporting Periods and not less than one Reporting Period prior to the start of each Franchisee Year), provide to the Secretary of State a revised profit and loss forecast, cash flow forecast and forecast balance sheet for each of the 13 Reporting Periods in the relevant Franchisee Year and each subsequent Franchisee Year of the Franchise Term.
- 2.5 Not used.
- 2.6 The Franchisee shall not be relieved of any of its obligations under the Franchise Agreement as a result of any comment or failure to comment by the Secretary of State on any Business Plan or any agreement with or approval, implicit or explicit, of any Business Plan by the Secretary of State at any time.
- 2.7 The Secretary of State may at any time require the Franchisee to produce a Business Action Plan in respect of any aspect of the Business Plan. Such Business Action Plan may include steps relating to:
- (a) timetable and service pattern development;
 - (b) Station facility improvement;
 - (c) performance management improvement;
 - (d) customer service improvement; and
 - (e) improvements in the quality of service delivery or the efficiency of delivery of the Franchise Services.
- 2.8 The Franchisee shall comply with any guidance issued by the Secretary of State about how and with whom any consultation on the content of a Business Action Plan is to take place.
- 2.9 Any proposal in a Business Action Plan shall only be implemented if and to the extent that the Secretary of State decides it is appropriate to do so and subject to any conditions which he may impose.

3. Financial And Operational Information

Accounting Records

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

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;
 - (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); and
 - (d) a report on the Franchisee's progress in respect of the activities comprised in Table 1 of paragraph 9.15 of Schedule 6.2 (Thameslink/GN Franchise Specific Provisions).
- 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(d), 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 Franchisee Period within three Reporting Periods of the end of the Franchisee 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) save as stated in the notes thereto, be prepared and audited in accordance with GAAP, consistently applied and in accordance with the Companies Act 2006; and
 - (b) together with those notes and subject to any qualifications contained in any relevant auditors' report, give a true and fair view of:
 - (i) the state of affairs and profits 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.
- 4.4 Not used.
- 4.5 Not used.

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. Not used

12. Not used

13. Not used

14. **Community Rail Partnerships**

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.

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. Not used

17. Not used

APPENDIX 1 TO SCHEDULE 13

Not Used

APPENDIX 2 TO SCHEDULE 13

Key Assets

1. Information About Assets Used In The Franchise

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

- (a) for each Primary Franchise Asset or other asset which is the subject of, or operated under, a Key Contract:
 - (i) the progress and completion of all work described in the maintenance schedules and manuals;
 - (ii) all operating manuals (including any safety related regulations); and
 - (iii) all permits, licences, certificates or other documents required to operate such asset; and
- (b) a printed or electronic list of all assets owned by the Franchisee from time to time (excluding, unless otherwise requested by the Secretary of State, any office furniture and consumable items).

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

Information to be provided	Information (format)	When information to be provided
Number of Cancellations and Partial Cancellations		
Number of Passenger Services in the Plan of the Day which were the subject of a Cancellation	[number]	B
Number of Passenger Services in the Plan of the Day which were the subject of a Partial Cancellation	[number]	B
Number of Passenger Services in the 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 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
<p>Where there is a difference between the Timetable and the Plan of the Day on any day which is attributable to the introduction, removal or alteration of a Passenger Service by the Franchisee (or with the agreement of the Franchisee in contravention of its obligations under Schedule 1 (Passenger Service Obligations)), the following:</p> <p>(a) the fact of such difference;</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>	[number]	B
Number of Passenger Services in the Plan of the Day which were the subject of a cancellation and which satisfied the conditions of the term Cancellation, except that such cancellations occurred for reasons attributable to the occurrence of a Force Majeure Event	[number]	B
Number of Passenger Services in the Plan of the Day which were the subject of a partial cancellation and which satisfied the conditions of the term Partial Cancellation, except that	[number]	B

Information to be provided	Information (format)	When information to be provided
such partial cancellations occurred for reasons attributable to the occurrence of a Force Majeure Event		
Number of Passenger Services in the 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 exercise by Network Rail of its rights pursuant to the Track Access Agreement	[number]	B
Number of Passenger Services in the 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 exercise by Network Rail of its rights pursuant to the Track Access Agreement	[number]	B
Minutes Delay and Punctuality		
Number of Minutes Delay attributable to the Franchisee	[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 2.7 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]	

Information to be provided	Information (format)	When information to be provided
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

SCHEDULE 0

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 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 6 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 Franchisee 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 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 or arrangement for the lending, seconding, hiring, contracting out, supervision, training, assessment, or accommodation by another Train Operator of any train drivers, conductors or other train crew used by the Franchisee in the provision of the Passenger Services;
5. any contract or arrangement for the subcontracting or delegation to another Train Operator of the provision of any of the Passenger Services (whether or not the consent of the Secretary of State is required to such subcontracting or delegation under paragraph 1 of Schedule 2.3 (Third Party Delivery of Passenger Services and Other Franchisees));
6. any contract or arrangement with a Train Operator (other than an Access Agreement) for the provision to the Franchisee of train dispatch, performance or supervision of platform duties, security activities, evacuation procedures, advice or assistance to customers, assistance to disabled customers, operation of customer information systems, cash management or ticket issuing systems administration;
7. any contract or arrangement with a Train Operator for the provision of breakdown or recovery, and track call services to assist in the provision of the Passenger Services;
8. any contract or arrangement for the supply of spare parts or Spares;
9. any contract or arrangement for the maintenance of track and other related infrastructure;
10. any licences of Marks to the Franchisee;
11. any contract or arrangement for the provision or lending of Computer Systems used by the Franchisee for the delivery of the Franchise Services;
12. any agreement including or for the provision of Control Point Accommodation in respect of the operation/delivery of any Passenger Services and "**Control Point Accommodation**" means staff accommodation used by those Franchise Employees responsible for dealing with Disruptive Events (as defined under the Track Access Agreement);

13. any contract or arrangement for the leasing, sub-leasing, hiring or licensing by another Train Operator to the Franchisee of rolling stock vehicles used by the Franchisee in the provision of the Passenger Services;
14. any contract for the provision of spare parts with Railpart (UK) Limited or any subsidiary thereof; and
15. contracts in relation to the Hatfield SCPF Project listed in the Appendix to Schedule 14.4.

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

- 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.

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
The Shere Ticket Issuing System	
St Neots car park Scheme	
Phases 1, 2 and 3 of the Great Northern, Customer Information System Project	
Hertford house lease dated 31 March 2006 between (1) Dorrington City Limited and (2) First Capital Connect Limited relating to the first, second and third floors, Hertford House, 1 Cranwood Street, London EC1 (as amended)	✓
all infrastructure, equipment, moveable and non-moveable property and associated rights forming a part of the projects referenced in (i) the funding agreement between the Secretary of State and ATOC dated 24 May 2013 in relation to additional cycle parking schemes at Harpenden, Hatfield, Leagrave and Luton Stations and (ii) in the funding agreement between the Secretary of State and ATOC dated 13 July 2012 in relation to additional cycle parking schemes at Letchworth, St Albans Bedford and Royston Stations	✓
Thameslink accommodation being the lease agreement between (1) Dooba Investments III Limited and (2) First Capital Connect Limited dated 29 October 2013 relating to the property, Unit 6, Crossway Park, Hitchin Road, Arlesey, insofar as this lease agreement relates to the MSA requirement for the Franchisee to provide facilities to accommodate a mock-up of the TRSP new train (the " Thameslink Accommodation ")	✓
Mock-Up (as such term is defined in the MDCTA)	✓
Operator Owned Spares (as such term is defined in the MDCTA)	✓
Operator Owned Special Tools (as such term is defined in the MDCTA)	✓

Integrated Laboratory Equipment (as such term is defined in the MDCTA)	✓
The NR Asset Purchase Agreement (for GRIP 4) dated 08 May 2012 made between Network Rail and the Franchisee insofar as this agreement relates to the Hatfield Station SCPF Project (and without prejudice to the potential for other elements of this contract to be transferred to a Successor Operator pursuant to any Transfer Scheme on expiry of the Franchise Agreement)(the "APuA")	✓
SCPF Hatfield Basic Asset Protection Agreement (BAPA) (for GRIP4) undated between Network Rail and the Franchisee	✓
The Agreement amending the APuA – SCPF Hatfield ApuA Variation No 1 letter GRIP 5 dated 12 February 2012 (wrongly)	✓
SPCF Hatfield BAPA (for GRIP 5) dated 11 March 2013 made between Network Rail and the Franchisee	✓
The Consultant Appointment Agreement between the Franchisee and GHA Livigunn dated 8 May 2012	✓
The Agreement amending the ApuA – SCPF Hatfield ApuA Variation No2 letter GRIP 6-8 Final – between Network Rail and the Franchisee dated and signed	✓
SCPF Hatfield BAPA (for GRIP 6-8) Final, dated and signed.	✓
The Construction Contract which is NEC Construction Contract, Third Edition June 2005 Option A: Priced Contract with Activity Schedule between the Franchisee and CJ Reynolds Limited dated 20 September 2013	✓
SCPF Hatfield Form of Collateral Warranty template between the Franchisee, the Contractor (CJ Reynolds) and Sub Contractor to the Contractor	✓

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.

SCHEDULE 0

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, 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:
- (a) 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;
 - (b) 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
 - (c) 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.

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; and

- (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.

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 Stations prior to the End of the Franchise Period

- 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 including 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 (notwithstanding the fact that such period is longer than twelve or thirteen months) be deemed to commence on the Start Date.
- 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.

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:

$$\frac{\text{MAWE} + \text{JAWWE} + \text{SAWE} + \text{DAWE}}{4}$$

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

DAWE 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 when compared with the number and costs for such employees as contemplated in the Financial Model 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. Fares

Reduction in Prices of Fares

3.1

- (a) During the last 13 months of the Franchise Period the Franchisee shall not, without the prior written consent of the Secretary of State (not to be unreasonably withheld), set the Price or Child Price of or sell (except to the extent required to do so under the terms of the Ticketing and Settlement Agreement as a result of the Price or Child Price of a Fare being set by another person) any Fare which would entitle the purchaser of such Fare to travel on all or any of the Passenger Services after the Franchise Period for an amount which is less than the Price or the Child Price of that Fare immediately before the commencement of such 13 month period or, in the case of a new Fare, the Price of its nearest equivalent immediately before the commencement of such period.
- (b) Paragraph 3.1(a) shall not prevent the Franchisee from giving any discount or reduction to which the purchaser of a Fare may be entitled by virtue of:

- (i) presenting a Discount Card (or any equivalent replacement thereof) issued by the Franchisee before the commencement of such 13 month period and to which the purchaser would have been entitled before the commencement of such period;
 - (ii) presenting a Discount Card issued by another train operator;
 - (iii) the Passenger's Charter or the passenger's charter of any other train operator; or
 - (iv) any relevant conditions of carriage.
- (c) The Franchisee shall procure that persons acting as its agent (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) shall comply with the provisions of paragraph 3.1(a) to the extent that such provisions apply to the selling of Fares by the Franchisee.

Percentage Allocations

3.2

- (a) Except to the extent that the Secretary of State may consent from time to time (such consent not to be unreasonably withheld), the Franchisee shall not, in the last 13 Reporting Periods of the Franchise Period, take any action or step which may result in its Percentage Allocation (as defined in the Ticketing and Settlement Agreement) in respect of any Rail Product (as defined in the Ticketing and Settlement Agreement) being reduced.
- (b) The Franchisee shall notify the Secretary of State before taking any such action or step in the last 13 Reporting Periods of the Franchise Period 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.

Restrictions in respect of Sale of Advance Purchase Train-specific Fares

3.3

- (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.

4. **Inter-Operator Schemes**

Voting on Scheme Councils

- 4.1 Subject to paragraph 4.6, during the last 12 months of the Franchise Period 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.
- 4.2 Subject to paragraph 4.3, the Franchisee shall vote at any such meeting in the manner required by the Secretary of State.

Successor Operator

- 4.3 Where the Franchisee has been notified by the Secretary of State that a Successor Operator has been selected (whether a franchisee or otherwise and whether or not such selection is conditional), the Franchisee shall give such Successor Operator reasonable notice of:
- (a) any meeting referred to in paragraph 4.1(a);
 - (b) any resolutions to be voted upon at any such meeting where such resolutions might reasonably be considered to affect the interests of such Successor Operator; and
 - (c) the Franchisee's voting intentions.
- 4.4 The Franchisee shall discuss with the Successor Operator in good faith with a view to agreeing the way the Franchisee should vote on the resolutions referred to in paragraph 4.3(b). In the absence of any agreement, the Franchisee shall, as soon as reasonably practicable thereafter, having regard to the deadline for voting on such resolutions, refer the matter to the Secretary of State for determination.
- 4.5 The Secretary of State shall reasonably determine the way the Franchisee should vote on any resolutions referred to him in accordance with paragraph 4.4, having regard to the transfer of the Franchise Services as a going concern at the end of the Franchise Period.

- 4.6 Where paragraph 4.3 applies, the Franchisee shall vote at any meeting referred to in paragraph 4.1(a) in accordance with any agreement pursuant to paragraph 4.4 or determination pursuant paragraph 4.5.

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) not used;
- (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) Shared Facility Agreements in relation to Shared Facilities;
 - (D) Rolling Stock Leases;
 - (E) Rolling Stock Related Contracts; and
 - (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 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.

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*

TRANSFER SCHEME

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.

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

SCHEDULE TO THE TRANSFER SCHEME

[List relevant Franchise Assets to be transferred to Successor Operator]

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;

"Notice of a Potential Franchisee Permitted Delay"

means either:

- (a) a Notice of Potential Permitted Delay under the MSA due to the occurrence of events described within paragraph (a) of the definition of Permitted Delay (as such term is defined in the MDCTA) in the MSA; or
- (b) a Notice of Potential Permitted Depot Delay under the relevant DAfL due to the occurrence of events described within paragraph (a) of the definition of Permitted Depot Delay (as such term is defined in the MDCTA) in either or both of the DAfLs but excluding any to the extent in relation to breach by the Secretary of State of his obligations,

in each case to the extent that it relates to matters occurring prior to 01:59 hours on the Transfer Date;

"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;

"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;

"Undisclosed Employee" has the meaning assigned to that term in clause 7.1(d); and

"Valuation Amount" means the value of increased payments payable by the Transferee from time to time under the MSA after the Transfer Date and/or of extension of time under paragraph 4 of Schedule 13 to the MSA or under paragraph 4 of Schedule 12.1 to either or both of the DAfLs, in each case consequent on a Notice of a Potential Franchisee Permitted Delay served prior to the Transfer Date to the extent relating to matters occurring in the period up to 01:59 hours on the Transfer Date. For these purposes the value of any extension of time shall be calculated in accordance with the principles of transparency and minimal additional cost set out in Schedule 5.1 of the Umbrella Agreement and by reference to the Work Rates (as such term is defined in the MDCTA) set out in the appendix to that Schedule 5.1.

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 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 mutatis 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]

Attention: [name]

(b) in the case of the Transferee to [name of Transferee] at:

[address]

Attention: [name]

- 8.5 Any such notice or other communication shall be delivered by hand or sent by courier or prepaid first class post. If sent by courier 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

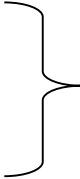
- 8.7 This Agreement does not create any rights under the Contracts (Rights of Third Parties) Act 1999 which is enforceable by any person who is not a party to it.

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:

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

- (e) 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);

(f) 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

(g) 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, (including any of the TRSP Suite of Documents which is transferred to the Transferee pursuant to the Transfer Scheme or the Deed of Accession (as defined in the MDCTA) (as the case may be), 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, excluding Relevant TRSP Past Liabilities, resulting from any breach of or failure by the Transferor to comply with the terms of any such contract, lease, licence or other equivalent arrangement	Amount of such liability or, to the extent that such amount is not ascertained, the parties reasonable estimate of the amount of such liability

6. The Stored Credit Balance held by the Franchisee at the Transfer Date shall be valued at the monetary amount so held.
7. 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.
8. The amount (if any) of the value of Relevant TRSP Past Liabilities shall be calculated as follows:
 - (a) if, at the Transfer Date in relation to the period prior to the Transfer Date, there has been no Notice of a Potential Franchisee Permitted Delay or there has been such a notice but it has been dismissed, settled or agreed without any liability established in relation to:
 - (i) increased payments under the MSA falling due for payment after the Transfer Date or any extension of time under paragraph 4 of Schedule 13 to the MSA or under paragraph 4 of Schedule 12.1 to either or both of the DAfLs; or
 - (ii) (in the case of a Notice of a Potential Franchisee Permitted Delay due to the occurrence of events described within paragraph (a) of the definition of Permitted Delay in the MSA) the obligation on the Transferee to pay liquidated damages to the Owner under the terms of the Replacement Lease and/or the Umbrella Agreement after the Transfer Date as a result of such notice,

in each case, nil;
 - (b) if, at the Transfer Date in relation to the period prior to 01:59 hours on the Transfer Date, there has been a Notice of a Potential Franchisee Permitted Delay which has been settled or agreed on a basis which establishes a liability:
 - (i) on the Transferee in relation to increased payments under the MSA after the Transfer Date or extension of time under paragraph 4 of Schedule 13 to the MSA or under paragraph 4 of Schedule 12.1 to either or both of the DAfLs, the Valuation Amount; or
 - (ii) (in the case a Notice of a Potential Franchisee Permitted Delay due to the occurrence of events described within paragraph (a) of the definition of Permitted Delay in the MSA) on the Transferee to pay liquidated damages to the Owner under the terms of the Replacement Lease (as such term is defined in the MDCTA) and/or the Umbrella Agreement after the Transfer Date as a result of such notice,

in the case of (b)(i) at the Valuation Amount and in the case of (b)(ii) at the applicable Owner Liquidated Damages Rate (as such term is defined in the MDCTA); or
 - (c) if at the Transfer Date in relation to the period prior to 01:59 hours on the Transfer Date there has been a Notice of a Potential Franchisee Permitted Delay which has not been dismissed, settled or agreed, then the Transferor and the Transferee shall endeavour to agree within 30 days of the Transfer Date:

- (i) a reasonable estimate of the Valuation Amount, having regard to the information then available to the parties regarding the likely eventual consequences of the delay for increased payments under the MSA after the Transfer Date or extension of time under paragraph 4 of Schedule 13 to the MSA or under paragraph 4 of Schedule 12.1 to either or both of the DAfLs;
- (ii) any liability the Transferee will have or is likely to have to pay liquidated damages to the Owner under the terms of the Replacement Lease (as such term is defined in the MDCTA) and/or the Umbrella Agreement as a result of such notice to the extent consequent on matters occurring prior to 01:59 hours on the Transfer Date, valued at the applicable Owner Liquidated Damages Rate

and in default of agreement either party may refer the matter to be finally resolved by the Reporting Accountants.

- 9. Each of any cycle facilities, Mock-up, Operator Owned Spares, Operator Owned Special Tools, the Thameslink Accommodation and the Integrated Laboratory Equipment as transferred by Transferor to Transferee pursuant to the Transfer Scheme shall be valued at nil. The terms Mock-up, Operator Owned Spares, Operator Owned Special Tools and the Integrated Laboratory Equipment shall each have the meanings given to them under the MDCTA.
- 10. Any ITSO equipment (including smartcard and ITSO Certified Smartmedia readers and ITSO database) and any Intellectual Property Rights associated with that ITSO equipment transferred from the Transferor to the Transferee pursuant to the Transfer Scheme shall be valued at nil.

SCHEDULE 0

Pensions

1. Franchise Sections

The Franchisee shall participate in and become the Designated Employer in relation to the First Capital Connect Shared Cost Section (the "**Franchise Section**") in respect of the Franchise Services. Subject to paragraphs 2 and 3.2(d) membership of the Franchise Section will be offered to each employee of a Franchisee only

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 it considers would fall within the scope of paragraphs 3.2(a) to (f) 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 it considers would fall within the scope of paragraphs 3.2(a) to (f) inclusive.

3.2 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 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, 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, 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.

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 (Payments), 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).

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 0

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, Passenger Focus 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 amount 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 any 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 analysis, statistics and other information derived from such report 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 results of any survey under Schedule 7.2 (National Passenger Survey);

- (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) such information as the Secretary of State may reasonably require to publish in connection with any Priced Option;
- (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, Passenger Focus and/or any Local Authority of any information relating to the development of the Service Level Commitment 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 of 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 the definition thereof);
- (b) not used; 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.

SCHEDULE 0

Additional Reporting Periods

1. **Expiry Date**

Subject to paragraph 2, the Franchise Agreement shall expire on 01:59 on 14 September 2014.

2. **Continuation for up to Additional Seven Reporting Periods**

If the Secretary of State gives notice to the Franchisee on or before 23:59 on 12 June 2014, then 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 seven Reporting Periods as the Secretary of State may stipulate in the notice.

3. **Key Contracts**

The Franchisee shall enter into any and all Key Contracts which are necessary for the Franchise Agreement to continue or be extended in accordance with this Schedule 18.

Rolling Stock issues in the event of Franchise Term extension

4. **Class 387 Units anticipated Variation**

4.1 The Franchisee and the Secretary of State acknowledge that pursuant to a manufacture and supply agreement dated 30 July 2013 the Southern Franchisee procured 29 x 4 car Class 387 units from Bombardier Transportation UK Limited (the "**Class 387 Units**") and that, in accordance with industry plans for the delivery of the Thameslink Programme, the intention is that the Class 387 Units will be sub leased to the Successor Operator. Because the Class 387 Units are expected to be delivered from September 2014, they will need to be sub leased by the Franchisee if the Franchise Term is extended pursuant to paragraph 2. It is planned that such sub leasing of the Class 387 Units will lead to a cascade of Class 319 units currently leased by the Franchisee to other Train Operators for the purpose of meeting the requirements of other industry plans including in relation to cascading rolling stock to enable newly electrified routes to be operated with electric rolling stock.

4.2 Accordingly the Secretary of State and the Franchisee agree that if a notice is served by the Secretary of State pursuant to paragraph 2 it will be necessary for the Franchisee to enter into agreements in relation to such sub leasing of the Class 387 Units (which will need to take into account the potential refinancing of such Class 387 Units) and the termination of lease arrangements in relation to Class 319 units to enable the planned cascade to occur. Accordingly if a notice is served pursuant to paragraph 2 the Franchisee shall at all times co-operate in good faith with the Secretary of State for the purposes of:

(a) agreeing commercially reasonable, cost effective and appropriate relevant sub lease and other agreements with the Southern Franchisee and other relevant counterparties in a timely manner; and

(b) facilitating the successful introduction into service of the Class 387 Units and the consequent cascade of Class 319 units in accordance with relevant timescales in industry plans.

4.3 It is acknowledged that it will be consistent with the duties of the Franchisee to cooperate in good faith under this paragraph 4 for it to require that the Franchisee is no worse off than if the leasing of the Class 319 units had continued and the Franchisee acknowledges that there is a presumption that it will be no better off.

5. **Inability of the Franchisee to lease relevant units for the period of an extension to the Franchise Term**

5.1 If a notice is served by the Secretary of State pursuant to paragraph 2 and:

(a) the Franchisee is then not able to continue the leasing of all of its Class 317 fleet; and/or

(b) in accordance with the terms of the Franchisee's lease for its Class 319 fleet any Class 319 units cease to be leased during the Franchise Term as so extended,

then the Secretary of State shall use all reasonable endeavours to exercise any right he may have to procure that such units (or reasonably appropriate substitute dual voltage electric multiple units) are made available for sub lease to the Franchisee by the new lessee to the extent reasonably required to enable the Franchisee to continue to deliver its obligations under the Franchise Agreement.

5.2 If and to the extent paragraph 5.1 applies and Class 317 or Class 319 rolling stock ceases to be able to be leased by the Franchisee in circumstances where it is not then made available on a sub lease basis on the same financial terms as prior to the termination of its leasing pursuant to the relevant Rolling Stock Lease there shall be deemed to be a Qualifying Change. The Qualifying Change shall take into account the cost and revenue implications (both positive and negative as the case may be) of mitigation measures put in place pursuant to this paragraph including any sub leasing of rolling stock as envisaged in paragraph 5.1.

5.3 Subject to the Franchisee complying with its obligations pursuant to paragraph 5.4 below if in direct consequence of relevant Class 317 or Class 319 units ceasing to be leased the Franchisee is unable to operate on a relevant day each of the Passenger Services as are set out in the Plan of the Day for that day, with at least the Passenger Carrying Capacity specified in the Train Plan for that Passenger Service, then the Franchisee shall be deemed to have used all reasonable endeavours to operate such Passenger Services and therefore shall not be in contravention of its obligations under paragraph 1.1 of Schedule 1.2 of the Franchise Agreement. In such circumstances the Franchisee shall use all reasonable endeavours to mitigate the adverse impacts on the Passenger Services to the greatest extent reasonably practicable.

5.4 Where relevant Class 317 or Class 319 units cease to be leased in the circumstances described in paragraphs 5.1 and 5.2 the Franchisee shall:

(a) (subject to sub paragraph (b) below) use all reasonable endeavours to mitigate the consequent adverse impacts on the Passenger Services;

(b) use all reasonable endeavours to minimise the adverse financial consequences on the Secretary of State including pursuant to the Qualifying Change that shall occur pursuant to paragraph 5.2; and

(c) cooperate in good faith with the Secretary of State for the purposes of finding reasonable, cost effective and appropriate solutions to the reduction in the size of the Train Fleet including through entering into sub lease arrangements in relation to Class 378 units of the type referred to in paragraph 4 in accordance with its obligations to be entered into under that paragraph.

SCHEDULE 0

Other Provisions

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 Request for Proposal, 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 Franchise 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 this Schedule 19; and

(c) the definitions set out at Clause 2 (Definitions) of this Franchise 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 the Franchise 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 The Secretary of State shall be under no obligation to consider a Variation proposed by the Franchisee but if he wishes to do so, he shall do so pursuant to paragraph 1.1 of this Schedule 19.
- 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 Franchise 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.

3. 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.

4. Disputes

Disputes under the Franchise Agreement

- 4.1 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.
- 4.2 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.

- 4.3 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 9 (Governing Law) of this Agreement; and
 - (e) nothing in this paragraph 4.3 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.
- 4.4 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

- 4.5 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.
- 4.6 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).

4.7 The Franchisee shall provide such further details of any dispute referred to in paragraph 4.5 as the Secretary of State may reasonably request from time to time.

5. Notices

Notices

5.1

- (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

E-mail: franchise.notices@dft.gsi.gov.uk

Attention: Director - Rail Commercial

Name: First Capital Connect Limited

Address: Hertford House, 1 Cranwood Street, London EC1V 9QS

E-mail: david.statham@firstgroup.com

Attention: Managing Director

- (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 5.1(a); or

- (ii) by electronic data transfer,

except that it shall be marked for the attention of the Contract Manager or the Franchise Manager (as the case may be).

Deemed Receipt

5.2 Any notice or other communication issued pursuant to paragraph 5.1 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; and
- (c) 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).

6. **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).

7. **Set Off**

- 7.1 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.
- 7.2 Notwithstanding paragraph 7.1 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.

8. **Miscellaneous Provisions**

Waivers

- 8.1
 - (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

- 8.2 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

- 8.3 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

- 8.4 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

8.5

- (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 8.5.
- (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 8.5 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 8.5(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 8.5(b).
- (d) The person nominated under paragraph 8.5(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

- 8.6 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.

9. 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).

10. Currency

If at any time the Bank of England or other competent monetary authority of the United Kingdom or competent organ of H. M. 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.

11. 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.

12. Non discrimination

- (a) 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:
- (i) of nationality, against a person who is a national of and established in a relevant State; or
 - (ii) that the goods to be supplied under the contract originate in another relevant State.
- (b) For the purpose of this paragraph, "**relevant State**" has the meaning given in the Public Contracts Regulations 2006.