

ITT DRAFT WEST COAST PARTNERSHIP FRANCHISE AGREEMENT

ITT VERSION
VOLUME THREE

SCHEDULES 1B TO 17B

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SCHEDULE 1B

PASSENGER SERVICE OBLIGATIONS

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SCHEDULE 1.1B

Franchise Services and Service Development

Part 1 - Franchise Services

1. Franchise Services

- 1.1 The Franchisee may at all times during the Integrated Operator Term provide and operate the Franchise Services specified in this Schedule 1.1. The Franchisee is required to provide the Passenger Services that comply with the Train Service Requirement and (without prejudice to the other provisions of the Franchise Agreement) is permitted to provide other Franchise Services subject to the provisions of Part 1 of this Schedule 1.1. The Franchisee is also required to provide the Shadow Operator Services in accordance with the provisions of Schedule 18 (Shadow Operator).
- 1.2 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.
- 1.3 Nothing in this Schedule 1.1 shall restrict any Affiliate of the Franchisee from having an interest in or participating in any business or activity.
- 1.4 The Franchisee shall not engage any Franchise Employee in any activity or business which it may not conduct or engage in under this Schedule 1.1.

2. Station Services

- 2.1 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.
- 2.2 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 or as lawfully directed by the ORR from time to time.

3. Light Maintenance Services

- 3.1 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 twelve (12) months or less;
- (d) the 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 emptying of retention tanks fitted to rolling stock vehicles equipped with Controlled Emission Toilets;
- (i) the replenishment of water tanks; and
- (j) 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.

3.2 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 or as lawfully directed by the ORR from time to time.

4. 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 information or materials targeted at tourists and other leisure passengers (such as maps) 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 4(a) or which, if provided at a Station, would fall within paragraph 2 and which, in each case, is made available only or principally to persons at such stations who either are about to travel or have recently travelled on a train used in the provision of the Passenger Services;
- (c) in any Reporting Period, the subleasing, hiring or licensing of up to ten per cent (10%) of the rolling stock vehicles used in the provision of the Passenger Services (such percentage to be determined by reference to the aggregate period of time for which such rolling stock vehicles are sub-let, hired or licensed and the aggregate period of time for which they are used in the provision of the Passenger Services);
- (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 one per cent (1%) of the number of Franchise Employees as at the Integrated Operator Start Date, for over ninety per cent (90%) of their normal working hours during such Reporting Period (including on a full-time basis); and

- (ii) one per cent (1%) of any other Franchise Employees as at the Integrated Operator Start Date,

provided that this paragraph shall not apply to any employee lent, seconded, hired or contracted out under any of paragraphs 4(a) to 4(c) inclusive and paragraphs 4(e) to 4(p) inclusive, or engaged in any other activity which is permitted under this Schedule 1.1;

- (e) any heavy maintenance of rolling stock vehicles which does not fall within the Light Maintenance Services, carried out on behalf of any other person at any Depot(s) that the Secretary of State may agree in writing from time to time as being included in this paragraph 4(e), subject to the number of persons engaged or employed in such activity not exceeding by more than ten per cent (10%) the number so engaged or employed on the Integrated Operator Start Date;
- (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 information relating to railway passenger services within Great Britain to passengers through telephone, internet, mobile data services or other appropriate means;
- (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 the Infrastructure Manager or any other Train Operator on an emergency basis;
- (l) the licensing or permitting of any other person (including an Affiliate of the Franchisee) to carry out any activity or business, in connection with the provision of the Franchise Services, or otherwise, on any rolling stock vehicle operated by the Franchisee, at any station served by the Passenger Services, at any Depot, or otherwise (including the letting, leasing or licensing (on an exclusive basis or otherwise) of any part or all of a Station or Depot to such other person);

- (m) such other activity or business as may be reasonably necessary for the purpose of providing any other Franchise Services or complying with the Franchise Agreement, provided that it could not reasonably be carried out by or through an Affiliate of the Franchisee;
- (n) the subleasing to any other person of such property which is not comprised in a Station or Depot that the Secretary of State may agree in writing from time to time as being included in this paragraph 4(n);
- (o) the provision or operation of Charter Services, subject to the Planned Train Mileage of such Charter Services not exceeding in any Reporting Period two per cent (2%) of the Planned 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 2, 3, 4(a) to 4(p) above, subject to the gross value of any such services or activity (excluding any attribution of costs) not exceeding twenty five thousand pounds (£25,000) per annum in each Franchisee Year, per item and in aggregate, two hundred and fifty thousand pounds (£250,000) per annum in each Franchisee Year provided that in the second and each subsequent Franchisee Year, these amounts will be increased by multiplying by RPI (where **RPI** is the quotient of the Retail Prices Index for the January which immediately precedes the commencement of the relevant Franchisee Year divided by the Retail Prices Index for January 2019).

5. Royal Train

- 5.1 The Franchisee shall, if and to the extent requested by any person (including DB Cargo UK Limited its successor and assigns) 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.
- 5.2 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 or other rolling stock 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.

6. Restrictions relating to Franchise Services

- 6.1 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):
 - (a) on the Conventional Rail Network between such routes as are confirmed in accordance with Schedule 20 (IOC Confirmable Obligations);
 - (b) on the HS2 Network between such routes as are confirmed in accordance with Schedule 20 (IOC Confirmable Obligations);

- (c) any diversionary route or depot access route as set out on any certificate issued by the relevant Infrastructure Manager's Acceptance Panel (or equivalent) from time to time for the relevant rolling stock comprised in the Train Fleet; and
 - (d) Passenger Services on such other routes as the Secretary of State may specify in writing from time to time as being required to be included in the Passenger Services.
- 6.2 It is acknowledged that a Passenger Service to be operated by the Franchisee on the routes specified above in paragraph 6.1 may be operated throughout the route, on part of the route or any combination of the whole or part of any two or more of the routes specified above.
- 6.3 The Secretary of State may impose such conditions to the Secretary of State's consent as the Secretary of State considers appropriate for the purpose of securing the continuity of the provision of the Franchise Services at the end of the Integrated Operator Term.
- 6.4 The Franchisee shall not during the Integrated Operator 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) an Infrastructure Manager; 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.

7. Restrictions on Closures of Railway Passenger Services or Railway Facilities

- 7.1 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.
- 7.2 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 the Secretary of State under Part 4 of the Railways Act 2005 in relation to such Closure.

8. Subcontracting any Passenger Services

- 8.1 Subject to paragraph 8.2, the Franchisee may not subcontract or delegate the provision of the Passenger Services without the prior written consent of the Secretary of State.

- 8.2 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 Planned Train Mileage of the Passenger Services so delegated or subcontracted does not exceed five per cent (5%) of the Planned Train Mileage of the Franchisee in any Reporting Period; and
 - (e) the Franchisee continues to perform its obligations under this Schedule 1.1 in respect of any subcontracted or delegated services.
- 8.3 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 8 and Schedule 14 (Preservation of Assets).

Part 2 - Service Development

9. Train Service Requirement - Purpose and Responsibility

- 9.1 Subject to paragraph 9.7, this Part 2 of Schedule 1.1 sets out the obligations of the Franchisee in relation to the acquisition of timetable development rights required for the purposes of securing a Timetable that complies with the Train Service Requirement and preparing a Train Plan consistent with the obligations of the Franchisee and the provision of appropriate levels of passenger carrying capacity. It also provides for alteration of the Train Service Requirement by the Secretary of State. The Train Service Requirement does not in any way limit the Franchisee's obligations pursuant to paragraph 14 of this Schedule 1.1.
- 9.2 The Train Service Requirement is the minimum specification of the Passenger Services and (where relevant) capacity to be provided by the Franchisee during the Integrated Operator Term. The Secretary of State may, from time to time, specify certain maxima in relation to the specification of the Passenger Services and capacity. The Franchisee shall ensure that it complies with any such maxima.
- 9.3 The Train Service Requirement as at the Integrated Operator Start Date is comprised in the following, in agreed terms, or, in respect of the Integrated Services TSR and the Established Integrated Services TSR as may be agreed or determined in accordance with paragraph 42 of Schedule 18.2 (Accepted Programme Specific Requirements), marked as follows:
- (a) IO TSR0 (being the Train Service Requirement as in force on the day immediately prior to the Integrated Operator Start Date) from the Integrated Operator Start Date until the Anticipated High Speed Start Date;
 - (b) the Integrated Services TSR from the Anticipated High Speed Start Date until the Anticipated High Speed Established Services Date; and
 - (c) the Established Integrated Services TSR from the Anticipated High Speed Established Services Date until the Expiry Date.
- 9.4 The Secretary of State and the Franchisee agree that the replacement of IO TSR0 by the Integrated Services TSR, and of the Integrated Services TSR by the Established Integrated Services TSR, at the times and for the periods specified in paragraph 9.3, shall not constitute a Change.
- 9.5 For the purposes of this Schedule 1.1, the Train Service Requirement shall remain in force unless and until amended or replaced pursuant to this Schedule 1.1.
- 9.6 The Train Service Requirement may be expressed in whole or in part at any level of generality or to any level of detail the Secretary of State considers appropriate.
- 9.7 Notwithstanding any provision of this Part 2 of Schedule 1.1, the provisions of paragraphs 8 to 15 of Schedule 18.3 (Transitional Programme Specific Requirements) shall apply to the acquisition of timetable development rights required for the purposes of securing a Timetable that complies with the Integrated Services TSR and a Timetable that complies with the Established Integrated Services TSR and preparing a Train Plan in relation to such train service requirements, until:
- (a) in respect of the Integrated Services TSR and associated Train Plan, the Anticipated High Speed Start Date; and
 - (b) in respect of the Established Integrated Services TSR and associated Train Plan, the Anticipated High Speed Established Services Date.

10. Train Plan

- 10.1 For the purposes of this Agreement, the **"Train Plan"** shall be the plan (including sub-plans) prepared by the Franchisee for the operation of trains and train formations under the Timetable that best matches available capacity to Forecast Passenger Demand as amended from time to time during the Franchise Period in accordance with this Agreement.
- 10.2 NOT USED.
- 10.3 The Franchisee shall submit to the Secretary of State a Train Plan in respect of each Timetable in accordance with this Schedule 1.1.
- 10.4 In preparing any Train Plan, the Franchisee shall do so by reference to the Timetable that it envisages operating in order to comply with the Train Service Requirement and paragraph 14 of this Schedule 1.1.
- 10.5 Each Train Plan shall set out for each railway passenger service in the Timetable to which it relates:
- (a) its start point and departure time;
 - (b) its terminating point and arrival time;
 - (c) the number and class of rolling stock vehicles allocated to each such railway passenger service;
 - (d) the Passenger Carrying Capacity that each such railway passenger service, as formed, is to have; and
 - (e) its Forecast Passenger Demand and, where this has been requested by the Secretary of State and is capable of calculation, Actual Passenger Demand.
- 10.6 A Train Plan shall be in any format that the Secretary of State may reasonably specify for this purpose.

11. Consultation on Significant Alterations to the Timetable

- 11.1 Notwithstanding any consultation the Secretary of State might separately undertake in respect of any amended or new draft Train Service Requirement issued pursuant to paragraph 16, the Franchisee shall where:
- (a) it intends that any future Timetable will contain Significant Alterations compared to the Timetable then in force; and
 - (b) such Significant Alterations are likely to have, in the reasonable opinion of the Franchisee, a materially adverse effect on:
 - (i) the ability of passengers using any station served by the Passenger Services to make journeys relating to work or education at reasonably convenient times; and/or
 - (ii) the trading prospects of commercial enterprises located in any community in which a station served by the Passenger Services is located in consequence of it being more difficult for customers or employees to access such commercial enterprises through travel on the Passenger Services,

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

- 11.2 These provisions shall not apply to the Integrated Services Timetable or the Established Integrated Services Timetable.
- 11.3 Accordingly the Franchisee shall where the circumstances described in paragraph 11.1 apply:
- (a) as soon as reasonably practicable provide to the Secretary of State and all Stakeholders a comprehensive summary of the proposed changes from the Timetable then in force specifying the proposed Timetable changes, the reasons for them and the likely impact on passengers;
 - (b) carry out the consultation in relation to such proposed changes using a reasonable range of communication channels (taking into account the scale of the proposed changes) and in a manner that can be reasonably expected to encourage responses from a broad range of affected Stakeholders;
 - (c) give consultees such time as is reasonable under all the circumstances to respond (it being agreed that it shall normally be reasonable to give at least twelve (12) weeks to respond in relation to major proposed Timetable changes);
 - (d) take due account of the responses of consultees;
 - (e) within six (6) weeks of the close of the consultation (or such longer period as the Secretary of State may agree, such agreement not to be unreasonably withheld or delayed) publish a report containing a summary of the main issues raised by respondents (including quantitative analysis of the responses received), the reasoned response of the Franchisee to them and notification of how the Franchisee shall now seek to exercise relevant Timetable Development Rights in the context of its obligation to take due account of the results of the consultation;
 - (f) ensure that the published report is promptly provided to the Secretary of State and all respondents who submitted written responses to the consultation and published in a widely accessible form; and
 - (g) ensure that the relevant Timetable Development Rights to implement the proposed Timetable change are not exercised prior to the publication of the report and exercise such Timetable Development Rights in the manner indicated in the report.

12. Timetable Development Rights

- 12.1 The Franchisee shall use all reasonable endeavours to amend and/or enter into such Access Agreements as may be necessary or desirable from time to time to obtain the timetable development rights that it requires to secure a Timetable that enables it to operate railway passenger services that comply with the Train Service Requirement and otherwise comply with its obligations under the Franchise Agreement (including under paragraph 14 of this Schedule 1.1).
- 12.2 Prior to exercising any Timetable Development Rights to secure a Timetable the Franchisee shall make an informed estimate of Forecast Passenger Demand and in doing so shall make reasonable assumptions based on available evidence (making proper use of recognised railway industry systems and forecasting tools as these may develop over the Franchise Period) with the estimate being in such format and to such level of disaggregation as the Secretary of State may reasonably require.

12.3 Subject to the remaining provisions of this paragraph 12, the Franchisee shall exercise its Timetable Development Rights so as to secure a Timetable that enables it to operate railway passenger services that comply with the Train Service Requirement and paragraph 14 of this Schedule 1.1 in accordance with its obligations under paragraph 17 of this Schedule 1.1.

12.4 Where the Franchisee proposes to exercise its Timetable Development Rights so that the Timetable in force after the relevant Passenger Change Date contains Significant Alterations to that in force prior to such Passenger Change Date the Franchisee shall (without prejudice to its obligation to consult pursuant to paragraph 11) act reasonably with the intention of obtaining a Timetable which enables:

(a) paragraph 14.1(b); and

(b) paragraph 14.1(c),

of this Schedule 1.1 to be achieved in relation to each Passenger Service in the Timetable to the greatest extent reasonably practicable.

It is agreed that in acting reasonably the Franchisee shall take full and proper account of its informed estimate of the Forecast Passenger Demand made pursuant to paragraph 12.2 above.

12.5 Unless the Secretary of State otherwise directs, the Franchisee shall, for the purposes of securing a Timetable that complies with the Train Service Requirement and paragraph 14 of this Schedule 1.1, exercise its rights under the Relevant 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 the Infrastructure Manager in relation to such agreement in respect of its Timetable Development Rights.

12.6 If the Secretary of State does not consider that the Franchisee has taken sufficient steps under paragraph 12.5, the Secretary of State may require the Franchisee to exercise its rights in such manner as the Secretary of State reasonably considers appropriate in the circumstances, including:

(a) disputing any actual or proposed act or omission by the Infrastructure Manager 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.

12.7 Subject to the Franchisee complying with its obligations under paragraph 12.5 above, it shall not be liable for any failure to secure a Timetable that enables the Franchisee to operate railway passenger services that comply with the Train Service Requirement and paragraph 14 of this Schedule 1.1, 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 12.1 above;

(b) the Infrastructure Manager exercising its flexing rights from time to time under the Relevant Track Access Agreement or the Network Code in respect of such Train Slots;

(c) the Infrastructure Manager exercising its other rights from time to time under the Relevant Track Access Agreement or the Network Code; or

- (d) the exercise by the ORR of its powers pursuant to section 22C of the Act.

12.8 TDR Amendments

- (a) If and to the extent that the Franchisee is not able to secure a Timetable that enables it to operate railway passenger services that comply with the Train Service Requirement as a result of it not being able to obtain the Timetable Development Rights that it requires for that purpose, the Secretary of State shall (subject to paragraphs 12.8(b) and 12.8(c) below) issue to the Franchisee amendments to the Train Service Requirement ("**TDR Amendment**"). The amendments to the Train Service Requirement contained in the TDR Amendment shall be those that the Secretary of State considers necessary for the purposes of enabling the Franchisee to secure a Timetable that is compliant with the Train Service Requirement by exercise of the Timetable Development Rights that the Franchisee does have.
- (b) The Secretary of State shall have an unfettered discretion as to whether or not to issue a TDR Amendment in circumstances where the Franchisee:
- (i) has failed to exercise all reasonable endeavours to obtain the requisite Timetable Development Rights in accordance with paragraph 12.1; and
 - (ii) is not relieved by paragraph 12.7 above from liability for such failure to secure a Timetable that enables the Franchisee to operate railway passenger services that comply with the Train Service Requirement.
- (c) The Franchisee shall not be relieved from its obligations to obtain a Timetable that enables the Franchisee to operate the Train Service Requirement by the issue of any TDR Amendment where the Secretary of State reasonably considers that such failure to secure a Timetable that enables the Franchisee to operate the Train Service Requirement is partly due to the default of the Franchisee in not properly complying with its obligations under the Franchise Agreement in relation to securing timetable development rights. Accordingly any TDR Amendment may be drafted so that it does not relieve the Franchisee of the obligation to comply with the Train Service Requirement to the extent that the Secretary of State determines that the failure is due to such default of the Franchisee and the Franchisee may therefore be in contravention of the Franchise Agreement.

12.9 Following issue of any TDR Amendment pursuant to paragraph 12.8 the Franchisee shall, unless otherwise agreed by the Secretary of State, continue to use all reasonable endeavours to amend and/or enter into such Access Agreements as may be necessary or desirable from time to time to obtain the timetable development rights that it requires to secure a Timetable that enables it to operate railway passenger services that comply with the Train Service Requirement without such TDR Amendment.

12.10 Any TDR Amendment issued pursuant to paragraph 12.8 shall 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 to secure a Timetable that enables it to operate railway passenger services that comply with the Train Service Requirement without any such TDR Amendment.

12.11 With effect from the date on which any TDR Amendment ceases to have effect in accordance with paragraph 12.10 the Train Service Requirement without such TDR Amendment shall thereafter apply.

13. Certification and Notification by Franchisee of Exercising Timetable Development Rights

- 13.1 Before exercising any Timetable Development Right to bid for Train Slots, the Franchisee shall provide a certificate addressed to the Secretary of State and signed by a statutory director of the Franchisee confirming that its proposed exercise of that Timetable Development Right will be compliant with its obligation specified in paragraph 12.3.
- 13.2 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 13.1 is a true and accurate confirmation of compliance with its obligation specified in paragraph 12.3.
- 13.3 The Franchisee shall:
- (a) keep the Secretary of State fully informed of any discussions with the Infrastructure Manager in relation to the matters referred to in this Schedule 1.1 which may, in the reasonable opinion of the Franchisee, have a material impact on the ability of the Franchisee to deliver the Train Service Requirement or meet the requirements of paragraph 14 of this Schedule 1.1 through the Timetable and shall, if required to do so by the Secretary of State, supply copies of any related correspondence to the Secretary of State; and
 - (b) update any notification under this paragraph 13.3 and/or certification under paragraph 13.1 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 the Infrastructure Manager's proposed or actual rejection or modification of its bid or any part of it or for any other reason.

14. Planning to meet Target Passenger Demand

14.1 Capacity and Timetable Planning

- (a) The Franchisee shall, in preparing its Timetable and Train Plan, unless the Secretary of State otherwise agrees, provide for at least the capacity specified in the Train Service Requirement.
- (b) The Franchisee shall use all reasonable endeavours to provide for Passenger Carrying Capacity on each Passenger Service that meets as a minimum the Target Passenger Demand for that Passenger Service.
- (c) The Franchisee shall use all reasonable endeavours to provide passengers with a reasonable expectation of a seat, in accordance with such requirements as are confirmed in accordance with Schedule 20 (IOC Confirmable Obligations).

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

If at the time it prepares its Timetable and/or Train Plan, having exercised all reasonable endeavours, the Franchisee is unable to prepare a Timetable and/or Train Plan having the Passenger Carrying Capacity and/or meeting the reasonable expectations referred to in paragraphs 14.1(b) and 14.1(c), then the Timetable and/or the Train Plan shall specify the best allocation of Passenger Services and rolling stock vehicles to Passenger Services that is reasonably practicable with a view to:

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

- (b) ensuring, so far as is possible, that such excess is not unduly concentrated on any particular Route or Passenger Service, and in accordance with any spread of capacity between the High Speed Services and Conventional Services as the Secretary of State may specify from time to time; and
- (c) minimising, so far as is possible, the extent to which passengers are required to stand on Conventional Services or High Speed Services, or both, by reference to the expectations specified in, or in accordance with, paragraph 14.1(c).

14.3 Preparation of Timetable and Train Plan

- (a) Subject to paragraph 14.3(b), the Franchisee shall in preparing its Timetable and its Train Plan take full and proper account of its calculation of Forecast Passenger Demand and use all reasonable endeavours to ensure that the Train Fleet is deployed in an optimal manner for the purposes of complying with its obligations under paragraphs 14.1 and 14.2 above.
- (b) The Franchisee shall in preparing its Timetable and Train Plan deploy the entire Train Fleet (excluding reasonable planning requirements for the allocation of Hot Standbys or other rolling stock vehicles to be out of service due to maintenance requirements, Mandatory Modifications or any other reason agreed with the Secretary of State (such agreement not to be unreasonably withheld or delayed)) in delivering the Passenger Services:
 - (i) during each Peak; and
 - (ii) at such times outside the Peak where such deployment of the entire Train Fleet is reasonably required to meet the Franchisee's obligations pursuant to paragraphs 14.1 and 14.2 above.

14.4 Finalising the Train Plan

- (a) The Franchisee shall submit its proposed Train Plan to the Secretary of State as soon as reasonably practicable after the Infrastructure Manager has issued the Timetable on which the Train Plan is to be based.
- (b) The Franchisee shall submit its final Train Plan to the Secretary of State prior to the commencement of the Timetable to which it relates.
- (c) The Train Plan shall be certified by a statutory director of the Franchisee as being true and accurate and including the minimum capacity specified in the Train Service Requirement.
- (d) The Franchisee shall provide to the Secretary of State in a timely manner such rolling stock diagrams as the Secretary of State may reasonably request from time to time.
- (e) Without prejudice to the provisions of Schedule 1.2 (Operating Obligations), if the Secretary of State notifies the Franchisee within thirty (30) days of receipt of a Train Plan that amendments to it are required, the Franchisee shall make those amendments and re-submit a revised Train Plan within thirty (30) days of receipt of the Secretary of State's notification (and the provisions of this paragraph 14.4(e) shall apply to any such re-submitted draft). Where the Secretary of State does not require any amendments, or further amendments (as applicable) the Franchisee shall comply with the Train Plan from the date of commencement of the Timetable to which it relates.

15. Capacity Mitigation Proposal

- 15.1 Without prejudice to the obligation of the Franchisee to include in the Train Plan the capacity specified in the Train Service Requirement, if at any time the Franchisee is unable to prepare a Timetable and/or a Train Plan which meets the requirements of paragraph 14.1 (regardless of

whether the Franchisee has used all reasonable endeavours to do so), the Secretary of State may serve a notice on the Franchisee requiring it to produce a proposal to a reasonable specification provided with the notice to remedy or mitigate such inability ("**Capacity Mitigation Proposal**").

15.2 The Capacity Mitigation Proposal may, without limitation, include measures to be implemented by the Franchisee to:

- (a) remedy the circumstances leading to the Franchisee being unable to prepare a Timetable and/or a Train Plan which meets the requirements of paragraph 14.1; and/or
- (b) minimise, so far as is possible, the amount by which Target Passenger Demand exceeds the provision of Passenger Carrying Capacity on the affected Passenger Services;
- (c) ensure, so far as is possible, that such excess is not unduly concentrated on any particular Route or Passenger Service; and
- (d) minimise, so far as is possible, the extent to which passengers are required to stand on Conventional Services or High Speed Services, or both, by reference to the expectations specified in, or in accordance with, paragraph 14.1(c),

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

15.3 Where the Secretary of State reasonably believes that future circumstances may lead to the Franchisee being unable to prepare a Timetable and/or a Train Plan which meets the requirements of paragraph 14.1 at any time within the next four (4) years (including after the end of the Integrated Operator Term) the Secretary of State shall have the right to serve notice on the Franchisee specifying those future circumstances and the date that the Franchisee should assume that they will arise from and requiring it to produce a Capacity Mitigation Proposal to remedy or mitigate such future circumstances on the basis of assumptions provided by the Secretary of State.

15.4 The Capacity Mitigation Proposal shall (unless the Secretary of State specifies to the contrary) include the Franchisee's informed estimate of Forecast Passenger Demand, in such format and to such level of disaggregation as the Secretary of State may reasonably require. Without limitation such specification may require the Franchisee to present options to address relevant issues through:

- (a) alterations to the Train Service Requirement;
- (b) modification of rolling stock or the acquisition of additional or replacement rolling stock;
- (c) alterations to Fares; and/or
- (d) alterations or enhancements to any track, signalling, station, depot or other relevant railway infrastructure.

15.5 The Capacity Mitigation Proposal shall provide a comprehensive analysis backed by relevant data and assumptions of:

- (a) all cost and revenue and other financial implications of options contained within it including the potential implications for Franchise Payments;
- (b) the implications (if any) for the Benchmarks; and
- (c) the likely impact of options within it for existing and future passenger journeys and journey opportunities.

15.6 The Franchisee shall meet with the Secretary of State to discuss the Capacity Mitigation Proposal and provide such further information or analysis and further iterations of the Capacity Mitigation Proposal as the Secretary of State shall reasonably require. If the Secretary of State decides that the Secretary of State wishes to implement any Capacity Mitigation Proposal (or any part thereof) this shall be by way of a Variation.

16. New or amended Train Service Requirement by the Secretary of State and Franchisee Informed Opinion

16.1 As and when required, whether for the purposes of considering alterations to the Train Service Requirement 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 train service requirements, 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 Train Service Requirement which should be made in order to deliver an optimal range of railway passenger services relative to Target Passenger Demand;
- (c) its informed opinion as to any changes to the current Train Service Requirement which:
 - (i) would deliver an optimal range of railway passenger services 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; and
- (d) a draft of the Train Plan that the Franchisee considers that each set of proposed changes would require.

16.2 Prior to issuing any amended or new Train Service Requirement the Secretary of State shall provide to the Franchisee the Secretary of State's draft of any proposed amended or new Train Service Requirement stating the date upon which the Secretary of State proposes that such amended or new Train Service Requirement should take effect along with the Secretary of State's views as to the changes (if any) that the Secretary of State proposes to make to the Benchmarks.

16.3 On receipt of any such draft of a proposed amended or new Train Service Requirement the Franchisee shall provide to the Secretary of State (if so requested) its informed opinion:

- (a) with supporting reasons as to the impact of the proposed amended or new Train Service Requirement on the delivery of an optimal range of railway passenger services patterns relative to Target Passenger Demand and compliance with paragraph 14.1 of this Schedule 1.1;
- (b) with supporting reasons as to the changes to resources and adjustment to Franchise Payments (if any) which would be required in consequence of the proposed amended or new Train Service Requirement;
- (c) with supporting reasons as to changes (if any) to the Benchmarks;

- (d) of the process to be required to implement the proposed amendment to the Train Service Requirement together with a plan for the implementation of the amendment to the Train Service Requirement (including all steps required to ensure that the Franchisee can deliver a Timetable compliant with such amended or new Train Service Requirement) prepared in accordance with procedural arrangements specified by the Secretary of State pursuant to paragraph 17 of this Schedule 1.1; and
- (e) with supporting reasons of the likely impact of the proposed amended or new Train Service Requirement on existing and future passenger journeys and journey opportunities,

together with a draft of the Train Plan that it considers that the proposed amended or new Train Service Requirement would require.

- 16.4 There may be iterations of drafts of the proposed amended or new Train Service Requirement and the Franchisee shall to the extent required by the Secretary of State have the obligations described in this paragraph 16 in respect of all such iterations.
- 16.5 Processes contained in this paragraph 16 shall take place in accordance with procedural arrangements and timescales stipulated by the Secretary of State pursuant to paragraph 17.2 of this Schedule 1.1.
- 16.6 The Secretary of State may, in accordance with any stipulation made under paragraph 17.2, issue to the Franchisee any amended or new Train Service Requirement that the Secretary of State requires the Franchisee to operate and notice of the amendments (if any) to the Benchmarks. Such amended or new Train Service Requirement will be issued prior to the commencement of the timetable development process of the Infrastructure Manager for the Timetable in respect of which it is proposed to implement the change to Passenger Services arising from the amended or new Train Service Requirement.
- 16.7 In the absence of the Secretary of State issuing any amended or new Train Service Requirement the existing Train Service Requirement will remain in full force and effect. The degree of variation from any Train Service Requirement specified at the date of the Franchise Agreement was entered into in respect of any particular period and brought about by any amended or new Train Service Requirement issued pursuant to this paragraph 16 shall (where relevant) be of a magnitude no greater than that contemplated in the Invitation to Tender.
- 16.8 At the same time as the Secretary of State provides the Franchisee with a draft of any proposed amended or new Train Service Requirement pursuant to paragraph 16.2, the Secretary of State shall also provide to the Franchisee the Secretary of State's opinion of any amendments (if any) that are required to the Benchmarks.

17. Procedural Arrangements and Timescales

- 17.1 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, the Infrastructure Manager and others.
- 17.2 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 the development of the Timetable and the resultant Train Plan) and that the Secretary of State may amend any such stipulation from time to time.
- 17.3 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 17.2.

- 17.4 Any stipulation by the Secretary of State pursuant to paragraph 17.2:
- (a) shall be at the reasonable discretion of the Secretary of State;
 - (b) may contain procedural arrangements and timescales to be followed by the Franchisee in relation to other changes to the Franchise Services (pursuant to paragraph 1 of Schedule 9.3B (Variations to the Franchise Agreement)) in conjunction with the Train Service Requirement; and
 - (c) may provide for iterations of drafts of any amended or new Train Service Requirement, Train Plan or Timetable.
- 17.5 Any procedural arrangements and timescales stipulated by the Secretary of State pursuant to paragraph 17.2 shall have contractual effect between the Franchisee and the Secretary of State in accordance with the terms of such stipulation.

18. Obligations in relation to other Train Operators

- 18.1 Subject to the terms of the Licences and any applicable Law, the Franchisee shall co-operate with other Train Operators in respect of their timetable development rights where such other Train Operators provide railway passenger services meeting common or displaced passenger demand, with a view to ensuring that:
- (a) the levels of overcrowding over the Routes or other relevant routes are minimised and not unduly concentrated on particular railway passenger services, Routes or other relevant routes;
 - (b) the stopping patterns of such railway passenger services are placed at approximately evenly-spaced intervals throughout each relevant hour, taking into account the reasonable needs of passengers and the different types of railway passenger services provided by other Train Operators and the Franchisee; and
 - (c) a reasonable pattern of railway passenger service is provided on the relevant route(s) to enable passengers to make Connections (particularly where low frequency railway passenger services are operated, first trains or last trains are involved, taking account of seasonal fluctuations in passenger demand and the time needed to make any such Connection).

19. Provisions relating to Access Agreements and Property Leases

- 19.1 Where the Secretary of State considers it requisite for the purposes of better securing the delivery of railway passenger services under the Franchise Agreement, or any other franchise agreement, or for the better achievement by the Secretary of State of any of the Secretary of State's 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.
- 19.2 Except to the extent that the Secretary of State otherwise indicates from time to time, the Franchisee shall notify the Secretary of State of its intention to enter into or amend any Access Agreement:

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

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

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

19.4 If and to the extent that:

- (a) the Secretary of State exercises the Secretary of State's rights pursuant to paragraph 19.1;
- (b) the Franchisee's compliance with the Secretary of State's requirements pursuant to paragraph 19.1 would lead to the unavoidable consequence of the Franchisee contravening any other terms of the Franchise Agreement or the occurrence of an Event of Default; and
- (c) the Franchisee duly complies with such requirements,

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

20. The Timetable and the Working Timetable

20.1 Any specification of Passenger Services in the Train Service Requirement shall (unless the Secretary of State states to the contrary) be regarded as relating to how those Passenger Services are to be provided for in the National Rail Timetable (or other applicable timetable) that the relevant Infrastructure Manager publishes for passengers.

20.2 The Franchisee shall ensure, for each period between two (2) consecutive Passenger Change Dates during the Integrated Operator Term that the Timetable for such period is, in its reasonable opinion, not materially different from the relevant working timetable issued by the Infrastructure Manager.

SCHEDULE 1.2B

Operating Obligations

1. Daily Operating Obligations

The Franchisee agrees to use all reasonable endeavours to operate on each day of the Integrated Operator Term each of its Passenger Services as are set out in the Plan of the Day for that day and with at least the Passenger Carrying Capacity specified in the Train Plan for that Passenger Service. The Franchisee shall notify the Secretary of State as soon as reasonably practicable if it has on any day of the Integrated Operator Term failed to operate to a material extent each of its Passenger Services as are set out in the Plan of the Day for that day and with at least the Passenger Carrying Capacity specified in the Train Plan for that Passenger Service.

2. Timetabling and Train Planning Compliance Investigation

2.1 If the Secretary of State considers that the Franchisee may have breached any of its obligations under any of paragraphs 12.1, 12.3, 12.4, 12.5, 14.1, 14.2 or 14.3 of Schedule 1.1 (Franchise Services and Service Development), paragraph 1 of this Schedule 1.2 and/or paragraphs 8.1, 8.2, 8.3, 12.1, 12.2 or 12.3 of Schedule 18.3 (Transitional Programme Specific Requirements), the Secretary of State shall (in addition to the Secretary of State's right to obtain further information pursuant to paragraph 1.1 of Schedule 1.5 (Information about Passengers) and without prejudice to any other rights of the Secretary of State under the Franchise Agreement or otherwise) have the right, by serving notice on the Franchisee, to instigate an investigation of the Franchisee's compliance with its obligations under paragraphs 12.1, 12.3, 12.4, 12.5, 14.1, 14.2 or 14.3 of Schedule 1.1 (Franchise Services and Service Development), paragraph 1 of this Schedule 1.2 and paragraphs 8.1, 8.2, 8.3, 12.1, 12.2 or 12.3 of Schedule 18.3 (Transitional Programme Specific Requirements), including any differences between the Forecast Passenger Demand and the Actual Passenger Demand and any unreasonable assumptions about the timetables likely to be operated by other Train Operators made by the Franchisee ("**Timetabling and Train Planning Compliance Investigation**").

2.2 Following the service of such a notice the Franchisee shall:

- (a) provide such information as the Secretary of State may reasonably require for the purposes of determining if the Franchisee has complied with its obligations under paragraphs 12.1, 12.3, 12.4, 12.5, 14.1, 14.2 or 14.3 of Schedule 1.1 (Franchise Services and Service Development), paragraph 1 of this Schedule 1.2 and/or paragraphs 8.1, 8.2, 8.3, 12.1, 12.2 or 12.3 of Schedule 18.3 (Transitional Programme Specific Requirements) including evidence of:
 - (i) the steps taken by the Franchisee to amend and/or enter into Access Agreements, exercise Timetable Development Rights and exercise its rights under the Relevant Track Access Agreement to object, to make representations and to withhold consent in respect of any actual or proposed act or omission by the Infrastructure Manager in relation to such agreement in respect of its Timetable Development Rights;
 - (ii) the extent to which the Franchisee has operated on each day of the relevant Reporting Period each of its Passenger Services as are set out in the Plan of the Day for that day and with at least the Passenger Carrying Capacity specified in the Train Plan for that Passenger Service;
 - (iii) Forecast Passenger Demand and the way that it was calculated including all evidence taken into account and assumptions used (including any divergences from then existing industry modelling standards and the reasons for such divergences); and

- (iv) any assumptions about the timetables likely to be operated by other Train Operators made by the Franchisee; and
 - (v) the alternative solutions considered by the Franchisee before finalising the Timetable and Train Plan and the reasons why any such alternative solutions were not adopted; and
- (b) permit the Secretary of State to carry out an audit of the extent to which the Timetable and Train Plan enables the Franchisee to operate railway passenger services that comply with the Train Service Requirement and paragraph 14 of Schedule 1.1 (*Franchise Services and Service Development*) and fully co-operate with and provide all information needed to facilitate such audit.

2.3 **Contravention of the Franchise Agreement**

- (a) The Franchisee shall be in contravention of the Franchise Agreement if following the completion by the Secretary of State of the Timetabling and Train Planning Compliance Investigation the Secretary of State concludes that the Franchisee breached any of its obligations under any of paragraphs 12.1, 12.3, 12.4, 12.5, 14.1, 14.2 or 14.3 of Schedule 1.1 (Franchise Services and Service Development), paragraph 1 of this Schedule 1.2 and/or paragraphs 8.1, 8.2, 8.3, 12.1, 12.2 or 12.3 of Schedule 18.3 (Transitional Programme Specific Requirements) including where the Franchisee:
- (i) failed to act reasonably in calculating Forecast Passenger Demand because it unreasonably assumed that there would be differences between Forecast Passenger Demand and Actual Passenger Demand at the time that the Forecast Passenger Demand calculation was made; or
 - (ii) made unreasonable assumptions about the timetables likely to be operated by other Train Operators serving some or all of the same stations as the Franchisee.
- (b) Where the Secretary of State does conclude pursuant to paragraph 2.3(a) above that the Franchisee has breached any relevant obligation the Franchisee shall (at its own cost) pay to the Secretary of State the costs incurred by the Secretary of State in undertaking any Timetabling and Train Planning Compliance Investigation (including any audit pursuant to paragraph 2.2(b)).
- (c) The Secretary of State shall notify the Franchisee if the Secretary of State concludes pursuant to paragraph 2.3(a) that the Franchisee is in contravention of the Franchise Agreement and the Secretary of State may at the Secretary of State's discretion, and entirely without prejudice to the Secretary of State's other rights consequent upon the relevant contravention, serve a Remedial Plan Notice pursuant to paragraph 2 of Schedule 10.1 (Procedure for remedying a Contravention of the Franchise Agreement).

3. **Timetable changes proposed by the Infrastructure Manager**

- 3.1 The Franchisee shall notify the Secretary of State promptly after being notified by the Infrastructure Manager that the Infrastructure Manager has decided or proposes to:
- (a) omit from the Plan of the Day Passenger Services that are included in the Timetable; or
 - (b) reschedule in the Plan of the Day Passenger Services from their scheduling in the Timetable.
- 3.2 To the extent that any such decision or proposal may, in the reasonable opinion of the Franchisee, materially (having regard to both duration and scale) prejudice the Franchisee's ability to deliver the Timetable with the Passenger Carrying Capacity stipulated in the Train Plan the Franchisee

shall explain in such notification the way in which, in its reasonable opinion, such omission or rescheduling may materially prejudice the Franchisee's ability to deliver the Timetable with the Passenger Carrying Capacity stipulated in the Train Plan.

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

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

3.5 If the Secretary of State does not consider that the Franchisee has taken sufficient steps under paragraph 3.4, the Secretary of State may require the Franchisee to exercise its rights referred to in paragraph 3.4 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 the Infrastructure Manager 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.

3.6 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 3.4 before requiring the Franchisee to take any action referred to in paragraph 3.5.

3.7 The provisions of this paragraph 3 shall apply to any actual or proposed omission or rescheduling of Passenger Services that originates from any person other than the Infrastructure Manager, as those provisions apply to the Infrastructure Manager.

4. Timetable changes proposed by the Franchisee

4.1 The Franchisee agrees, subject to paragraph 4.3, not to propose to the Infrastructure Manager:

- (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.

4.2 The Franchisee shall submit to the Secretary of State an amended Train Plan in respect of each Timetable change proposal.

4.3 The Franchisee shall use all reasonable endeavours to operate adequate railway passenger services to or from any special events which are not already provided for in the Plan of the Day to meet the passenger demand that is reasonably likely to arise from such special events and to ensure that the railway passenger services provided have an appropriate amount of passenger carrying capacity. The Franchisee shall in meeting its obligations pursuant to this paragraph 4.3:

- (a) work with the Infrastructure Manager and other Train Operators to plan amendments to the Plan of the Day through the omission, addition or rescheduling of Passenger Services including, but not limited to, additional or retimed late services and the operation of services on reasonable diversionary routes;
- (b) seek to optimise the effective delivery of the Passenger Services as a whole with the provision of appropriate capacity in the context of the additional demand consequent upon a relevant special event, including considering how maintenance requirements will be planned around special events and alternative options to provide appropriate capacity; and
- (c) work with the organisers of special events to understand the additional passenger demand that is likely to arise from such special events.

4.4 The Franchisee shall from time to time promptly provide such evidence of its compliance with its obligations under paragraph 4.3 as the Secretary of State may reasonably request.

5. Timetable changes and Train Plan changes requested by the Secretary of State

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

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

5.2 The Secretary of State may reasonably request that the Franchisee shall submit to the Secretary of State an amendment to the Train Plan at any time.

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

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

- (a) without prejudice to any other provision of this Schedule 1.2, notify the Secretary of State promptly where such disruption would materially (having regard to both duration and scale) prejudice the Franchisee's ability to deliver the Timetable or deliver the Timetable in accordance with the Train Plan;
- (b) co-operate with the Infrastructure Managers and other Train Operators to act in the overall interests of passengers using such railway passenger services, including using all reasonable endeavours to ensure that such disruption is not concentrated on a particular part of the network, except where such concentration either:
 - (i) would be in the overall interests of passengers using such Passenger Services or railway passenger services and would not result in disproportionate inconvenience to any group of passengers; or
 - (ii) is reasonably necessary as a result of the cause or the location of the disruption; and
- (c) use all reasonable endeavours to provide or secure the provision of alternative transport arrangements in accordance with paragraph 6.2.

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

- (a) ensure that such alternative transport arrangements are of reasonable quality, of a reasonably similar frequency to the Passenger Services included in the Timetable which such arrangements replace and reasonably fit for the purpose of the journey to be undertaken;
- (b) transport passengers to, or as near as reasonably practicable to, the end of their intended journey on such Passenger Services, having particular regard to the needs of any Disabled Persons and, where appropriate, making additional arrangements for such Disabled Persons to complete their intended journey;
- (c) provide adequate and prominent publicity of such alternative transport arrangements in advance, subject, in the case of unplanned disruption, to the Franchisee having sufficient notice of such disruption to enable it to provide such publicity;
- (d) provide sufficient alternative transport capacity for the reasonably foreseeable demand for the disrupted Passenger Services; and
- (e) ensure, if any planned disruption overruns, that there is a reasonable contingency arrangement for such alternative transport arrangements to continue for the duration of such overrun.

7. **Obligation to use all reasonable endeavours under this Schedule 1.2**

7.1 Any obligation in this Schedule 1.2 on the part of the Franchisee to use "**all reasonable endeavours**" shall (with the exception of paragraph 5 of this Schedule 1.2) include an obligation to:

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

- (b) take reasonable measures to avoid and/or reduce the impact of any disruption to the Franchise Services having regard to all the circumstances, including the reasonably foreseeable risks arising from the matters referred to in paragraph 7.2; and
- (c) actively manage the performance by the Infrastructure Managers of their respective contractual relationship with the Franchisee (and provide appropriate management resources for this purpose) so as to secure the best performance reasonably obtainable from the Infrastructure Managers by these means (including taking the steps referred to in paragraph 7.4), having regard to all the circumstances.

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

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

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

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

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

- (a) co-operating with the relevant Infrastructure Manager(s) in the development, agreement and implementation of:
 - (i) a five (5) year (rolling) Performance Strategy Plan; and
 - (ii) recovery plans in response to failures to achieve the performance levels specified in any Performance Strategy Plan;

- (b) co-operating with each Infrastructure Manager in adopting the principles set out in any Service Recovery Plans agreed between that Infrastructure Manager and the Franchisee from time to time;
- (c) undertaking regular reviews of:
 - (i) the most common and most detrimental causes of delay to the Passenger Services; and
 - (ii) the causes of the ten (10) delays to the Passenger Services with the longest duration (to the extent not already reviewed in accordance with paragraph 7.4(c)(i)),

which have occurred during a defined review period (e.g. weekly/four (4) weekly/quarterly) and which have been caused by the Franchisee, any other Train Operator, any other train operator licensed under the Act or the relevant Infrastructure Manager;

- (d) undertaking with each Infrastructure Manager a review of the time taken to recover the Passenger Services following the occurrence of any of the events specified in paragraphs 7.4(c)(i) and 7.4(c)(ii) and seeking to identify and implement actions that reduce the delay effect of such events;
- (e) setting up and holding regular and effective performance review meetings with each Infrastructure Manager, 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 the Infrastructure Managers in the Performance Strategy Plan and derived delivery plans and using reasonable endeavours to specify and develop such delivery plans;
- (g) as and when required by each Infrastructure Manager, co-operating with that Infrastructure Manager in improving the accuracy of future timetables by providing access to trains (and data collected from train systems), other facilities and/or information;
- (h) co-operating with each Infrastructure Manager in other delay management initiatives and ongoing quarterly reviews of the Performance Strategy Plan;
- (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 any Infrastructure Manager fails to perform its obligations under the Relevant Track Access Agreement, enforcing the Franchisee's rights under such Relevant Track Access Agreement.

7.5 The Franchisee undertakes to reasonably co-operate with each Infrastructure Manager with regard to each such Infrastructure Manager's management of the network, including in relation to the establishment of up to date Timetable Planning Rules.

7.6 To the extent not already provided for in the Franchise Agreement, the Franchisee shall use all reasonable endeavours to ensure the performance by each Infrastructure Manager of its obligations under any relevant agreement including, where appropriate or where requested by

the Secretary of State, enforcing its rights against each Infrastructure Manager under any such agreement.

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

SCHEDULE 1.3B

NOT USED

SCHEDULE 1.4B

Passenger Facing Obligations

1. Publishing the Timetable

1.1 The First Timetable

The Franchisee shall publish on the Integrated Operator 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 (i) and (ii); and
 - (iv) on the Franchisee's website; and
- (b) the timetables of other Train Operators at Stations, in accordance with paragraph 1.4.

1.2 Timetable Revisions and Alterations

Notwithstanding its obligations under paragraph 17 of Schedule 18.2 (Accepted Programme Specific Requirements) 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 (4) 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 (4) 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 (4) 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 (2) Passenger Change Dates to the Passenger Services which call at such Franchisee Access Stations, in sufficient time for such

information to be published by such operators within the time limit provided for in paragraph 1.3(a).

1.4 **Other Train Operators' Timetables**

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

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

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

The Franchisee shall use all reasonable endeavours to procure (including by virtue of any arrangements made from time to time between Network Rail and RSP) that the National Rail Timetable (or any replacement timetable), 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 (2) Passenger Change Dates,

is available to passengers through the National Rail Enquiry Scheme (or any replacement) not less than four (4) weeks prior to coming into effect.

2. **Communicating 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 (7) 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 Additional Obligations

3.1 Obligation to Sell

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

3.2 Restrictions on Sales

- (a) The Franchisee shall not sell or offer to sell any Fares at a discount (whether by the issue of Discount Cards or otherwise) or offer a reduction to the price of a Fare except as may otherwise be permitted pursuant to paragraph 3.2(b).
- (b) Nothing in paragraph 3.2(a) shall prevent the giving of 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 or another train operator pursuant to any scheme in force at the Integrated Operator Start Date or the High Speed Start Date (as the case may be) or pursuant to the operation of Law or any discount permitted by the Secretary of State; or
 - (ii) the Passenger's Charter or the passenger's charter of any other train operator; or
 - (iii) the National Rail Conditions of Carriage (as such term is defined under the Ticketing and Settlement Agreement).
- (c) The Franchisee shall not sell or offer to sell any Fare or Discount Card which has a validity of thirteen (13) or more months, except to the extent required to do so under the terms of the Ticketing and Settlement Agreement.

4. Passenger's Charter

4.1 Content

The Franchisee shall:

- (a) publish its Passenger's Charter:
- (i) in the same form specified by the Secretary of State in accordance with Schedule 20 (IOC Confirmable Obligations);
 - (ii) in accordance with the requirements specified in paragraph 4.3;

(iii) which, so far as relates to the period after the High Speed Start Date, may (and shall if so requested by the Secretary of State) consist of separate Passenger's Charters for the High Speed Services and the Conventional Services;

(b) review the need for changes to the Passenger's Charter at least every three (3) years thereafter in consultation with the Passengers' Council, and shall submit a draft of any revisions to the Passenger's Charter that it wishes to propose, together with proof of such consultation, to the Secretary of State; 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 the Passengers' Council at least seven (7) 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 (7) 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 (7) days before such revision comes into effect,

save in respect of the Passenger's Charter which is effective on the Integrated Operator Start Date, and the Passenger's Charter which is effective on the High Speed Start Date, in which cases the Franchisee shall publicise such Passenger's Charter in the manner contemplated by this paragraph 4.3 on and from the Integrated Operator Start Date or the High Speed Start Date (as applicable) or as otherwise specified by the Secretary of State in accordance with Schedule 20 (IOC Confirmable Obligations).

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 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);

(b) use all reasonable endeavours to make passengers aware of their right to claim compensation pursuant to the Passenger's Charter including by:

(i) displaying the relevant information on trains and at Stations;

- (ii) making appropriate announcements to passengers on trains and at Stations when the circumstances giving rise to that right occur;
 - (iii) making compensation claim forms readily available to passengers at Stations and on the Franchisee's website; and
 - (iv) any other reasonable means to reflect future advancements in technology proposed in writing either by the Franchisee or the Secretary of State and agreed by both Parties (acting reasonably); and
- (c) use all reasonable endeavours:
- (i) to comply with any other obligations, statements and representations; and
 - (ii) to meet any other standards or targets of performance,
- as are comprised in its Passenger's Charter from time to time.

5. End to End Journeys and Cycles

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

6. Statutory Notices

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

7. Train and Station Cleaning

The Franchisee shall:

- 7.1 ensure that the nature and frequency of its planned and reactive programme for maintaining a reasonable standard of train presentation is such that all rolling stock used by the Franchisee in the provision of the Passenger Services is expected to be kept reasonably clean, appropriately stocked with consumables and free from minor defects;
- 7.2 use all reasonable endeavours to ensure that a reasonable standard of train presentation is maintained at all times in respect of all rolling stock used by the Franchisee in the provision of the Passenger Services;
- 7.3 ensure that the nature and frequency of its planned and reactive programme for maintaining a reasonable standard of Station condition and passenger environment is such that all of the Stations are expected to be clean, free of litter and graffiti, painted to a reasonable standard and free from minor defects; and
- 7.4 use all reasonable endeavours to ensure that all Stations are clean, free of litter and graffiti, painted to a reasonable standard and free from minor defects throughout the Franchise Term.

8. Publication of Performance Data

- 8.1 The Franchisee shall in accordance with paragraph 8.2 of this Schedule 1.4 (and in such format as the Secretary of State may reasonably require) publish on the Franchisee's web site in relation to each Reporting Period during the Integrated Operator Term the performance of the Franchisee by reference to each of the performance measures in Schedule 7 (IOC Performance Regime), and such other performance measures as the Secretary of State may specify from time to time. Such data shall be published by the Franchisee within ten (10) Weekdays of it becoming available to the Franchisee.
- 8.2 The Franchisee shall ensure that the data published by it pursuant to paragraph 8.1 shall in each case be shown:
- (a) in relation to all Passenger Services;
 - (b) disaggregated by reference to Service Groups;
 - (c) on a periodic and/or on an average basis (as applicable); and
 - (d) include such other details as are confirmed as being required in accordance with Schedule 20 (IOC Confirmable Obligations).
- 8.3 The Franchisee shall also publish (in such format as the Secretary of State may reasonably require) such data as is confirmed in accordance with Schedule 20 (IOC Confirmable Obligations).

9. Publication of Complaints and Faults Handling Data

- 9.1 The Franchisee shall publish (in such format as the Secretary of State may reasonably require) in relation to the Reporting Periods that have elapsed since the last Reporting Period reported on, in the case of the first such report, since the Integrated Operator Start Date):
- (a) a summary of the data published by the ORR from time to time in relation to the handling of passenger complaints regarding the Franchisee's operation of the Passenger Services;
 - (b) details of the number of faults notified to the Franchisee by passengers or station users through specified channels including the website of the Franchisee (each a "**Notified Fault**") in each case identifying the total numbers of Notified Faults (by reference to whether such Notified Faults relate to rolling stock or stations), with such numbers further disaggregated by Service Group and broken down into relevant sub-categories of Notified Fault;
 - (c) the mean average time taken by the Franchisee:
 - (i) to resolve Notified Faults; and
 - (ii) where Notified Faults are not resolved within twenty (20) Weekdays, to provide feedback to applicable passengers and/or station users on its progress in seeking resolution of such Notified Faults; and
 - (d) from the third (3rd) such report onwards a summary comparison of:
 - (i) the mean average number of Notified Faults notified to the Franchisee;
 - (ii) the mean average time taken by the Franchisee to resolve Notified Faults; and

- (iii) the mean average time taken by the Franchisee, where Notified Faults have not been resolved within twenty (20) Weekdays to provide feedback to applicable passengers and/or station users on its progress in seeking resolution of such Notified Faults,

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

10. Route Maps

10.1 The Franchisee shall produce a Route Map which shall include as a minimum;

- (a) all stations served by the Passenger Services; and
- (b) key stations located on any Other Passenger Route Within the Geographical Area (which shall either be selected by the Franchisee on a reasonable basis or, if so directed by the Secretary of State, specified by the Secretary of State in a notice to the Franchisee).

10.2 The Route Map shall include notes identifying:

- (a) in relation to any Other Passenger Route Within the Geographical Area with a principal destination point outside of the Geographical Area, such ultimate origin or ultimate destination point; and
- (b) those Routes over which services are also is operated and such service is:
 - (i) operated by a passenger train operator other than the Franchisee; and
 - (ii) is run on a more frequent basis (as stated in the National Rail Timetable) than the Passenger Services.

10.3 The Franchisee shall, as soon as reasonably practicable, update the Route Map in all places where it is displayed where there is any change:

- (a) to the Passenger Services, leading to a change in the routes falling within the definition of Route; or
- (b) to the passenger services operated by another passenger train operator (as stated in the National Rail Timetable), leading to a change to the routes falling within the definition of Other Passenger Route Within the Geographical Area.

10.4 The Route Map shall at all times be displayed:

- (a) in every passenger carrying vehicle within the Train Fleet;
- (b) at every Station; and
- (c) on its website.

10.5 The Franchisee shall be regarded as having complied with the requirement of paragraph 10.1 if a map that meets the requirements of a Route Map is produced by a Local Authority or other relevant Stakeholder. The provisions of paragraphs 10.3 and 10.4 shall apply in relation to any such map.

SCHEDULE 1.5B

Information about Passengers

1. Passenger Numbers Information

1.1 The Franchisee shall, as and when reasonably requested by the Secretary of State (and, for these purposes, it shall not be unreasonable to make such a request at least twice yearly), provide information to the Secretary of State on the extent of the use by passengers of the Passenger Services. Without limitation to the generality of the foregoing, in particular and when so requested, the Franchisee shall provide information relating to:

(a) the number of passengers travelling in each class of accommodation:

(i) on each Passenger Service;

(ii) on each Route; and/or

(iii) at any station or between any stations;

(b) the times of the day, week or year at which passengers travel; and

(c) the Actual Consist Data and the Scheduled Consist Data,

(the information referred to in the whole of paragraph 1.1 being referred to together as "**Actual Passenger Demand**").

1.2 The Franchisee shall obtain and collate the information specified in paragraph 1.1 by using all the technology available on the rolling stock. The Franchisee shall ensure that any technology for determining the number of passengers travelling in each class of accommodation that is fitted on the Train Fleet remains operational and in good working order from the date that it is fitted throughout the Franchise Period. The Secretary of State acting reasonably shall have the right to obtain such other information that the Franchisee has, ought properly to have or could reasonably obtain which may provide a more detailed or accurate view of the extent of use by passengers of the Passenger Services including information about ingress and egress of passengers at ticket gates at Stations.

1.3 The Franchisee shall provide to the Secretary of State all of the information generated by the technology and/or by using manual counts pursuant to paragraph 2 including the information specified in paragraph 1.1:

(a) promptly following its collation and in any case within the following timescales:

(i) in the case of data collected automatically by the Count Equipment and capable of being transmitted directly and automatically to the RPC Database or the Preliminary Database (as appropriate), within forty-eight (48) hours of its collation;

(ii) in the case of data collected automatically by the Count Equipment but not capable of direct and automatic transmission to the RPC Database or the Preliminary Database (as appropriate), within one (1) calendar month of its collation; and

(iii) in the case of data collected by manual count, within one (1) calendar month of its collation;

- (b) using such systems, in such a format and to such level of disaggregation as the Secretary of State may reasonably require, and in a format which is capable of being read by the RPC Database or the Preliminary Database (as appropriate) (which shall include providing data which is not encrypted);
- (c) either by transmitting such data directly to the RPC Database or the Preliminary Database (as appropriate) or by ensuring that the database provider can pull and transmit such data to the RPC Database or the Preliminary Database (as appropriate), as appropriate according to the nature of the Franchisee's Count Equipment from time to time or by providing such data to the Secretary of State by such other means as the Secretary of State notifies to the Franchisee from time to time; and
- (d) to the extent required by the Secretary of State, by providing the Secretary of State with direct remote access to the system used by the Franchisee to collect such information such that the Secretary of State is able to download such information,

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

- 1.4 The Franchisee shall use any flagging system contained within the RPC Database to highlight such events and occurrences as the Secretary of State may reasonably specify in writing from time to time.
- 1.5 At the same time as the Franchisee provides information in accordance with paragraph 1.1, it shall (if the Secretary of State requests it to so):
 - (a) update any Forecast Passenger Demand accordingly in the same format and to the same level of disaggregation as the Secretary of State requires pursuant to paragraph 1.3(b); and
 - (b) notify the Secretary of State of any such update.

2. Manual Passenger Counts

- 2.1 The Secretary of State shall have the right to require the Franchisee to carry out manual counts in relation to some or all of the Passenger Services at such times as may be required and in such manner (including as to levels of accuracy and the number of days) as may be specified from time to time by the Secretary of State.
- 2.2 The Secretary of State shall be entitled to audit such counts (whether by specimen checks at the time of such counts, verification of proper compliance with the manner approved by the Secretary of State or otherwise). In the event that such audit reveals, in the reasonable opinion of the Secretary of State, a material error, or a reasonable likelihood of material error, in such counts, the Secretary of State may require the counts to be repeated or the results adjusted as the Secretary of State considers appropriate, and in these circumstances the Franchisee shall pay to the Secretary of State the costs of any such audits.

3. Technology for Obtaining the Information referred to in paragraph 1.2

- 3.1 The technology to be used for the purposes of paragraph 1.2 shall be confirmed in accordance with Schedule 20 (IOC Confirmable Obligations).

- 3.2 The technology to be used for the purposes of paragraph 1.2 shall be fitted to the Conventional Rolling Stock or the High Speed Rolling Stock (as applicable) as confirmed in accordance with Schedule 20 (IOC Confirmable Obligations).
- 3.3 Without limiting the Secretary of State's rights under paragraph 1.1 of this Schedule 1.5, the technology used by the Franchisee shall be used to provide counts in respect of, in any period of not less than twelve (12) weeks, at least two (2) of each of the Timetabled Services, and each count shall be carried out on each rolling stock unit comprising a particular train. The Franchisee may only use a method of extrapolation and use extrapolated data to provide a reliable estimate of a full train's count with the Secretary of State's prior written approval of the use of extrapolated data and the method of extrapolation (such approval not to be unreasonably withheld or delayed). The Franchisee shall comply with its obligation under this paragraph 3 from the date(s) such rolling stock is incorporated into the Train Fleet.
- 3.4 The Parties acknowledge that the information supplied under paragraph 1.1 above, and any product of it created by the RPC Database or the Preliminary Database (as appropriate), may constitute Confidential Information to which Schedule 17 (Confidentiality and Freedom of Information) applies.

4. Client Relationship Management (CRM) Data

- 4.1 The Franchisee shall ensure that any CRM System is the property of the Franchisee or is licensed to the Franchisee on terms which have been approved by the Secretary of State (such approval not to be unreasonably withheld or delayed) and that any CRM Data obtained by or on behalf of the Franchisee shall be:
- (a) obtained on terms such that the Franchisee shall be the Data Controller of such data; and
 - (b) the property of the Franchisee.
- 4.2 In relation to any CRM Data obtained by or on behalf of the Franchisee, the Franchisee shall ensure or procure that at the same time as the Franchisee seeks consent to process such CRM Data, the consent of the Data Subject is also sought to such CRM Data being disclosed to any Successor Operator and/or the Secretary of State and processed by any Successor Operator for the same purposes as the Franchisee sought consent to process such CRM Data.
- 4.3 Any consent referred to in paragraph 4.2 shall be sought in such manner as shall from time to time be approved by the Secretary of State (such approval not to be unreasonably withheld or delayed) and shall be on terms such as shall permit, in each case in compliance with the Data Protection Act:
- (a) the Franchisee to disclose such CRM Data to any Successor Operator and/or the Secretary of State; and
 - (b) any such Successor Operator to process such CRM Data in the manner contemplated by paragraph 4.2.
- 4.4 The Franchisee shall not be required to:
- (a) disclose, publish, share or otherwise provide or make available any Personal Data (including CRM Data) to any person (including a Successor Operator or any participant involved with the re-letting of the Franchisee); or
 - (b) provide access to any CRM System,

in each case pursuant to the terms of the Franchise Agreement (together, the **"CRM Obligations"**) if and to the extent that the Franchisee demonstrates to the satisfaction of the Secretary of State that compliance with such CRM Obligations would put the Franchisee, acting as a Data Controller, in contravention of its duties and/or obligations under any Personal Data Legislation.

5. Yield Management Data

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

5.2 If and to the extent that the collection, use and/or processing of any Yield Management Data is subject to the Data Protection Act then paragraphs 4.1(a), 4.2, 4.3, 4.4 and 6 of this Schedule 1.5 shall apply in respect of Yield Management Data in the same way as they apply to CRM Data.

6. Personal Data – General Provisions

6.1 In respect of any Personal Data processed by the Franchisee, including CRM Data, the Franchisee agrees that it shall:

- (a) comply with the Data Protection Act and all other legislation relating to the protection and use of personal information (including the Privacy and Electronic Communications (EC Directive) Regulations 2003) (all such legislation collectively being the **"Personal Data Legislation"**) to the extent that such legislation applies to it; and
- (b) procure that its agents or sub-contractors shall do the same to the extent that such legislation applies to any of them.

6.2 Pursuant to paragraph 6.1, the Franchisee agrees to comply with the Personal Data Legislation in respect of its processing of CRM Data and in particular, but without limitation, the Franchisee shall:

- (a) ensure that CRM Data is processed fairly and lawfully (in accordance with Part 1 of Schedule 1 of the Data Protection Act);
- (b) ensure that CRM Data is obtained only for one or more specified and lawful purposes, and shall not be further processed in any manner incompatible with that purpose or those purposes (in accordance with Part 2 of Schedule 1 of the Data Protection Act); and
- (c) obtain and maintain all appropriate notifications as required under the Data Protection Act.

6.3 In accordance with its capacity as Data Controller of CRM Data and in accordance with the ensuing obligations under the Data Protection Act:

- (a) the Franchisee shall procure that any CRM Data Processor which it appoints shall:
 - (i) prior to any disclosure of CRM Data to the CRM Data Processor, enter into written terms between itself and the Franchisee which are equivalent to those contained in this paragraph 6.3; and

1 **Note to Bidders:** this paragraph is being updated by the Department.

- (ii) process CRM Data only on behalf of the Franchisee, only for the purpose(s) as defined by the Franchisee and only in accordance with instructions received from the Franchisee from time to time;
- (b) the Franchisee shall, and shall procure that any CRM Data Processor which it appoints shall, at all times have in place appropriate technical and organisational measures against unauthorised or unlawful processing of CRM Data and against accidental loss or destruction of, or damage to, CRM Data and that such measures shall:
 - (i) reflect the level of harm, damage and/or distress that might be suffered by the Data Subject to whom the CRM Data relates in the event of a contravention of the measures as set out herein;
 - (ii) ensure that only authorised personnel have access to CRM Data and that any persons authorised to have access to CRM Data will respect and maintain all due confidentiality; and
 - (iii) (in the case of the CRM Data Processor) include compliance with a schedule of minimum security measures pursuant to the written terms between the Franchisee and the CRM Data Processor;
- (c) the Franchisee shall procure that any CRM Data Processor which it appoints shall:
 - (i) promptly notify the Franchisee of any actual or suspected, threatened or 'near miss' incident of accidental or unlawful destruction or accidental loss, alteration, unauthorised or accidental disclosure of or access to the CRM Data or other breach of this paragraph 6.3(c) ("**Security Breach**") and, pursuant to this the Franchisee shall promptly notify the Secretary of State of all Security Breaches by itself or by the CRM Data Processor (the Franchisee hereby acknowledges that whilst the Secretary of State is not Data Controller in respect of the CRM Data, the Secretary of State's legitimate interests given its duties under the Act may be affected in the event of a Security Breach and as such the Secretary of State wishes to be notified of the same); and
 - (ii) promptly provide the Franchisee on request with all reasonable information, assistance and co-operation in relation to its use of the CRM Data, including in relation to any audit by the Franchisee or by any person appointed on its behalf to permit an accurate and complete assessment of compliance with this paragraph 6;
- (d) the Franchisee shall, and shall procure that any CRM Data Processor which it appoints shall, at all times take reasonable steps to ensure the reliability of its/their personnel who have access to the CRM Data and ensure they are aware of the obligations of the Franchisee or the CRM Data Processor (as appropriate) in relation to the same; and
- (e) the Franchisee shall, and shall procure that any CRM Data Processor which it appoints shall, not cause or permit the CRM Data to be transferred to any location outside the European Economic Area (as defined in the Data Protection Act or otherwise as appropriate) without the prior written permission of:
 - (i) (in the case of the Franchisee) the Secretary of State; or
 - (ii) (in the case of any Data Processor appointed by the Franchisee) the Franchisee provided that the Franchisee shall not give any such consent without the prior written permission of the Secretary of State;

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

7. Rail Passenger Counts Database

7.1 Subject to compliance by the Franchisee with its obligations set out in this Schedule 1.5, the Secretary of State shall as soon as reasonably practicable following the Start Date:

- (a) use reasonable endeavours to set up and thereafter maintain the RPC Database;
- (b) use reasonable endeavours to populate the RPC Database with such Actual Passenger Demand information as the Franchisee shall provide pursuant to the Franchisee's obligations contained elsewhere in the Franchise Agreement and any other information that the Secretary of State shall desire; and
- (c) use reasonable endeavours to provide the Franchisee with log-in details to the RPC Database in order to allow the Franchisee to access Actual Passenger Demand information that has been provided by the Franchisee, any Infrastructure Manager Data, any Third Party Data and to generate reports from the RPC Database.

7.2 The RPC Database is not intended to be used as the sole basis for any business decision. The Secretary of State makes no representation as to the accuracy and/or completeness of:

- (a) any data or information contained in the RPC Database;
- (b) the raw Actual Passenger Demand information provided by the Franchisee or any Infrastructure Manager Data or any Third Party Data (as inputted to the RPC Database by whatever means); or
- (c) any product of that Actual Passenger Demand information, Infrastructure Manager Data and/or Third Party Data.

7.3

- (a) The Secretary of State is not liable for:
 - (i) any inaccuracy, incompleteness or other error in Actual Passenger Demand information, Infrastructure Manager Data, Third Party Data or product of the above provided to the Secretary of State by the Franchisee, Infrastructure Manager, NR or a third party; or
 - (ii) any failure of the RPC Database to achieve any particular business result for the Franchisee. For the avoidance of doubt, it is the responsibility of the Franchisee to decide the appropriateness of using the RPC Database to achieve its own business results; or
 - (iii) any loss, destruction, corruption, degradation, inaccuracy or damage of or to the Actual Passenger Demand information following its submission to the RPC Database; or
 - (iv) any loss or damage to the property or assets of the Franchisee (tangible or intangible) as a result of a contravention of paragraph 7.1 of this Schedule 1.5; or

- (v) any indirect, special or consequential loss or damage.
- (b) The Secretary of State's total liability for the duration of the Franchise Agreement in respect of a contravention of its obligations under paragraph 7.1 of this Schedule 1.5 for all other heads of loss or damage which can lawfully be limited shall be limited to the extent to which the Secretary of State is successful in recovering the equivalent loss from such entity to whom the Secretary of State subcontracts its obligations under paragraph 7.1 of this Schedule 1.5 (the "**Subcontractor**"), subject to the following provisions:
 - (i) if reasonably requested by the Franchisee within three (3) months of incurring such loss or damage, the Secretary of State shall use reasonable endeavours to recover the equivalent losses from the Subcontractor;
 - (ii) it shall not be reasonable for the Franchisee to make a request pursuant to paragraph 7.3(b)(i) above if the value of the Franchisee's losses does not exceed ten thousand pounds sterling (**£10,000**) x **RPI** (where RPI is the quotient of the Retail Prices Index for the January which immediately precedes the commencement of the relevant Franchisee Year divided by the Retail Prices Index for January 2019);
 - (iii) prior to accounting to the Franchisee for any sums recovered from the Subcontractor pursuant to this paragraph 7.3(b), the Secretary of State shall be entitled to deduct and retain any reasonable costs and expenses incurred in pursuing such a claim which the Secretary of State does not successfully recover from the Subcontractor; and
 - (iv) the Secretary of State shall be entitled to deduct from any sums recovered from the Subcontractor pursuant to this paragraph 7.3(b) such sum as the Secretary of State reasonably deems appropriate to take account of the Secretary of State's actual or potential liability to other train operating companies pursuant to equivalent arrangements with them, with a view to distributing any sums received from the Subcontractor fairly between the various operators.
- (c) The Franchisee shall use all reasonable endeavours to mitigate any losses incurred by the Franchisee as a result of a contravention by the Secretary of State of the Secretary of State's obligations contained in paragraph 7.1 of this Schedule 1.5.

7.4 The Parties acknowledge that it is intended that the RPC Database will also contain actual passenger demand information relating to franchisees other than the Franchisee but a franchisee shall have access only to information relating to its own franchise (in the case of the Franchisee, via the log on details provided pursuant to paragraph 7.1(c)). For the avoidance of doubt, the licence granted at paragraph 8.6 shall only permit the usage of the RPC Database, Derivative Output and Intellectual Property Rights related to the Actual Passenger Demand information supplied by the Franchisee.

7.5 Without prejudice to Schedule 14.4 (Designation of Franchise Assets), paragraphs 2.1 and 3 of Schedule 15.1 (Reletting Provisions), Schedule 15.4 (Provisions applying on and after Termination) or any other rights of the Secretary of State, the Franchisee agrees that, following the expiry or termination by whatever means of the Franchise Agreement and any Continuation Document, the Secretary of State shall be entitled to allow access to the Franchisee's Actual Passenger Demand information by way of granting access to that area of the RPC Database or otherwise to any future operator of the Passenger Services (whether or not in direct succession to the Franchisee) or to such part of the Actual Passenger Demand information as relates to the part of the franchise which is being taken over by such future operator.

8. Intellectual Property Rights and General Provisions

- 8.1 All Intellectual Property Rights in the RPC Database and Derivative Output shall at all times remain owned by the Secretary of State and to the extent that any rights in the RPC Database vest in the Franchisee by operation of law, the Franchisee hereby assigns such rights to the Secretary of State.
- 8.2 Subject to Schedule 14.4 (Designation of Franchise Assets) and Schedule 15.4 (Provisions applying on and after Termination), all Intellectual Property Rights in the Actual Passenger Demand information will at all times remain owned by the Franchisee and (subject as previously stated) to the extent that any rights in the Actual Passenger Demand information vest in the Secretary of State by operation of law, the Secretary of State hereby assigns such rights to the Franchisee.
- 8.3 All Intellectual Property Rights in the Infrastructure Manager Data will at all times remain owned by the relevant NR entity or Infrastructure Manager entity and to the extent that any rights in the Infrastructure Manager Data vest in the Secretary of State or the Franchisee by operation of law, the Secretary of State and/or the Franchisee (as applicable) will enter into a separate agreement with the relevant Infrastructure Manager entity to assign such rights to it.
- 8.4 All Intellectual Property Rights in the Third Party Data will at all times remain owned by the third party from whom they have been obtained and to the extent that any rights in the Third Party Data vest in the Secretary of State or the Franchisee by operation of law, the Secretary of State and/or the Franchisee (as applicable) will enter into a separate agreement with the relevant Third Party to assign such rights to it.
- 8.5 Subject to Schedule 14.4 (Designation of Franchise Assets) and Schedule 15.4 (Provisions applying on and after Termination), each Party:
- (a) acknowledges and agrees that it shall not acquire or claim any title to any of the other Party's Intellectual Property Rights (or those of the other Party's licensors) by virtue of the rights granted to it under this Agreement or through its use of such Intellectual Property Rights; and
 - (b) agrees that it will not, at any time, do, or omit to do, anything which is likely to prejudice the other Party's ownership (or the other Party's licensors' ownership) of such Intellectual Property Rights.
- 8.6 The Secretary of State hereby grants, for the duration of the Franchise Period, the Franchisee a non-exclusive, non-transferable licence to use:
- (a) the RPC Database;
 - (b) any Derivative Output; and
 - (c) all Intellectual Property Rights in the same,
- in the United Kingdom for the purposes of accessing the Actual Passenger Demand information by using the functionality of the RPC Database.
- 8.7 Without limiting any other rights the Secretary of State may have, the Franchisee hereby grants the Secretary of State a perpetual, non-terminable, non-exclusive licence (which is transferable and/or capable of being sub-licensed in the circumstances set out in this paragraph 8.7) to use the Actual Passenger Demand information and all Intellectual Property Rights in the same:
- (a) by including them in the RPC Database; and/or

- (b) by including them in the Preliminary Database; and/or
- (c) whether included in the RPC Database, the Preliminary Database or in any other format for such purposes as the Secretary of State may reasonably require including for the purposes of assisting the Secretary of State's decision making on train service requirements, infrastructure, station and rolling stock investment, the best use of the network and the alleviation of overcrowding; and/or
- (d) to the extent permitted by the other provisions of the Franchise Agreement to share, disclose, or publish the same and transfer and/or sub-licence and permit the use and sharing, disclosing or publishing for the purposes it is shared or disclosed; and/or
- (e) to allow a future operator of the Passenger Services (whether or not in direct succession to the Franchisee) to view and access such Actual Passenger Demand information (whether via the RPC Database or otherwise) as directly relates to the services that it will be running,

and such rights to use the Actual Passenger Demand information and all Intellectual Property Rights pursuant to this paragraph 8.7 shall continue following expiry or termination of this Agreement.

- 8.8 Paragraphs 7.2, 7.3, 8.1, 8.2 and 8.7 of this Schedule 1.5 shall continue in force after expiry or termination of the Franchise Agreement or any Continuation Document, together with any other provisions which expressly or impliedly continue in force after the expiry or termination of the Franchise Agreement or any Continuation Document.
- 8.9 The Parties intend that the provisions of The Contract (Rights of Third Parties) Act 1999 will apply to allow the relevant NR entity or Infrastructure Manager entity to rely on and enforce against a third party the provisions of paragraph 8.3 of this Schedule 1.5.

SCHEDULE 1.6B

The Rolling Stock

1. Purpose

1.1 This Schedule records the rolling stock vehicles which shall be comprised in the Train Fleet from the Integrated Operator Start Date (Original Rolling Stock shown in Table 1) and further additional rolling stock that will become part of the Train Fleet during the Integrated Operator Term (Specified Additional Rolling Stock shown in Table 2 and Unspecified Additional Rolling Stock shown in Table 3) and key information in relation to it. It includes other requirements in relation to the Train Fleet including in relation to rolling stock testing and commissioning and compliance with the requirements of the Secretary of State in relation to the specification of the Train Fleet including in relation to baby changing facilities and Controlled Emission Toilets.

2. The Composition/Deployment of the Train Fleet

2.1 The Train Fleet consists of:

- (a) from the Integrated Operator Start Date until the lease expiry dates referred to in Column 6 of Table 1 in Appendix 1 to this Schedule 1.6 the rolling stock vehicles set out in Table 1 in Appendix 1 to this Schedule 1.6 ("**Original Rolling Stock**") with the Passenger Carrying Capacity per unit referred to in Column 3 and Column 4 of Table 1 in Appendix 1 to this Schedule 1.6;
- (b) from the dates set out in Column 6 of Table 2 in Appendix 1 to this Schedule 1.6, until the lease expiry dates referred to in Column 7 of Table 2 in Appendix 1 to this Schedule 1.6 the rolling stock vehicles including new build or cascaded rolling stock ("**Specified Additional Rolling Stock**") set out in Table 2, in Appendix 1 to this Schedule 1.6 with the Passenger Carrying Capacity per unit referred to in Column 3 and Column 4 of Table 2; and
- (c) from the relevant dates specified in paragraph 2.3, each Unspecified Additional Rolling Stock.
- (d) NOT USED.

2.2 NOT USED.

2.3 The Franchisee shall by no later than:

- (a) the date which is 12 months prior to each such date specified in Column 1 of Table 3 in Appendix 1 to this Schedule 1.6, enter into Rolling Stock Leases (subject to compliance with all other relevant provisions of this Agreement including in relation to Rolling Stock Related Contracts) in respect of; and
- (b) each date specified in Column 1 of Table 3 in Appendix 1 to this Schedule 1.6, introduce into revenue earning passenger service,

the quantum of rolling stock specified in Column 2 of Table 3 in Appendix 1 to this Schedule 1.6 and which (unless otherwise agreed by the Secretary of State) provides at least the minimum Passenger Carrying Capacity per unit and has at least the minimum reliability, capability and quality characteristics referred to in Column 3, Column 4 and Column 5 (respectively) of the Table 3 in Appendix 1 to this Schedule 1.6 ("**Unspecified Additional Rolling Stock**").

- 2.4 The Passenger Carrying Capacity of any rolling stock vehicles shall be as set out in Tables 1 or 2 or 3 in Appendix 1 to this Schedule 1.6 or as determined by the Secretary of State in accordance with paragraph 3.4 of this Schedule 1.6 (as applicable).
- 2.5 The Franchisee shall procure that the rolling stock vehicles described in the Tables 1 or 2 or 3 in Appendix 1 to this Schedule 1.6, with the capacity and other characteristics referred to there, are available for deployment in the provision of the Passenger Services to the extent required by the Timetable and Train Plan during the periods referred to therein.

3. Changes to the Train Fleet

- 3.1 The Franchisee shall maintain the composition of the Train Fleet during the Integrated Operator Period, 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.
- 3.2 NOT USED.
- 3.3 During the Integrated Operator Period, 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 (3) consecutive Reporting Periods or more.
- 3.4 If any change is made to the Train Fleet in accordance with this Schedule 1.6, the Secretary of State may, after consulting the Franchisee, determine the Passenger Carrying Capacity of any rolling stock vehicles or class of rolling stock vehicles comprising the Train Fleet following such change. The Secretary of State shall notify the Franchisee of the Secretary of State's determination of any such Passenger Carrying Capacity.

4. Rolling Stock Testing and Commissioning

- 4.1 The Franchisee shall, to the extent reasonably requested by the Secretary of State and (other than as required pursuant to the provisions of paragraph 43 of Schedule 18.2 (Accepted Programme Specific Requirements) subject to payment of the Franchisee's reasonable costs by the relevant third party or by the Secretary of State, co-operate with any third party which the Secretary of State may specify (including a Successor Operator, a rolling stock vehicle manufacturer or any Infrastructure Manager 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).
- 4.2 The co-operation referred to in paragraph 4.1 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.

5. Controlled Emission Toilets

- 5.1 The Franchisee shall ensure that all rolling stock vehicles comprised in the Train Fleet used for the provision of the Passenger Services which have on board toilet facilities shall be fitted with Controlled Emission Toilets with a tank capacity sufficient for the requirements of the Passenger Services so that all rolling stock vehicles which have on board toilets are exclusively fitted with Controlled Emission Toilets. Any newly built rolling stock which becomes part of the Train Fleet which have on board toilet facilities shall be fitted exclusively with Controlled Emission Toilets.
- 5.2 The Franchisee shall ensure that the contents of the toilet retention tanks relating to each Controlled Emission Toilet fitted on rolling stock vehicles in accordance with the requirements of paragraph 5.1 are disposed of in a safe and hygienic manner at suitable facilities designed for these purposes including at Depots and stabling points.

6. Baby Changing Facilities

- 6.1 The Franchisee shall ensure that each train operated by the Franchisee in delivering the Passenger Services that is fitted with toilet facilities is also fitted with such number of baby change facilities as is necessary to be compliant with the requirements of the PRM TSI.

7. Measurement of Traction Energy Usage

- 7.1 The Franchisee shall ensure that all rolling stock units that form part of the Train Fleet are able to measure and monitor fuel use as soon as reasonably practicable, and in the case of electric traction, enable the Franchisee to be a **"Metered Train Operator"** as defined by Network Rail's Traction Electricity Rules.

APPENDIX 1 TO SCHEDULE 1.6B

The Composition of the Train Fleet

The tables in this Appendix (or equivalent replacement tables) will be populated in accordance with Schedule 20 (IOC Confirmable Obligations).

1. Original Rolling Stock

Explanatory Note A: Where in Column 6 both a Scheduled Lease Expiry Date and an Early Redelivery Date are specified in relation to one or more specified units (each being a "**Specified Unit**") the Lease Expiry Date for the Specified Units shall be the Early Redelivery Date provided that where any unit shown in Table 2 or Table 3 below as replacing any Specified Unit from the Early Delivery Date is delivered after the Early Redelivery Date such Specified Unit shall remain in the Train Fleet until the relevant Scheduled Lease Expiry Date or such earlier date as the Secretary of State acting reasonably may agree.

Table 1 (Original Rolling Stock)								
Column 1	Column 2	Column 3		Column 4		Column 5	Column 6	
Class of vehicle/unit	Number of vehicles in fleet and unit configuration	Standard Class Passenger Carrying Capacity per unit		First Class Passenger Carrying Capacity per unit		Owner/Lessor	Lease expiry date(s) (See Explanatory Note A above)	
		Seats	Wheelchair spaces	Seats	Wheelchair Spaces		Scheduled Lease Expiry Date	Early Redelivery Date (if any)

2. Specified Additional Rolling Stock

Table 2 (Specified Additional Rolling Stock)									
Column 1	Column 2	Column 3		Column 4		Column 5	Column 6	Column 7	Column 8
Class of vehicle /unit	Number of vehicles in fleet and unit configuration	Standard Class Passenger Carrying Capacity per unit		First Class Passenger Carrying Capacity per unit		Owner/Lessor	Lease start date(s)	Lease expiry date(s)	Identity of any unit in Table 1 (Original Rolling Stock) intended to be replaced by the Specified Additional Rolling Stock and the date of replacement
		Seats	Wheelchair spaces	Seats	Wheelchair spaces				

3. Unspecified Additional Rolling Stock

Table 3 (Unspecified Additional Rolling Stock)							
Column 1	Column 2	Column 3		Column 4		Column 5	Column 6
Date of introduction into revenue earning passenger service	Number of vehicles in fleet and unit configuration	Standard Class Passenger Carrying Capacity per unit		First Class Passenger Carrying Capacity per unit		Characteristics (e.g. minimum reliability, capability and quality such as CET, automated passenger counts or other characteristics of the rolling stock)	Identity of any unit in Table 1 (Original Rolling Stock) intended to be replaced by the Unspecified Additional Rolling Stock and the date of replacement
		Seats	Wheelchair spaces	Seats	Wheelchair spaces		

SCHEDULE 1.7B

Stations

1. Station Asset Management

1.1 NOT USED.

1.2 NOT USED.

1.3 NOT USED.

1.4 The Franchisee shall, from the Integrated Operator Start Date, subject to paragraph 1.10, continue to comply with the Station Asset Management Plan created, and as updated from time to time, by the Franchisee pursuant to paragraph 1 of Schedule 1.7A (Stations).

1.5 The Station Asset Management Plan shall:

- (a) include the information set out in paragraph 1.6; and
- (b) meet the requirements of paragraph 1.7,

and it shall be reasonable for the Secretary of State to not approve a plan which does not include such information or meet such requirements.

1.6 The Franchisee shall ensure that the Station Asset Management Plan in relation to each Station shall include the following:

- (a) the details of all maintenance, repair and renewal activity undertaken by the Franchisee since the Start Date;
- (b) the details of any maintenance, repair and renewal activity which the Franchisee has not completed or not completed within the specified time frame set out in any Station Asset Management Plan together with reasons;
- (c) the details of the maintenance, repair and renewal activity undertaken since the Start Date or planned by the Infrastructure Manager, any Local Authority, any Community Rail Partnership and any other relevant stakeholder, which the Franchisee is aware of;
- (d) the assumptions that the Franchisee has made about the current state and future degradation of assets at the Station at the time the Station Asset Management Plan was prepared or, if an asset becomes an asset at the Station on a later date, the assumptions of the Franchisee about the current state and future degradation of each relevant asset on the date that it becomes such an asset at the Station;
- (e) the details of under and over provision of assets at the Station at the time the Station Asset Management Plan was prepared given current and projected future customer volumes and characteristics, reasonable customer demands and any implications of the commencement or operation of the Passenger Services from the High Speed Start Date and the High Speed Established Services Date and planned enhancements or removals to accommodate changing customer volumes and characteristics, reasonable customer demands and any implications of the commencement or operation of the Passenger Services from the High Speed Start Date and the High Speed Established Services Date;

- (f) the plans for improving the environmental performance of Stations, including where appropriate, plans for:
 - (i) energy metering and data management, including measurement and verification plans for measures adopted;
 - (ii) lighting and lighting controls;
 - (iii) heating and heating controls;
 - (iv) auxiliary power uses;
 - (v) other energy efficiency measures;
 - (vi) renewable energy generation;
 - (vii) water efficiency measures;
 - (viii) waste reduction;
 - (ix) identification of opportunities for recycling or reuse of assets; and
 - (x) identification of opportunities for local sourcing of assets and asset materials;
- (g) the plans to ensure that delivery of Station Services is resilient to periods of extreme weather and minimises disruption to passengers;
- (h) the plans to ensure that maintenance, repair, renewal, enhancement and other building works to be carried out at such Stations is consistent with:
 - (i) the Principles of Inclusive Design; and
 - (ii) the Security in the Design of Stations Guidance; and
- (i) the plans to ensure that activity at such Stations is consistent with the Network Rail Asset Management Policy.

1.7 In addition, the Franchisee shall ensure that the Station Asset Management Plan:

- (a) shall cover a period of no less than forty (40) years from the date that it is created or revised and updated in accordance with this Schedule 1.7, as if the Franchisee was to operate each of the Stations for such forty (40) year period; and
- (b) is developed in accordance, and complies, with guidance and policies (including the guidance documents known as "*Subject Specific Guidelines*" published by the Institute of Asset Management (or such appropriate replacement guidance) which are commensurate with those that would be referred to by a competent, skilled and experienced train operator using an asset management planning approach, in particular in respect of the balance of maintenance and renewal of each asset type.

1.8 Any amendments to the Station Asset Management Plan must be agreed by the Secretary of State (such consent not to be unreasonably withheld or delayed).

1.9 The Franchisee shall ensure that all renewal, enhancement and other building works at Stations are implemented in accordance with the Principles of Inclusive Design.

1.10 Updating the Station Asset Management Plan

- (a) By no later than:
- (i) each anniversary of the Integrated Operator Start Date; and
 - (ii) as soon as reasonably practicable on each occasion (if any) that an additional station or New Station becomes a Station (for example, as a result of remapping),
- the Franchisee shall have reviewed the Station Asset Management Plan and shall submit to the Secretary of State for approval (such approval not to be unreasonably withheld or delayed) a draft updated version of the Station Asset Management Plan.
- (b) The updated draft Station Asset Management Plan shall include and reflect the following:
- (i) a schedule of any revisions to the current Station Asset Management Plan and a brief summary of the rationale supporting any change for review and approval by the Secretary of State;
 - (ii) any changed and developing circumstances and the requirements of the Station Asset Management Plan Accreditation;
 - (iii) where relevant, the outcomes of, and the Franchisee's responses to the stakeholder consultation process described in paragraph 4; and
 - (iv) the information required in accordance with paragraphs 1.6 and 1.7 of this Schedule 1.7 save that the reference to the "*Start Date*" in paragraph 1.6(a) shall be read as the date on which the Station Asset Management Plan is reviewed and updated by the Franchisee in accordance with this paragraph 1.10 of this Schedule 1.7.
- (c) If:
- (i) the Secretary of State approves an updated draft Station Asset Management Plan submitted to it pursuant to paragraph 1.10(a), such document shall become the then current Station Asset Management Plan; or
 - (ii) the Secretary of State does not approve an updated draft Station Asset Management Plan submitted to it pursuant to paragraph 1.10(a), then the Franchisee shall make:
 - (A) such amendments to it as the Secretary of State shall reasonably direct; and
 - (B) provide such additional information as the Secretary of State may reasonably require.
- (d) The Franchisee shall put in place such arrangements as are necessary (to the reasonable satisfaction of the Secretary of State) to ensure that the Station Asset Management Plan is (and continues to be maintained) in a format acceptable to the Secretary of State which is capable of being transferred to a Successor Operator as part of the Handover Package so that the Successor Operator is able to access, use and amend the Station Asset Management Plan using the same format.

1.11 Station Asset Management Plan Accreditation Certificate

- (a) The Franchisee shall maintain the Station Asset Management Plan Accreditation required to be achieved in accordance with paragraph 1.11(a)(i) of Schedule 1.7A (Stations) for the remainder of the Franchise Period.
- (b) If the Station Asset Management Plan Accreditation is at any time lost or the Franchisee fails to secure such then the Franchisee shall report that fact to the Secretary of State as soon as reasonably practicable and in any event within ten (10) Weekdays of the Franchisee becoming aware of such fact.
- (c) From the date upon which the Franchisee notified the Secretary of State pursuant to paragraph 1.11(b) (or should have notified the Secretary of State having complied with the provisions of this Agreement), the Franchisee shall:
 - (i) re-secure such accreditation as soon as reasonably practicable and in any case within three (3) months; and
 - (ii) report to the Secretary of State every Reporting Period on the measures it is proposing to take, and is taking, to achieve such restoration of the Station Asset Management Plan Accreditation.
- (d) Where the Franchisee fails to secure the Station Asset Management Plan Accreditation pursuant to paragraph 1.11(c) within three (3) months of the date of such accreditation being lost or failed to be secured (as the case may be) such failure shall constitute a contravention of the Franchise Agreement and the Secretary of State may issue a Remedial Plan Notice pursuant to Schedule 10.1 (Procedure for remedying a Contravention of the Franchise Agreement) and the provisions of Schedule 10 (Remedies, Events of Default and Termination Events) shall apply.

2. Grey Assets

2.1

- (a) The Franchisee shall use all reasonable endeavours to agree an updated and comprehensive list of all Grey Assets with each Infrastructure Manager within twelve (12) months of the Integrated Operator Start Date.
- (b) If at any time during the Integrated Operator Period the Franchisee reasonably considers that an asset not included in the list prepared pursuant to paragraph 2.1(a) is a Grey Asset it shall notify the Infrastructure Manager accordingly and use all reasonable endeavours to agree whether or not such asset should be considered to be a Grey Asset as soon as reasonably practicable.

2.2 If the Franchisee reaches agreement with the Infrastructure Manager that any asset is a Grey Asset pursuant to paragraph 2.1 above the Franchisee shall:

- (a) consult with the Infrastructure Manager and, where reasonably necessary and agreed by the Infrastructure Manager, carry out a joint inspection of each such Grey Asset; and
- (b) use all reasonable endeavours to agree with the Infrastructure Manager the proper allocation of responsibility in relation to each such Grey Asset (including whether such Grey Asset falls within or outside the boundary of an area subject to a Station Lease) on a reasonable basis consistent with the document entitled "*The Secretary of State's baseline principles for establishing asset responsibilities at stations*" (as it may be updated from

time to time). The Franchisee shall use all reasonable endeavours to reach such agreement as soon as reasonably practicable and in any event within twenty four (24) months of any such asset being identified to the Infrastructure Manager as a Grey Asset in the case of Grey Assets identified pursuant to paragraph 2.1(b).

- 2.3 Where the Franchisee is unable to agree with the Infrastructure Manager the proper allocation of responsibility under the relevant Station Lease in relation to any Grey Asset pursuant to paragraph 2.2(b) (including whether such Grey Asset falls within or outside the boundary of an area subject to a Station Lease), the Franchisee shall refer such matter to the dispute resolution process under the terms of the relevant Station Lease.
- 2.4 The Franchisee shall ensure, that where the allocation of responsibility for a Grey Asset is agreed pursuant to paragraph 2.2 or determined pursuant to paragraph 2.3), such Grey Asset is:
- (a) to the extent that a Station Asset Management Plan has not been submitted to the Secretary of State as at the date of such agreement or determination (as the case may be), included in the Station Asset Management Plan to be submitted to the Secretary of State pursuant to paragraph 1.10; or
 - (b) to the extent that a Station Asset Management Plan has been submitted to the Secretary of State as at the date of such agreement or determination (as the case may be), is included in the next update to the Station Asset Management Plan to be submitted to the Secretary of State pursuant to paragraph 1.10 immediately after the date of such agreement or determination.
- 2.5 The Franchisee shall use all reasonable endeavours to ensure that the allocation of responsibility for each Grey Assets agreed pursuant to paragraph 2.2 or determined pursuant to paragraph 2.3 shall be recorded via an amendment to the Station Lease and, where applicable, by an amendment to the relevant Station Access Conditions as soon as reasonably practicable and in any event within thirty-six (36) months of the date upon which allocation of responsibility for each such Grey Asset is so agreed or determined. The Franchisee shall obtain the prior written consent of the Secretary of State to any such amendment to the Station Lease and/or Station Access Conditions.

3. Station Social and Commercial Development Plan

- 3.1 The Franchisee shall implement, resource and comply with the Station Social and Commercial Development Plan for the duration of the Franchise Term that as a minimum must:
- (a) provide the Franchisee's initial view of potentially suitable sites at Stations to be refurbished for use by community groups and social enterprises for commercial development;
 - (b) be for a period of 10 years and be reviewed on a rolling basis; and
 - (c) set out how the Franchisee shall:
 - (i) identify schemes to develop currently redundant or under-utilised station buildings and facilities for use by community groups and social enterprises or for commercial development including schemes which sustain and enhance the viability of existing facilities at Stations or lead to the development of new facilities including through appropriate sub-leasing of Station buildings;

- (ii) consult with customers and the community on the concerns, issues, opportunities and risks relating to the Stations and the priorities for investment;
- (iii) effectively evaluate, prioritise and develop such schemes taking account of customer and community views; and
- (iv) implement the schemes in accordance with their allocated priority.

3.2 Any amendments to the Station Social and Commercial Development Plan must be agreed by the Secretary of State in accordance with this paragraph 3.

3.3 By no later than the end of the first Franchisee Year after the Integrated Operator Start Date, and on each subsequent anniversary of this date, the Franchisee shall submit to the Secretary of State for approval (such approval not to be unreasonably withheld) a revised Station Social and Commercial Development Plan updated in accordance with the requirements of paragraph 3.4 below.

3.4 Each updated version of the Station Social and Commercial Development Plan shall:

- (a) incorporate a schedule of any revisions made to the previous Station Social and Commercial Development Plan and a brief summary of the rationale supporting those revisions;
- (b) appropriately reflect changed and developing circumstances where relevant; and
- (c) appropriately reflect the outcomes of, and the Franchisee's responses to, the Stakeholder consultation process described in paragraph 4, below.

3.5 The Franchisee shall ensure that the Station Social and Commercial Development Plan shall be updated so that following each update it continues to cover at least a period of ten (10) years from the date of the update.

3.6 If:

- (a) the Secretary of State approves an updated draft Station Social and Commercial Development Plan submitted to it pursuant to paragraph 3.3, such document shall become the then current Station Social and Commercial Development Plan; or
- (b) the Secretary of State does not approve an updated draft Station Social and Commercial Development Plan submitted to it pursuant to paragraph 3.3, then the Franchisee shall:
 - (i) make such amendments to it as the Secretary of State shall reasonably direct; and
 - (ii) provide such additional information as the Secretary of State may reasonably require.

4. Consultations

4.1 On or before the annual submission of the Station Asset Management Plan or the Station Social and Commercial Development Plan pursuant to the provisions of this Schedule 1.7, the Franchisee shall conduct consultations with relevant Stakeholders (including ACoRP, passengers, users of Stations, members of relevant local communities, Network Rail and the British Transport Police) in relation to the potential risks, opportunities and priorities for investment and operational efficiencies in relation to Stations. The Franchisee shall act reasonably in determining the scope of the specification of such consultations including the Stations to be considered.

5. NOT USED.

6. Security at Stations

- 6.1 The Franchisee shall maintain for the duration of the Integrated Operator Period the Secure Stations Accreditation for the Stations already achieved by the Franchisee during the ICWC Period as set out in Appendix 1 to this Schedule 1.7.
- 6.2 The Franchisee shall maintain for the duration of the Integrated Operator Period the Secure Car Parks Accreditation for the Stations already achieved by the Franchisee during the ICWC Period as set out in Appendix 1 to this Schedule 1.7.
- 6.3 In the event that the TRH Score for a Station increases by five per cent (5%) or more from the previous year's TRH Score for such Station, the Franchisee shall:
- (a) in respect of a Station that does not have Secure Station Accreditation, notify the Secretary of State of such increase and, as soon as reasonably practicable, obtain Secure Station Accreditation for such Station. The Franchisee shall notify the Secretary of State once such Secure Station Accreditation has been obtained and shall maintain the same through the Franchise Term; or
 - (b) in respect of a Station that already has Secure Station Accreditation (either pursuant to paragraph 6.1 above, or because the Franchisee has been required to obtain Secure Station Accreditation pursuant to paragraph 6.3(a) above), notify the Secretary of State of such increase and the provisions of paragraph 6.5 shall apply.
- 6.4 Upon the Secretary of State receiving notification pursuant to paragraph 6.4(b) above, the Secretary of State may, following consultation with the British Transport Police, revoke the Secure Station Accreditation for such Station. For the avoidance of doubt, revocation of Secure Station Accreditation pursuant to this paragraph 6.5 shall constitute a contravention of the Franchise Agreement by the Franchisee.
- 6.5 Where a Station loses its Secure Station Accreditation (whether pursuant to paragraph 6.5 or otherwise) the Franchisee shall:
- (a) obtain Secure Station Accreditation for such Station as soon as reasonably practicable, in any event no later than 12 months from and including the date of the loss of such Secure Station Accreditation, and notify the Secretary of State that such Secure Station Accreditation has been achieved; and
 - (b) maintain such Secure Station Accreditation once obtained for the duration of the Franchise Term.
- 6.6 In this paragraph 6:
- (a) **"BTP Methodology"** means the document in the agreed form marked BTP Methodology;
 - (b) **"Secure Car Parks Accreditation"** means car parks at Stations which have achieved accreditation under the Secure Car Parks Scheme;
 - (c) **"Secure Car Parks Scheme"** means the scheme run by the British Parking Association that sets design and management safety standards for crime reduction at car parks, also known as Park Mark;

- (d) **"Secure Stations Accreditation"** means Stations which have achieved accreditation under the Secure Stations Scheme;
- (e) **"Secure Stations Scheme"** means the certification scheme which is managed by the Department for Transport and British Transport Police and sets station design and management safety standards for crime reduction and supporting vulnerable people at railway stations; and
- (f) **"TRH Score"** means the threat, risk harm score for each Station calculated by the British Transport Police in accordance with the BTP Methodology.

7. Information about Station Improvement Measures

- 7.1 The Franchisee shall at all times during the Franchise Period maintain records in relation to the measures taken by it to improve the Station environment at each of the Stations, covering the areas and the information set out in Appendix 2 to this Schedule 1.7.
- 7.2 The Franchisee shall, subject to paragraph 7.3, provide to the Secretary of State the information set out in Appendix 2 to this Schedule 1.7 within one (1) Reporting Period of each anniversary of the Start Date during the Franchise Period.
- 7.3 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 as is reasonably specified by the Secretary of State; and
 - (b) any particular Station as is reasonably specified by the Secretary of State.
- 7.4 The information to be provided by the Franchisee to the Secretary of State within the timescales stipulated are set out in Appendix 2 to this Schedule 1.7.

8. NOT USED.

9. Station Investment

- 9.1 The Franchisee shall at all times during the Integrated Operator 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.
- 9.2 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) where requested by the Secretary of State to do so use all reasonable endeavours to engage with Network Rail for the purposes of ascertaining the feasibility and costs of

making amendments to any Station Leases in order to facilitate the implementation of those opportunities.

10. CCTV

10.1 The Franchisee shall ensure that any installation of, or upgrade to, CCTV at any Station shall be undertaken in accordance with the CCTV Guidance.

11. Station Toilet Access

11.1 The Franchisee shall ensure that access to toilet facilities at all Stations is provided free of charge.

APPENDIX 1 TO SCHEDULE 1.7B

**List of Stations and Car Parks with Secure Stations Accreditation
and Secure Car Parks Accreditation**

1. Secure Stations Accreditation

Birmingham International
Carlisle
Coventry
Crewe
Lancaster
Macclesfield
Oxenholme
Penrith
Preston
Rugby
Runcorn
Stafford
Stockport
Stoke-on-Trent
Warrington Bank Quay
Wigan North Western

2. Secure Car Parks Accreditation

Birmingham International
Carlisle
Coventry
Crewe
Lancaster
Macclesfield
Oxenholme
Penrith
Preston
Rugby
Runcorn
Stafford
Stoke-on-Trent
Warrington Bank Quay
Wigan North Western

APPENDIX 2 TO SCHEDULE 1.7B

Information about Station Improvement Measures²

Table A		
Column 1	Column 2	Column 3
Information to be provided	Information (format)	When information to be provided
		As per paragraph 7.2 but subject to paragraph 7.3.

² **Note to Bidders:** The below table shall be populated with the same information as in Schedule 1.7A prior to contract signature.

APPENDIX 3 TO SCHEDULE 1.7B

NOT USED

APPENDIX 4 TO SCHEDULE 1.7B

NOT USED

SCHEDULE 2B

ASSETS, LEASES, OTHER FRANCHISEES AND SCHEMES

Schedule 2.1B:	Asset Vesting and Transfer
Schedule 2.2B:	Security of Access Agreements, Rolling Stock Leases, Station and Depot Leases
Schedule 2.3B:	Other Franchisees
Schedule 2.4B:	NOT USED
Schedule 2.5B:	Transport, Travel and Other Schemes
	Appendix 1: List of Transport, Travel and Other Schemes

SCHEDULE 2.1B

Asset Vesting and Transfer

1. NOT USED

2. Vesting of Property Leases during the Integrated Operator Term

2.1 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.

2.2 In respect of the new Property Leases specified in paragraph 2.3 or any other new Property Lease with the relevant Infrastructure Manager, 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).

2.3 The Franchisee shall enter into the following leases with the relevant Infrastructure Manager (to the extent that such leases have not already been entered into by the Franchisee in accordance with paragraph 2.3 of Schedule 2.1A (Asset Vesting and Transfer)):

- (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 Infrastructure Manager 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.

2.4 The Franchisee shall not be in contravention of paragraph 2.3 if and to the extent that the relevant Infrastructure Manager refuses to enter into any leases specified therein.

- 2.5 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.
- 2.6 The Franchisee shall use all reasonable endeavours to ensure that any Station Lease that it enters into accurately records all fixtures and fittings in relation to such Station Lease.

SCHEDULE 2.2B

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 the Secretary of State 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 the Secretary of State's 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 the Secretary of State's nominee shall be obliged, in connection with the novation, to agree to assume responsibility for any unperformed obligation, liability or consequences of a contravention 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 the Secretary of State may direct, subject, to the extent applicable, to the consent of the ORR. The provisions of paragraph 1.3 shall apply to any such novation.

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

2. Rolling Stock Related Contracts and Insurance Arrangements

2.1 The Franchisee shall not:

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

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

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

- (a) 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));
- (b) the terms proposed by any person providing finance in relation to the relevant rolling stock (including cash flows);
- (c) 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;
- (d) 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; and
- (e) a detailed justification of the Franchisee's proposed maintenance strategy for the relevant rolling stock and/or the Franchisee's analysis of the whole life costs of the relevant rolling stock.

2.3 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).

2.4 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 Integrated Operator Start Date; or
- (b) enter into any new insurance arrangements after the Integrated Operator 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**").

2.5 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. Cascaded Rolling Stock and Delayed Cascade Mitigation Plan

3.1 For the purpose of this paragraph 3:

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

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

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

"Relevant Rolling Stock" means rolling stock to be acquired by another Train Operator which, when acquired, will initiate the **"cascade"** of rolling stock that directly or indirectly makes the Cascaded Rolling Stock available for use by the Franchisee.

3.2 Without limiting paragraph 2.1 (*Rolling Stock Related Contracts and Insurance Arrangements*), where the rolling stock to be leased by the Franchisee under any Rolling Stock Lease is Cascaded Rolling Stock the Secretary of State may:

(a) as a condition of giving the Secretary of State's consent to the Franchisee executing such Rolling Stock Lease, require that such Rolling Stock Lease contains a provision whereby, in the event of a Relevant Delay, the Secretary of State may require that such Cascaded Rolling Stock can continue to be used by the Prior Train Operator during such period as the Secretary of State shall specify. Without limitation this may include the Franchisee subleasing the Cascaded Rolling Stock back to the Prior Train Operator and/or a delay to the date on which the Cascaded Rolling Stock is required to be delivered to the Franchisee under such Rolling Stock Lease; and

(b) where the Secretary of State requires such a provision to be included in the relevant Rolling Stock Lease, if a Relevant Delay occurs, require the Franchisee to make the Cascaded Rolling Stock available for use by the Prior Train Operator during such period as the Secretary of State may require.

3.3 Where the Secretary of State exercises the Secretary of State's right pursuant to paragraph 3.2 (b) to make Cascaded Rolling Stock available for use by the Prior Train Operator during a specified period there shall be a Change.

3.6 NOT USED.

3.7 Where the Secretary of State exercises the Secretary of State's right pursuant to paragraph 3.2(b) to require the Franchisee to make the Cascaded Rolling Stock available for use by the Prior Train Operator during a specified period, the Franchisee shall not be liable for any failure to comply with its obligations under the Franchise Agreement to the extent that:

(a) such failure to comply arises directly as a result of the Franchisee being unable to use the Cascaded Rolling Stock; and

(b) the Franchisee uses all reasonable endeavours to comply with the relevant obligations notwithstanding the unavailability of the Cascaded Rolling Stock.

- 3.8 The Franchisee shall notify the Secretary of State as soon as reasonably practicable if it becomes aware of any material risk that a Relevant Delay will occur. If a Relevant Delay does occur the Franchisee shall use all reasonable endeavours to mitigate the impact on the delivery of the Franchise Services of the unavailability of the Cascaded Rolling Stock at the expected time including by identifying and proposing value for money alternative sources of replacement rolling stock.
- 3.9 If a Relevant Delay has occurred or the Secretary of State believes that there is a material risk that a Relevant Delay will occur the Secretary of State may serve a notice on the Franchisee requiring it to produce a plan to a reasonable specification provided with the notice to remedy or mitigate the impact of the delayed availability of the Cascaded Rolling Stock ("**Delayed Cascade Mitigation Plan**"). Such specification may include measures to be implemented by the Franchisee to mitigate the direct or indirect impact of the Relevant Delay on the Prior Train Operator or any other affected Train Operator. The Delayed Cascade Mitigation Plan shall provide a comprehensive analysis backed by relevant data and assumptions of:
- (a) all cost and revenue and other financial implications of options contained within it including the potential implications for Franchise Payments;
 - (b) the implications (if any) for the Benchmarks; and
 - (c) the likely impact of options within it for existing and future passenger journeys and journey opportunities.
- 3.10 The Franchisee shall meet with the Secretary of State to discuss the Delayed Cascade Mitigation Plan and provide such further information or analysis and further iterations of the Delayed Cascade Mitigation Plan as the Secretary of State shall reasonably require.
- 3.11 Where any rolling stock vehicles cease to be part of the Train Fleet but are acquired by another Train Operator for use in delivering passenger services the Franchisee shall:
- (a) ensure that:
 - (i) such rolling stock is in an acceptable redelivery condition consistent with the hand back terms agreed with the lessor;
 - (ii) a complete set of maintenance and mileage records are handed over in a suitable format; and
 - (iii) the Train Operator is given reasonable access to the relevant rolling stock prior to handover to assist with an effective hand over in relation to both operation and maintenance; and
 - (b) use reasonable endeavours to ensure that:
 - (i) the Train Operator is offered 'knowledge transfer' sessions to enable recipient engineers and operational personnel to learn from informed peers;
 - (ii) the Train Operator is offered on-train development programmes to train their maintenance staff to an appropriate level of competence; and
 - (iii) it offers medium-term support and advice in relation to such rolling stock including technical and operational support.

4. Assignment of Property Leases during the Franchise Term

- 4.1 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 the Secretary of State may direct, subject where applicable to the agreement of any other party to such Property Lease or the ORR.
- 4.2 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 the Secretary of State's nominee agrees to assume responsibility for such unperformed obligation, such liability or the consequences of such antecedent breach in connection with the relevant assignment); and
 - (b) that neither the Secretary of State nor the Secretary of State's nominee shall be obliged, in connection with such assignment, to agree to assume responsibility for any unperformed obligation, liability or consequences of a contravention referred to in paragraph 4.2(a), and the Franchisee shall indemnify the Secretary of State or the Secretary of State's nominee, as the case may be, on an after-tax basis against any costs, losses, liabilities or expenses suffered or incurred in relation thereto.
- 4.3 The Franchisee shall, on the occurrence of any of the circumstances specified in paragraph 4.1 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 the Secretary of State may direct, subject, where applicable, to the consent of the relevant Infrastructure Manager. The provisions of paragraph 4.2 shall apply to any such assignment.
- 4.4 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 4.

5. Station and Depot Leases

- 5.1 The Franchisee shall at all times enforce its rights under each Station Lease and Depot Lease.
- 5.2 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).

6. Station Subleases

6.1 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.

6.2 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 6.2(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 the relevant Infrastructure Manager (and, if required, the relevant sub-lessee) and to the duration of the relevant Station Lease.

6.3 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 (3) months after the date of such notice.

7. Station/Depot Change Proposals

7.1 The Franchisee shall promptly notify the Secretary of State on receipt of any Depot Proposal for Change or Station Proposal for Change (as the case may be) and shall provide with such notification:

- (a) all the documents relating to any such Depot Proposal for Change or Station Proposal for Change (as the case may be); and
- (b) a report which sets out the Franchisee's view of the impacts (if any) of any such Depot Proposal for Change or Station Proposal for Change (as appropriate) on the provision of the Franchise Services (including any impacts on revenue and costs) and how the Franchisee proposes to respond to such Depot Proposal for Change or Station Proposal for Change.

7.2 If and to the extent requested by the Secretary of State the Franchisee shall, following such consultation with the Secretary of State as the Secretary of State may require:

- (a) respond to any Depot Proposal for Change or Station Proposal for Change (as the case may be) as may be directed by the Secretary of State; and
- (b) exercise such rights as it may have under the relevant Property Lease or Access Agreement in such manner and take such action as the Secretary of State may require in relation to any Station Proposal for Change or Depot Proposal for Change (including in relation to any agreement of the amount of any compensation payable whether under condition C3.4 of the Station Access Conditions or condition C3.2 of the Depot Access Conditions (as appropriate) or otherwise and including submitting any relevant dispute to any relevant dispute resolution procedures). The Franchisee shall not, without the consent of the Secretary of State, agree or propose to agree a value in relation to any indemnity or other compensation payable in relation to any Station Proposal for Change or Depot Proposal for Change whether under condition C3.4 of the Station Access Conditions or condition C3.2 of the Depot Access Conditions (as appropriate) or otherwise.

7.3 The Franchisee shall ensure that any claim it makes pursuant to paragraph 7.2(b) is disaggregated such that any claims relating to loss of revenue and increased costs are separately identified in any such claim. The Franchisee shall not amend and/or agree or propose to amend, the provisions relating to the payment of compensation under condition C3.4 of the Station Access Conditions or condition C3.2 of the Depot Access Conditions or equivalent (as appropriate) (including by agreeing or proposing to agree any commercial agreements or arrangements which will have the effect of excluding the application of the provisions of condition C3.4 of the Station Access Conditions or condition C3.2 of the Depot Access Conditions or equivalent (as appropriate)) without the consent of the Secretary of State.

SCHEDULE 2.3B

Other Franchisees

1. Other Franchisees

- 1.1 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.
- 1.2 The benefit of any arrangements of the type referred to in paragraph 1.1(b) shall be provided on substantially the same terms as previously obtained by the relevant franchisee, subject to clause 14.8 (*Arm's Length Dealings*) and paragraph 1.3 of this Schedule 2.3, provided that the Secretary of State may exclude or modify any terms agreed or amended by such franchisee in the twelve (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.
- 1.3 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.
- 1.4 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.
- 1.5 References in this paragraph 1 to **"a franchisee"** include references to any franchise operator of that franchisee.

SCHEDULE 2.4B

NOT USED

SCHEDULE 2.5B

Transport, Travel and Other Schemes

1. Local Authority Concessionary Travel Schemes

- 1.1 The Franchisee shall, subject to paragraph 1.3:
- (a) participate in and comply with its obligations under:
 - (i) the concessionary travel schemes listed in Appendix 1 (List of Transport, Travel and Other Schemes) to this Schedule 2.5; and
 - (ii) any other concessionary travel scheme which the Franchisee is required to participate in during the Franchise Term pursuant to paragraph 1.1(b); and
 - (b) if so requested by the Secretary of State, participate in and comply with its prospective obligations under:
 - (i) any concessionary travel scheme listed in the Franchise Agreement the terms of which have been amended since the date of the Franchise Agreement; and
 - (ii) such other concessionary travel schemes as any relevant Local Authority may require or request it to participate in.
- 1.2 In respect of any relevant concessionary travel scheme, the Franchisee shall:
- (a) notify the Secretary of State where the Franchisee determines that (if it were bearing cost and revenue risk) its participation, or continuing participation, in such scheme and/or the obligations assumed by the relevant Local Authority in connection therewith, each pursuant to Part II of the Travel Concession Schemes Regulations 1986 (SI 1986/77) (the "**Regulations**"), would fail to leave the Franchisee financially no worse off (following consideration of the application of the reimbursement test in paragraph 5(2) of the Regulations) than it was immediately following the Integrated Operator Start Date, and provide such information within such period as the Secretary of State may reasonably require for the purposes of determining whether the Secretary of State agrees with the determination of the Franchisee; and
 - (b) exercise its rights under the scheme in such manner and take such other action as the Secretary of State may reasonably require in relation to any payments due to the Franchisee thereunder (including in relation to the amount of any such payment and including submitting any relevant dispute to any relevant dispute resolution procedures).
- 1.3 The Secretary of State may from time to time notify the Franchisee, whether following notification from the Franchisee under paragraph 1.2(a) or otherwise, that the Franchisee is not required to participate, or to continue to participate, in one or more of the schemes referred to in paragraph 1.1, in which case the Franchisee shall not be required to, or shall be entitled to cease to, participate in the relevant scheme.
- 1.4 The Secretary of State shall consult the Franchisee before making any request of the Franchisee to participate in any amended or new concessionary travel scheme pursuant to paragraph 1.1 and shall allow the Franchisee a reasonable opportunity to make representations to the Secretary of State with respect to any such participation.
- 1.5 NOT USED.
- 1.6 NOT USED.

2. Multi-modal Fares Schemes

2.1 The Franchisee shall, subject to paragraph 2.3:

- (a) participate in and comply with its obligations under:
 - (i) the multi-modal fares schemes set out in paragraph 2 of Appendix 1 (List of Transport, Travel and Other Schemes) to this Schedule 2.5; and
 - (ii) any other multi-modal fares scheme which the Franchisee is required to participate in during the Franchise Term pursuant to paragraph 2.1(b);

including by co-operating in the implementation of any smart card technology pursuant to any such multi modal fares schemes; and

- (b) if so requested by the Secretary of State, participate in and comply with its prospective obligations under:
 - (i) any multi-modal fares scheme set out in paragraph 2 of Appendix 1 (List of Transport, Travel and Other Schemes) to this Schedule 2.5, the terms of which have been amended since the date of signature of this Agreement; and
 - (ii) such other multi-modal fares schemes as any relevant Local Authority may require or request it to participate in.

2.2 In respect of any multi-modal fares scheme, the Franchisee shall:

- (a) notify the Secretary of State where the Franchisee determines that (if it were bearing cost and revenue risk) its participation, or continuing participation, in such scheme and/or the obligations assumed by the relevant Local Authority in connection therewith, would fail, by way of distribution of income or otherwise, to render the Franchisee financially no worse off, and provide such information within such period as the Secretary of State may reasonably require for the purposes of determining whether the Secretary of State agrees with the determination of the Franchisee; and
- (b) exercise its rights under the scheme in such manner and take such other action as the Secretary of State may reasonably require in relation to any payments due to the Franchisee thereunder (including in relation to the amount of any such payment and including submitting any relevant dispute to any relevant dispute resolution procedures).

2.3 The Secretary of State may from time to time notify the Franchisee, whether following notification from the Franchisee under paragraph 2.2(a) or otherwise, that the Franchisee is not required to participate, or to continue to participate, in one or more of the schemes referred to in paragraph 2.1, in which case the Franchisee shall not be required to, or shall be entitled to cease to, participate in the relevant scheme.

2.4 Where used in this paragraph 2 the term **"financially no worse off"** shall be construed to mean (in each case, as if the Franchisee were bearing cost and revenue risk):

- (a) in respect of any multi-modal fares scheme set out in paragraph 2 of Appendix 1 (List of Transport, Travel and Other Schemes) to this Schedule 2.5, that the Franchisee incurs no greater financial loss than the financial loss (if any) incurred by the Franchisee at the Integrated Operator Start Date under that scheme, as adjusted by reference to any change in the level of prices according to the Retail Prices Index since such date;
- (b) in respect of any multi-modal fares scheme which replaces and (in the Secretary of State's reasonable opinion) is reasonably similar to any such scheme as may be set out in

paragraph 2 of Appendix 1 (List of Transport, Travel and Other Schemes) to this Schedule 2.5, that the Franchisee incurs no greater financial loss than the financial loss (if any) incurred by the Franchisee at the Integrated Operator Start Date under the replaced scheme, as adjusted by reference to any change in the level of prices according to the Retail Prices Index since such date; and

- (c) in respect of any multi-modal fares scheme which does not replace or which does replace but which is not (in the Secretary of State's reasonable opinion) reasonably similar to any such scheme or schemes as may be set out in paragraph 2 of Appendix 1 (List of Transport, Travel and Other Schemes) to this Schedule 2.5, such reimbursement arrangements as agreed by the relevant parties to such multi-modal fares schemes (or on failure to agree, as determined by the Secretary of State).

2.5 The Secretary of State shall consult the Franchisee before making any request of the Franchisee to participate in any amended or new multi-modal fares scheme pursuant to paragraph 2.1 and shall allow the Franchisee a reasonable opportunity to make representations to it with respect to any such participation.

3. Discount Fare Schemes

3.1 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.

3.2 The Secretary of State shall provide a reasonable opportunity to the Franchisee to make representations to the Secretary of State before amending, introducing or ceasing to approve a Discount Fare Scheme pursuant to paragraph 3.1.

3.3 The Franchisee shall supply to the Secretary of State, in respect of any Discount Fare Scheme referred to in paragraph 3.1, 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.

4. Inter-Operator Schemes

4.1 The Franchisee shall participate in and comply with its obligations under the terms of each of the Inter-Operator Schemes.

4.2 Without limiting paragraphs 4.1 and 4.3, 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.

4.3 The Franchisee shall not amend, or agree or propose to amend, any Inter-Operator Scheme other than in accordance with its terms.

4.4 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 to materially affect the provision of the Franchise Services; and

(b) have regard to the Secretary of State's views in respect of any such proposal.

4.5 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.

APPENDIX 1 TO SCHEDULE 2.5B

List of Transport, Travel and Other Schemes

1. Local Authority Concessionary Travel Schemes

1.1 Each of the following schemes:

- (a) any concessionary travel scheme which the Franchisee is required to participate in during the Franchise Term as confirmed in accordance with Schedule 20 (IOC Confirmable Obligations); and
- (b) any other concessionary travel scheme which the Franchisee is required to participate in during the Franchise Term pursuant to paragraph 1 of Schedule 2.5.

2. Multi-modal Fares Schemes

2.1 Each of the following schemes:

- (a) any multi-modal fares travel scheme which the Franchisee is required to participate in during the Franchise Term as confirmed in accordance with Schedule 20 (IOC Confirmable Obligations); and
- (b) any other multi-modal fares travel scheme which the Franchisee is required to participate in during the Franchise Term pursuant to paragraph 2 of Schedule 2.5.

3. Discount Fare Schemes

- 3.1 Any discount fare scheme approved from time to time by the Secretary of State for the purposes of section 28 of the Act, if and to the extent that the Passenger Services are services or services of a class or description, in relation to which the discount fare scheme in question applies, 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.

4. Inter-Operator Schemes

- 4.1 Each of the following schemes which relate to arrangements between the Franchisee and other participants in the railway industry:
- (a) any scheme which the Franchisee is required to participate in as confirmed in accordance with Schedule 20 (IOC Confirmable Obligations); and
 - (b) any other scheme, agreement and/or contract of a similar or equivalent nature as may from time to time during the Integrated Operator Period amend, replace or substitute, in whole or in part, any of such schemes, agreements and/or contracts.

SCHEDULE 3B

NOT USED

SCHEDULE 4B

ACCESSIBILITY AND INCLUSIVITY

Schedule 4B:	Accessibility and Inclusivity
	Appendix 1: Minor Works
	Appendix 2: Accessible Transport Arrangements

SCHEDULE 4B

Accessibility and Inclusivity

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 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 economical 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 any Infrastructure Manager 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 National 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 3A 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 IOC Cost Budget in respect of some or all of the works and/or expenditure. In considering the Secretary of State's 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 the IOC Cost Budget in accordance with this paragraph 2.5 in any Franchisee Year:

- (a) the Secretary of State shall make such adjustment to the IOC Cost Budget; 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 (7) 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.

3A. Minor Works

3A.1 For the purposes of this paragraph 3A, "**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:

- (a) may, but shall not necessarily include, the Minor Works described in Appendix 1 (Minor Works) to this Schedule 4;
- (b) shall not include any works which any Infrastructure Manager, the Franchisee or any other person has a separate obligation to carry out, except where:
 - (i) such obligation is an obligation of the Franchisee under the EA; or
 - (ii) the inclusion of such works would lead to the acceleration of the timescale for their completion and the Secretary of State gives the Secretary of State's consent pursuant to paragraph 3A.1(c);
- (c) shall only include works other than those permitted by paragraphs 3A.1(b)(i) and 3A.1(b)(ii) with the prior consent of the Secretary of State; and
- (d) must comply with the standards provided for in the Code of Practice, unless otherwise agreed with the prior consent of the Secretary of State.

3A.2 The Franchisee shall:

- (a) establish and manage the Minor Works' Budget to fund the carrying out of Minor Works;
- (b) before the start of each Franchisee Year:
 - (i) develop a Minor Works' Programme and consult with the Disabled Persons Transport Advisory Committee and relevant Passengers' Council in relation thereto;
 - (ii) in conjunction with its activities in paragraph 3A.2(b)(i), and, consistent with its obligations under paragraph 2.2(b), liaise with the relevant Infrastructure Manager 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 3A.2(b)(i) and 3A.2(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 (3) Reporting Periods; and

- (e) co-operate, as the Secretary of State may reasonably require, with the relevant Infrastructure Manager 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 (7) 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 the Secretary of State's 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 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 Passenger Assistance (or whatever service may replace it from time to time for the purposes of ORR's most recent guidance on Disabled People's Protection Policies);
 - (b) record whether such seating accommodation and/or assistance is actually provided; and
 - (c) provide such records to the Secretary of State on the Secretary of State's request.
- 4.2 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.
- 4.3 The Franchisee shall, no later than six (6) months after the Integrated Operator Start Date, revise its Disabled People's Protection Policy such that it complies with the ORR's most recent published guidance on Disabled People's Protection Policies as at the Integrated Operator Start Date, and obtain the ORR's approval of the revised version.
- 4.4 The Franchisee shall comply with the requirements set out in Appendix 2 (Accessible Transport Arrangements) to this Schedule 4 in respect of the provision of accessible transport arrangements for persons with disabilities.

APPENDIX 1 TO SCHEDULE 4B

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 4B

Accessible Transport Arrangements

1. References in this Appendix 2 to Schedule 4 (Accessibility and Inclusivity) to passengers are references to passengers with disabilities who are wheelchair users or otherwise severely mobility impaired.
2. Subject to paragraph 4, where:
 - 2.1 a passenger wants to travel on a Passenger Service; and
 - 2.2 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 accessible transport arrangements for that passenger in accordance with paragraph 3.
3. The Franchisee shall provide accessible transport arrangements for the passenger referred to in paragraph 2:
 - 3.1 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;
 - 3.2 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
 - 3.3 to or from such other station as the Franchisee may, having regard to the journey and the needs of the passenger, agree,and, in any case, at no cost additional to the price of the Fare which would otherwise be payable for the passenger's rail journey.
4. The Franchisee's obligations under this Appendix 2 to Schedule 4 (Accessibility and Inclusivity) are subject to:
 - 4.1 reasonable prior notice of the passenger's requirement for accessible transport arrangements; and
 - 4.2 the availability of suitable accessible transport arrangements (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 accessible transport arrangements).

SCHEDULE 5B

FARES

Schedule 5B	Schedule 5B is to be confirmed in accordance with Schedule 20 (IOC Confirmable Obligations).
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SCHEDULE 6B

FRANCHISE SPECIFIC OBLIGATIONS AND COMMITTED OBLIGATIONS

Schedule 6.1B:	Franchise Specific Obligations
Schedule 6.2B:	Committed Obligations
	Part 1(a): Continued Committed Obligations
	Part 1(b): Other Committed Obligations
	Part 2: Special Terms related to Committed Obligations
Schedule 6.3B:	Service Quality Regime
Schedule 6.4B:	Alliances

SCHEDULE 6.1B

Franchise Specific Obligations

1. Definitions

1.1 In this Schedule 6.1 except to the extent the context otherwise requires the following words and expressions have the following meanings:

"Access Agreements" has the meaning given to the term access agreement in section 83(1) of the Act;

"Cyber Security Information Sharing Strategy" or "CSISS" means the strategy created by the Franchisee pursuant to paragraph 21.1 of Schedule 6.1A which contains (as a minimum) the information set out in paragraph 21.2 of Schedule 6.1A, as updated in accordance with paragraph 21.7(a) of Schedule 6.1A and (from the Integrated Operator Start Date) in accordance with paragraph 9.4(a) of Schedule 6.1;

"Incident Response Plan" means the plan created by the Franchisee pursuant to paragraph 20.1 of Schedule 6.1A (Franchise Specific Obligations) which contains (as a minimum) the information set out in paragraph 20.2 of Schedule 6.1A, as updated in accordance with paragraph 20.7(a) of Schedule 6.1A and (from the Integrated Operator Start Date) in accordance with paragraph 8.4(a) of Schedule 6.1;

"Scottish Ministers" has the meaning ascribed to it in section 44 of the Scotland Act 1998;

"Station Travel Plan" means, in relation to a Station, a strategy for managing travel to and from that Station by passengers and other station users with the aim of reducing the environmental impact of such travel;

"Station Travel Plan Guidance" means the guidance on station travel plans set out in the document entitled "Guidance on the Implementation of Station Travel Plans" dated July 2013 published by RSSB as amended or updated from time to time, or other relevant guidance as reasonably specified by the Secretary of State during the Franchise Term; and

"Welsh Ministers" has the meaning ascribed to it in section 45 of the Government of Wales Act 2006.

2. Transferring Stations

2.1 Transfer to the Franchisee

(a) The Franchisee shall use all reasonable endeavours to provide such assistance and information as the Secretary of State may reasonably require in relation to the potential

transfer of any station (each such station being an **"Identified Station"**) to the Franchisee during the Integrated Operator Term.

- (b) If, during the Integrated Operator Term, agreement is reached in relation to the transfer of any Identified Station between the Secretary of State, the current facility owner in respect of any Identified Station and the Franchisee, then the Secretary of State may direct the Franchisee to take such actions as may be necessary to give effect to the transfer of any Identified Station to the Franchisee. Any such direction by the Secretary of State shall constitute a Variation under paragraph 1.1 of Schedule 9.3B (Variations to the Franchise Agreement). Where a Variation occurs as contemplated under this paragraph 2.1 (b), the Secretary of State shall be entitled to make such consequential changes to the terms of the Franchise Agreement as reasonably considered necessary by the Secretary of State in order to give effect to the transfer of such Identified Station.

2.2 Transfer from the Franchisee

- (a) The Franchisee shall use all reasonable endeavours to provide such assistance and information as the Secretary of State may reasonably require during the Integrated Operator Term in relation to the transfer of any Station in respect of which the Franchisee is Facility Owner to a third party.
- (b) If, during the Franchise Term, agreement is reached between the Secretary of State and any third party in relation to the transfer of a Station, then the Secretary of State may direct the Franchisee (including by exercising the Secretary of State's rights under paragraph 19 (Provisions relating to Access Agreements and Property Leases) of Schedule 1.1 (Franchise Services and Service Development)) to take such actions as may be necessary to give effect to the transfer of such Stations. Any such direction by the Secretary of State shall constitute a Variation under paragraph 1.1 of Schedule 9.3B (Variations to the Franchise Agreement).
- (c) Where a Variation occurs as contemplated under this paragraph 2.2, the Secretary of State shall be entitled to make such consequential changes to the terms of the Franchise Agreement as reasonably considered necessary by the Secretary of State in order to give effect to the transfer of such stations (including, notwithstanding the provisions of Schedule 14.6 (Residual Value Mechanism) in order to ensure that such provisions will continue to apply in relation to any Infrastructure Manager Fixture Asset comprised in a transferring station in the same way as such provisions would have applied had the Franchisee remained the Facility Owner at such Station.

3. Infrastructure Projects

3.1 For the purposes of this paragraph 3:

- (a) **"Infrastructure Project"** shall mean any of:
 - (i) **Euston conventional station upgrade**, which means proposals to refurbish or redevelop the conventional (National Rail) station at Euston and works to integrate the conventional station with the High Speed station at Euston;
 - (ii) **Crossrail 2**;
 - (iii) **North Wembley to Euston Power Supply Works (Bushey feeder area)**, which means proposals to enable an independent and resilient power supply between North Wembley and Euston, including the renewal and upgrade of the 25kV power supply equipment in the Bushey feeder area and associated work in relation to an additional neutral section at Bushey;

- (iv) **East West Rail**, which means the phased delivery of an east-west rail network connecting Oxford / Aylesbury with Milton Keynes / Cambridge, with a significant interface with the West Coast Main Line around Milton Keynes;
- (v) **Birmingham New Street signalling**, which means works associated with the renewal and resignalling of signalling infrastructure in the Birmingham New Street area including New Street Station;
- (vi) **Midlands Rail Hub**, which means the proposed package of infrastructure enhancements in the West Midlands area to facilitate up to 10 additional paths into central Birmingham for additional local / regional services. The proposal includes reinstating platform 4 at Snow Hill; additional platforms at Moor Street (with associated signalling improvements); new chords at Bordesley to connect the Camp Hill and Snow Hill lines; reconfiguration of Kings Norton station to bring disused platforms back into use; and four-tracking / additional crossovers in the Water Orton area;
- (vii) **Crewe Hub**, which consists of a number of engineering proposals that would enable a greater number of trains per hour to stop at the existing Crewe station, including a possible northern junction between the West Coast Main Line and new HS2 line;
- (viii) **Northern Powerhouse Rail**, which means the proposed new east-west rail network across the Pennines which could potentially link with HS2 and the West Coast Main Line;
- (ix) **North of England Programmes**, which is a collective term for enhancements delivered as part of Northern Hub and North West Electrification, referred to as the 'Great North Rail Project'; and
- (x) **Transpennine Route upgrade**, which is a proposal to deliver improvements to journey times between Leeds and Manchester, the ability to run longer trains offering more seats on both long distance and local services and improvements to overall performance on the whole route,

and any other infrastructure projects as may be notified to the Franchisee by the Secretary of State during the Franchise Term.

- 3.2 The Franchisee shall, from the Integrated Operator Start Date until completion of each Infrastructure Project, engage constructively with all relevant parties responsible for the delivery of such Infrastructure Project with the intention of assisting its timely, efficient and effective completion.
- 3.3 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) and any reasonable objections shall be raised by the Franchisee in accordance with the relevant railway industry procedures. It is acknowledged that the Franchisee may make reasonable objections with a view to mitigating the impact of the Infrastructure Projects and their implementation on passengers and the Franchise Services, while recognising the need for the Infrastructure Projects to be able to be undertaken in a reasonable manner.
- 3.4 The Franchisee shall throughout the Integrated Operator Term allocate such appropriate Franchise Employees and other relevant resource as is reasonably required for the purposes of

complying with its obligations in relation to all of the Infrastructure Projects pursuant to both the Franchise Agreement and the Access Agreements to which it is a party.

- 3.5 The Franchisee shall provide within ten (10) Weekdays 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 so far as the Franchisee is reasonably able the emerging risk position in relation to each such Infrastructure Project as it affects passengers and the Franchise Services. 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 passengers and the Franchise Services of any relevant risk arising is mitigated to the greatest extent reasonably practicable.

4. Co-operation with third party promoted franchise schemes

- 4.1 Except to the extent that any of the following third party promoted franchise schemes are completed and in operation prior to the Integrated Operator Start Date, the Franchisee shall, where instructed to do so by the Secretary of State, fully and effectively co-operate with relevant Local Authorities and/or other interested bodies and with Network Rail and act reasonably and in good faith in its engagement with each of them in relation to each such third party promoted franchise scheme:

- (a) **Coventry station upgrade**, which is a local authority-funded scheme to upgrade the station buildings and environs as part of a wider city centre regeneration project, and includes construction of a second footbridge connecting all platforms, extension of platform canopies and construction of additional car parking;
- (b) **Wolverhampton station upgrade**, which is a local authority-funded scheme to deliver a station renovation project to better integrate rail, light rail and local buses in Wolverhampton and to provide a new multi-storey car park;
- (c) **Halton curve**, which is a scheme promoted by the local authority to provide access to and from Liverpool Lime Street to Chester and North Wales via Liverpool South Parkway, Runcorn and Frodsham. The scheme will include enhancement and renewals of track and signalling across the full length of the curve and new track and signalling infrastructure at either end on the West Coast Main Line and the Chester and Warrington Line;
- (d) **Carlisle station upgrade**, which is a scheme promoted by the Local Authority to relocate the long stay car park and improve the pick-up and drop-off area of the station forecourt; and
- (e) **Stockport station enhancements**, which is a scheme promoted by Rail North to address conflicting moves on the Stockport to Slade Junction section.

- 4.2 Where instructed to do so by the Secretary of State the Franchisee shall fully and effectively co-operate with the Secretary of State, Network Rail, HS2 Limited and any relevant Local Authority in relation to any scheme to reopen or divert any rail route.

- 4.3 The Franchisee shall, where instructed to do so by the Secretary of State during the Franchise Term, fully and effectively co-operate with the Secretary of State, Network Rail, HS2 Limited, any Local Authority, Welsh Ministers, Scottish Ministers or any relevant third party in the development and implementation of plans and proposals to:

- (a) enhance existing stations;

- (b) open new stations;
 - (c) open new rail routes, or re-open existing rail routes that are not currently used to operate regular passenger services; and
 - (d) regenerate and redevelop the areas at or immediately surrounding stations.
- 4.4 The obligation to co-operate pursuant to paragraph 4.3 shall include the Franchisee carrying out in a timely manner all the activities and actions reasonably required to be carried out or taken by a Train Operator who:
- (a) in any of the cases in paragraphs 4.3(a) and 4.3(d) only, is the Facility Owner at the relevant station;
 - (b) in any of cases in paragraphs 4.3(a), 4.3(b), 4.3(c) or 4.3(d) is or is likely to be a provider of passenger services at the station or on the route in question.
- 4.5 Without limiting the above, the obligation to co-operate pursuant to paragraph 4.3 shall also include:
- (a) attending meetings with the Secretary of State, Network Rail, HS2 Limited, a Local Authority, Welsh Ministers, Scottish Ministers or a relevant third party (as the case may be);
 - (b) reviewing and commenting on the implementation and programme plans for the development of a brand new station;
 - (c) providing analysis and advice to any of the above parties in relation to station location and design, timetabling, staffing, marketing, rolling stock and other relevant operational and practical issues;
 - (d) negotiating in good faith with the Secretary of State or relevant scheme promoter with a view to reaching agreement with that person in relation to the terms (including price) for provision of Passenger Services at any new station or on any new or re-opened rail route;
 - (e) maintaining records of usage and financial performance of passenger services calling at the relevant stations or operating on the relevant routes;
 - (f) make available those records to the Secretary of State or relevant scheme promoter;
 - (g) co-operate with any reasonable request by the Secretary of State or relevant scheme promoter to undertake a review of the operational and financial performance of the Passenger Services at the relevant stations or on the relevant routes (including their value for money); and
 - (h) in the case of paragraph 4.3(a) or 4.3(b) above only, using reasonable endeavours to achieve any necessary amendments to any Station Lease or enter into new station leases as may be required for the purposes of the development and implementation of any such new station.
- 4.6 Without limiting the above, the Franchisee shall at all times during the ICWC Term fully and effectively co-operate with Welsh Ministers in relation to:
- (a) any scheme to reopen or divert any rail route; and

- (b) any proposal which may be promoted by (or on behalf of) Welsh Ministers during the ICWC Term for the provision of additional, varied or extended Passenger Services to and from destinations in Wales, such co-operation to include the provision of information to Welsh Ministers in respect of the implications of such proposals on the operation of the existing Passenger Services in Wales, costs and revenues and any other impact on the Franchisee's obligations under the Franchise Agreement.

4.7 Without limiting the above, the Franchisee shall at all times during the ICWC Term fully and effectively co-operate with Scottish Ministers in relation to:

- (a) any scheme to reopen or divert any rail route; and
- (b) any proposal which may be promoted by (or on behalf of) Scottish Ministers during the ICWC Term for the provision of additional, varied or extended Passenger Services to and from destinations in Scotland, such co-operation to include the provision of information to Scottish Ministers in respect of the implications of such proposals on the operation of the existing Passenger Services in Scotland, costs and revenues and any other impact on the Franchisee's obligations under the Franchise Agreement.

5. NOT USED.

6. Railway Heritage

6.1 The Franchisee shall:

- (a) engage constructively with the Railway Heritage Trust in order to maintain a register of listed buildings, those in conservation areas, and a list of designated artefacts and records (to ensure compliance with the Railway Heritage Act 1996);
- (b) engage constructively with the Railway Heritage Trust, Network Rail, and other relevant organisations to ensure that historic buildings and structures are conserved and promoted; and
- (c) maintain close and purposeful contact with heritage railway lines within the area of the Franchise, to identify and execute initiatives which will increase their usage and provide benefit to Passengers and the community.

7. Station Travel Plans

7.1 The Franchisee shall implement, maintain and comply with the Station Travel Plans which are in existence as at the Integrated Operator Start Date.

7.2 In addition to its obligations in paragraph 7.1, by no later than:

- (a) three (3) months prior to the Anticipated High Speed Start Date; and
- (b) each anniversary of the Integrated Operator Start Date,

the Franchisee shall submit to the Secretary of State for approval (such approval not to be unreasonably withheld or delayed) a draft updated version of each Station Travel Plan.

7.3 Each draft Station Travel Plan submitted in accordance with paragraph 7.2 shall:

- (a) reflect the best practice approach in accordance with Station Travel Plan Guidance;

- (b) comply with the Passenger Proposition, in so far as the same relates to Station Travel Plans; and
- (c) include a schedule of any revisions to the current Station Travel Plan and a brief summary of the rationale supporting any revision.

7.4 If in respect of any Station:

- (a) the Secretary of State approves an updated draft Station Travel Plan submitted to it pursuant to paragraph 7.2, such document shall become the then current Station Travel Plan for that Station; or
- (b) the Secretary of State does not approve an updated draft Station Travel Plan submitted to it pursuant to paragraph 7.2, then the Franchisee shall make:
 - (i) such amendments to it as the Secretary of State shall reasonably direct; and
 - (ii) provide such additional information as the Secretary of State may reasonably require.

7.5 From the date of approval pursuant to paragraph 7.4(a), the Franchisee shall implement, maintain and comply with the Station Travel Plans.

8. Incident Response Plan

8.1 The Franchisee shall, from the Integrated Operator Start Date, continue to comply with the Incident Response Plan in force on the day immediately prior to the Integrated Operator Start Date.

8.2 The Incident Response Plan shall be updated by the Franchisee:

- (a) in accordance with paragraph 1.1(c) of Schedule 19.4 (High Speed Services Review); and
- (b) on an annual basis,

and submitted to the Secretary of State for approval (such approval not to be unreasonably withheld or delayed).

8.3 Each updated version of the Incident Response Plan shall incorporate a schedule of revisions to the Incident Response Plan compared to the previous version and a brief summary of the rationale supporting each such revision.

8.4 If:

- (a) the Secretary of State approves an updated draft Incident Response Plan submitted to it pursuant to paragraph 8.2, such document shall become the then current Incident Response Plan; or
- (b) the Secretary of State does not approve an updated draft Incident Response Plan submitted to it pursuant to paragraph 8.2, the Franchisee shall:
 - (i) make such amendments to it as the Secretary of State shall reasonably direct; and
 - (ii) provide such additional information as the Secretary of State may reasonably require.

9. Cyber Security Information Sharing Strategy

- 9.1 The Franchisee shall, from the Integrated Operator Start Date, continue to comply with the Cyber Security Information Sharing Strategy in force on the day immediately prior to the Integrated Operator Start Date.
- 9.2 The Cyber Security Information Sharing Strategy shall be updated by the Franchisee on an annual basis and submitted to the Secretary of State for approval (such approval not to be unreasonably withheld or delayed).
- 9.3 Each updated version of the Cyber Security Information Sharing Strategy shall incorporate a schedule of revisions to the Cyber Security Information Sharing Strategy compared to the previous version and a brief summary of the rationale supporting each such revision.
- 9.4 If:
- (a) the Secretary of State approves an updated draft Cyber Security Information Sharing Strategy submitted to it pursuant to paragraph 9.2, such document shall become the then current Cyber Security Information Sharing Strategy and the Franchisee shall implement and comply with the updated Cyber Security Information Sharing Strategy from the date of such approval; or
 - (b) the Secretary of State does not approve an updated draft Cyber Security Information Sharing Strategy submitted to it pursuant to paragraph 9.2, the Franchisee shall:
 - (i) make such amendments to it as the Secretary of State shall reasonably direct; and
 - (ii) provide such additional information as the Secretary of State may reasonably require.

10. Integrated Services Mobilisation Communications Plan

- 10.1 The Franchisee shall, from the Integrated Operator Start Date, continue to comply with the Integrated Services Mobilisation Communications Plan in force on the day immediately prior to the Integrated Operator Start Date.
- 10.2 The Integrated Services Mobilisation Communications Plan shall be updated by the Franchisee promptly upon receipt of a request from the Secretary of State and submitted to the Secretary of State for approval (such approval not to be unreasonably withheld or delayed).
- 10.3 Each updated version of the Integrated Services Mobilisation Communications Plan shall incorporate a schedule of revisions to the Integrated Services Mobilisation Communications Plan compared to the previous version and a brief summary of the rationale supporting each such revision.
- 10.4 If:
- (a) the Secretary of State approves an updated draft Integrated Services Mobilisation Communications Plan submitted to it pursuant to paragraph 10.2, such document shall become the then current Integrated Services Mobilisation Communications Plan and the Franchisee shall implement and comply with the updated Integrated Services Mobilisation Communications Plan from the date of such approval; or
 - (b) the Secretary of State does not approve an updated draft Integrated Services Mobilisation Communications Plan submitted to it pursuant to paragraph 10.2, the Franchisee shall:

- (i) make such amendments to it as the Secretary of State shall reasonably direct; and
- (ii) provide such additional information as the Secretary of State may reasonably require.

11. Marketing Plan

- 11.1 The Franchisee shall, from the Integrated Operator Start Date, continue to comply with the Integrated Services Marketing Plan in force on the day immediately prior to the Integrated Operator Start Date.
- 11.2 Without prejudice to paragraph 52.4 of Schedule 18.2 (Accepted Programme Specific Requirements), the Integrated Services Marketing Plan shall be updated by the Franchisee on an annual basis and submitted to the Secretary of State for approval (such approval not to be unreasonably withheld or delayed).
- 11.3 Each updated version of the Integrated Services Marketing Plan shall incorporate a schedule of revisions to the Integrated Services Marketing Plan compared to the previous version and a brief summary of the rationale supporting each such revision.
- 11.4 If:
- (a) the Secretary of State approves an updated draft Integrated Services Marketing Plan submitted to it pursuant to paragraph 11.2, such document shall become the then current Integrated Services Marketing Plan and the Franchisee shall implement and comply with the updated Integrated Services Marketing Plan from the date of such approval; or
 - (b) the Secretary of State does not approve an updated draft Integrated Services Marketing Plan submitted to it pursuant to paragraph 11.2, the Franchisee shall:
 - (i) make such amendments to it as the Secretary of State shall reasonably direct; and
 - (ii) provide such additional information as the Secretary of State may reasonably require.

12. ISO 44001

- 12.1 The Franchisee shall maintain and comply with the ISO 44001 certification for the Franchise Term.

13. Digital Railway Account

- 13.1 The Digital Railway Account shall be an interest bearing account, with a commercially reasonable rate of interest (such interest to be promptly credited to the account) and on terms which prevent the account from being overdrawn.
- 13.2 Where the Digital Railway Account contains (or should contain) any monies upon the earlier of:
- (a) the High Speed Established Services Date; or
 - (b) the end of the Franchise Period,

the Franchisee shall pay the Digital Railway Account Balance to the Secretary of State promptly upon receiving a request for payment from the Secretary of State.

13.3 The Secretary of State may, at any time after 1 May 2023, require the Franchisee to pay the Digital Railway Account Balance to the Secretary of State and the Franchisee shall pay such monies promptly upon receiving such request.

SCHEDULE 6.2B

Committed Obligations

Part 1 (a) – Continued Committed Obligations

1. Continued Committed Obligations

- 1.1 Unless otherwise agreed by the Secretary of State, to the extent that any Committed Obligation set out in Schedule 6.2A (Committed Obligations) was required to be satisfied by the Integrated Operator Start Date and is not so satisfied as at the Integrated Operator Start Date, that Committed Obligation shall be deemed to be included in this Schedule 6.2 and the Franchisee shall remain obliged to satisfy that Committed Obligation at its own cost.
- 1.2 For the avoidance of doubt, the continuation of a Committed Obligation pursuant to paragraph 1.1 shall not constitute a waiver of the obligation to satisfy that Committed Obligation by the Integrated Operator Start Date nor prevent the Secretary of State from bringing an action against the Franchisee in connection with any such contravention of the Franchise Agreement.

Part 1 (b) – Other Committed Obligations

1. High Speed Business Unit

- 1.1 Except as otherwise confirmed by the Secretary of State under Schedule 20 (IOC Confirmable Obligations), the provisions of this paragraph 1 shall apply from the Integrated Operator Start Date.
- 1.2 The Franchisee shall organise the business of providing the Franchise Services by the creation of a separable internal business unit (the "**High Speed Business Unit**") in relation to the High Speed Services through the creation of separate train crew and rolling stock diagrams in relation to the High Speed Services, and separate station staff allocation in relation to the High Speed Stations.
- 1.3 Without the prior written consent of the Secretary of State, the Franchisee shall not take any action which would be reasonably likely to lead to increased cost or reduced revenue in consequence of duplication of business functions as a result of the creation of the High Speed Business Unit.
- 1.4 In relation to the High Speed Business Unit and the High Speed Services, the Franchisee shall:
 - (a) upon reasonable notice, attend meetings with the Secretary of State to discuss and provide an opinion on any relevant issues;
 - (b) provide information, data, reports and analysis reasonably required by the Secretary of State to enable consideration of alternative options for the provision of the Passenger Services by any Successor Operator, including in relation to assessing the implications of separation of the services by:
 - (i) service type, e.g. High Speed Services and Conventional Services;
 - (ii) market type e.g. intercity, regional or commuter markets (including combinations of High Speed Services and Conventional Services, if applicable); and/or
 - (iii) geographical area (including combinations of High Speed Services and Conventional Services if applicable).

- 1.5 Any information requested by the Secretary of State in accordance with paragraph 1.4(b) shall also take into account any change to Passenger Services associated with the launch of railway passenger services on the HS2 Eastern Leg and HS2 Western Leg of the HS2 Network.
- 1.6 Without limiting the provisions of paragraph 2 of Schedule 15.1 (Reletting Provisions), the Franchisee shall, if so requested by the Secretary of State, in connection with any proposal (whether or not yet finalised) to tender for the right and obligation to provide the High Speed Services in succession to the Franchisee, provide the Secretary of State (or any of the Secretary of State's advisers, employees, representatives, nominees or agents) with such information, reports and analysis as the Secretary of State (or any of the Secretary of State's advisers, employees, representatives, nominees or agents) may require in respect of the High Speed Business Unit. This may include:
- (a) operational and financial information, data, reports and analysis (including driver, other train crew and rolling stock diagrams, health and safety and environmental information, Network Rail charges and performance data, HS2 Limited (as Infrastructure Manager) charges and performance data);
 - (b) terms and conditions of employees and human resources policies; and
 - (c) any other information as the Secretary of State may specify from time to time.

2. General obligation of the Franchisee to maximise revenue and minimise costs

- 2.1 The Franchisee shall use all reasonable endeavours, consistent with a Train Operator bearing cost and revenue risk in relation to its franchise and acting in an economical and efficient manner, to maximise revenue and minimise or mitigate the impacts of any factors leading to revenue being reduced including maximising revenue collections, growing Peak Passenger Service revenues and Off-Peak Passenger Service revenues and driving performance.
- 2.2 The Franchisee shall use all reasonable endeavours, consistent with a Train Operator bearing cost and revenue risk in relation to its franchise and acting in an economical and efficient manner, to minimise costs or mitigate the impacts of any factors leading to costs being increased or reducing less quickly than the Franchisee had forecast.
- 2.3 The Franchisee shall proactively consider and implement actions to meet its obligations pursuant to paragraphs 2.1 and 2.2 above, provided that where the consent of the Secretary of State is required to any action pursuant to the terms of the Franchise Agreement, the Franchisee shall seek the Secretary of State's consent as soon as reasonably practicable and shall only pursue such action once consent has been provided.
- 2.4 The Secretary of State shall have the right to require the Franchisee to take measures to:
- (a) maximise revenue and minimise or mitigate the impacts of any factors leading to revenue being reduced or increasing less quickly than the Franchisee had forecast; and/or
 - (b) minimise costs and minimise or mitigate the impacts of any factors leading to costs being increased or reducing less quickly than the Franchisee had forecast,
- such measures being consistent with a Train Operator bearing cost and revenue risk in relation to its franchise and acting in an economical and efficient manner.
- 2.5 The Franchisee shall if requested by the Secretary of State develop plans to maximise revenue and minimise costs in accordance with any specification or instructions provided by the Secretary of State. The Franchisee shall provide such supporting information as the Secretary of State shall reasonably require, enter into discussions about the subject matter of the plans with the Secretary of State and produce further iterations of such plans if required.

3. NOT USED.

4. Additional Committed Obligations

4.1 Additional Committed Obligations may be incorporated into this Schedule in accordance with Schedule 20 (IOC Confirmable Obligations).

PART 2 - Special Terms related to the Committed Obligations

This Part 2 of Schedule 6.2 sets out further provisions which shall apply to the Committed Obligations contained in this Franchise Agreement and these provisions shall be construed as supplemental to the related provisions set out in Part 1 of this Schedule 6.2 and elsewhere in this Franchise Agreement.

1. Continuation of Availability

1.1 Where the Franchisee is obliged under Schedule 6.2A or under this Schedule 6.2 to provide, implement or install something (whether a service, facility or otherwise) the Franchisee shall ensure that once the same is provided, implemented or installed that it continues to be provided and made available (and where relevant, effectively maintained) for the remainder of the Franchise Period unless the contrary is expressly stated.

1.2 Where Part 1 to Schedule 6.2 (Committed Obligations) includes a commitment:

- (a) regarding the maintenance of certain facilities or activities or other similar analogous matters which are the subject of the Committed Obligations, the Franchisee shall not be regarded as having contravened the relevant obligation due to any temporary non-availability of the facility or activity (as the case may be) due to accidental damage or vandalism or maintenance, repair or replacement activities; or
- (b) regarding staffing requirements or particular appointments the Franchisee is required to make and maintain, the obligation of the Franchisee 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,

providing always that the Franchisee is using all reasonable endeavours to keep the duration of any (x) non-availability of a facility or activity or (y) vacant or unfulfilled post or appointment (as the case may be) as short as reasonably practicable.

2. Expenditure Commitments

2.1 Annual Expenditure

Where Part 1 to Schedule 6.2 (Committed Obligations) 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.

2.2 Expenditure Commitments in real amounts

All expenditure commitments set out in Part 1 to Schedule 6.2 (Committed Obligations), 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 Appendix 1 (Annual Franchise Payments) to Schedule 8.1 (Franchise Payments)).

2.3 Expenditure by the Infrastructure Manager

All amounts which the Franchisee has committed (whether unconditionally or otherwise) pursuant to Part 1 to Schedule 6.2 (Committed Obligations) to expend in connection with improvements to track or Stations shall be in addition to any expenditure made by the Infrastructure Manager as part of its infrastructure improvements or maintenance programme to the extent such expenditure is not directly funded or reimbursed by the Franchisee.

3. Underspend

- (a) Where in relation to any Committed Obligation deemed to be included in this Schedule 6.2 by paragraph 1.1 of Part 1(a) of this Schedule 6.2, that is expressed in terms of a requirement to spend not less than a specified sum in fulfilling its stated objective, the Franchisee is able to achieve that stated objective without incurring the full amount referred to in that Committed Obligation, whether because of cost savings or otherwise, the Franchisee shall notify the Secretary of State, together with a statement of the costs it has incurred (excluding any third party funding) in delivering the relevant obligations and a reconciliation against the amount it had committed to spend (excluding any third party funding) ("**Underspend**").
- (b) The Parties shall, acting reasonably, seek to agree an additional scheme or schemes which would give rise to benefits to passengers using the Passenger Services to be funded using one or more Underspends and, once agreed, the Franchisee shall apply such relevant Underspend in the delivery of the agreed scheme(s). In circumstances only where, despite having used reasonable endeavours the Parties fail to agree an additional scheme in relation to which relevant Underspend will be applied, the aggregate amount of unallocated Underspend shall be repaid to the Secretary of State as soon as reasonably practicable.

4. Nature of Commitment

- 4.1 Any commitment in terms of Part 1 to Schedule 6.2 (Committed Obligations) shall be in addition to any obligation of the Franchisee elsewhere in this Agreement and nothing in this Schedule 6.2 (Committed Obligations) shall limit or restrict an obligation imposed on the Franchisee elsewhere in this Agreement.
- 4.2 Save as expressly provided in Part 1 to Schedule 6.2 (Committed Obligations), each Committed Obligation is a separate obligation from any other Committed Obligation and satisfaction of or steps taken towards the satisfaction of one Committed Obligation will not amount to or contribute towards satisfaction of any other Committed Obligation.
- 4.3 Where in Part 1 to Schedule 6.2 (Committed Obligations), references are made to particular manufacturers or suppliers of equipment or services, the Franchisee may fulfil its relevant commitment by using reasonable equivalents.

5. Review of Compliance

- 5.1 Progress with Committed Obligations shall be considered and discussed at Franchise Performance Meetings.
- 5.2 In addition to its obligation under paragraph 5.1, 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.

6. Consequences of 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 Schedule 6.2 (Committed Obligations), such late, partial or non-delivery shall constitute a contravention of the Franchise Agreement.

7. Not Used

8. Third Party Consents, Agreement and Conditions

8.1 A Committed Obligation may be expressed to be conditional upon the satisfaction of any condition (including the occurrence of any event or the obtaining of any third party consent and/or entering into any agreement or arrangement with a third party) ("**Pre-condition**"). Where a Committed Obligation is subject to a Pre-condition and, despite having used all reasonable endeavours, the Franchisee is not able to satisfy such Pre-condition within such timescales (if any) as are required to enable the Franchisee to deliver such Committed Obligation in accordance with its terms then the Secretary of State and the Franchisee shall agree (or on failure to agree, the Secretary of State shall reasonably determine) such modifications to such Committed Obligation as may be necessary to allow the Franchisee to deliver a scheme which would give rise to benefits to passengers using the Passenger Services similar to (but not necessarily the same as) those benefits which would have arisen if the Franchisee had delivered such Committed Obligation.

8.2 If the Franchisee and the Secretary of State agree (or on failure to agree, the Secretary of State reasonably determines) a modification to a Committed Obligation pursuant to paragraph 8.1 then to the extent that the Franchisee delivers such modified Committed Obligation by the date agreed by the Parties (or, on failure to agree reasonably determined by the Secretary of State) then the Franchisee shall not be in breach of the Franchise Agreement.

9. Designation of Assets comprised in COs as Primary Franchise Assets

9.1 The Secretary of State may at any time designate as a Primary Franchise Asset any asset (other than those designated as RV Assets) introduced by the Franchisee by way of a Committed Obligation (the "Designated CO Primary Franchise Assets"). Such designation shall take effect from the date on which the Secretary of State delivers to the Franchisee a notice designating the relevant asset as a Designated CO Primary Franchise Asset.

9.2 The transfer value in relation to any Designated CO Primary Franchise Asset, which at the end of the Franchise Period is:

- (a) not de-designated as a Primary Franchise Asset pursuant to paragraph 10 of Schedule 14.4 (Designation of Primary Franchise Assets); and
- (b) transferred to a Successor Operator (whether pursuant to the Transfer Scheme or otherwise),

shall (unless otherwise agreed by the Secretary of State) be nil.

10. Obligations on Delivery of a Committed Obligation

By no later than thirty (30) days after the date of delivery of a Committed Obligation the Franchisee shall provide to the Secretary of State a certificate (in such form as may be specified by the Secretary of State from time to time) signed by a statutory director of the Franchisee confirming that such Committed Obligation has been delivered in full and in accordance with its terms, together with such supporting information as may be requested by the Secretary of State from time to time.

SCHEDULE 6.3B

Service Quality Regime

1. Service Quality Regime

- 1.1 A service quality regime (or equivalent) may be developed for the Franchise Services, the Conventional Services and / or the High Speed Services and incorporated into this Schedule 6.3 (Service Quality Regime) under Schedule 20 (IOC Confirmable Obligations).

SCHEDULE 6.4B

Alliances

1. Co-operation with Network Rail

1.1 General Co-operation

The Franchisee shall use all reasonable endeavours to work with Network Rail to identify ways in which co-operation between the Franchisee and Network Rail can be enhanced, costs can be reduced and closer working and alignment of incentives can improve value for money within the parameters of this Agreement.

1.2 Sharing of information with Network Rail

The Franchisee shall, to the extent reasonably requested by Network Rail, share with Network Rail all relevant data including GPS data and data derived from geometry measurement systems, forward facing CCTV, driver advisory systems and train condition monitoring systems fitted to any rolling stock within the Train Fleet. Any such data provided to Network Rail shall be provided in such format as Network Rail may reasonably request without charge.

2. Compliance with the Alliance Agreement

2.1 The Franchisee shall comply with the terms of the Alliance Agreement (and any Joint Task Agreement developed pursuant to the Alliance Agreement) for the duration of the Franchise Period, save where the Alliance Agreement is terminated by Network Rail or by the Franchisee in accordance with the provisions of this Schedule 6.4.

2.2 The Franchisee shall not amend the Alliance Agreement without the approval of the Secretary of State (such approval not to be unreasonably withheld).

3. Termination of the Alliance Agreement

3.1 The Franchisee shall not terminate the Alliance Agreement without the consent of the Secretary of State (such approval not to be unreasonably withheld).

3.2 The Franchisee shall notify the Secretary of State if:

- (a) it receives a termination notice from Network Rail under the Alliance Agreement within one (1) Weekday of the date of receipt of such termination notice;
- (b) Network Rail takes any steps to terminate the Alliance Agreement or warned in writing to terminate the Alliance Agreement within one (1) Weekday of becoming aware such steps have been taken or receipt of any notice threatening to terminate the Alliance Agreement;
- (c) the Franchisee considers (acting reasonably) that it may have taken an action or omitted to take an action which could constitute a material or persistent breach of the Alliance Agreement.

4. Reporting on the Alliance Agreement

4.1 The Franchisee shall report to the Secretary of State in writing each quarter on activities undertaken pursuant to the Alliance Agreement including:

- (a) progress on the Joint Tasks;

- (b) reasons for any delay or obstacles to implementing the Joint Tasks and actions being taken to mitigate such delay or obstacle, where appropriate; and
- (c) a report on performance against any key performance indicators agreed between Network Rail and the Franchisee to monitor the performance of the Alliance Agreement,

and each report shall include written confirmation from Network Rail that it agrees with the content of such report.

SCHEDULE 7B

IOC PERFORMANCE REGIME

Schedule 7B	Schedule 7B is to be confirmed in accordance with Schedule 20 (IOC Confirmable Obligations).
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SCHEDULE 8B

PAYMENTS

Schedule 8.1B:	Franchise Payments
	Appendix 1: Calculation of Periodic Franchise Payments (PFP)
	Appendix 2: IOC Fee

SCHEDULE 8.1B

Franchise Payments

1. Franchise Payments

1.1 The Franchise Payment (£FP) for each Reporting Period in the Integrated Operator Period, shall be an amount equal to:

£FP =	PFP + IOC_{BF} + IOC_{PF} + ShOpP
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where:

PFP	means the amount of Periodic Franchise Payment as calculated pursuant to the provisions of Appendix 1 (Calculation of Periodic Franchise Payments (PFP)) of this Schedule 8.1B (Franchise Payments) to be made on that Reporting Period's Payment Date. PFP may be a positive or negative number. PFP may be payable by the Secretary of State or the Franchisee;
IOC_{BF}	means the amount of any IOC Base Fee calculated pursuant to the provisions of Appendix 2 (IOC Fee) of this Schedule 8.1B (Franchise Payments);
IOC_{PF}	means (where relevant) the amount of any IOC Performance Fee calculated pursuant to the provisions of Appendix 2 (IOC Fee) of this Schedule 8.1B (Franchise Payments);
ShOpP	means (where relevant) the amount calculated in accordance with paragraph 1.1 of Schedule 18.5 (Shadow Operator Payments).

1.2 The Parties agree that:

- (a) where **£FP is a positive number**, the Secretary of State shall pay that amount to the Franchisee on the Payment Date for that Reporting Period;
- (b) where **£FP is a negative number**, the Franchisee shall pay the corresponding positive amount to the Secretary of State on the Payment Date for that Reporting Period.

1.3 The Parties shall at all times act in good faith, reasonably and in a timely manner in relation to the calculation of the Franchise Payment (£FP) (including each element thereof) for each Reporting Period.

1.4 Subject to the provisions of paragraphs 1.5 and 1.7, if the Parties have not agreed the amount of the Franchise Payment (£FP) for each Reporting Period within fifteen (15) Weekdays after the end of that Reporting Period, the Secretary of State may (but shall not be obliged to) reasonably determine it on the basis of the information then available to the Secretary of State.

1.5 If the Parties have not agreed the amount of the relevant Annual Adjustment (AADJ) for an IOC Year within six (6) Reporting Periods after the end of that IOC Year:

- (a) the Secretary of State may (but shall not be obliged to) determine AADJ for the relevant IOC Year on the basis of the information then available to the Secretary of State; or

- (b) the Secretary of State may (but shall not be obliged to) make an interim determination of AADJ for the relevant IOC Year on the basis of the information then available to the Secretary of State; and/or
- (c) if the Secretary of State makes an interim determination under paragraph (b) then, unless the Parties agree the amount of the relevant AADJ, the Secretary of State may (but shall not be obliged to) make a further determination of AADJ for the relevant IOC Year taking account of information available to the Secretary of State as at the date of such further determination.

1.6 In this Schedule 8.1B (Franchise Payments) and in the Appendices to this Schedule:

"IOC Year"	means each Franchisee Year during the Integrated Operator Period.
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1.7 Provided that the Franchisee has submitted the Management Accounts to the Secretary of State in accordance with paragraph 9.2 of Schedule 11.2B, the Secretary of State shall not be entitled to withhold payment of any undisputed amounts of the Franchise Payment (£FP) for the relevant Reporting Period, which amounts shall be paid by the Secretary of State in accordance with paragraph 2 of this Schedule 8.1B.

2. Payment of Franchise Payments

- 2.1 The Secretary of State shall notify the Franchisee, no less than five (5) Weekdays prior to the end of each Reporting Period, of the amount of the Franchise Payment (£FP) payable in respect of that Reporting Period.
- 2.2 Each such notification shall set out in reasonable detail how the Franchise Payment (£FP) (and each element thereof) has been calculated.
- 2.3 The Payment Date for a Reporting Period shall be the last Weekday of that Reporting Period.
- 2.4 Each Franchise Payment (£FP) 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 (£FP) shall be made:
 - (a) by automatic electronic funds transfer in pounds sterling to such bank account in the United Kingdom as the payee of such payment may have previously specified to the payer in writing; and
 - (b) so that cleared funds are received in that account on or before the due date for payment.

Interest

- 2.6 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.
- 2.7 If the amount of any Franchise Payment (£FP) is agreed or determined to contain a manifest error 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 (£FP) had been correct, then the recipient shall repay the excess within three (3) Weekdays 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 (£FP) had been correct, then the payer shall pay the amount of any shortfall to the payee within three (3) Weekdays 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 (£FP) was paid until the date on which such excess amount or shortfall is paid.

Disputes under Schedule 8B

- 2.8 If either Party disputes the amount of a Franchise Payment (£FP), the dispute shall, unless the Parties otherwise agree, be resolved in accordance with the provisions of clause 17 (Governing Law and Jurisdiction) of the Franchise Agreement. Any such dispute shall not affect the obligation of either Party to pay a Franchise Payment (£FP) notified in accordance with this Schedule 8.1B (Franchise Payments).

No Double Recovery

- 2.9 The Franchisee shall not be entitled to recover (by way of a Change or otherwise) more than once in respect of the same loss, cost, expense or other outgoing suffered or incurred by it.

Force Majeure and Payments

- 2.10 Following the occurrence of a Force Majeure Event, the payment of Franchise Payments shall continue unaffected.

3. IOC Budget Setting Process

- 3.1 The Franchisee shall by no later than three (3) Reporting Periods before the commencement of the second and each subsequent IOC Year in the Integrated Operator Period submit to the Secretary of State drafts of the IOC Cost Budget, IOC Record of Assumptions and a periodic forecast of the Forecast IOC Revenue for the following IOC Year. Each such draft shall be prepared in accordance with the principles set out in paragraph 3.4 of this Schedule 8.1B (Franchise Payments).
- 3.2 The Parties shall at all times act in good faith, reasonably and in a timely manner in the interpretation and application of the IOC Budget Setting Process and shall, in good faith, seek to agree the relevant IOC Cost Budget, Forecast IOC Revenue and the associated IOC Record of Assumptions for each Reporting Period in the relevant IOC Year.
- 3.3 In the event that the IOC Cost Budget, IOC Record of Assumptions and/or the Forecast IOC Revenue are not agreed by one (1) Reporting Period before the start of the IOC Year to which it relates then the Secretary of State shall reasonably determine, to the extent not agreed, the relevant IOC Cost Budget, IOC Record of Assumptions and Forecast IOC Revenue and the Secretary of State shall (inter alia) take account of:
- (a) the Franchisee's obligations to perform the Franchise Services in accordance with the provisions of the Franchise Agreement; and
 - (b) whether (in the reasonable opinion of the Secretary of State) in relation to the proposed item in the IOC Cost Budget, IOC Record of Assumptions and/or the Forecast IOC Revenue, the Franchisee has acted as an Efficient Operator.

3.4 Each IOC Cost Budget and Forecast IOC Revenue shall:

- (a) adopt a format and structure which facilitates the easy comparison of costs and revenue with the definitions of Actual IOC Cost and Actual IOC Revenue and with the information reported in the IOC Section of the Management Accounts and the IOC Section of the Annual Management Accounts;
- (b) in the case of:
 - (i) the IOC Cost Budget and associated IOC Record of Assumptions, make no assumptions or include any costs or adjustments which would not fall within the definition of Actual IOC Costs or which (unless otherwise expressly agreed in writing with or required by the Secretary of State) would not be included by an Efficient Operator; and
 - (ii) in the case of the Forecast IOC Revenue and associated IOC Record of Assumptions, make assumptions and include all revenue and adjustments which would fall within the definition of Actual IOC Revenue or which (unless otherwise agreed in writing with or required by the Secretary of State) would be included by an Efficient Operator;
- (c) adopt:
 - (i) the same format and structure and line by line entries as was used for the most recent IOC Cost Budget and Forecast IOC Revenue (as Placed in Escrow) or as otherwise from time to time specified by the Secretary of State;
 - (ii) the same accounting principles and standards as set out in the IOC Record of Assumptions (as most recently placed in Escrow) (as these may be varied by agreement between the Parties or, in the case of accounting standards, as these may be reasonably revised by the Secretary of State to take account of changes to GAAP);
- (d) identify any proposed:
 - (i) payments to an Affiliate of the Franchisee (including management fees, royalty fees and any commission); and
 - (ii) payment of any fees, remuneration and/or pension contributions in respect of any director or officer of the Franchisee,

in each case by reference to each Reporting Period of the IOC Year; and
- (e) demonstrate compliance with the IOC Procurement Strategy (save to the extent expressly agreed otherwise by the Secretary of State (in the Secretary of State's absolute discretion)).

4. Indexation

- 4.1 For the avoidance of doubt, it is agreed that Franchise Payments and the amounts shown in any IOC Cost Budget for any given IOC Year shall not be subject to any indexation or adjustment to take into account the effects of inflation in that given IOC Year.

APPENDIX 1 TO SCHEDULE 8.1B

Calculation of Periodic Franchise Payments (PFP)

1. Periodic Franchise Payments

1.1 This Appendix 1 (Calculation of Periodic Franchise Payments (PFP)) to Schedule 8.1B (Franchise Payments) sets out how the Periodic Franchise Payment (PFP) shall be calculated.

1.2 In carrying out the calculations in this Appendix 1 (Calculation of Periodic Franchise Payments (PFP)):

- (a) Actual IOC Costs and the IOC Cost Budget shall be expressed as positive numbers where they are paid or payable by the Franchisee; and
- (b) Actual IOC Revenue and Forecast IOC Revenue shall be expressed as positive numbers where they are received or receivable by the Franchisee.

1.3 In this Appendix 1 (Calculation of Periodic Franchise Payments (PFP)) to Schedule 8.1B (Franchise Payments):

“Current Reporting Period”	means the Reporting Period for which the Periodic Franchise Payment (PFP) calculation is being made;
“Preceding Reporting Period”	means the Reporting Period immediately before the Current Reporting Period;
“Current IOC Year”	means the IOC Year which contains the Current Reporting Period;
“Preceding IOC Year”	means the IOC Year immediately before the Current IOC Year;
“YTD”	means calculated for all Reporting Periods in the Current IOC Year up to and including the Current Reporting Period; and
“YTPP”	means calculated for all Reporting Periods in the Current IOC Year up to and including the Preceding Reporting Period.

2. Calculation of Periodic Franchise Payment

2.1 The Periodic Franchise Payment (PFP) (which may be a positive or a negative number and therefore may be payable by the Secretary of State or the Franchisee) shall be calculated in relation to each Reporting Period after the Integrated Operator Start Date as follows:

PFP =	$ICP_{IOC} + CostADJ_{IOC} - IRP - RevADJ + AADJ$
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<p>ICP_{IOC} (initial cost payment) *</p>	<p>means CBC_{IOccy}, <u>minus</u> PICP_{IOccy} i.e.:</p> $ICP_{IOC} = CBC_{IOccy} - PICP_{IOccy}$
<p>CostADJ_{IOC} (periodic cost adjustment) (i.e. the adjustment for the difference between the initial cost payment and the relevant costs actually incurred, in the previous period)</p>	<p>means:</p> <p>(a) for the first Reporting Period of the First IOC Year, £0 (zero);</p> <p>(b) for the <u>first</u> Reporting Period of the <u>second and subsequent</u> IOC Years; CAC_{IOccy}, <u>minus</u> PICP_{IOccy}, <u>minus</u> PCostADJ_{IOccy} i.e.:</p> $CostADJ_{IOC} = CAC_{IOccy} - PICP_{IOccy} - PCostADJ_{IOccy}$ <p>(c) for the <u>second and subsequent</u> Reporting Periods in each IOC Year; CAC_{IOccy} <u>minus</u> PICP_{IOccy} <u>minus</u> PCostADJ_{IOccy} i.e.:</p> $CostADJ_{IOC} = CAC_{IOccy} - PICP_{IOccy} - PCostADJ_{IOccy}$
<p>CBC_{IOccy} (cumulative budgeted costs (current year))</p>	<p>means the sum of budgeted costs YTD as shown in the IOC Cost Budget as most recently Placed in Escrow.</p>
<p>PICP_{IOccy} (previous initial cost payments (current year to preceding period))</p>	<p>means the sum of the initial cost payments (calculated as ICP_{IOC}) YTPP. For the avoidance of doubt, in calculating PICP_{IOccy}, each ICP_{IOC} is the amount as at the date of its original calculation (i.e. each ICP_{IOC} shall not be recalculated to take account of any Changes to the IOC Cost Budget).</p>
<p>PICP_{IOccy} (previous initial cost payments (previous year))</p>	<p>means the sum of the initial cost payments (calculated as ICP_{IOC}) for all Reporting Periods of the <u>Preceding</u> IOC Year. For the avoidance of doubt, in calculating PICP_{IOccy}, each ICP_{IOC} is the amount as at the date of its original calculation (i.e. each ICP_{IOC} shall not be recalculated to take account of any Changes to the IOC Cost Budget).</p>
<p>CAC_{IOccy} (cumulative actual costs (current year to preceding period))</p>	<p>means the sum of CAC_{IOccyI} for all line items I, where CAC_{IOccyI} means, for each and every line item I, the <u>lower of</u>:</p> <p>(a) the sum of Actual IOC Costs for line item I, YTPP; and</p> <p>(b) the sum of budgeted costs for line item I, YTPP, as shown in the IOC Cost Budget (as most recently Placed in Escrow).</p>
<p>CAC_{IOccy} (cumulative actual costs (previous year))</p>	<p>means the sum of CAC_{IOccyI} for all line items, I, where CAC_{IOccyI} means, for each and every line item, I, the <u>lower of</u>:</p> <p>(a) the sum of Actual IOC Costs for line item I, in all Reporting Periods in the <u>Preceding</u> IOC Year; and</p>

	(b) the sum of budgeted costs for line item I , for all Reporting Periods in the <u>Preceding</u> IOC Year, as shown in the IOC Cost Budget (as most recently Placed in Escrow for that <u>Preceding</u> IOC Year).
I (line item)	means each and every line item in the IOC Cost Budget.
PCostADJ_{IOCCy} (previous periodic cost adjustments (current year))	means: (a) for the second Reporting Period of each IOC Year, £0 (zero); (b) for the third and subsequent Reporting Periods of each IOC Year, the sum of all previous periodic cost adjustments (calculated as CostADJ_{IOc}) calculated for the <u>second and subsequent</u> Reporting Periods in the <u>Current</u> IOC Year up to and including the Preceding Reporting Period. For the avoidance of doubt, in calculating PCostADJ_{IOCCy} : (i) each CostADJ_{IOc} is the amount as at the date of its original calculation (i.e. each CostADJ_{IOc} shall not be recalculated to take account of any Changes to the IOC Cost Budget); and (ii) the calculation of PCostADJ_{IOCCy} does not include the periodic cost adjustment CostADJ_{IOc} calculated for the first Reporting Period of the Current IOC Year.
PCostADJ_{IOCPy} (previous periodic cost adjustments (previous year excluding RP 1))	means the sum of all periodic cost adjustments (calculated as CostADJ_{IOc}) calculated for the <u>second and subsequent</u> Reporting Periods of the <u>Preceding</u> IOC Year (if any). For the avoidance of doubt, in calculating PCostADJ_{IOCPy} : (a) each CostADJ_{IOc} is the amount as at the date of its previous calculation (i.e. each CostADJ_{IOc} shall not be recalculated to take account of any Changes to the IOC Cost Budget); (b) the calculation of PCostADJ_{IOCPy} does not include the periodic cost adjustment CostADJ_{IOc} calculated for the first Reporting Period of the Preceding IOC Year; and (c) if there was only one Reporting Period in the previous IOC Year, then PCostADJ_{IOCPy} shall be £0 (zero).
IRP (initial revenue payment)	means the initial revenue payment being an amount equal to the Forecast IOC Revenue for the Current Reporting Period.
RevADJ (periodic revenue adjustment)	means the periodic revenue adjustment, being: (a) for the first Reporting Period of the First IOC Year, £0 (zero); or (b) for all subsequent Reporting Periods, the Actual IOC Revenue for the Preceding Reporting Period <u>minus</u> Forecast IOC Revenue for the Preceding Reporting Period. For the avoidance of doubt, in the first Reporting Period of each IOC Year after the first IOC

	Year, the Preceding Reporting Period will be the final Reporting Period of the Preceding IOC Year.
AADJ (annual adjustment (costs and revenue))	<p>means for the Current IOC Year AADJCost <u>minus</u> AADJRev:</p> $AADJ = AADJCost - AADJRev$ <p>where</p> <p>AADJCost means:</p> <p>(a) an amount equal to what CAC_{IOCpy} would have been, had it been calculated using Actual IOC Costs as shown in the IOC Section of the Annual Management Accounts for the Preceding IOC Year (to be provided pursuant to paragraph 9.4(b) of Schedule 11.2B);</p> <p><u>minus</u></p> <p>(b) CAC_{IOCpy} as previously calculated for the Preceding IOC Year; and</p> <p>AADJRev means:</p> <p>(a) the total Actual IOC Revenue as shown in the IOC Section of the Annual Management Accounts for the Preceding IOC Year (to be provided pursuant to paragraph 9.4(b) of Schedule 11.2B);</p> <p><u>minus</u></p> <p>(b) the total Actual IOC Revenue as taken into account when calculating RevADJ for the Preceding IOC Year.</p> <p>Provided always that for the First IOC Year (where there is no Preceding IOC Year) AADJ shall be £0 (zero).</p>

* *Explanatory note: The descriptions in parenthesis in column one of this table are included to assist the reader only and shall not affect the meaning of these definitions.*

3. Annual Adjustment (AADJ)

- 3.1 The Annual Adjustment (AADJ) shall be included in the next calculation of the Periodic Franchise Payment (PFP) which is made after the agreement or determination of the amount of the Annual Adjustment (or where no such Payment Date exists shall be paid within thirty (30) days of the date of agreement or determination). For any other Reporting Period, AADJ shall equal zero (£0).
- 3.2 For the avoidance of doubt, the Franchisee shall (if so requested by the Secretary from time to time) calculate AADJ after the end of the Franchise Period and provide such supporting information as the Secretary of State reasonably requires.

APPENDIX 2 TO SCHEDULE 8.1B

IOC Fee

1. IOC Fee

1.1 This Appendix 2 (IOC Fee) to Schedule 8.1B (Franchise Payments) sets out how the IOC Base Fee (IOC_{BF}) for each Reporting Period and the IOC Performance Fee (IOC_{PF}) shall be calculated and paid.

1.2 In this Appendix 2 (IOC Fee) to Schedule 8.1B (Franchise Payments) the following definitions shall apply:

PaidBF	means the sum of all IOC Base Fees (IOC _{BF}) paid or payable for any IOC Year as adjusted pursuant to the provisions of paragraph 2.2.
RPI	is the quotient of the Retail Prices Index for the January which immediately precedes the relevant date of payment of the IOC Fee divided by the Retail Prices Index for January 2019.
Allocatable IOC_{PF}	means PaidBF x 0.075 for any IOC Year.

1.3 For any relevant Reporting Period:

- (a) the IOC Base Fee (IOC_{BF}) shall be calculated in accordance with paragraph 2 of this Appendix 2 (IOC Fee) to Schedule 8.1B (Franchise Payments) and is payable for each Reporting Period in arrears; and
- (b) any IOC Performance Fee (IOC_{PF}) shall be calculated in accordance with paragraph 3 of this Appendix 2 (IOC Fee) to Schedule 8.1B (Franchise Payments) and is payable annually in arrears (in accordance with paragraph 4 below).

2. Calculation of the IOC Base Fee (IOCBF)

2.1 Subject to paragraph 2.2, the IOC Base Fee (IOC_{BF}) for any Reporting Period shall be an amount equal to:

IOC_{BF} =	$\frac{BF}{13}$
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Where:

BF is the relevant amount as set out below (allocated pro rata if the fee level changes part way through a Reporting Period and/or if a Reporting Period is other than 28 days):

BF	£
From the Integrated Operator Start Date until the High Speed Start Date	[REDACTED] ³ multiplied by RPI ([REDACTED] ⁴ x RPI)
From the High Speed Start Date until the High Speed Established Services Date	[REDACTED] ⁵ pounds multiplied by RPI ([REDACTED] ⁶ x RPI)
From the High Speed Established Services Date until the end of Integrated Operator Period	[REDACTED] ⁷ multiplied by RPI ([REDACTED] ⁸ x RPI)

2.2 If the sum of all the IOC Base Fees (IOC_{BF}) paid or payable for any IOC Year exceeds one point four per cent (1.4%) of the Actual IOC Revenue (as shown in the IOC Section of the Annual Management Accounts in accordance with the provisions of paragraph 9.4 of Schedule 11.2B (Management Information)) for that IOC Year, the **PaidBF** shall be adjusted to be an amount equal to one point four per cent (1.4%) of the Actual IOC Revenue for that IOC Year.

3. Calculation of the IOC Performance Fee (IOCPF)

3.1 In relation to each IOC Year, the IOC Performance Fee (IOC_{PF}) shall be the sum of the six amounts corresponding to the Franchisee's IOC Annual Review score for the IOC Criteria as set out below:

IOC Criterion	IOC Annual Review Scorecard score for relevant IOC Criterion	IOC_{PF} £
Delivery of the IOC Benchmarks relating to operational performance	4	[REDACTED] ⁹

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

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

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

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

⁷ Where text has been omitted from the document, this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

⁸ Where text has been omitted from the document, this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

⁹ Where text has been omitted from the document, this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

	3	[REDACTED] ¹⁰
	2 or 1	[REDACTED] ¹¹
Delivery of the IOC Benchmarks relating to customer experience and engagement	4	[REDACTED] ¹²
	3	[REDACTED] ¹³
	2 or 1	[REDACTED] ¹⁴
Delivery of the Committed Obligations in Schedule 6.2	4	[REDACTED] ¹⁵
	3	[REDACTED] ¹⁶
	2 or 1	[REDACTED] ¹⁷
Collaborative Working	4	[REDACTED] ¹⁸
	3	[REDACTED] ¹⁹

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- ¹⁰ Where text has been omitted from the document, this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.
- ¹¹ Where text has been omitted from the document, this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.
- ¹² Where text has been omitted from the document, this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.
- ¹³ Where text has been omitted from the document, this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.
- ¹⁴ Where text has been omitted from the document, this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.
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- ¹⁸ Where text has been omitted from the document, this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.
- ¹⁹ Where text has been omitted from the document, this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

	2 or 1	[REDACTED] ²⁰
Agreement of Changes and the IOC Cost Budget	4	[REDACTED] ²¹
	3	[REDACTED] ²²
	2 or 1	[REDACTED] ²³
Continuous Improvement	4	[REDACTED] ²⁴
	3	[REDACTED] ²⁵
	2 or 1	[REDACTED] ²⁶

Where:

AIOCP_{PF} means the relevant part of the Allocatable IOC_{PF} as is allocated pursuant to the provisions of paragraph 3.2.

3.2 The Allocatable IOC_{PF} shall be:

- (a) allocated equally across the six (6) IOC Criteria for achieving a score of 4, and then 50% of each of those amounts for achieving a score of 3 in respect of that IOC Criterion; or
- (b) allocated as the Secretary of State otherwise notifies, across the six (6) IOC Criteria for achieving a score of 4, and then the amount for achieving a score of 3 in respect of that IOC Criterion. Such notice:
 - (i) must be served no later than one (1) Reporting Period prior to the commencement of the relevant IOC Year;

²⁰ Where text has been omitted from the document, this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

²¹ Where text has been omitted from the document, this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

²² Where text has been omitted from the document, this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

²³ Where text has been omitted from the document, this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

²⁴ Where text has been omitted from the document, this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

²⁵ Where text has been omitted from the document, this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

²⁶ Where text has been omitted from the document, this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

- (ii) must allocate the whole Allocatable IOC_{PF} amount in such a way as means that it can be earned in its entirety by the Franchisee (subject to attaining the relevant scores);
- (iii) may (in the Secretary of State's absolute discretion) within any IOC Criterion, allocate the same amount for a score of a 4 and a score of a 3 (but may not allocate less for a score of 4 than for a score of 3 within that IOC Criterion); and
- (iv) may (in the Secretary of State's absolute discretion) contain allocations of zero (£0) (but not less than zero) Allocatable IOC_{PF} to any one or more of the six (6) IOC Criterion and/or for achieving a score of 4 and/or for achieving a score of 3 within each IOC Criterion.

4. Payment of the IOC Performance Fee

- 4.1 Unless a Termination Notice has been served by the Secretary of State pursuant to the provisions of paragraph 5 of Schedule 10.2 (Events of Default and Termination Events), the IOC Performance Fee shall be payable on the first Payment Date falling no less than twenty (20) Weekdays after agreement or determination of the scores for the IOC Criteria pursuant to the provisions of Schedule 11.3B (Integrated Operator Annual Review) (or if there is no such Payment Date, within twenty (20) Weekdays after such agreement or determination).
- 4.2 For the avoidance of doubt, for Payment Dates other than as referred to in paragraph 4.1, the IOC Performance Fee (IOC_{PF}) shall each be zero (£0).

5. Overpayment of the IOC Fee

- 5.1 Any overpayment of the IOC Fee (arising pursuant to the provisions of paragraph 2.2) shall be repaid by the Franchisee to the Secretary of State on the first Payment Date falling no less than ten (10) Weekdays after the identification of the overpayment (or if there is no such Payment Date, within twenty (20) Weekdays after identification of the overpayment).

SCHEDULE 9B

CHANGES AND VARIATIONS

Schedule 9.1B:	Financial and Other Consequences of Change
	Appendix 1: Agreement or Determination of Adjustments following Change
Schedule 9.2B:	IOC Escrow Documents and Shadow Operator Escrow Documents
Schedule 9.3B:	Variations to the Franchise Agreement

SCHEDULE 9.1B

Financial and Other Consequences of Change

1. Purpose and Application of Schedule

1.1 This Schedule 9.1B sets out:

- (a) the circumstances both before and after the Integrated Operator Start Date which will result in an adjustment to the IOC Cost Budget, the IOC Record of Assumptions, and (where relevant) the IOC Modelling Suite, IOC Confirmed Obligations, and/or Shadow Operator Escrow Documents (but not, for the avoidance of doubt the Forecast IOC Revenue); and
- (b) the process by which any adjustment to the IOC Escrow Documents, IOC Confirmed Obligations, and/or any of the Shadow Operator Escrow Documents will be determined and effected; and
- (c) the process by which the IOC Benchmarks will be adjusted to reflect any Change.

1.2 Schedule 9.2B (IOC Escrow Documents and Shadow Operator Escrow Documents) contains provisions dealing with the IOC Escrow Documents and the Shadow Operator Escrow Documents which are relevant to the operation of this Schedule 9.1B.

1.3 This Schedule 9.1B shall apply in relation to a Change which is to be agreed by the Parties or determined by the Secretary of State pursuant to the provisions of paragraph 2.3. For the avoidance of doubt, this Schedule 9.1B shall not apply in relation to an ICWC Change.

1.4 In this Schedule 9B, references to the "**relevant Record of Assumptions**" means the IOC Record of Assumptions, the Product Cost Assumptions Statement and/or the Transitional Record of Assumptions (as the case may be).

1.5 Any reference in a "B" Schedule (other than this Schedule 9B) or in Schedule 18, 19 or 20 to a "Change" shall be deemed to be a reference to a proposed Change served by the Secretary of State on the Franchisee in accordance with paragraph 2.2(b) of this Schedule.

2. How any adjustments to the IOC Escrow Documents, IOC Benchmarks, IOC Confirmed Obligations, Shadow Operator Escrow Documents and/or relevant Record of Assumptions will be established

2.1 Either Party may from time to time propose a Change by service of a notice on the other, and such notice shall specify the reasons for, the suggested timing and the proposed effective date of the proposed Change.

2.2

- (a) In the case of a notice under paragraph 2.1 served by the Franchisee, such notice shall be accompanied by such information as will enable the Secretary of State to determine the financial and operational effect of the proposed Change (including the proposed updates to the relevant Record of Assumptions to reflect the proposed Change).
- (b) In the case of a notice under paragraph 2.1 served by the Secretary of State, the Franchisee shall supply to the Secretary of State such information within such period as the Secretary of State may reasonably require for the purposes of determining the financial and operational effect of the proposed Change.

2.3 The Parties shall act in good faith, reasonably and in a timely manner in considering any proposed Change notified under paragraph 2.1 and shall seek to agree whether or not to proceed with the

proposed Change (with or without modification) together with any consequential amendments to the terms of this Agreement and/or the any of the Escrow Documents. In the event that the Secretary of State and the Franchisee are unable to agree on whether to implement a proposed Change (with or without modification) or the financial and/or operational impact of the Change (if any) the Secretary of State shall reasonably determine it and the proposed effective date of the Change.

- 2.4 Within fourteen (14) days after a Change is agreed or determined, the Franchisee shall make the relevant adjustment to the IOC Escrow Documents, IOC Confirmed Obligations, and/or Shadow Operator Escrow Documents to reflect the impact of the Change. The Franchisee shall give notice to the Secretary of State of the time and location any adjustments are to be processed and allow representatives of the Secretary of State to attend when these adjustments are processed. The Change will not be completed until the Secretary of State has reviewed the impacts of the Change and confirmed that the adjusted updated document(s) are ready to be Placed in Escrow in accordance with Schedule 9.2B (IOC Escrow Documents and Shadow Operator Escrow Documents).
- 2.5 In considering or determining any proposed Change notified under paragraph 2.1, the Secretary of State shall (inter alia) take account of:
- (a) the Franchisee's obligations to perform the Franchise Services in accordance with the provisions of the Franchise Agreement; and
 - (b) whether (in the reasonable opinion of the Secretary of State) in relation to the proposed Change, the Franchisee has acted as an Efficient Operator.

3. How updates to the relevant Record of Assumptions will be established

- 3.1 The Parties shall agree or the Secretary of State shall reasonably determine the required updates to the relevant Record of Assumptions (if applicable) to reflect any Change.

4. Changes to IOC Benchmarks

- 4.1 Either Party may give notice to the other that it considers that a proposed Change has or will have, in that Party's reasonable opinion, a material effect on the likelihood of the Franchisee meeting the requirements of any IOC Benchmark (whether in terms of increasing or reducing that risk) and in such circumstances, this paragraph 4 shall apply.
- 4.2 Any notice referred to in paragraph 4.1 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 Change.
- 4.3 Where this paragraph 4 applies, the relevant IOC Benchmarks shall be revised to the extent that such revision is reasonably considered to be necessary to hold constant the likelihood of the Franchisee meeting the requirements of that IOC Benchmark. The Parties shall agree or the Secretary of State shall reasonably determine any such revision(s).
- 4.4 For the purposes of any revision to the IOC Benchmarks under this paragraph 4, regard may be had to:
- (a) any relevant assumptions in the IOC Record of Assumptions (as proposed to be updated to reflect the relevant Change); and/or
 - (b) 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.

5. Estimated Revisions

- 5.1 This paragraph 5 applies where there is a proposed Change. It provides a mechanism for interim adjustments to the IOC Cost Budget, IOC Benchmarks, and/or any of the Shadow Operator Escrow Documents, pending the final agreement or determination of those adjustments under this Schedule 9.1B.
- 5.2 Where either Party so requests that this paragraph 5 applies, the Secretary of State shall make the Estimated Revisions described in paragraph 5.3.
- 5.3 The estimated revisions are the Secretary of State's estimates of the IOC Cost Budget, IOC Benchmarks, and/or Shadow Operator Escrow Documents figures (and other adjustments) which will apply once the process in paragraphs 2 to 4 of this Schedule 9.1B has been completed in respect of the Change (the "**Estimated Revisions**").
- 5.4 The estimates referred to in paragraph 5.3 will be such estimates as the Secretary of State, acting reasonably, makes having regard to the time and the information available to the Secretary of State 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 provision to be made in respect of adjustments to the IOC Cost Budget, IOC Benchmarks, and/or any of the Shadow Operator Escrow Documents before full information about the proposed Change is available and/or full consideration of the nature and extent of the consequences of the proposed Change 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 or proposed Change. Where the Secretary of State is aware that there are any such actual or potential impacts which the Secretary of State has not taken into account, the Secretary of State shall notify the Franchisee of them when notifying the Estimated Revisions pursuant to paragraph 5.2; and
 - (c) the Secretary of State shall be entitled to adjust any Estimated Revision notified pursuant to paragraph 5.2 to the extent the Secretary of State 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 the Secretary of State at the time the Secretary of State made the Secretary of State's original estimate, have resulted in the Secretary of State 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 adjustment of the IOC Cost Budget, IOC Benchmarks, and/or any of the Shadow Operator Escrow Documents in respect of the relevant Change or proposed Change.
- 5.5 In the circumstances described in paragraph 5.2 and paragraph 5.4(c), the IOC Cost Budget, IOC Benchmarks, and/or relevant Shadow Operator Escrow Document shall be restated in the amounts and values of the Estimated Revisions, and Franchise Payments and/or Shadow Operator Payments, (as the case may be) shall be paid accordingly until the final agreement or determination of the adjustments pursuant to paragraph 2.3 has taken place and its results have been put into effect.
- 5.6 The restatement of the IOC Cost Budget, IOC Benchmarks, and/or any of the Shadow Operator Escrow Documents referred to in paragraph 5.5 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.

5.7 No estimate made by the Secretary of State pursuant to this paragraph 5 shall prejudice the Secretary of State's subsequent determination of the adjustment of the IOC Cost Budget, IOC Benchmarks, and/or relevant Shadow Operator Escrow Document pursuant to paragraph 2.3.

5.8 Where paragraph 5.5 applies then, as soon as reasonably practicable after the agreement or determination of the adjustment of the IOC Cost Budget, IOC Benchmarks, and/or any of the Shadow Operator Escrow Documents pursuant to the provisions of paragraph 2.3, the Parties shall make an adjustment to the relevant models and/or documents following the process set out in paragraph 2.4 of this Schedule 9B.

5A. Agreed Revisions

5A.1 This paragraph 5A provides a mechanism for the Parties to agree that items will be included in Changes to the IOC Cost Budget and/or any of the Shadow Operator Escrow Documents, under this Schedule 9.1B in circumstances where the process in paragraphs 2 to 4 of this Schedule 9.1B has not yet been completed.

5A.2 The Parties may from time to time (by written agreement which specifically refers to this paragraph 5A.2) agree specific adjustments to the IOC Cost Budget and/or Shadow Operator Escrow Documents (which may include adjustments in relation to Shadow Operator Contingency) (the "**Agreed Revisions**") and such Agreed Revisions shall be included in a Change when the process in paragraphs 2 to 4 of this Schedule 9.1B has been completed.

5A.3 The Parties shall act in good faith, reasonably and in a timely manner in considering any proposed Agreed Revisions.

5A.4 No Agreed Revision pursuant to this paragraph 5A shall prejudice either Party's rights to propose a Change under paragraph 2.1 of this Schedule 9B.

6. Information

The Franchisee shall promptly, having regard to the other timescales anticipated in this Schedule 9.1B, 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 the Secretary of State's rights and comply with the Secretary of State's obligations pursuant to this Schedule 9.1B.

APPENDIX 1 TO SCHEDULE 9.1B

Agreement or Determination of Adjustments following Change

1. General Adjustments/Assumptions

1.1 Adjustments to the IOC Escrow Documents, IOC Benchmarks and/or any of the Shadow Operator Escrow Documents are to be agreed between the Parties or reasonably determined by the Secretary of State on the basis that unless otherwise requested by the Secretary of State, the Franchisee shall comply with the Shadow Operator Financial Management Strategy (if applicable) and the Shadow Operator Procurement Strategy or the IOC Procurement Strategy (as the case may be), shall demonstrate that the financial effect of the proposed Change is in accordance with application of the Shadow Operator Financial Management Strategy, the Shadow Operator Procurement Strategy and/or the IOC Procurement Strategy as applicable and shall use all reasonable endeavours to:

- (a) reduce any revenue that may be foregone; and
- (b) increase any revenue that may arise, and

as a consequence of a Change.

2. Assumptions in the relevant Record of Assumptions

2.1 Where the Secretary of State reasonably considers that the assumptions contained in the IOC Record of Assumptions, the Transitional Record of Assumptions or the Product Cost Assumptions Statement are ambiguous or that additional assumptions are required in relation to circumstances not dealt with by the assumptions in the relevant 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.

SCHEDULE 9.2B

IOC Escrow Documents and Shadow Operator Escrow Documents

1. Franchisee's Obligations

- 1.1 The Franchisee shall deliver to the Secretary of State two (2) copies of each of:
- (a) the IOC Cost Budget, the IOC Record of Assumptions and the Forecast IOC Revenue:
 - (i) within twenty one (21) days after agreement or determination of the same pursuant to the provisions of paragraph 2 of Schedule 18.1 (Shadow Operations);
 - (ii) within twenty one (21) days after execution of any variation agreement pursuant to the provisions of paragraph 8.6 of Schedule 18.1 (Shadow Operations);
 - (iii) within twenty one (21) days after completion of the Switch Review;
 - (iv) at least seven (7) days before the High Speed Start Date;
 - (v) at least seven (7) days before the High Speed Established Services Date;
 - (vi) within fourteen (14) days after the agreement or determination of the IOC Cost Budget for the First IOC Year (as provided for in paragraph 10 of Schedule 18.1 (Shadow Operations));
 - (vii) within fourteen (14) days after the agreement or determination of the IOC Cost Budget (as provided for in the IOC Cost Budget Setting Process (as the case may be); and
 - (viii) within fourteen (14) days after the agreement or determination of any adjustment to the IOC Cost Budget as provided for in Schedule 9.1B (Financial and Other Consequences of Change); and
 - (b) (unless otherwise directed by the Secretary of State) the relevant version of the IOC Modelling Suite which informed the relevant IOC Cost Budget as at each of:
 - (i) as at the date the IOC Cost Budget was agreed or determined pursuant to the provisions of paragraph 2 of Schedule 18.1 (Shadow Operations), within twenty one (21) days after such agreement or determination;
 - (ii) as at the date of any variation agreement pursuant to the provisions of paragraph 8.6 of Schedule 18.1 (Shadow Operations), within twenty one (21) days after such agreement or determination;
 - (iii) as at completion of the Switch Review, within twenty one (21) days after completion of the Switch Review;
 - (iv) as at the Integrated Operator Start Date, at least seven (7) days in advance of such date;
 - (v) as at the High Speed Start Date, at least seven (7) days in advance of such date; and
 - (vi) as at the High Speed Established Services Date, at least seven (7) days in advance of such date; and
 - (c) the Shadow Operator Escrow Documents as follows:

- (i) the Accepted Programme Modelling Suite, Cost Baseline, Product Cost Assumptions Statement and Resourcing Plan on the Shadow Operator Start Date;
- (ii) the Transitional Modelling Suite, Transitional Record of Assumptions and the Transitional Programme within twenty one (21) days after agreement or determination of the same pursuant to the provisions of paragraph 2 of Schedule 18.1(Shadow Operations); and
- (iii) the relevant Shadow Operator Escrow Documents within twenty one (21) days after the agreement or determination of any adjustment to it as provided for in Schedule 9.1B (Financial and Other Consequences of Change).

1.2 Each Escrow Document shall be delivered:

- (a) in electronic format on non-rewritable password protected CD-ROM or other appropriate electronic medium and in the format as agreed or determined by the Secretary of State (pursuant to the provisions of Schedule 18.1 (Shadow Operations), the IOC Cost Budget Setting Process or the Shadow Operator Annual Review process in Schedule 18.4 (Shadow Operator Annual Review), or pursuant to paragraph 2.3 of Schedule 9.1B (Financial and other Consequences of Change)); and
- (b) be accompanied by a notice that the relevant Escrow Documents are to be Placed in Escrow.²⁷

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 (and at the cost of) 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 1.1 or (as the case may be) is in accordance with the applicable provisions of paragraph 1.2.

2. Secretary of State's Obligations

2.1 The Secretary of State shall:

- (a) within three (3) days following receipt, acknowledge receipt to the Franchisee of any version of the Escrow Documents delivered to the Secretary of State 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

27 **Note to Bidders:** If a USB stick is used, the Budget needs to be time and date stamped (this includes when it is updated for any contract change). Any disc needs to be signed and dated by both Parties at the date delivered (this includes when it is updated for any future contract change). The Franchisee will need to provide non-rewritable electronic media when submitting documents to be held in Escrow.

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 the Secretary of State 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 (7) 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) should either Party decide that the Escrow Documents are required in relation to a proposed Change, the Secretary of State shall 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 update the IOC Cost Budget, IOC Record of Assumptions and, if relevant, the IOC Modelling Suite or any Shadow Operator Escrow Document pursuant to Schedule 9.1B (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 update Escrow Documents pursuant to the 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 adjustment to the Escrow Documents has been agreed or determined as provided for in Schedule 9.1B (Financial and Other Consequences of Change), two copies of the Replacement Copy shall also be Placed in Escrow.

2.3 Nothing in this Schedule 9.2B 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 9.2B or any adjustment to the Escrow Documents.

3. Errors in Escrow Documents

- 3.1 Any feature of the Escrow Documents which is in the reasonable opinion of either Party considered to be an error will be:
- (a) treated as a proposed Change and either Party may serve notice under paragraph 2.1 of Schedule 9.1B (Financial and other Consequences of Change); and
 - (b) a record of the error shall be noted in the relevant Record of Assumptions and, if applicable, the Escrow Documents.

SCHEDULE 9.3B

Variations to the Franchise Agreement

1. Variations

1.1 The terms of the Franchise Agreement may be varied as follows but not otherwise:

- (a) by the Secretary of State (as contemplated where relevant in the Invitation to Tender) in relation to:
 - (i) any aspect of the Franchise Services; and/or
 - (ii) any provision of the Franchise Agreement other than those provisions specified in paragraph 1.2,

by service of a notice on the Franchisee referring to this paragraph 1.1(a) and setting out the variation to the terms of the Franchise Agreement; and

- (b) in relation to any other provision of the Franchise Agreement, by agreement in writing between the Parties to that effect,

(each a "**Variation**").

1.2 Without prejudice to the Secretary of State's rights under paragraph 1.1(a), the terms of each of:

- (a) clauses 5 (Duration of the Franchise Agreement), 7 (Assignment), 10 (Cumulative Rights and Remedies), 11 (Dispute Resolution), 12 (Notices), 13 (Set-Off) and 14 (Miscellaneous Provisions) of this Agreement;
- (b) Schedules 8B (Payments), 9B (Changes and Variations), 10B (Remedies, Events of Default and Termination Events), 12B (Financial Covenants and Bonds) and 14B (Preservation of Assets) of this Agreement; and
- (c) the definitions set out at clause 3 (Definitions) of this Agreement insofar as such affect the respective rights and obligations of the Secretary of State and the Franchisee pursuant to the provisions referred to at (a) and (b) above,

shall not be varied at any time other than in accordance with the terms of 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 the Secretary of State requires to be followed for the purposes of orderly consideration of Variations. This will include for the purpose of considering any potential 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 costs and revenue as a consequence of proceeding with the Variation).

- 1.5 NOT USED.
- 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 (including the costs and revenue effects of implementing the Variation).

SCHEDULE 10B

REMEDIES, EVENTS OF DEFAULT AND TERMINATION EVENTS

Schedule 10.1B:	Procedure for remedying a Contravention of the Franchise Agreement
Schedule 10.2B:	Events of Default and Termination Events
Schedule 10.3B:	Force Majeure and Business Continuity
Schedule 10.4B:	Liability

SCHEDULE 10.1B

Procedure for remedying a Contravention of the Franchise Agreement

1. Contraventions of the Franchise Agreement

- 1.1 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.
- 1.2 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.

2. Remedies for Contraventions of the Franchise Agreement

If the Secretary of State is satisfied that the Franchisee is contravening, or is likely to contravene any term of the Franchise Agreement, the Secretary of State 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"**).

3. Remedial Plan Notices

- 3.1 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 (**"Remedial Plan Period"**) within which the Secretary of State requires the Franchisee to provide an appropriate plan for the purpose of facilitating or securing compliance with such Relevant Term (a **"Remedial Plan"**).

4. Remedial Plans

- 4.1 If the Secretary of State issues a Remedial Plan Notice, the Franchisee shall submit (at its own cost) a Remedial Plan to the Secretary of State within the Remedial Plan Period.
- 4.2 Each Remedial Plan shall set out:
- (a) the Relevant Term which has caused such 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.

5. Remedial Agreements

- 5.1 If the Secretary of State is satisfied that the matters within such Remedial Plan referred to in paragraphs 4.2(c) and (d) are appropriate (with or without further modification as the Parties may agree) the Secretary of State may require the Franchisee to enter into a supplemental

agreement (the "**Remedial Agreement**") with the Secretary of State to implement those matters.

5.2 It is a term of the Franchise Agreement that the Franchisee (at its own cost) complies with each Remedial Agreement in accordance with its terms.

6. Effect of Force Majeure Event on a Remedial Agreement

6.1 Without prejudice to the operation of paragraph 2.1 of Schedule 10.2 (Events of Default and Termination Events), the following provisions shall apply in relation to Force Majeure Events affecting the Franchisee's performance of their obligations pursuant to a Remedial Agreement:

- (a) the Franchisee shall give written notice to the Secretary of State promptly after the Franchisee becomes aware (and in any event within twenty four (24) hours after becoming aware) of the occurrence or likely occurrence of a Force Majeure Event which will or is likely to affect the Franchisee's ability to comply with a Remedial Agreement within the period specified therein;
- (b) each notice submitted in accordance with paragraph 6.1(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 6.1(a) to 6.1(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 that Remedial Agreement.

7. Enhanced Monitoring by the Secretary of State

7.1 Following the occurrence of a contravention of the Franchise Agreement, the Secretary of State may at the Secretary of State's option (but shall not be obliged to) commence or increase the level and/or frequency of monitoring (whether by inspection, audit or otherwise) of the 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.

7.2 The Franchisee shall co-operate fully with the Secretary of State in relation to the monitoring referred to in paragraph 7.1.

7.3 The results of such monitoring will be reviewed at each Franchise Performance Meeting held pursuant to Schedule 11.1 (Franchise Performance Meetings).

7.4 The Franchisee shall compensate the Secretary of State (at the Franchisee's own cost) for all reasonable costs incurred by the Secretary of State in carrying out such monitoring.

7.5 Where the Franchisee incurs any expenses and/or costs as a result of or in connection with any monitoring referred to in paragraph 7.1, these shall be born at the Franchisee's own cost.

SCHEDULE 10.2B

Events of Default and Termination Events

1. Definition of Events of Default

Each of the following is an “**Event of Default**”:

1.1 Insolvency²⁸

- (a) **Administration:** Any step being taken by any person with a view to the appointment of an administrator to the Franchisee, the Parent, any Bond Provider or the Guarantor;
- (b) **Insolvency:** Any of the Franchisee, the Parent, any Bond Provider or the Guarantor 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, the Parent, any Bond Provider or the Guarantor making any proposal under section 1 of the Insolvency Act 1986, or any of the Franchisee, the Parent, any Bond Provider or the Guarantor 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 expropriation, attachment, sequestration, execution or other enforcement action or other similar process affecting any property of the Franchisee or the whole or a substantial part of the assets or undertaking of the Franchisee, the Parent, any Bond Provider or the Guarantor, 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, any Bond Provider or Guarantor with a view to its winding-up or any person presenting a winding-up petition or any of the Franchisee, the Parent, any Bond Provider or Guarantor 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 1.1,

28 Note to Bidders: Where there are multiple parents, DfT may customise provisions such that it applies to the Franchisee, such immediate parent of the Franchisee and any intermediate parents up to the ultimate parent.

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 twenty (20) Weekdays having elapsed in order to allow the Franchisee to replace the relevant Bond Provider.

1.2 Non-payment

The Franchisee failing to pay to the Secretary of State any amount due under the Franchise Agreement within twenty eight (28) days of the due date for such payment.

1.3 Change of Control

A Change of Control other than in accordance with the prior consent of the Secretary of State pursuant to clause 8 (Change of Control and Facilitation Fee).

1.4 Revocation of Licence

Revocation of any Licence required to be held by the Franchisee in order to comply with its obligations under the Franchise Agreement.

1.5 Safety Certificate and Safety Authorisation

The Safety Certificate and/or Safety Authorisation of the Franchisee being withdrawn or terminated.

1.6 NOT USED.

1.7 Non-compliance with Remedial Agreements and Orders under the Act

(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.

(c) Non-compliance by the Franchisee with any enforcement notice issued to it by the Secretary of State pursuant to section 120 of the Act.

(d) NOT USED.

1.8 Financial Ratios

Breach by the Franchisee of either or both of the Financial Ratios specified in paragraph 2 of Schedule 12 (Financial Covenants and Bonds).

1.9 Breach of Law

- (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 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 1.9(c) until such appeal has been determined to be unsuccessful; or
- (d) It becoming unlawful for the Franchisee to provide all or, in the reasonable opinion of the Secretary of State, a material part of the Shadow Operator Services.

1.10 Contravention of Other Obligations

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 10.2 (other than this paragraph 1.10) and/or Schedule 10.2A (other than paragraph 1.10 in Schedule 10.2A));
- (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:
 - (i) contravening such obligation or obligations again to an extent which is reasonably considered by the Secretary of State to be material; or
 - (ii) permitting the contravention to continue; or
 - (iii) 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 1.10(b)(ii).

1.11 Non-membership of Inter-Operator Schemes

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.

1.12 Bonds

- (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 such 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) required to be provided pursuant to paragraph 4 of Schedule 12 (Financial Covenants and Bonds) which individually or in aggregate fulfil the requirements of Schedule 12 (Financial Covenants and Bonds); or
- (c) A failure by the Franchisee to procure the provision to the Secretary of State of a Season Ticket Bond (or Season Ticket Bonds) required to be provided pursuant to paragraph 5 of Schedule 12 (Financial Covenants and Bonds) which individually or in aggregate fulfil the requirements of Schedule 12 (Financial Covenants and Bonds).

1.13 Key Contracts

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.

1.14 Funding Deed

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

1.15 Rolling Stock Leases

A failure by the Franchisee to enter into a new Rolling Stock Lease in accordance with paragraph 2.3(a) of Schedule 1.6 (The Rolling Stock) in respect of the Unspecified Additional Rolling Stock.

1.16 Other Events of Default

Any other failure, or act or omission of the Franchisee, or other circumstances, explicitly stated in this Franchise Agreement to be an Event of Default, including in:

- (a) paragraph 5.5 of Schedule 11.3 (Integrated Operator Annual Review); and
- (b) paragraph 6.5 of Schedule 18.4 (Shadow Operator Annual Review).

1.17 ICWC Events of Default

The occurrence, prior to the Integrated Operator Start Date, of any Event of Default set out in Schedule 10.2A (Events of Default and Termination Events).

2. Definition of Termination Events

Each of the following is a "Termination Event":

- 2.1 any Force Majeure Event continues with the effect of preventing the Franchisee from delivering, wholly or mainly, the Passenger Services for more than six (6) consecutive months (including where any of those months falls before the Integrated Operator Start Date); or

- 2.2 the warranty given by the Franchisee pursuant to paragraph 6.1 (Tax Compliance) of Schedule 12 (Financial Covenants and Bonds) is materially untrue; or
- 2.3 the Franchisee commits a material breach of its obligation to notify the Secretary of State of any Occasion of Tax Non-Compliance in respect of any Affected Party (as defined in paragraph 6.3 of Schedule 12 (Financial Covenants and Bonds)) as required by paragraph 6.2(a) of Schedule 12 (Financial Covenants and Bonds); or
- 2.4 the Franchisee fails to provide details of proposed mitigating factors as required by paragraph 6.2(b) of Schedule 12 (Financial Covenants and Bonds) which in the reasonable opinion of the Secretary of State, are acceptable; or
- 2.5 the Secretary of State serves a Competition Event Notice on the Franchisee pursuant to clause 15.5 (*Competition*); or
- 2.6 any Force Majeure Event continues with the effect of preventing the Franchisee from delivering, wholly or mainly, the Shadow Operator Services for more than six (6) consecutive months (including where any of those months falls before the Integrated Operator Start Date); or
- 2.7 in the circumstances set out in paragraph 5.8 of Schedule 19.1 (Readiness Review), being a failure or refusal by the Franchisee to enter into a Remedial Agreement in such form as the Secretary of State specifies; or
- 2.8 the Anticipated High Speed Start Date has been delayed to a date later than the Passenger Change Date in December 2029; or
- 2.9 the HS2 Project is cancelled prior to completion of the Readiness Review.

3. Consequences of Events of Default

The occurrence of an Event of Default shall constitute a contravention of the Franchise Agreement by the Franchisee. On the occurrence of an Event of Default, the provisions of Schedule 10.1 (Procedure for remedying a Contravention of the Franchise Agreement) shall apply.

4. Notification of Event of Default

The Franchisee shall notify the Secretary of State as soon as reasonably practicable on, and in any event within twenty four (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.

5. Termination Notices

- 5.1 The Secretary of State may (subject to paragraph 5.4), on and at any time after the occurrence of:
 - (a) (subject to paragraphs 5.2 and 5.3) an Event of Default which:
 - (i) is unremedied or continuing; and
 - (ii) the Secretary of State considers to be material; or
 - (b) a Termination Event specified in paragraph 2.1 and/or 2.6 of this Schedule 10.2 which is unremedied or continuing; or
 - (c) a Termination Event specified in paragraphs 2.2, 2.3, 2.4, 2.5 and 2.7 of this Schedule 10.2; or

(d) a Termination Event specified in paragraphs 2.8 and 2.9 of this Schedule 10.2,

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.

5.2 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 Remedial Plan Period has expired.

5.3 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.

5.4 Where the Secretary of State serves a Termination Notice solely in relation to the Termination Event specified in paragraph 2.8 and 2.9 of this Schedule 10.2, then:

(a) the Shadow Operator Services shall terminate with effect from the date specified in such Termination Notice; and

(b) the remainder of the Franchise Agreement shall terminate with effect from the later of:

(i) the date which is two (2) years after the date on which the Termination Notice was served on the Franchisee; or

(ii) any later date specified in such Termination Notice.

5.5 A notice served on the Franchisee by the Secretary of State pursuant to paragraph 2.1(b) or 2.2(b) of Schedule 19.4 (High Speed Services Review) shall constitute a Termination Notice.

6. Consequences of Termination or Expiry

6.1 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.

6.2 Nothing in this paragraph 6 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.

6.3 Upon termination of the Shadow Operator Services, paragraphs 20, 21 and 22 of Schedule 18.1 (Shadow Operations) shall apply.

SCHEDULE 10.3B

Force Majeure and Business Continuity

1. Definition of 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 the relevant Infrastructure Manager (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 1(a)(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 the relevant Infrastructure Manager, 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 the relevant Infrastructure Manager 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 (2) Rolling Stock Units and ten (10) 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. For the purposes of this paragraph 1(c), **"Rolling Stock Units"** 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;

- (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 the Infrastructure Manager from gaining access to any relevant section or part of track; and
- (f) any strike or other Industrial Action by any or all of the employees of the Franchisee or any or all of the employees of:
- (i) a relevant Infrastructure Manager;
 - (ii) the operator of any other railway facility; or
 - (iii) any person with whom the Franchisee has a contract or arrangement for the lending, seconding, hiring, contracting out or supervision by that person of train drivers, conductors, other train crew or station or depot staff used by the Franchisee in the provision of the Franchise Services,
- or of the agents or sub-contractors of any such person listed in paragraphs 1(f)(i) to 1(f)(iii).

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 twelve (12) consecutive hours;
- (b) the Franchisee notifies the Secretary of State within two (2) Weekdays 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 and/or Shadow Operator Services (as appropriate);
- (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 and/or Shadow Operator Services (as appropriate);
- (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 and/or Shadow Operator Services (as appropriate) 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

- 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 (6) consecutive months (including

where any of those months falls before the Integrated Operator Start Date), it shall be a Termination Event in accordance with paragraph 2.1 of Schedule 10.2 (Events of Default and Termination Events).

- 3.3 If any Force Majeure Event continues, with the effect of preventing the Franchisee from delivering, wholly or mainly, the Shadow Operator Services for more than six (6) consecutive months (including where any of those months falls before the Integrated Operator Start Date), it shall be a Termination Event in accordance with paragraph 2.6 of Schedule 10.2 (Events of Default and Termination Events).

4. Business Continuity

4.1 Obligation to Produce a BCP

- (a) The Franchisee shall no later than one (1) month prior to the Anticipated High Speed Start Date produce and provide to the Secretary of State a written Business Continuity Plan in respect of the Franchise Services, updated to take account of the High Speed Services and the people, facilities and assets used to provide them which is consistent with the requirements of ISO 22301. For the avoidance of doubt, the Business Continuity Plan in force on the day immediately prior to the Integrated Operator Start Date shall continue to apply from the Integrated Operator Start Date until the High Speed Start Date.
- (b) Within one (1) month of the end of each Franchisee Year the Franchisee shall provide to the Secretary of State a certificate addressed to the Secretary of State and signed by a statutory director of the Franchisee confirming that the Business Continuity Plan is consistent with the requirements of the ISO 22301.

4.2 No Relief under Force Majeure

- (a) Nothing in paragraph 3 will relieve the Franchisee from its obligations under the Franchise Agreement to create, implement and operate the Business Continuity Plan.
- (b) If a Force Majeure Event affecting the Franchisee occurs which is an event or circumstance that is within the scope of the Business Continuity Plan, then paragraph 3.1 will only apply to that Force Majeure Event to the extent that the impacts of that Force Majeure Event would have arisen even if:
- (i) the Franchisee had complied with this paragraph 4; and
 - (ii) the Business Continuity Plan had been fully and properly implemented and operated in accordance with this paragraph 4 and the terms of the Business Continuity Plan in respect of that Force Majeure Event.

SCHEDULE 10.4B

Liability

1. Exclusion of Liability

1.1 Liability with respect to Passengers and Third Parties

- (a) 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.
- (b) 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.

1.2 Liability of the Secretary of State

Neither the Secretary of State nor any of the Secretary of State's 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 the Secretary of State's 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 the Secretary of State's 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 the Secretary of State's 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 11B

FRANCHISE PERFORMANCE MEETINGS AND MANAGEMENT INFORMATION

Schedule 11.1B:	Franchise Performance Meetings
Schedule 11.2B:	Management Information
	Appendix 1: Environmental Information
	Appendix 2: Operational Information
	Appendix 3: NOT USED
Schedule 11.3B	IOC Annual Review

SCHEDULE 11.1B

Franchise Performance Meetings

1. Franchise Performance Meetings

- 1.1 The Parties shall hold a Franchise Performance Meeting at least once in every Reporting Period (or such other interval as the Secretary of State may notify to the Franchisee in writing) at a time and location notified to the Franchisee by the Secretary of State.
- 1.2 ²⁹The Franchisee shall ensure that:
- (a) the representatives of the Franchisee at a Franchise Performance Meeting shall include such directors and/or senior managers of the Franchisee as the Secretary of State may require; and
 - (b) representatives of the Parent (which shall include such directors and/or senior managers of the Parent as the Secretary of State may require) attend a Franchise Performance Meeting at least once every quarter.
- 1.3 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 1.3 are subject to the Franchisee receiving at least twenty eight (28) days' notice of the requirement to prepare and present any such report.
- 1.4 No comment or failure to comment nor any agreement or approval, implicit or explicit by either Party at a Franchise Performance Meeting will relieve a Party of its obligations, constitute a waiver of an obligation or otherwise vary the terms of the Franchise Agreement. The terms of the Franchise Agreement shall only be capable of waiver or variation in writing in accordance with clause 14.1 (Waivers) and paragraph 1 of Schedule 9.3B (Variations to the Franchise Agreement) (respectively).

29 **Note to Bidders:** Where there are multiple parents, DfT may customise provisions such that the Secretary of State will have approval rights in circumstances where the Franchisee proposes to nominate representatives other than from the immediate parent.

SCHEDULE 11.2B

Management Information

1. Corporate Information

1.1 The Franchisee shall notify the Secretary of State of any change to any of the following information within twenty one (21) days of such change:

- (a) its name;
- (b) its business address and registered office;
- (c) its directors and company secretary;
- (d) its auditors;
- (e) its trading name or names; and
- (f) to the best of the 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 twenty per cent (20%) of the votes at general meetings of the Franchisee.

1.2 ³⁰The Franchisee shall inform the Secretary of State of any:

- (a) material change or proposed material change in its business;
- (b) material change in or restructuring of the capitalisation or financing of the Franchisee, the Parent or the Guarantor; and
- (c) litigation or other dispute which may have a material effect on its business.

For the purposes of paragraph 1.2(a), a material change or proposed material change shall include the employment or the termination of employment of any Key Personnel or the termination of any Key Contract.

2. 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);

30 **Note to Bidders:** Where there are multiple parents, DfT may customise provisions such that it applies to the Franchisee, such immediate parent of the Franchisee and any intermediate parents up to the ultimate parent

- (iii) all permits, licences, certificates or other documents required to operate such asset; and
- (iv) a printed or electronic list of all assets owned by the Franchisee from time to time (excluding, unless otherwise requested by the Secretary of State, any office furniture and consumable items).

3. Identification of Key Personnel and Provision of Organisation Chart

- 3.1 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 and an organisational chart detailing the responsibilities and reporting lines of each of the Key Personnel. Without prejudice to the provisions of paragraph 3.3, the Franchisee shall no later than one (1) month prior to the Anticipated High Speed Start Date provide to the Secretary of State an updated schedule and organisational chart identifying the Key Personnel who shall be employed in respect of the Franchise Services which shall include the people with the roles determined in accordance with Schedule 20 (IOC Confirmable Obligations).
- 3.2 The Franchisee shall nominate a board level director of the Franchisee (or at the Secretary of State's discretion, a director of the Parent or any appropriate Affiliate) whose responsibilities shall include overseeing, at a strategic level, the Franchisee's interface with the Secretary of State in relation to sections 119 to 121 (inclusive) of the Act and co-ordinating relevant activities and delivery of counter terrorist security on behalf of the Franchisee in connection with the Franchisee's compliance with relevant instructions issued by the Secretary of State under section 119 of the Act from time to time. Such director shall be identified by job title in the organisation chart referred to in paragraph 3.3 and shall be deemed part of the Key Personnel. Unless otherwise notified (by either Party), the director nominated for the purposes of paragraph 3.2 of Schedule 11.2A on the ICWC Expiry Date, shall be the director nominated under this paragraph 3.2 of Schedule 11.2 as at the Integrated Operator Start Date.
- 3.3 The schedule of Key Personnel and the organisation chart detailing the responsibilities and reporting lines of each of the Key Personnel applicable on the ICWC Expiry Date shall (unless changes occur at the Integrated Operator Start Date) be the schedule and organisational chart as at the Integrated Operator Start Date. The Franchisee shall update such schedule and chart (and provide copies to the Secretary of State promptly thereafter) as and when any changes occur (including, for the avoidance of doubt, if any changes occur on the Integrated Operator Start Date and/or the High Speed Start Date).

4. Operational Performance Information

- 4.1 The Franchisee shall provide to the Secretary of State the information specified in Appendix 2 (Operational Performance Information) to this Schedule 11.2 at the times specified therein.

5. Maintenance of Records

- 5.1 The Franchisee shall at all times create and maintain true, up to date and complete records, books and other materials relating to the:
- (a) operation and maintenance of Franchise Assets;
 - (b) operation of the Franchise Services; and
 - (c) financial performance of the Franchise,

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

of the Franchise as a going concern in accordance with paragraph 1 of Schedule 14.1 (Maintenance of Franchise).

- 5.2 Unless otherwise agreed by the Secretary of State, all records, books and materials required to be maintained by the Franchisee in accordance with this Schedule 11.2 shall be held in a form that is capable of audit for a period of not less than six (6) years following the Expiry Date or the date of any earlier termination of this Agreement.
- 5.3 References to records, books and materials in this Schedule 11.2 shall include records, books and materials maintained under any Previous Franchise Agreement to the extent that such records relate to services equivalent to the Franchise Services and the Franchisee has access to them (which it shall use all reasonable endeavours to secure). Notwithstanding the requirements of paragraphs 5.2 and 5.4, the Franchisee shall only be required to hold such records, books and materials created under any Previous Franchise Agreement for a period of six (6) years following the date of this Agreement.
- 5.4 The Franchisee shall not be responsible for any records, books or materials maintained under any Previous Franchise Agreement, as referred to in paragraph 5.3, being true, complete and up to date. As soon as reasonably practicable after becoming aware that any such records, books or materials 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, books or materials in accordance with paragraph 5.1.

6. Right to Inspect

- 6.1 The Franchisee shall, if requested by the Secretary of State, allow the Secretary of State and the Secretary of State's representatives and advisers:
- (a) to inspect and copy any records referred to in this Schedule 11.2 and paragraph 17 of Schedule 18.1 (Shadow Operations) and the Secretary of State may verify any such records; and/or
 - (b) to inspect and copy at any reasonable time any books, records and any other material kept by or on behalf of the Franchisee and/or its auditors and any assets (including the Franchise Assets) used by the Franchisee in connection with the Franchise Services.
- 6.2 The Franchisee shall make available to the Secretary of State, the Secretary of State's representatives and advisers the information referred to in paragraph 6.1 and grant or procure the grant of such access (including to or from third parties) as the Secretary of State, the Secretary of State's representatives and advisers shall reasonably require in connection therewith. The obligation of the Franchisee under this paragraph 6.2 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 6.1 is kept by or on behalf of the Franchisee.
- 6.3 The Secretary of State, the Secretary of State's representatives and advisers shall be permitted to take photographs, film or make a video recording, or make any other kind of record of any such inspection.
- 6.4 If any inspection reveals that information previously supplied to the 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.

7. Information to the Passengers' Council and Local Authorities

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

8. Periodic Update Reports

8.1 The Franchisee shall prepare and submit to the Secretary of State a periodic report in each Reporting Period which shall:

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

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

9. Financial Information

9.1 Accounting Records

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.

9.1A The Franchisee shall ensure that:

- (a) each of the:
 - (i) IOC Section of the Management Accounts;
 - (ii) IOC Section of the Annual Management Accounts;
 - (iii) Shadow Operator Section of the Management Accounts; and
 - (iv) Shadow Operator Section of the Annual Management Accounts,

reports costs (and where relevant revenues) on a line by line basis (for each and every item) which matches the corresponding lines in the relevant Cost Baseline, Transitional Budget, IOC Cost Budget and Forecast IOC Revenue (as the case may be) each as most recently Placed in Escrow.

9.2 Reporting Period Financial Information

- (a) The Franchisee shall deliver to the Secretary of State, within ten (10) Weekdays of the end of each Reporting Period:

- (i) its Management Accounts for such Reporting Period, setting out in separate sections the IOC Section of the Management Accounts, the Shadow Operator Section of the Management Accounts and the ICWC Section of the Management Accounts, each such section including a cash flow statement, profit and loss account and balance sheet for that Reporting Period and cumulatively for the Franchisee Year to date;
 - (ii) written confirmation that the Management Accounts, to the best of the knowledge, information and belief of the board of directors of the Franchisee, contain a true and accurate reflection of the revenues, costs, assets and liabilities of the Franchisee (including contingent assets or liabilities and known business risks and opportunities) appropriately allocated to the ICWC, IOC and Shadow Operator Sections respectively of the Management Accounts and, to the extent that they do not, identify in a written report relevant issues in reasonable detail and provide such further information that the Secretary of State shall reasonably require in relation; and
 - (iii) 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 Covenants and Bonds).
- (b) The Management Accounts shall also set out:
- (i) sufficient information to enable the Secretary of State to calculate Actual Operating Costs and Modified Revenue in accordance with paragraph 2.1 of Schedule 12 (Financial Covenants and Bonds);
 - (ii) the ratio of the Franchisee's:
 - (A) Total Modified Revenue to its Total Actual Operating Costs; and
 - (B) 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 Costs and Forecast Operating Costs for each of the Reporting Periods used for the purposes of the calculation of the ratios pursuant to this paragraph 9.2(b);
 - (iii) a comparison of the Franchisee's financial performance during such period against the relevant Forecast IOC Revenue, IOC Cost Budget and other information provided by the Franchisee in the then current Business Plan. Such comparison shall follow the same structure and format as, and report costs on (a line item by line item basis) consistently with, the IOC Cost Budget as most recently Placed in Escrow and shall present the information in such manner as to facilitate the identification of Actual IOC Costs as reported in the IOC Section of the Management Accounts and easy comparison of those Actual IOC Costs with the IOC Cost Budget;
 - (iv) a comparison of the Franchisee's cumulative financial performance during the Franchisee Year in which such period occurs against the cumulative position set out in the IOC Cost Budget and Forecast IOC Revenue including clear identification of any costs on any individual line of the IOC Section of the Management Accounts which are cumulatively in the Franchisee Year to date in excess of the cumulative year to date costs on that corresponding line of the IOC Cost Budget most recently Placed in Escrow;

- (v) a statement of any costs incurred in that Reporting Period which exceed the amount specified in the relevant line in the IOC Cost Budget together with an explanation of why the overspend occurred (with evidence to demonstrate that it acted as an Efficient Operator) and (where applicable), why no proposal for Change was made by the Franchisee to address the excess cost;
 - (vi) a statement of any revenue not recorded in the IOC Section of the Management Accounts but which falls within the definition of Actual IOC Revenue together with an explanation of why such revenue was not received or accrued by the Franchisee (with evidence to demonstrate that it acted as an Efficient Operator);
 - (vii) a detailed statement and a detailed and comprehensive written explanation of any material differences between the cumulative cost and revenue figures in the IOC Section of the Management Accounts and the IOC Cost Budget and Forecast IOC Revenue most recently Placed in Escrow;
 - (viii) a detailed statement and explanation of any PCS Advances and/or PCG Advances (each as defined in the Funding Deed) provided and/or repaid during such Reporting Period;
 - (ix) an accrual or accruals of cost or revenue (presented in the relevant Section(s) of the Management Accounts) representing the difference between the actual Franchise Payment paid or received in the Reporting Period and the amount of the draft calculation of the total Franchise Payment payable or receivable (including each element of the Periodic Franchise Payment (PFP)) for the Reporting Period based on the cumulative costs and revenues in the IOC Section of the Management Accounts, pursuant to paragraph 2 of Appendix 1 to Schedule 8.1B (Franchise Payments); together with supporting information showing how the Franchisee has calculated such payment including a breakdown of the information used for the purposes of the calculation of each element of the Franchise Payment pursuant to Schedule 8.1B (Franchise Payments);
 - (x) separate identification of any costs, revenues, balances and accounting adjustments in the IOC Section of the Management Accounts which relate to the provision of the PMO Services;
 - (xi) separate identification of any costs and related accounting adjustments in the IOC Section of the Management Accounts which relate to the provision of the Franchise Services (other than the Shadow Operator Services) after the Integrated Operator Start Date but which do not fall within the definition of Actual IOC Costs;
 - (xii) explanations of any prior period or retrospective adjustments to transactions in the previous Management Accounts which impact the cumulative costs and/or revenues as reported in the IOC Section of the Management Accounts and/or the Shadow Operator Section of the Management Accounts for any Reporting Period; and
 - (xiii) separate identification of payments to or from any Affiliate of the Franchisee.
- (c) Within five (5) Weekdays after receipt of the Management Accounts for each Reporting Period in accordance with paragraphs (a) and (b) above, the Secretary of State shall notify the Franchisee of any further information, explanation or analysis which the Secretary of State requires in relation to the IOC Section of the Management Accounts (including information that the Secretary of State requires in relation to the calculation of the Franchise Payment under the provisions of Schedule 8.1B) and the Franchisee shall promptly provide such further information or analysis.

9.3 Quarterly Financial Information

- (a) Within twenty (20) Weekdays after the end of the third (3rd), sixth (6th) and ninth (9th) Reporting Periods in each Franchisee Year, the Franchisee shall deliver to the Secretary of State the following information:
- (i) an updated forecast of expected Actual IOC Revenue and expected Actual IOC Costs together with a detailed and comprehensive written explanation as to any changes in such forecast from the previous forecast provided pursuant to the provisions of this Schedule 11.2, for each of the following thirteen (13) Reporting Periods. For the avoidance of doubt, this updated forecast does not replace or alter the Forecast IOC Revenue or IOC Cost Budget as agreed or determined in accordance with Schedule 8.1B (Franchise Payments); and
 - (ii) a statement of calculation demonstrating the Franchisee's performance against each of the financial covenants in paragraph 2 of Schedule 12 (Financial Covenants and Bonds) at the beginning of each Reporting Period and a forecast of performance against such covenants for each of the following thirteen (13) Reporting Periods.
- (b) 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.

9.4 Annual Financial Information

- (a) NOT USED.
- (b) Within four (4) Reporting Periods after the end of each Franchisee Year, the Franchisee shall deliver to the Secretary of State the following information:
- (i) its Annual Management Accounts for that Franchisee Year;
 - (ii) 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;
 - (iii) a detailed reconciliation of the Annual Management Accounts to the Annual Audited Accounts (in such format as the Secretary of State may reasonably specify from time to time), which shall:
 - (A) identify and distinguish between transactions in the Annual Audited Accounts which meet the definition of Actual IOC Costs, transactions in the Annual Audited Accounts which meet the definition of Actual Shadow Operator Costs, and transactions in the Annual Audited Accounts which do not fall within either of these definitions;
 - (B) identify and distinguish between transactions in the Annual Audited Accounts which meet the definitions of Actual IOC Revenue, transactions in the Annual Audited Accounts which meet the definition of Actual Shadow Operator Revenue and transactions in the Annual Audited Accounts which do not fall within either of these definitions;
 - (C) disaggregate the costs in the Annual Audited Accounts so as to report against (and show in a format consistent with that used in) each Section of the Annual Management Accounts;
 - (D) demonstrate that the Actual IOC Costs and Actual Shadow Operator Costs reported in the IOC Section of the Annual Management Accounts and the Shadow Operator Section of the Annual Management Accounts are

consistent with the Actual IOC Costs and Actual Shadow Operator Costs as reported in the Annual Audited Accounts; and

- (E) demonstrate that the Actual IOC Revenue and Actual Shadow Operator Revenue reported in the IOC Section of the Annual Management Accounts and the Shadow Operator Section of the Annual Management Accounts are consistent with the Actual IOC Revenue and Actual Shadow Operator Revenue as reported in the Annual Audited Accounts;
 - (iv) a statement from the Franchisee's auditors, (in a format to be from time to time reasonably specified by the Secretary of State) that the detailed reconciliation referred to in (iii) above has been prepared reasonably based on the underlying actual costs and revenues in the Annual Audited Accounts and Annual Management Accounts;
 - (v) a statement from the Franchisee's auditors confirming compliance with the financial covenants in paragraph 2 of Schedule 12 (Financial Covenants and Bonds);
 - (vi) a statement from the Franchisee (signed by a statutory director of the Franchisee) confirming compliance with the reporting requirements of paragraph 9.2(b)(vi) of this Schedule 11.2;
 - (vii) a draft calculation of the Annual Adjustment (AADJ) for the Franchisee Year based on the costs and revenues in the Annual Audited Accounts, pursuant to paragraph 3 of Appendix 1 to Schedule 8.1B (Franchise Payments); and
 - (viii) a statement from the Franchisee (signed by a statutory director of the Franchisee) confirming the value, timing and impact of any prior period or retrospective adjustments to the Annual Audited Accounts or the Annual Management Accounts of any previous period since the First IOC Year and confirming that the impact of these prior period or retrospective adjustments has been included in the draft calculation of the Annual Adjustment (AADJ) in paragraph (vii) above.
- (c) In accordance with paragraphs (a) and (b) above, the Secretary of State may notify the Franchisee of any further information, explanation or analysis which the Secretary of State requires in relation to the calculation of the Annual Adjustment (AADJ) for the relevant Franchisee Year and the Franchisee shall promptly provide such further information or analysis.

9.5 Accounting Standards and Practices

- (a) Each set of Management Accounts and Annual Management Accounts shall:
- (i) be in the formats as from time to time agreed between the Parties or in such other format as the Secretary of State may reasonably specify from time to time;
 - (ii) 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
 - (iii) identify, to the reasonable satisfaction of the Secretary of State, any changes in such accounting policies from those policies that were applied in preparing the financial statements contained in the ICWC Record of Assumptions, the IOC Record of Assumptions, the Transitional Record of Assumptions and the Product Cost Assumption Statements (as applicable) Placed in Escrow on the Integrated Operator Start Date.
- (b) The Annual Audited Accounts shall:

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

9.6 Parent and Guarantor Accounts

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, the Guarantor and any Affiliate, together with copies of all related directors' and auditors' reports. If any of the Parent, the Guarantor or the Affiliate is domiciled outside England and Wales, the equivalent documents in the jurisdiction of residence of the Parent, the Guarantor or the Affiliate (as applicable) shall be delivered to the Secretary of State.

9.7 Secretary of State Audit of calculations provided pursuant to paragraphs 9.2, 9.3 and 9.4

- (a) Without prejudice to paragraph 2.2 of Schedule 12 (Financial Covenants and Bonds) and paragraph 17 of Schedule 18.1 (Shadow Operations) or to any other rights of the Secretary of State under the Franchise Agreement, the Secretary of State and the Secretary of State's representatives shall be permitted to inspect at any time the books, records and any other material kept by or on behalf of the Franchisee in order to check or audit any item contained in or relating to the Management Accounts in so far as they relate to:
 - (i) the statement of calculations required by paragraph 9.2(b)(ii) of this Schedule 11.2 and any other matter in connection with the Franchisee's obligations under paragraph 2 of Schedule 12 (Financial Covenants and Bonds);
 - (ii) the identification of which costs and revenues reported in the IOC Section of the Management Accounts, the IOC Section of the Annual Management Accounts and the Annual Audited Accounts are Actual IOC Costs and Actual IOC Revenues;
 - (iii) the calculation of Franchise Payments;
 - (iv) the calculation of the reconciliation referred to at paragraph 9.4(b)(iii); and/or

- (v) any other information required pursuant to the provisions of paragraphs 9.2, 9.3 or 9.4.
- (b) The Franchisee shall make available to the Secretary of State and the Secretary of State's representatives such information and grant such access or procure the grant of such access (including to or from third parties) as they shall reasonably require in connection with any audit to be carried out pursuant to paragraph 9.7(a). If any audit carried out pursuant to paragraph 9.7(a) reveals, in the reasonable opinion of the Secretary of State, any material inaccuracy in the Management Accounts, the Annual Management Accounts and/or the Annual Audited Accounts (but only in so far as such accounts relate to the statement of calculations required by paragraph 9.2(b)(ii)) then the Secretary of State may exercise the Secretary of State's rights as described in paragraphs 2.2(c) or 2.2(d) of Schedule 12 (Financial Covenants and Bonds) and the Franchisee shall pay all reasonable costs of any such audit as a monitoring cost pursuant to paragraph 7.4 of Schedule 10.1 (Procedure for remedying a Contravention of the Franchise Agreement).

9.8 Obligations on Termination or Expiry of the Franchise Agreement

- (a) Notwithstanding any termination or expiry of the Franchise Agreement, upon request of the Secretary of State the Franchisee shall promptly provide a reconciliation between its Annual Audited Accounts and a set of accounts with a format and level of information equivalent to the previous Annual Management Accounts.

10. Business Plans

10.1 Initial Business Plan

- (a) The Initial Business Plan which applies from the Integrated Operator Start Date shall be the Integrated Operator Business Plan, or Interim Integrated Operator Business Plan (as applicable), developed in accordance with paragraph 12 of Schedule 18.2 (Accepted Programme Specific Requirements).

10.2 Annual Business Plans³¹

- (a) No later than one (1) Reporting Period before the start of each Franchisee Year after the Integrated Operator Start Date, the Franchisee shall deliver to the Secretary of State the Franchisee's business plan for the forthcoming Franchisee Year (the "**Annual Business Plan**"). The Annual Business Plan shall be a detailed and comprehensive description of the Franchisee's planned activities for such Franchisee Year and the manner in which the Franchisee shall meet its obligations under the Franchise Agreement in respect of that Franchisee Year, excluding in relation to the Shadow Operator Services, and include:
 - (i) a profit and loss forecast, cash flow forecast and forecast balance sheet for each of the thirteen (13) Reporting Periods in the relevant Franchisee Year including the final agreed or determined IOC Cost Budget relating to that Franchisee Year and details of the Forecast IOC Revenues in the format required by Schedule 8.1B (Franchise Payments);
 - (ii) a forecast of the Franchisee's performance against each of the financial covenants in paragraph 2 of Schedule 12 (Financial Covenants and Bonds) for each of the thirteen (13) Reporting Periods in the relevant Franchisee Year; and

31 **Note to Bidders:** Where there are multiple parents, the Annual Business Plan must be provided to at least the immediate and ultimate parents, and confirmation statements from a statutory director of those entities must be provided.

- (iii) a statement from each of, a statutory director of the Franchisee and, a statutory director of the Parent confirming that the Annual Business Plan has been provided to, considered and endorsed by the board of directors of the Parent and that the board of directors of the Parent is not aware of any other plan which may alter, vary or impact on the Business Plan and shall at any time during the following twelve (12) months notify the Secretary of State should any of them become aware of any such plan.
- (b) If at any time during a Franchisee Year the Franchisee produces any other annual business plan or periodic plan which is delivered to its Parent it shall at the same time as delivering such plan to its Parent notify the Secretary of State of all such plans and shall explain to the Secretary of State how (if at all) such further plan alters, amends or otherwise varies or impacts on the applicable Annual Business Plan or Initial Business Plan. The Secretary of State shall be entitled to copies of such further plans as the Secretary of State shall reasonably determine. For the avoidance of doubt, the delivery of any plan under this paragraph (b) does not replace or alter the Forecast IOC Revenue or IOC Cost Budget as agreed or determined in accordance with Schedule 8.1B (Franchise Payments).

10.3 Business Action Plan

- (a) 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:
 - (i) timetable and service pattern development;
 - (ii) Station facility improvement;
 - (iii) performance management improvement;
 - (iv) customer service improvement; and
 - (v) improvements in the quality of service delivery or the efficiency of delivery of the Franchise Services.
- (b) The 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.
- (c) 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 the Secretary of State may impose.

11. Safety Information

11.1 Safety

- (a) 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.
- (b) 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 the 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.
- (c) The Franchisee shall participate in industry groups and committees addressing the domestic and European safety agenda of the Railway Group.

12. Further Information

12.1 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 the Secretary of State may request within such period as the Secretary of State 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 12.1(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.

12.2 The information referred to in paragraph 12.1 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 Passenger Services and/or the Shadow Operator Services;
- (b) in so far as the Franchisee has or is able to obtain the same, any 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 or any documents associated with 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.

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

- (a) the information required to be provided under this Schedule 11.2 more frequently than set out in this Schedule 11.2;
- (b) the information required to be provided under this Schedule 11.2, 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.

13. Information from Third Parties

13.1 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.

13.2 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.

13.3 The obligations of the Franchisee under this Schedule 11.2 to provide information to the Secretary of State shall not apply if the Secretary of State notifies the Franchisee that the Secretary of State has received the relevant information directly from any other person (including the relevant

Infrastructure Manager 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.

- 13.4 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 11.2. Any such advice shall include an assessment of the materiality of the relevant change.

14. Compatibility of Information

- 14.1 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 3 of Schedule 13.1A or Schedule 13.1B (Rail Industry Initiatives and Co-operation).

- 14.2 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.

15. Environmental Information

15.1 Environmental Information Data Collection Plan

(a) The:

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

applicable as at the end of the ICWC Term shall apply at the Integrated Operator Start Date.

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

(c) The Secretary of State may require:

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

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

- (d) Where the Franchisee is:
- (i) undertaking works, whether at a Station or Depot or in respect of rolling stock;
 - (ii) procuring rolling stock; or
 - (iii) taking any other action which could enable the Franchisee to provide any items of Excluded Data in a cost effective manner,

the Franchisee shall use reasonable endeavours to do so in a manner which would enable the Franchisee to provide any relevant item of Excluded Data (and any item of IOC Excluded Data which the Franchisee becomes able to provide as a result will, with effect from the date on which the Franchisee becomes able to provide the same, form part of the Initial Dataset).

- (e) The Franchisee shall measure and collect and provide to the Secretary of State in accordance with this paragraph 15, that data included in the Initial Dataset so as to allow the Secretary of State and the Franchisee to understand the current environmental performance of the Franchise and any potential for improvement in terms of environmental impact.
- (f) The Franchisee may, in its discretion, measure and collect additional data provided that the minimum required under the Initial Dataset is adhered to and the Franchisee shall cooperate with the Secretary of State to seek to identify improvements in the efficiency and/or cost effectiveness of the collection of the data in the Dataset.
- (g) The Franchisee shall ensure that the form of measurement of the Initial Dataset enables it to report a consolidated periodic or annual usage figure to the Secretary of State as specified for each measure in paragraph 1 of Appendix 1 (Environmental Information) to this Schedule 11.2.

15.2 Environmental Impact Monitoring Report and Environmental Impact Monitoring Audit

- (a) The Franchisee shall submit to the Secretary of State a report setting out the result of the data collection of the Initial Dataset required by this paragraph 15 in accordance with the applicable granularity and regularity specified in paragraph 1 of Appendix 1 (Environmental Information) to this Schedule 11.2 (the "**Environmental Impact Monitoring Report**") within three (3) months following the end of each Franchisee Year.
- (b) The Franchisee shall procure a suitably qualified independent body (such independent body to be appointed only with the prior written approval of the Secretary of State) to undertake an annual independent written audit of the data provided in the Environmental Impact Monitoring Report and the collection methodology of the Initial Dataset in respect of each Franchisee Year (the "**Environmental Impact Monitoring Audit**").
- (c) The Franchisee shall procure that the independent body appointed pursuant to paragraph 15.2(b) includes in the Environmental Impact Monitoring Audit:
- (i) a retrospective assessment (covering the Franchisee Year to which the audit relates) of the Franchisee's data collection methodology and level of data granularity carried out in accordance with this paragraph 15.2 and any recommendations by the independent body in respect of such methodology;
 - (ii) a verification of the accuracy of past data submissions made in respect of the Initial Dataset and as summarised in the Environmental Impact Monitoring Report; and

- (iii) an assessment of the Franchisee's proposed data collection methodology and level of data granularity for the following Franchisee Year's data collection, and

where the independent body has identified as part of its audit any errors, discrepancies or concerns with any of the items described in paragraphs 15.2(c)(i) to (iii) above, whether these are, in the reasonable opinion of the independent body undertaking the audit, material or minor errors, discrepancies or concerns.

- (d) The Franchisee shall submit a copy of the Environmental Impact Monitoring Audit to the Secretary of State at the same time as the Environmental Impact Monitoring Report is submitted in accordance with paragraph 15.2(a) above.
- (e) Where the Environmental Impact Monitoring Audit highlights errors, discrepancies or concerns with any of the items described in paragraphs 15.2(c)(i) to (iii) above, the Franchisee shall, at the Franchisee's cost:
 - (i) **in the case of any errors, discrepancies or concerns which are capable of rectification** rectify such errors, discrepancies or concerns and resubmit the relevant Environmental Impact Monitoring Report updated to address these to the Secretary of State as soon as reasonably practicable, and in any event within ten (10) Weekdays, following the date of the submission of the Environmental Impact Monitoring Audit to the Secretary of State so that there is a complete and accurate record of the data in question; and
 - (ii) **in the case of concerns in relation to the Franchisee's data collection methodology and level of data granularity for the forthcoming Franchisee Year's data collection** – make such amendments to such methodology as recommended in the Environmental Impact Monitoring Audit so as to address those concerns.

16. Environmental Impact Targets

16.1 Environmental Impact Targets set by the Secretary of State

The Secretary of State sets out in paragraph 2 of Appendix 1 (Environmental Information) of this Schedule 11.2 the targets for improving the environmental performance of the Franchise (the "**Environmental Impact Targets**"), and the Franchisee shall meet such Environmental Impact Targets during the Integrated Operator Period.

16.2 Performance against the Environmental Impact Targets

- (a) For each Franchisee Year the Secretary of State shall determine the Franchisee's performance against each Environmental Impact Target on an annual basis (within two (2) Reporting Periods of receipt of the Environmental Impact Monitoring Report) by comparing the following, or such additional or amended items in such list as may be confirmed in accordance with Schedule 20 (IOC Confirmable Obligations):
 - (i) **for traction carbon emissions:** the Franchisee's performance set out in the Environmental Impact Monitoring Report (as updated following the Environmental Impact Monitoring Audit) against the relevant Environmental Impact Target for the relevant Franchisee Year, in accordance with the annual trajectory specified in the Sustainable Development Strategy;
 - (ii) **for non-traction energy use:** the Franchisee's performance as set out in the Environmental Impact Monitoring Report (as updated following the Environmental Impact Monitoring Audit) against the relevant Environmental Impact Targets;

- (iii) **for waste:** the Franchisee's performance as set out in the Environmental Impact Monitoring Report (as updated following the Environmental Impact Monitoring Audit) against the relevant Environmental Impact Targets;
 - (iv) **for mains water:** the Franchisee's performance as set out in the Environmental Impact Monitoring Report (as updated following the Environmental Impact Monitoring Audit) against the relevant Environmental Impact Targets.]
- (b) For the purposes of undertaking the comparison pursuant to paragraph 16.2(a), the results referred to in paragraphs 16.2(a)(i) to (iii) (as the case may be) shall be rounded up to one (1) decimal place with the midpoint (that is, 4.45) rounded upwards (that is, 4.5).
 - (c) As soon as reasonably practicable following the Integrated Operator Start Date and in any event within six (6) months of the Integrated Operator Start Date, the Franchisee shall produce and provide to the Secretary of State for approval an implementation plan for the duration of the Integrated Operator Period which is capable of achieving each of the Environmental Impact Targets each Franchisee Year (as such implementation plan may be revised in accordance with paragraph 16.3 (the "**Environmental Impact Targets Plan**")).
 - (d) Following the Secretary of State's approval, the Franchisee shall use all reasonable endeavours to implement the Environmental Impact Targets Plan (including any such plan which is revised in accordance with paragraph 16.2(e)) in order to achieve the Environmental Impact Targets.
 - (e) Notwithstanding the requirements of this paragraph 16.2, the Franchisee shall review its then current Environmental Impact Targets Plan and revise such plan as necessary by no later than twelve (12) months after the High Speed Established Services Date following the Integrated Operator Start Date to ensure that such plan in the reasonable opinion of the Secretary of State, is capable of achieving each Environmental Impact Target in each Franchisee Year.

16.3 Remedial Actions

- (a) In the event that an Environmental Impact Target is not met in any Franchisee Year, the Franchisee shall as soon as reasonably practicable produce and provide to the Secretary of State a revised Environmental Impact Targets Plan which, in the reasonable opinion of the Secretary of State, is capable of achieving the Environmental Impact Targets. The costs of producing and providing any such revised Environmental Impact Targets Plan shall be at the Franchisee's cost.
- (b) The Franchisee shall use all reasonable endeavours to implement the revised Environmental Impact Targets Plan, which shall be the Environmental Impact Targets Plan for the purposes of the Franchise Agreement.

16.4 Publication

The Franchisee shall publish (in such format as the Secretary of State may reasonably require) details of its performance against the Environmental Impact Targets in widely accessible forms including, as a minimum, publishing them on its website and in each Customer Report.

APPENDIX 1 TO SCHEDULE 11.2B

Environmental Information

The tables in paragraphs 1 and 2 of this Appendix (or equivalent replacement tables) will be updated and/or populated in accordance with Schedule 20 (IOC Confirmable Obligations).

1. Environmental Impact Monitoring Dataset

Table 1			
Subject	Unit	Granularity	Regularity
TRACTION	EC4T (kWh)	Breakdown per distinct fleet - metered	Four (4) week period
	EC4T (kWh)	Breakdown per distinct fleet - unmetered	Four (4) week period
	Gas-oil (litres)	Breakdown per distinct fleet	Four (4) week period
NONTRACTION	Electricity (kWh)	Total	Four (4) week period or monthly
	Gas (kWh)	Total	Four (4) week period or monthly
	Gas-oil (litres)	Total	Four (4) week period or monthly
CARBON	Scope 1 emissions (tonnes)	Total	Annual
	Scope 2 emissions (tonnes)	Total	Annual
	Embodied carbon in new infrastructure projects over the amount set out in paragraph 10.3 (b) (Sustainable Construction) of Schedule 13.1 (Rail Industry Initiatives)	Total	Per project
WATER	Mains Water consumption (m ³)	Total	Annual
	Water recycling initiatives	Narrative	Annual
WASTE	Waste generated (tonnes)	Total	Annual
	Waste recycled (tonnes)	Total	Annual
	Waste subject to other recovery (tonnes)	Total	Annual
	Waste to landfill (tonnes)	Total	Annual
	Hazardous waste	Total	Annual
ENVIRONMENTAL MANAGEMENT SYSTEM (EMS)	Enforcement/information Notices	Total	Annual
	Environmental fines or prosecutions	Total	Annual
	Environmental incidents reported through the EMS	Total	Annual
	Environmental training records % personnel briefed/trained	Total	Annual

2. Environmental Impact Targets

Table 2			

APPENDIX 2 TO SCHEDULE 11.2B

Operational Performance Information

1. Information about the operational 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 2. Such information shall include details as to whether or not any curtailment, diversion, delay or failure to attain any connection is attributable, in the 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 2:

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

- 1.5 This Appendix 2 shall be interpreted in accordance with any guidance issued by the Secretary of State from time to time for that purpose.

The following table of operational performance information is to be confirmed in accordance with Schedule 20 (IOC Confirmable Obligations).

Table 1 - Operational Performance Information		
Information to be provided	Information (format)	When information to be provided

APPENDIX 3 TO SCHEDULE 11.2B

NOT USED

SCHEDULE 11.3B

Integrated Operator Annual Review

1. Purpose Of Annual Review

- 1.1 The purpose of the IOC Annual Review is for the Secretary of State to undertake a review of the Franchisee's performance in relation to the Franchise Services (excluding the Shadow Operator Services) in respect of the most recently completed IOC Performance Period.
- 1.2 NOT USED.

2. Annual Review Meetings

- 2.1 The Secretary of State shall notify the Franchisee of the date, time and location for the IOC Annual Review Meeting by no later than the end of the relevant IOC Performance Period, provided always that the IOC Annual Review Meeting shall take place no later than the eighteenth (18th) day of the fourth (4th) Reporting Period following the end of the relevant IOC Performance Period.
- 2.2 For the avoidance of doubt, nothing in this Schedule 11.3 shall prevent the Parties from discussing any matter relevant to an IOC Annual Review outside of an IOC Annual Review Meeting.

3. Annual Review Checklist

- 3.1 Not less than thirty (30) days prior to the last date in each IOC Performance Period, the Secretary of State, acting reasonably, shall notify the Franchisee in writing of any additional information that the Franchisee is required to submit at the same time as the completed IOC Annual Review Checklist.
- 3.2 Not less than fifteen (15) days prior to the last date in each IOC Performance Period, the Franchisee shall notify the Secretary of State in writing of any matters in addition to those set out in the IOC Annual Review Checklist or the information notified to the Franchisee by the Secretary of State in accordance with paragraph 3.1 of this Schedule 11.3, which the Franchisee considers to be relevant for the IOC Annual Review. The Secretary of State shall, within five (5) days of receiving such notice, provide written confirmation to the Franchisee of whether the Secretary of State considers such matters to be relevant to the IOC Annual Review.
- 3.3 Unless notified otherwise in writing by the Secretary of State, the Franchisee shall undertake an IOC Stakeholder Survey in respect of each IOC Performance Period and shall include the IOC Stakeholder Report in the relevant IOC Annual Review Checklist. The IOC Stakeholder Report shall:
- (a) set out an analysis of the responses received from Stakeholders and the Department, HS2 Limited, Network Rail, the TMM and passenger representative bodies in response to the IOC Stakeholder Survey; and
 - (b) provide for the approach of the Franchisee to collaborative working to be assessed by Stakeholders and the Department, HS2 Limited, Network Rail, the TMM and passenger representative bodies on a scale from poor to excellent.
- 3.4 As soon as reasonably practicable after the end of each IOC Performance Period, and in any event no later than thirty (30) days after the end of each IOC Performance Period, the Franchisee shall deliver to the Secretary of State a duly completed copy of the IOC Annual Review Checklist in respect of the relevant IOC Performance Period.

- 3.5 The IOC Annual Review Checklist delivered by the Franchisee in accordance with paragraph 3.4 of this Schedule 11.3 may include written commentary from the Franchisee in respect of the relevant IOC Performance Period covering:
- (a) each of the matters listed in the IOC Annual Review Checklist;
 - (b) any other such matter notified by the Secretary of State to the Franchisee in accordance with paragraph 3.1 of this Schedule 11.3; and
 - (c) any other matter which the Secretary of State has confirmed as relevant for the IOC Annual Review in accordance with paragraph 3.2.
- 3.6 At any time following delivery by the Franchisee of the IOC Annual Review Checklist and other information in accordance with paragraph 3.4 and 3.5 of this Schedule 11.3 and prior to the date that is sixty (60) days prior to the IOC Annual Review Meeting, the Secretary of State may notify the Franchisee, in writing of such further detail or evidence as the Secretary of State reasonably requires the Franchisee to provide in relation to its performance during the IOC Performance Period and the Franchisee shall comply with such request within a reasonable amount of time and in any event no later than fifteen (15) days following receipt of such request.
- 3.7 The Secretary of State shall provide the Franchisee with:
- (a) written commentary on the completed IOC Annual Review Checklist (including any commentary provided by the Franchisee under paragraph 3.5 of this Schedule 11.3B); and
 - (b) any information additional to that contained in the IOC Annual Review Checklist which the Secretary of State has used or intends to use to assess the Franchisee's performance,
- in each case, no later than thirty (30) days prior to the IOC Annual Review Meeting.
- 3.8 As soon as reasonably practicable, and in any event no later than ten (10) days after the Secretary of State has delivered written commentary in accordance with paragraph 3.7 of this Schedule 11.3, the Franchisee shall provide the Secretary of State with a written response to the Secretary of State's written commentary in such format as is notified by the Secretary of State to the Franchisee from time to time.

4. IOC Annual Review Meetings

- 4.1 Each IOC Annual Review Meeting shall take place at the date, time and location notified by the Secretary of State in accordance with paragraph 2.1 of this Schedule 11.3 and shall be attended by representatives of each of the Secretary of State and the Franchisee.
- 4.2 The Franchisee shall ensure that the representatives of the Franchisee at each IOC Annual Review Meeting include such:
- (a) appropriate and qualified personnel of the Franchisee;
 - (b) directors and/or senior managers of the Franchisee; and
 - (c) directors and/or senior managers of the Parent,
- as the Secretary of State may reasonably require.
- 4.3 At each IOC Annual Review Meeting the Parties shall discuss the Franchisee's performance by reference to the IOC Annual Review Checklist, together with any supporting commentary, documents or evidence submitted by the Franchisee to the Secretary of State in accordance with

paragraph 3.4, 3.5, 3.6 or 3.8 of this Schedule 11.3B and any commentary and/or information provided by the Secretary of State to the Franchisee in accordance with paragraph 3.7 of this Schedule 11.3B.

5. IOC Annual Review Scoring

- 5.1 The Secretary of State shall provide to the Franchisee, no later than ten (10) days following the IOC Annual Review Meeting, a duly completed IOC Annual Review Scorecard setting out the Franchisee's performance in each of the IOC Criteria for such IOC Performance Period.
- 5.2 Each IOC Annual Review shall be complete once the Secretary of State has sent a duly completed IOC Annual Review Scorecard to the Franchisee in accordance with paragraph 5.1 of this Schedule 11.3.
- 5.3 Scores in the IOC Annual Review Scorecard shall be awarded by the Secretary of State having regard to the IOC Scoring Standards. One single, integer, overall score shall be awarded in relation to each IOC Criterion based on the Secretary of State's assessment of the Franchisee's performance in respect of that IOC Criterion against the IOC Scoring Standards and taking into account:
- (a) the Annual Review Checklist provided to the Secretary of State by the Franchisee in accordance with paragraphs 3.4, 3.5 and 3.8 of this Schedule 11.3;
 - (b) any commentary provided to the Franchisee by the Secretary of State in accordance with paragraph 3.7 of this Schedule 11.3; and
 - (c) any discussions between the Franchisee and the Secretary of State at the IOC Annual Review Meeting.
- 5.4 If the IOC Annual Review Scorecard:
- (a) indicates that the Franchisee has been awarded a score of "2":
 - (i) in relation to any IOC Criterion, then the Secretary of State may by written notice to the Franchisee require the Franchisee to propose an IOC Management Action Plan in accordance with Appendix 3 to this Schedule 11.3, to improve its performance in that IOC Criterion;
 - (ii) in relation to any IOC Criterion for which the Franchisee was also awarded a score of "2" or less in the IOC Annual Review Scorecard for the immediately preceding IOC Annual Review (if any), then such score shall be deemed to be a contravention of the Franchise Agreement and the provisions of Schedule 10 (Remedies, Events of Default and Termination Events) shall apply and the Secretary of State may issue a Remedial Plan Notice in respect of that IOC Criterion pursuant to Schedule 10.1 (Procedure for remedying a Contravention of the Franchise Agreement); or
 - (b) indicates that the Franchisee has been awarded a score of "1" in relation to any IOC Criterion, then such score shall be deemed to be a contravention of the Franchise Agreement and the provisions of Schedule 10 (Remedies, Events of Default and Termination Events) shall apply and the Secretary of State may issue a Remedial Plan Notice in respect of that IOC Criterion pursuant to Schedule 10.1 (Procedure for remedying a Contravention of the Franchise Agreement).
- 5.5 If the IOC Annual Review Scorecard provided to the Franchisee in accordance with paragraph 5.1 of this Schedule 11.3 indicates that the Franchisee has been awarded a score of "1" in relation to more than half of the IOC Criteria, then that shall be deemed to be a contravention of, and an

Event of Default in relation to, the Franchise Agreement and the Secretary of State may issue a Remedial Plan Notice in respect of such IOC Criteria or any of them pursuant to Schedule 10.1 (Procedures for remedying a Contravention of the Franchise Agreement) and the provisions of Schedule 10 (Remedies, Events of Default and Termination Events) shall apply.

- 5.6 Where a Remedial Agreement is already in place in relation to any IOC Criterion in respect of which the Franchisee is awarded a score of "1" or "2" in any IOC Annual Review Scorecard, the Secretary of State shall not be entitled to issue an additional Remedial Plan or a Management Action Plan in relation to that IOC Criterion unless such Remedial Plan or Management Action Plan relates solely to matters which are not within the scope of the in place Remedial Agreement, provided always that the Secretary of State may amend any Remedial Agreement or Management Action Plan to the extent the Secretary of State considers reasonably necessary to require the Franchisee to remedy the performance issues leading to a score of 1 or 2 (as appropriate in the relevant IOC Criteria).

6. Updating the IOC Annual Review Checklist

- 6.1 The Parties shall seek to agree, by no later thirty (30) days after the last IOC Annual Review Meeting for such IOC Performance Period, any changes to the IOC Annual Review Checklist to be used for the following year's IOC Annual Review, or the Secretary of State shall reasonably determine such changes if the Parties have not agreed by the date which is one hundred and twenty (120) days after the end of the relevant IOC Performance Period.

7. IOC Stakeholder Survey

- 7.1 The Franchisee shall, no later than six (6) months after the Integrated Operator Start Date, submit to the Secretary of State for approval a draft IOC Stakeholder Survey which shall be used to assess the Franchisee's performance as part of the IOC Annual Review.

- 7.2 The IOC Stakeholder Survey shall enable an assessment of:

- (a) the Franchisee's approach to collaborative working in its performance of the Franchise Services (excluding the Shadow Operator Services);
- (b) the manner in which the Franchisee has sought to address challenges which have arisen in its performance of the Franchise Services (excluding the Shadow Operator Services) (including whether the Franchisee has taken a constructive and pro-active approach to solving such challenges);
- (c) the satisfaction of Stakeholders, the Department, HS2 Limited, Network Rail, the TMM and passenger representative bodies; and
- (d) the Franchisee's performance in the relevant IOC Performance Period in comparison to the Franchisee's performance in any prior IOC Performance Period, whether by maintaining materially similar survey questions or by other means.

- 7.3 If:

- (a) the Secretary of State approves the draft IOC Stakeholder Survey submitted to it pursuant to paragraph 7.1 of this Schedule 11.3, such document shall become the IOC Stakeholder Survey; or
- (b) the Secretary of State does not approve the draft IOC Stakeholder Survey submitted to it pursuant to paragraph 7.1 of this Schedule 11.3, then the Franchisee shall make:
 - (i) such amendments as the Secretary of State shall reasonably direct; and

- (ii) re-submit a revised draft IOC Stakeholder Survey by such date as the Secretary of State may reasonably specify (and the provisions of paragraph 7.1 to 7.3 of this Schedule 11.3 shall apply to such re-submitted draft).

7.4 For each IOC Performance Period, prior to undertaking the IOC Stakeholder Survey in accordance with paragraph 3.3 of this Schedule 11.3, the Franchisee shall submit to the Secretary of State for approval:

- (a) the questions to be included in that IOC Stakeholder Survey; and
- (b) the list of Stakeholders (including, where requested by the Secretary of State, the names or roles of individuals representing such Stakeholders) whom the Franchisee proposes to invite to respond to the IOC Stakeholder Survey.

7.5 If:

- (a) the Secretary of State approves the questions and list of Stakeholders submitted to it pursuant to paragraph 7.4 of this Schedule 11.3, the Franchisee shall include such questions in the IOC Stakeholder Survey and shall invite such Stakeholders and the Department, Network Rail, HS2 Limited, the TMM and passenger representative bodies to respond to it; or
- (b) the Secretary of State does not approve the questions and/or list of Stakeholders submitted to it pursuant to paragraph 7.1 of this Schedule 11.3, then the Secretary of State shall reasonably determine the questions and/or list and the Franchisee shall include such questions in the IOC Stakeholder Survey and shall invite such Stakeholders to respond to it in accordance with that determination.

8. Miscellaneous

8.1 No comment or failure to comment nor any agreement or approval, implicit or explicit by either Party in an IOC Annual Review Checklist, IOC Annual Review Scorecard or at an IOC Annual Review Meeting will relieve a Party of its obligations, constitute a waiver of an obligation, or breach or right or entitlement or otherwise vary the terms of the Franchise Agreement.

APPENDIX 1 TO SCHEDULE 11.3B

ANNUAL REVIEW CHECKLIST

1. Annual Review Checklist

- 1.1 A report on the Franchisee's delivery of the IOC Benchmarks relating to operational performance:
- (a) the level of performance achieved against the IOC Benchmarks, and an explanation of the level of performance achieved relative to that IOC Benchmark;
 - (b) an explanatory note setting out, if relevant, any act, omission or failure of a third party which has impacted performance and the extent of that impact, along with supporting evidence; and
 - (c) details and supporting evidence of any actions undertaken to mitigate any impacts on performance, including work with the TMM in respect of the High Speed Rolling Stock Contracts (Franchisee) regarding train performance, and Network Rail and HS2 Limited regarding infrastructure.
- 1.2 A report on the Franchisee's delivery of the IOC Benchmarks relating to customer experience and engagement:
- (a) the level of performance achieved against the IOC Benchmarks, and an explanation of the level of performance achieved relative to each IOC Benchmark;
 - (b) an explanatory note setting out, if relevant, any act, omission or failure of a third party which has impacted customer experience and engagement and the extent of that impact, along with supporting evidence;
 - (c) a report on the engagement with passengers against that planned including the level of proactivity and engagement; and
 - (d) details and supporting evidence of any actions undertaken to mitigate adverse impacts on the customer experience, including any publication by Passenger Focus (or any subsequent passenger body).
- 1.3 A report setting out the Committed Obligations that had been scheduled to be delivered during that IOC Performance Period, including:
- (a) areas where the Committed Obligations have been delivered and better outcomes have been achieved;
 - (b) details of any Committed Obligations which have not been delivered as a result of agreed Variations and the basis of the Variation; and
 - (c) where Committed Obligations have not been delivered, the number of such Committed Obligations and the relative size of those obligations compared to the Committed Obligations that have been delivered during that IOC Performance Period.
- 1.4 The IOC Stakeholder Report.
- 1.5 Evidence of engagement with relevant Stakeholders (including any Stakeholders notified by the Secretary of State to the Franchisee) and any passenger representative bodies and any relevant results of the IOC Stakeholder Survey.

- 1.6 A report on the Franchisee's view of its relationship with HS2 Limited any relevant results of the IOC Stakeholder Survey.
- 1.7 A report on the Franchisee's view of its relationship with Network Rail with reference to the Alliance Agreement and any relevant results of the IOC Stakeholder Survey.
- 1.8 A report on the Franchisee's view of its relationship with the TMM any relevant results of the IOC Stakeholder Survey.
- 1.9 A report on the approach to agreeing IOC Changes and Variations and the IOC Cost Budget, including:
- (a) the level of supporting evidence provided in proposing Changes to the IOC Cost Budget and in agreeing the IOC Cost Budget for the next Franchisee Year;
 - (b) the level of supporting evidence provided in proposing other IOC Changes and/or Variations;
 - (c) the timeliness of information provided; and
 - (d) evidence of the proactive identification of any Changes or Variations on a timely basis.
- 1.10 Evidence of any ways in which the Franchisee has sought to identify areas of efficiency, innovation and/or improvement in delivering the Franchise Services, including details of proposals submitted by the Franchisee and the level of supporting evidence to those proposals.
- 1.11 The status of any IOC Management Action Plans or Remedial Plans relating to the delivery of the Franchise Services during the Integrated Operator Period.

APPENDIX 2 TO SCHEDULE 11.3B

Annual Review Scorecard

Part A – Performance

Score	<i>Delivery of the IOC Benchmarks relating to operational performance</i>	<i>Delivery of the IOC Benchmarks relating to customer experience and engagement</i>	<i>Delivery of the Committed Obligations in Schedule 6.2</i>
4: strong performance	The Franchisee has met all of the IOC Benchmarks relating to operational performance.	The Franchisee has met all of the IOC Benchmarks relating to customer experience and engagement. The Franchisee has proactively and effectively engaged with passengers.	The Franchisee has delivered all of the relevant Committed Obligations and has achieved better outcomes in delivering those Committed Obligations than were planned or expected.
3: good	But for any act, omission or failure of a third party, the Franchisee would have met all of the IOC Benchmarks relating to operational performance set out in Schedule 7 (IOC Performance Regime).	But for any act, omission or failure of a third party, the Franchisee would have met all of the IOC Benchmarks relating to customer experience and engagement. The Franchisee has effectively engaged with passengers.	The Franchisee has delivered all of the relevant Committed Obligations.
2: mostly acceptable with minor reservations	The Franchisee has met or exceeded the floor level of performance in respect of each of the IOC Benchmarks relating to operational performance set out in Schedule 7 (IOC Performance Regime) or would have exceeded the floor level but for any act, omission or failure of a third party.	The Franchisee has met or exceeded the floor level of performance in respect of each of the IOC Benchmarks relating to customer experience and engagement or would have exceeded the floor level but for any act, omission or failure of a third party. The Franchisee has engaged with passengers albeit such engagement has only been effective as a result of active management by the Secretary of State.	The Franchisee is not in material breach of any Committed Obligations but is in breach of a non-material number of Committed Obligations.

<p>1: major reservations</p>	<p>The Franchisee's performance against any one of the IOC Benchmarks relating to operational performance set out in Schedule 7 (IOC Performance Regime) is below the floor level.</p>	<p>The Franchisee's performance against any one of the IOC Benchmarks relating to customer experience and engagement is below the floor level.</p> <p>and/or</p> <p>The Franchisee has not engaged effectively with passengers.</p>	<p>The Franchisee is in breach of a material number of Committed Obligations and/or is in material breach of any one or more Committed Obligations.</p>
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Part B – Behaviours

Score	<i>Collaborative Working</i>	<i>Agreement of Changes and the IOC Cost Budget</i>	<i>Continuous Improvement</i>
<p>4: strong performance</p>	<p>The Franchisee has demonstrated (including through responses to the IOC Stakeholder Survey, where applicable) strong collaborative working with:</p> <p>(i) Network Rail, HS2 Limited, the TMM and the Department, including in relation to responsiveness and problem solving; and</p> <p>(ii) such other persons and organisations (including Stakeholders and passenger representative bodies) with whom the Franchisee has been required to have a material level of interaction in performing Franchise Services (excluding the Shadow Operator Services), and such other persons and organisations as have been notified to the Franchisee by the Secretary of State (from time to time during the IOC Performance Period) as being relevant to this assessment,</p> <p>in each case taking into account the level of interaction that the Franchisee has been required to have with such persons and/or organisations.</p>	<p>The Franchisee has worked proactively with the Secretary of State to agree the IOC Cost Budget for the next Franchisee Year and any IOC Changes and/or Variations during the IOC Performance Period, including through the provision of strong and comprehensive supporting evidence in relation to the IOC Cost Budget, any IOC Changes and/or Variations in a timely manner.</p> <p>The Franchisee has proactively identified the need for any IOC Changes and/or Variations to the Secretary of State in a timely manner.</p>	<p>The Franchisee has proactively sought to identify areas of efficiency, innovation and/or improvement in delivering the Franchise Services and actively discussed those areas with the Secretary of State providing strong supportive evidence for its proposals.</p>

<p>3: good</p>	<p>The Franchisee has demonstrated (including through responses to the IOC Stakeholder Survey, where applicable) a good level of collaborative working with:</p> <p>(i) Network Rail, HS2 Limited, the TMM and the Department, including in relation to responsiveness and problem solving; and</p> <p>(ii) such other persons and organisations (including Stakeholders and passenger representative bodies) with whom the Franchisee has been required to have a material level of interaction in performing the Franchise Services (excluding the Shadow Operator Services), and such other persons and organisations as have been notified to the Franchisee by the Secretary of State (from time to time during the IOC Performance Period) as being relevant to this assessment,</p> <p>in each case taking into account the level of interaction that the Franchisee has been required to have with such persons and/or organisations.</p>	<p>The Franchisee has worked with the Secretary of State to agree the IOC Cost Budget for the next Franchisee Year and any IOC Changes and/or Variations during the IOC Performance Period, including through the provision of supporting evidence in relation to all aspects of the IOC Cost Budget, the relevant IOC Changes and/or Variations, in a timely manner.</p> <p>The Franchisee has identified the need for any IOC Changes and/or Variations to the Secretary of State in a timely manner.</p>	<p>The Franchisee has sought to identify areas of efficiency, innovation and/or improvement in delivering the Franchise Services. When identifying areas of efficiency, the Franchisee has provided good supporting evidence for its proposals.</p>
<p>2: mostly acceptable with minor reservations</p>	<p>The Franchisee has demonstrated (taking into account the feedback received by the Franchisee in the IOC Stakeholder Survey, where applicable) a mostly acceptable level of collaborative working with:</p>	<p>The Franchisee has worked with the Secretary of State to agree the IOC Cost Budget for the next Franchisee Year and any IOC Changes and any Variations during the IOC Performance period, however, the Franchisee has provided limited supporting evidence in relation to</p>	<p>The Franchisee has sought, to a limited extent, to identify areas of efficiency, innovation and/or improvement in delivering the Franchise Services, however, limited areas of efficiency have been identified and each of these areas has only been identified as a result of</p>

	<p>(i) Network Rail, HS2 Limited, the TMM and the Department, including in relation to responsiveness and problem solving; and</p> <p>(ii) such other persons and organisations (including Stakeholders and passenger representative bodies) with whom the Franchisee has been required to have a material level of interaction in performing the Franchise Services (excluding the Shadow Operator Services), and such other persons and organisations as have been notified to the Franchisee by the Secretary of State (from time to time during the IOC Performance Period) as being relevant to this assessment,</p> <p>in each case taking into account the level of interaction that the Franchisee has been required to have with such persons and/or organisations.</p>	<p>the IOC Cost Budget, the IOC Change and/or Variations and/or has not identified the need for any IOC Changes and/or Variations to the Secretary of State in a timely manner.</p>	<p>active management by the Secretary of State.</p>
<p>1: major reservations</p>	<p>The Franchisee has failed to demonstrate (including through responses to the IOC Stakeholder Survey, where applicable) an effective level of collaborative working with:</p> <p>(i) Network Rail, HS2 Limited, the TMM or the Department; and/or</p> <p>(ii) such other persons and organisations (including Stakeholders and passenger representative bodies) with whom the</p>	<p>The Franchisee has provided little or no evidence to the Secretary of State in relation to the agreement of the IOC Cost Budget for the next Franchisee Year and for any IOC Changes and Variations.</p> <p>The Franchisee has not complied with the provisions of Schedule 8B and/or Schedule 9 in seeking to agree the IOC Cost Budget any IOC Changes or Variations.</p>	<p>The Franchisee has not sought to identify areas of efficiency, innovation and/or improvement in delivering the Franchise Services.</p>

	<p>Franchisee has been required to have a material level of interaction in performing the Franchise Services (excluding the Shadow Operator Services), and such other persons and organisations as have been notified to the Franchisee by the Secretary of State (from time to time during the IOC Performance Period) as being relevant to this assessment,</p> <p>in each case taking into account the level of interaction that the Franchisee has been required to have with such persons and/or organisations.</p>		
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APPENDIX 3 TO SCHEDULE 11.3B

IOC Management Action Plan

1. IOC Management Action Plan Notice

1.1 If an IOC Management Action Plan is required pursuant to paragraph 5.4(a)(i) of this Schedule 11.3, the Secretary of State shall provide to the Franchisee a written notice within a reasonable period following the delivery of the relevant IOC Annual Review Scorecard setting out:

- (a) the objectives of the IOC Management Action Plan ("**IOC Management Objectives**"); and
- (b) with reference to the objectives referred to in paragraph 1.1(a)0 of this Appendix and the relevant IOC Annual Review Scorecard and IOC Criterion, the particular areas that the Secretary of State requires to be addressed,

(the "**IOC Management Action Plan Notice**").

1.2 Within thirty (30) days of receipt of the IOC Management Action Plan Notice by the Franchisee, the Franchisee shall prepare and submit to the Secretary of State a draft IOC Management Action Plan in accordance with paragraph 2 of this Appendix.

2. Submission of Draft IOC Management Action Plan

2.1 The Franchisee shall ensure that each draft IOC Management Action Plan contains:

- (a) estimated costs for delivering the draft IOC Management Action Plan ("**IOC MAP Costs**"); and
- (b) specific tangible action points (each a "**IOC Management Action Point**"), indicating in the case of each IOC Management Action Point:
 - (i) how that IOC Management Action Point will contribute to meeting the IOC Management Objectives ;
 - (ii) when implementation of that IOC Management Action Point is to be commenced and completed or, in the case of any IOC Management Action Point that is continuous, dates for reviewing progress; and
 - (iii) how performance of that IOC Management Action Point is to be measured.

2.2 On receipt of each draft IOC Management Action Plan by the Secretary of State, the Secretary of State shall consider whether the draft IOC Management Action Plan is appropriate to achieve the IOC Management Objectives. If the Secretary of State:

- (a) is satisfied with the draft IOC Management Action Plan the Secretary of State shall provide the Franchisee with notice of the Secretary of State's approval within thirty (30) days; and
- (b) is not satisfied with the draft IOC Management Action Plan the Secretary of State shall, within thirty (30) days, provide the Franchisee with written feedback which describes the shortcomings of the draft IOC Management Action Plan and in particular why the draft IOC Management Action Plan does not meet the IOC Management Objectives. Following which, the Franchisee shall promptly amend the draft IOC Management Action Plan to the Secretary of State's reasonable satisfaction and the Secretary of State shall provide the Franchisee with notice of the Secretary of State's approval.

3. Implementation of IOC Management Action Plan

3.1 Following notice of the Secretary of State's approval of an IOC Management Action Plan in accordance with paragraph 2.2 of this Appendix:

- (a) the Franchisee shall:
 - (i) provide the Secretary of State with the final IOC Management Action Plan;
 - (ii) implement the proposals set out in that IOC Management Action Plan in accordance with its terms; and
- (b) the IOC MAP Costs shall be deemed to constitute a notice of proposed Change served by the Franchisee in accordance with paragraph 3.1 of Schedule 9.1B (Financial and Other Consequences of Change) and the Franchisee and the Secretary of State shall comply with that Schedule in agreeing or determining the required Change.

3.2 Any failure by the Franchisee to comply with the terms of an IOC Management Action Plan shall constitute a contravention of the Franchise Agreement.

SCHEDULE 12B

FINANCIAL COVENANTS AND BONDS

Schedule 12B:	Financial Covenants and Bonds
	Appendix 1: Template Form of Performance Bond
	Appendix 2: Template Form of Season Ticket Bond

SCHEDULE 12B

Financial Covenants and Bonds

1. Obligations

- 1.1 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 (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.
- 1.2 For the avoidance of doubt, any agreement by the Secretary of State under paragraph 1.1 may be given subject to such conditions as the Secretary of State considers appropriate and the Franchisee shall, as applicable, comply with, any such conditions.

2. Financial Ratios

- 2.1 The Franchisee covenants that as at the end of each Reporting Period during the IOC Term:
- (a) the ratio of its Modified Revenue to its Actual Operating Costs during the Preceding thirteen (13) Reporting Periods of the IOC Term (or, prior to the end of the thirteenth Reporting Period of the IOC Term, during all preceding Reporting Periods of the IOC Term) 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 thirteen (13) Reporting Periods (or, where there are less than thirteen (13) Reporting Periods remaining in the Franchise Term, for all remaining Reporting Periods) will **equal or exceed the ratio of 1.050:1**,

and for the purposes of this paragraph 2 "**Preceding thirteen (13) Reporting Periods**" means the Reporting Period just ended and the preceding twelve (12) Reporting Periods of the Franchise Term.

- 2.2 If:
- (a) in respect of any Reporting Period, the Franchisee fails pursuant to paragraph 9.2(b) of Schedule 11.2 (Management Information) to provide a statement of calculation of performance against the covenants set out in paragraphs 2.1(a)(ii) or 2.1(c)(ii); 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 the Secretary of State; 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 the Secretary of State's rights under paragraph 9.7 (Secretary of State Audit of calculations provided pursuant to paragraph 9.2(b)(ii)) of Schedule 11.2 (Management Information) to the extent that the Secretary of State 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 IOC Cost Budget; or
- (c) make payment under any intra-group borrowings.

3.2 **"Lock-up Period"** means any period from the time when any of the ratios referred to in paragraph 2.1 falls below the ratio of **1.050:1** until the time at which the Secretary of State is satisfied that the relevant ratio is again above the ratio of **1.050:1**.

3.3 Failure by the Franchisee at any time to comply with any of the ratios referred to in paragraph 2.1 shall be an Event of Default under paragraph 1.8 of Schedule 10.2 (Events of Default and Termination Events).

3.4 **"HS Lock-up Period"** means the period commencing on the Integrated Operator Start Date and ending on the date immediately following the end of the thirteenth (13th) Reporting Period after the High Speed Established Services Date.

3.5 The Franchisee shall not, during the HS Lock-up Period 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 IOC Cost Budget; or
- (c) make payment under any intra-group borrowings other than the repayment of all or part of any PCG Facility Loan (as defined in and in accordance with the provisions of the Funding Deed) and (for the avoidance of doubt) any repayments of all or part of any PCG Facility Loan will become re-drawable in accordance with the provisions of the Funding Deed,

to the extent that the cumulative total of the amounts referred to in paragraphs (a), (b) and (c) during the HS Lock-up Period exceeds an amount equal to the cumulative total of:

- (i) IOC Fees; plus
- (ii) any Shadow Operator Performance Fees,

paid (or which have become due for payment) in respect of Reporting Periods during the HS Lock-up Period.

4. Performance Bond

4.1 The Franchisee shall procure that there shall be a valid and effective Performance Bond in place with effect from the date of the Franchise Agreement, and the Franchisee shall procure that there shall be a valid and effective Performance Bond in place:

- (a) throughout the Franchise Period; and
- (b) for a further period that is the later of the date:
 - (i) falling one (1) month after the determination of the Purchase Price (as defined in any Supplemental Agreement) under the Supplemental Agreement; and
 - (ii) that is seven (7) Reporting Periods after the end of the Franchise Period.

The provisions of this paragraph 4.1 shall survive the termination of the Franchise Agreement.

4.2 Each Performance Bond shall:

- (a) be substantially in the form of Appendix 1 (Template Form of Performance Bond) to this Schedule 12B;
- (b) be issued by a Bond Provider;
- (c) have a value equal to the relevant amount determined under paragraph 4.4; and
- (d) have a minimum duration of three (3) years.

4.3 Provision of Replacement Performance Bond

- (a) The Franchisee may replace the then current Performance Bond at any time
- (b) The Franchisee shall replace each Performance Bond at least six (6) months prior to its scheduled expiry with a Replacement Performance Bond.
- (c) 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 twenty (20) Weekdays to procure the execution and delivery of a new Performance Bond by a Bond Provider acceptable to the Secretary of State.

4.4 Amount of Performance Bond

The value of the Performance Bond shall be as follows:

- (a) in relation to the Performance Bond in place on the Integrated Operator Start Date, an amount which is equal to:

(twenty million pounds (£20,000,000) x RPI) minus ShOp Adjust;

- (b) in relation to each subsequent Replacement Performance Bond (whenever issued) an amount which is equal to:

(twenty million pounds (£20,000,000) x RPI) minus ShOp Adjust;

and, for the purpose of this paragraph 4.4:

- (i) **RPI** shall be the quotient of the Retail Prices Index for the month for which the Retail Prices Index has most recently been determined on the date on which the Franchisee is to replace the Performance Bond or change its value, divided by the Retail Prices Index for January 2019;
- (ii) **ShOp Adjust** shall be any amount(s) paid under the Performance Bond by the Bond Provider to the Secretary of State in relation to a Shadow Operator Only Call Event minus any amount(s) paid to the Franchisee by the Secretary of State pursuant to paragraph 4.5(b) in relation to a Shadow Operator Only Call Event; and
- (iii) for the avoidance of doubt, the amount from time to time drawable under any Performance Bond shall be the relevant bond value minus any amount(s) paid under the Performance Bond by the Bond Provider to the Secretary of State but plus an amount equal to any amount(s) paid to the Franchisee by the Secretary of State pursuant to paragraph 4.5(b).

4.5 Demands under the Performance Bond

- (a) The Performance Bond shall be on terms that the amount as from time to time specified by the Secretary of State, 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, in circumstances where there are liabilities or obligations outstanding from the Franchisee to the Secretary of State; and/or
- (B) terminated solely as a consequence of the occurrence of one or more Events of Default or a Termination Event of a type described in paragraphs 2.2, 2.3, 2.4 and 2.5 of Schedule 10.2 (Events of Default and Termination Events) or pursuant to Clause 4.2(b) or 4.3(b) of the Conditions Precedent Agreement in circumstances where the Secretary of State has incurred or expects to incur losses, liabilities, costs or expenses 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 1.12(a) of Schedule 10.2A or Schedule 10.2B (as the case may be) (Events of Default and Termination Events) in relation to the Performance Bond; or
- (B) under paragraph 1.12(b) of Schedule 10.2A or Schedule 10.2B (as the case may be) (Events of Default and Termination Events),

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

- (iv) that the Franchisee has failed to perform or comply with its obligations under any Supplemental Agreement;
 - (v) that the Franchisee has failed to provide a Replacement Performance Bond complying with this paragraph 4 at least six (6) months prior to the scheduled expiry of the existing Performance Bond;
 - (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 4.3(c); or
 - (vii) that the Shadow Operator Services have been terminated pursuant to the provisions of paragraph 5.2(a) of Schedule 19.1 (Readiness Review) and in such circumstances (a "**Shadow Operator Only Call Event**"), the provisions of paragraph (e) shall apply (to limit the demand in those circumstances to a maximum of ten per cent (10%) of the bond value).
- (b) If the Secretary of State makes a demand under the Performance Bond, the Secretary of State 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) termination of the Shadow Operator Services prior to the High Speed Established Services Date; and/or
 - (iii) 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; and/or
 - (iv) any change and/or variation which is required to the terms of the Development Agreement (including any requirement for the Secretary of State to pay additional sums or make additional funds available to HS2 Limited) directly caused by the early termination of the Shadow Operator Services,
- and which are not otherwise recovered by the Secretary of State (including pursuant to Clause 7.4 of the Funding Deed). To the extent that the Secretary of State accounts to the Franchisee pursuant to this paragraph, the Franchisee shall procure that an amount equal to the amount so paid shall thereupon become re-drawable under the Performance Bond (in accordance with its terms) with immediate effect.
- (c) It is agreed that for the purposes of paragraph 4.5(b) losses, liabilities, costs or expenses which the Secretary of State or a Successor Operator has incurred or suffered or may be reasonably likely to incur or suffer shall include any losses, liabilities, costs or expenses consequent upon the fact that the Successor Operator and any Train Operators that might succeed the Franchisee in providing all or any of the Franchise Services during the remainder of the Franchise Term may do so on a different financial basis with regard to amounts equivalent to the Franchise Payments and/or other amounts payable pursuant to Schedule 8A and/or 8B (Franchise Payments) of the Franchise Agreement than the financial basis on which the Franchisee provided the Franchise Services pursuant to the Franchise Agreement.

- (d) Nothing in paragraphs 4.5(b) and 4.5(c) shall oblige the Secretary of State to account to the Franchisee for any proceeds of such Performance Bond in the circumstances described in paragraphs 4.5(a)(iii), 4.5(a)(v) or 4.5(a)(vi) until such time as the Franchisee has procured a Replacement Performance Bond which complies with the requirements of paragraph 4.
- (e) Without prejudice to the Secretary of State's rights to call up to one hundred per cent (100%) of the bond value pursuant to the provisions of paragraphs 4.5(a)(i) to (vi), the maximum amount that the Secretary of State shall be entitled to demand from the Bond Provider under the Performance Bond in relation to a Shadow Operator Only Call Event (as defined in paragraph 4.5(a)(vii)) shall be ten per cent (10%) of the bond value. For the avoidance of doubt any amounts drawn in relation to a Shadow Operator Only Call Event which are paid by the Secretary of State to the Franchisee pursuant to the provisions of paragraph 4.5(b), shall be re-drawable.

4.6 **Characteristics of Performance Bond Provider**

- (a) In determining whether a Bond Provider under any Replacement Performance Bond is acceptable, the Secretary of State may exercise the Secretary of State's discretion and shall not be obliged to accept a Bond Provider accepted under any previous Performance Bond.
- (b) 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.

4.7 **Provision of more than one Performance Bond**

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 (3) 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 (1) Performance Bond is provided the Secretary of State shall have a discretion as to whether to make a demand under one or more of such Performance Bonds and the extent to which the Secretary of State accounts to the Franchisee for the proceeds of each such Performance Bond in accordance with the provisions of paragraph 4.5(b).

5. **Season Ticket Bond**

5.1 **Provision of Season Ticket Bond**

The Franchisee shall procure that, for each Franchisee Year throughout the Franchise Term and during the relevant call period specified in Clauses 4 and 5 of the Season Ticket Bond, there shall be in place a valid and effective Season Ticket Bond substantially in the form of Appendix 2 (Template Form of Season Ticket Bond) to this Schedule 12B.

5.2 **Provision of Replacement Season Ticket Bond**

No later than one (1) Reporting Period before the expiry of each Bond Year, the Franchisee shall provide to the Secretary of State (or procure that the Secretary of State receives) a Season Ticket Bond for the following Bond Year:

- (a) substantially in the form of Appendix 2 (Template Form of Season Ticket Bond) to this Schedule 12B (or in any other form acceptable to the Secretary of State in the Secretary of State's discretion);

- (b) duly executed and delivered by a Bond Provider acceptable to the Secretary of State; and
- (c) in an amount determined in accordance with paragraph 5.3.

5.3 Amount of Season Ticket Bond

The amount of any Season Ticket Bond shall vary for each Reporting Period during the Bond Year to which the Season Ticket Bond relates in accordance with the following formula:

$$STBA = STL \times \frac{((RPI \times 100) + k)}{100} \times Z$$

where:

STBA equals the amount of the Season Ticket Bond in the relevant Reporting Period;

STL equals in respect of such Reporting Period:

- (a) the maximum amount which would be payable by the Franchisee in respect of Season Ticket Fares under and in accordance with a Supplemental Agreement and paragraph 3.3 of Schedule 15.4 (Provisions Applying on and after Termination) and the rights and liabilities of the Franchisee relating to an obligation of carriage under the terms of any Season Ticket Fares which were transferred under a Transfer Scheme relating to that Supplemental Agreement to a Successor Operator at that time; and
- (b) the Stored Credit Balance which would be held by the Franchisee,

if the Franchise Agreement were to terminate on any day during the Reporting Period (the "**Relevant Reporting Period**") falling thirteen (13) Reporting Periods before such Reporting Period,

provided that for these purposes only:

- (i) Season Ticket Fares shall mean any Season Ticket Fare which expires more than seven (7) days after it first comes into effect;
- (ii) the Start Date shall be assumed, where relevant, to have occurred before the commencement of the Relevant Reporting Period; and
- (iii) if STL cannot reasonably be determined at the time at which the Franchisee is required under paragraph 5.4 to provide its estimate of the amount of the relevant Season Ticket Bond (including because the Relevant Reporting Period has not yet occurred), the Relevant Reporting Period shall be the Reporting Period falling twenty six (26) Reporting Periods before the Reporting Period in the relevant Bond Year;

RPI equals the quotient of the Retail Prices Index for the month for which the Retail Prices Index has most recently been determined at the time the Franchisee is required under paragraph 5.4 to provide its estimate of the amount of the relevant Season Ticket Bond divided by the Retail Prices Index for the month falling twelve (12) months before such month;

k has such value as reasonably determined by the Secretary of State for the Fare Year in which the Reporting Period in the relevant Bond Year falls; and

Z equals **+1** or, if the Relevant Reporting Period falls twenty six (26) Reporting Periods before such Reporting Period, an amount equal to:

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

where **RPI** and **k** are determined for the twelve (12) months and the Fare Year preceding the twelve (12) months and the Fare Year for which **RPI** and **k** are respectively determined above.

5.4 The Franchisee shall supply to the Secretary of State, not later than three (3) Reporting Periods before the end of each Bond Year, its estimate of the amount of the Season Ticket Bond for each Reporting Period during the following Bond Year and shall supply such details as the Secretary of State may request in connection therewith.

5.5 The Franchisee and the Secretary of State shall endeavour to agree the amount of such Season Ticket Bond by no later than two (2) Reporting Periods before the end of each Bond Year. If the Parties are unable to agree the amount of the Season Ticket Bond in respect of any Reporting Period during the following Bond Year, the matter shall be resolved in accordance with the Dispute Resolution Rules.

5.6 If the amount of the Season Ticket Bond for each Reporting Period during a Bond Year has not been agreed two (2) Reporting Periods before the end of the preceding Bond Year, then, until the amount is agreed or determined in accordance with the Dispute Resolution Rules, the amount thereof shall be the amount determined by the Secretary of State.

5.7 The Secretary of State and the Franchisee may agree to increase or reduce the amount covered or required to be covered under a Season Ticket Bond from time to time.

5.8 Demands under the Season Ticket Bond

(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 1.12(a) of Schedule 10.2A and/or Schedule 10.2 B (as the case may be) (*Events of Default and Termination Events*) in relation to the Season Ticket Bond; or
 - (B) under paragraph 1.12(c) of Schedule 10.2A and/or Schedule 10.2 B (as the case may be) (*Events of Default and Termination Events*),

has occurred (whether or not the Franchise Agreement is, or is to be, terminated as a result thereof).

(b) If the Secretary of State makes a demand under the Season Ticket Bond, the Secretary of State 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.

5.9 Characteristics of Season Ticket Bond Provider

- (a) In determining whether a Bond Provider under any replacement Season Ticket Bond is acceptable, the Secretary of State may exercise the Secretary of State's discretion and shall not be obliged to accept a Bond Provider accepted under any previous Season Ticket Bond.
- (b) 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.
- (c) The Secretary of State agrees that, subject to receipt of a Season Ticket Bond in an amount determined in accordance with paragraph 5.3 in respect of any Bond Year, the Secretary of State shall release the relevant Bond Provider from any liability under the Season Ticket Bond provided in relation to the preceding Bond Year on the expiry of such Bond Year, provided that no Event of Default has occurred and is unremedied or continuing.

5.9A Provision of more than one Season Ticket Bond

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 Season Ticket Bond by providing up to three (3) valid and effective Season Ticket Bonds, the aggregate value of which at all times is equal to the value determined under paragraph 5.3. With the exception of the value of each individual Season Ticket Bond the provisions of the Franchise Agreement in relation to the Season Ticket Bond shall be deemed to apply separately in relation to each such Season Ticket Bond. Where more than one (1) Season Ticket Bond is provided the Secretary of State shall have a discretion as to whether to make a demand under one or more of such Season Ticket Bonds and the extent to which the Secretary of State accounts to the Franchisee for the proceeds of each such Season Ticket Bond in accordance with the provisions of paragraph 5.8(b).

5.10 Meaning of "Reporting Period"

References in this paragraph 5 to a "Reporting Period" shall be construed, where the Franchisee so requests and the Secretary of State consents (such consent not to be unreasonably withheld), to be references to each consecutive seven (7) day period (or such other period as may be agreed) during such Reporting Period. The Franchisee may only make such a request in respect of a maximum of two (2) Reporting Periods in each Bond Year and only where the amount of the Season Ticket Bond over any such period would, in the reasonable opinion of the Franchisee, differ materially if determined by reference to such seven (7) day periods.

6. Tax Compliance

- 6.1 The Franchisee represents and warrants that as at the Start Date, it has notified the Secretary of State in writing of any Occasions of Tax Non-Compliance where the Franchisee (including where the Franchisee is an unincorporated joint venture or consortium, the members of that unincorporated joint venture or consortium) is the Affected Party (as defined in paragraph 6.3 below) or any litigation that it is involved in that is in connection with any Occasions of Tax Non-Compliance where the Franchisee (including where the Franchisee is a joint venture or consortium, the members of that joint venture or consortium) is the Affected Party.
- 6.2 If, at any point during the Franchise Term, an Occasion of Tax Non-Compliance occurs in relation to any Affected Party, the Franchisee shall:
 - (a) notify the Secretary of State in writing of such fact within five (5) Weekdays of its occurrence; and
 - (b) promptly provide to the Secretary of State:

- (i) details of the steps which the Affected Party 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, the following defined terms shall have the following meanings:

"Affected Party" has the meaning given to it in the definition of Occasion of Tax Non Compliance;

"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 Principles" means the principle explained in the CJEU Case C-255/02 Halifax and others; and

"Occasion of Tax Non-Compliance" means, in respect of the Franchisee (including where Franchisee is an unincorporated joint venture or consortium, the members of that unincorporated joint venture or consortium) or the Franchisee (such party being the **"Affected Party"**):

- (a) any tax return of the Affected Party submitted to a Relevant Tax Authority on or after 1 October 2012 is found on or after 1 April 2013 is found to be incorrect as a result of:
 - (i) a Relevant Tax Authority successfully challenging the Affected Party 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 Affected Party 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 Affected Party 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.

APPENDIX 1 TO SCHEDULE 12B³²

Template Form of Performance Bond

[DOCUMENT "PB" - PERFORMANCE BOND]

Dated [INSERT DATE]

[INSERT NAME OF BOND PROVIDER]

[Template] Performance Bond

*Secretary of State for Transport
33 Horseferry Road
London SW1P 4DR*

32 **Note to Bidders:** This is a template document. DfT to populate based on the winning Bidder's details.

To: Secretary of State for Transport
33 Horseferry Road
London
SW1P 4DR
(The Secretary of State)

Whereas:

We are informed that you have entered into a franchise agreement dated [INSERT DATE] (the "**Franchise Agreement**") with [INSERT NAME OF FRANCHISEE] (the "**Franchisee**"). Pursuant to the Franchise Agreement the Franchisee will provide certain railway passenger and other services.

We are further informed that the Franchise Agreement requires that the Secretary of State receives a duly executed performance bond in the amount of [£ INSERT AMOUNT [PLUS RPI UPLIFT IF APPLICABLE]] (or such lesser amount as you may notify us of from time to time in writing) (the "**Bond Value**") to secure the performance by the Franchisee of and its compliance with its respective obligations under the Franchise Agreement and any Supplemental Agreement.

Accordingly:

We hereby unconditionally and irrevocably undertake to pay to you in full in London, immediately upon receipt of your first written demand on us in the form set out in the Schedule and, without further enquiry, the sum specified therein. Such written demand shall state:

- (a) the Call Event (as defined in Clause 2 hereof) that has occurred; and
- (b) the date of occurrence of such Call Event.

You may call on us for the whole or part of the amount of our liability hereunder and you may make any number of calls on us under this Bond provided that the amount of any call under this Bond shall not exceed the Available Bond Value at the time of that 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 by law) without any deduction or withholding, whether for or on account of tax, by way of set-off or otherwise.

In this Bond, **Available Bond Value** means, at any time, the Bond Value minus the aggregate amount of any calls paid by us under this Bond prior to that time but after adding back the aggregate amount of any monies paid to the Franchisee pursuant to the provisions of paragraph 4.5(b) of Schedule 12.A or Schedule 12.B (Financial Covenants and Bonds) of the Franchise Agreement.

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;
 - (b) subject always to Clause 1(a) above, without prejudice to your entitlement (whether before or after the High Speed Established Services Date) to call on us for sums in aggregate up to the Available Bond Value at the time of the Call Event, following the occurrence of any Call Event under Clauses 2(a) to (g) inclusive our maximum liability in respect of a Shadow Operator Only Call Event (as defined in Clause 2(h)) shall be limited to a sum or sums not exceeding in the aggregate an amount equal to ten per cent (10%) of the Bond Value; and
 - (c) notwithstanding anything contained herein, our liability hereunder shall expire on the earliest of:

- (i) the date falling six (6) months after the date on which any railway administration order is made in relation to the Franchisee pursuant to sections 60 to 62 of the Railways Act 1993; and
- (ii) the latest of:
 - (A) the date falling one (1) month after the determination of the Purchase Price (as defined in any Supplemental Agreement) under each relevant Supplemental Agreement; and
 - (B) the date falling seven (7) Reporting Periods after the end of the Franchise Period; and
 - (C) the end of the Franchise Term; and
- (iii) [INSERT DATE],

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 (less any amounts paid to the Franchisee pursuant to the provisions of paragraph 4.5 (b) of Schedule 12A or 12B (Financial Covenants and Bonds) of the Franchise Agreement), amounts to the Bond Value or less; after which date such undertaking shall be void whether returned to us or not.

2. **"Call Event"** means, in this Bond, any of:

- (a) the termination or expiry of the Franchise Agreement in circumstances where there are liabilities or obligations outstanding from the Franchisee to the Secretary of State;
- (b) the termination of the Franchise Agreement solely as a consequence of the occurrence of one or more Events of Default or a Termination Event of a type described in paragraphs 2.2, 2.3, 2.4 and 2.5 of Schedule 10.2A or Schedule 10.2B (as the case may be) (Events of Default and Termination Events) of the Franchise Agreement or pursuant to Clause 4.2(b) or 4.3(b) of the Conditions Precedent Agreement in circumstances where the Secretary of State has incurred or expects to incur losses, liabilities, costs or expenses in connection with early termination of the [INSERT NAME OF FRANCHISE] franchise;
- (c) the making of a railway administration order in relation to the Franchisee pursuant to sections 60 to 62 of the Railways Act 1993;
- (d) the occurrence of an Event of Default under the Franchise Agreement in respect of:
 - (i) paragraph 1.12(a) of Schedule 10.2A or Schedule 10.2B (as the case may be) (Events of Default and Termination Events) of the Franchise Agreement in relation to the Performance Bond; or
 - (ii) paragraph 1.12(b) of Schedule 10.2A or Schedule 10.2B (as the case may be) (Events of Default and Termination Events) of the Franchise Agreement, whether or not the Franchise Agreement is, or is to be, terminated as a result thereof;
- (e) the failure by the Franchisee to perform or comply with its obligations under any Supplemental Agreement;
- (f) the failure by the Franchisee to provide the Secretary of State with a Replacement Performance Bond which complies with paragraph 4 of Schedule 12A or Schedule 12B (as the case may be) (Financial Covenants and Bonds) of the Franchise Agreement at least six (6) months prior the scheduled expiry of the existing Performance Bond;

- (g) the failure by the Franchisee to procure the execution and delivery of a new Performance Bond by a Bond Provider in favour of and acceptable to the Secretary of State when required to do so in accordance with paragraph 4.3(c) of Schedule 12A or Schedule 12B (as the case may be) (Financial Covenants and Bonds) of the Franchise Agreement; or
- (h) the termination of the Shadow Operator Services pursuant to the provisions of:
 - (i) paragraph 5.2(a) of Schedule 19.1 (Readiness Review); or
 - (ii) paragraph 5.4(a) of Schedule 10.2A (Events of Default and Termination Events) solely as a consequence of an Event of Default specified in paragraph 1.17 of Schedule 10.2A (Events of Default and Termination Events),(such a Call Event being a **"Shadow Operator Only Call Event"**).

- 3. This undertaking is made to you, your successors and your assigns.
- 4. This undertaking shall not be discharged or released by time, indulgence, waiver, alteration or release of, or in respect to, the obligations of the Franchisee under the Franchise Agreement or any Supplemental Agreement or any other circumstances that might operate as a release of a guarantor at law or in equity.
- 5. You may make demand or give notice to us under this Bond in writing by hand or via email transmission to us as follows:

Address: [INSERT BOND PROVIDER'S ADDRESS]

Email Address: [INSERT BOND PROVIDER'S EMAIL ADDRESS]
- 6. References in this Bond to the Franchise Agreement and the Supplemental Agreement are to the Franchise Agreement and any Supplemental Agreement as amended from time to time.
- 7. Where used in this Bond, capitalised terms have the same meanings as in the Franchise Agreement.
- 8. This Bond shall be governed by and construed in accordance with the laws of England and Wales.

Executed as a deed this [INSERT DAY AND MONTH] of [INSERT YEAR].

SCHEDULE TO THE PERFORMANCE BOND

SPECIMEN DEMAND NOTICE

To: [INSERT NAME AND ADDRESS OF BOND PROVIDER]

[INSERT DATE OF DEMAND NOTICE]

We refer to the performance bond issued by you on [INSERT 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 [INSERT NAME OF FRANCHISEE] (the "**Franchisee**") on [INSERT FRANCHISE AGREEMENT SIGNATURE DATE].

We hereby notify you that the following Call Event (as defined in the Performance Bond) occurred on [INSERT DATE OF OCCURRENCE OF CALL EVENT]: [**DRAFTING NOTE: DELETE AS APPROPRIATE**]

- [The Franchise Agreement has [**terminated/expired**] on [INSERT DATE OF TERMINATION/EXPIRY] in circumstances where there are liabilities or obligations outstanding from the Franchisee to the Secretary of State.]
- The Franchise Agreement has terminated solely as a consequence of the occurrence of one or more Events of Default or a Termination Event of a type described in paragraphs 2.2, 2.3, 2.4 and 2.5 of Schedule 10.2A or Schedule 10.2B (as the case may be) (Events of Default and Termination Events) on [INSERT DATE OF TERMINATION] in circumstances where the Secretary of State has incurred or expects to incur losses, liabilities, costs or expenses in connection with early termination of the [INSERT NAME OF THE FRANCHISE] franchise.
- [A railway administration order has been made in relation to the Franchisee pursuant to sections 60 to 62 of the Railways Act 1993.]
- [That an Event of Default under the Franchise Agreement has occurred under:

[(a) paragraph 1.12(a) of Schedule 10.2A or Schedule 10.2B (as the case may be) (*Events of Default and Termination Events*) of the Franchise Agreement in relation to the Performance Bond; or]

[(b) paragraph 1.12(b) of Schedule 10.2A or Schedule 10.2B (as the case may be) (*Events of Default and Termination Events*) of the Franchise Agreement.]]
- [The Franchise Agreement has terminated pursuant to Clause 4.2(b) or 4.3(b) of the Conditions Precedent Agreement in circumstances where the Secretary of State has incurred or expects to incur additional costs in connection with early termination of the [INSERT NAME OF FRANCHISE] franchise.]
- [The Franchisee has failed to perform or comply with its obligations under any Supplemental Agreement.]
- [The Franchisee has failed to provide a Replacement Performance Bond (as described in the Franchise Agreement) complying with paragraph 4 of Schedule 12[A][B] (Financial Covenants and Bonds) of the Franchise Agreement at least six (6) months prior to the scheduled expiry of the existing Performance Bond.]
- [The Franchisee has failed to procure the execution and delivery of a new Performance Bond by a Bond Provider acceptable to the Secretary of State when required to do so in accordance with paragraph 4.3(c) of Schedule 12[A][B] (Financial Covenants and Bonds) of the Franchise Agreement.]

- [A Shadow Operator Only Call Event has occurred as the Shadow Operator Services have been terminated pursuant to the provisions of paragraph 5.2(a) of Schedule 19.1 (Readiness Review) or paragraph 5.4(a) of Schedule 10.2A (Events of Default and Termination Events) solely as a consequence of an Event of Default specified in paragraph 1.17 of Schedule 10.2A (Events of Default and Termination Events) of the Franchise Agreement.]

We hereby demand immediate payment from you of [SPECIFY ALTERNATIVE AMOUNT IF NOT BOND VALUE] or the Bond Value, whichever is smaller.

Please arrange for immediate payment of the relevant amount as follows:

[INSERT 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**

.....

APPENDIX 2 TO SCHEDULE 12B ³³

Template Form of Season Ticket Bond

DOCUMENT "STB" - SEASON TICKET BOND

Dated [INSERT DATE]

[INSERT NAME OF BOND PROVIDER]

[Template] Season Ticket Bond

*Secretary of State for Transport
33 Horseferry Road
London SW1P 4DR*

33 **Note to Bidders:** This is a template document. DfT to populate based on the winning Bidder's details.

To: Secretary of State for Transport
33 Horseferry Road
London
SW1P 4DR
(The "**Secretary of State**")

Whereas:

We are informed that you have entered into a franchise agreement dated [INSERT DATE] (the "**Franchise Agreement**") with [INSERT NAME OF FRANCHISEE] (the "**Franchisee**") under which the Franchisee will provide certain railway passenger services.

We are further informed that the Franchise Agreement requires that the Secretary of State receives a duly executed season ticket bond to secure the performance by the Franchisee of and its compliance with its obligations under the Franchise Agreement and any Supplemental Agreement.

Accordingly:

We hereby unconditionally and irrevocably undertake to pay to you in full in London, immediately upon receipt of your first written demand on us in the form set out in Schedule 1 (Specimen Demand Notice) 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 and clear of any restriction or condition and free 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 (Specimen Demand Notice).

2. "**Call Event**" means, in this Bond, any of:

- (a) the termination or expiry of the Franchise Agreement;
- (b) the making of a railway administration order in relation to the Franchisee pursuant to sections 60 to 62 of the Railways Act 1993; or
- (c) the occurrence of an Event of Default under paragraph 1.12(a) (in relation to a Season Ticket Bond) or paragraph 1.12(c) of Schedule 10.2A and/or Schedule 10.2B (*Events of Default and Termination Events*) of the Franchise Agreement (whether or not the Franchise Agreement is, or is to be, terminated as a result thereof).

3. Bond Value shall mean, in respect of any date, the amount specified in Schedule 2 (Bond Value) as being the value of this Bond for such date (provided that for these purposes the date of

occurrence of the Call Event specified in Clause 2(c) shall be deemed to be the last date for which a Bond Value is assigned under Schedule 2 (Bond Value) of this Bond).

4. Notwithstanding anything contained herein, but subject to Clause 5, our liability hereunder in respect of any Call Event shall expire no later than the end of the Franchise Term and:
 - 4.1 in relation to a Call Event specified in Clauses 2(a) and 2(b), at noon (London time) on the date falling three (3) 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
 - 4.2 in relation to any other Call Event, on the day falling one (1) 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:
 - 5.1 if the Call Event in respect of which you may call on us under this Bond is the termination of the Franchise Agreement, the date falling one (1) month after the determination of the Purchase Price (as defined in the Supplemental Agreement) under each relevant Supplemental Agreement;
 - 5.2 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 (3) months after the making of such railway administration order; or
 - 5.3 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 1.12(a) (in relation to a Season Ticket Bond) or paragraph 1.12(c) of Schedule 10.2A and/or Schedule 10.2B (Events of Default and Termination Events) of the Franchise Agreement (whether or not the Franchise Agreement is, or is to be, terminated as a result thereof), the date falling one (1) month after your notification to us under Clause 4,

except, in each case, in respect of any written demand for payment complying with all the requirements hereof which is received by us on or before the relevant date, after which date this undertaking shall be void whether returned to us or not.

6. This undertaking is made to you, your successors and your assigns.
7. This undertaking shall not be discharged or released by time, indulgence, waiver, alteration or release of, or in respect to, the obligations of the Franchisee under the Franchise Agreement or any Supplemental Agreement or any other circumstances that might operate as a release of a guarantor at law or in equity.
8. You may make demand or give notice to us under this Bond in writing by hand or via email transmission to us as follows:

Address: [INSERT BOND PROVIDER'S ADDRESS]

Email Address: [INSERT BOND PROVIDER'S EMAIL ADDRESS]
9. References in this Bond to the Franchise Agreement and the Supplemental Agreement are to the Franchise Agreement and the Supplemental Agreement as amended from time to time and terms defined therein shall have the same meaning in this Bond.
10. Where used in this Bond, capitalised terms have the same meanings as in the Franchise Agreement.

11. This Bond shall be governed by and construed in accordance with the laws of England and Wales.
Executed as a deed this [INSERT DAY AND MONTH] of [INSERT YEAR].

SCHEDULE 1 TO THE SEASON TICKET BOND

SPECIMEN DEMAND NOTICE

To: [INSERT NAME AND ADDRESS OF BOND PROVIDER]

[INSERT DATE OF DEMAND NOTICE]

We refer to the season ticket bond issued by you on [INSERT DATE OF BOND] (the "**Season Ticket Bond**") in connection with the franchise agreement (the "**Franchise Agreement**") entered into between the Secretary of State for Transport (the "**Secretary of State**") and [INSERT NAME OF FRANCHISEE] (the "**Franchisee**") on [INSERT FRANCHISE AGREEMENT SIGNATURE DATE].

We hereby notify you that the following Call Event (as defined in the Season Ticket Bond) occurred on [INSERT DATE OF OCCURRENCE OF CALL EVENT]: [**DRAFTING NOTE: DELETE AS APPROPRIATE**]

- [The Franchise Agreement [**terminated/expired**] on [INSERT DATE OF TERMINATION/EXPIRY].
- [A railway administration order has been made in relation to the Franchisee pursuant to sections 60 to 62 of the Railways Act 1993.]
- [An Event of Default occurred under paragraph 1.12(a) (in relation to a Season Ticket Bond) or paragraph 1.12(c) of Schedule 10.2[A][B] (Events of Default and Termination Events) of the Franchise Agreement.]

We hereby demand immediate payment from you of [SPECIFY ALTERNATIVE AMOUNT IF NOT BOND VALUE] or the Bond Value, whichever is smaller.

Please arrange for immediate payment of the relevant amount as follows:

[INSERT 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 BOND³⁴

Bond Value

Call Event occurring in Reporting Period	Bond Value £
1	[INSERT AMOUNT]
2	[INSERT AMOUNT]
3	[INSERT AMOUNT]
4	[INSERT AMOUNT]
5	[INSERT AMOUNT]
6	[INSERT AMOUNT]
7	[INSERT AMOUNT]
8	[INSERT AMOUNT]
9	[INSERT AMOUNT]
10	[INSERT AMOUNT]
11	[INSERT AMOUNT]
12	[INSERT AMOUNT]
13	[INSERT AMOUNT]

34 **Note to Bidders:** DfT to populate based on the winning Bidder’s response to the ITT.

SCHEDULE 13B

RAIL INDUSTRY INITIATIVES AND INNOVATION OBLIGATIONS

Schedule 13.1B:	Rail Industry Initiatives and Co-operation
	Appendix 1: Community Rail Partnerships
Schedule 13.2B:	Innovation Obligations
	Appendix 1: NOT USED

SCHEDULE 13.1B

Rail Industry Initiatives and Co-operation

1. British Transport Police

- 1.1 The Franchisee shall give due consideration to any request by the British Transport Police to provide suitable accommodation (including additional or alternative accommodation) or facilities at Stations to enable the British Transport Police to effectively perform the services owed to the Franchisee under any contract or arrangement entered into between the British Transport Police and the Franchisee.
- 1.2 The Franchisee shall:
- (a) work with the British Transport Police to:
 - (i) reduce crime and anti-social behaviour on the railway;
 - (ii) reduce minutes lost to police-related disruption;
 - (iii) increase passenger confidence with personal security on train and on station;
 - (b) work in partnership with the British Transport Police and conduct an annual assessment of the security and crime risk at all Stations and across the Franchise generally;
 - (c) co-operate with the British Transport Police to provide it with access to records and/or systems maintained by the Franchisee which relate to lost property to enable the British Transport Police to have access to such information when dealing with items reported to them as lost; and
 - (d) consult with the British Transport Police as to its requirements in relation to records and/or systems and shall ensure that the British Transport Police continues to have the access to the records and/or systems required in accordance with paragraph 1.2 of Schedule 13.1A (Rail Industry Initiatives and Co-operation).
- 1.3 The Franchisee shall consult with the British Transport Police in relation to plans to develop any part of the land within a Property Lease which could affect staff or customers and give the British Transport Police an opportunity to advise on and/or provide comments on any opportunities for the enhancement of safety and reduction in crime.

2. Community Rail Partnerships

- 2.1 The Franchisee shall become a member of and shall continue to participate in the Community Rail Partnerships relevant to the Passenger Services, including but not limited to the Community Rail Partnerships listed in the table in Appendix 1 to this Schedule 13.1 (and any successor Community Rail Partnerships). As part of such participation the Franchisee shall identify a senior Franchise Employee whose duties shall include:
- (a) supporting the Community Rail Partnerships;
 - (b) ensuring managerial focus within the Franchisee's organisation to enable the Franchisee to meet its Community Rail Partnership obligations; and
 - (c) leading on the Franchisee's development of community rail projects.
- 2.2 The Franchisee shall, at the request of the Secretary of State:

- (a) co-operate with the Secretary of State, Network Rail, ACoRP, local transport authorities and/or any other person as the Secretary of State may nominate for the purposes of developing and furthering the success of the Community Rail Partnerships;
 - (b) co-operate with, establish and/or participate in any Community Rail Partnership;
 - (c) provide technical support in respect of timetable specification for the Community Rail Partnerships, including providing appropriate journey and revenue data; and
 - (d) co-operate in the development of the Secretary of State's initiatives to examine:
 - (i) options for a more cost effective delivery of the railway passenger services operated on any Community Rail Route (such options to include changes in working practices of the relevant Franchise Employees, reducing rolling stock lease costs and maximising opportunities for obtaining local funding of development at relevant stations and developing new ways of maintaining and renewing relevant railway infrastructure); and
 - (ii) the actual costs incurred in operating, maintaining and renewing the infrastructure relevant for such Community Rail Route.
- 2.3 The Franchisee shall use reasonable endeavours to develop and implement the Community Rail Partnership's initiatives in order to increase the use of the Passenger Services by non-users of the Passenger Services and tourists including, where appropriate, the development of and implementation of marketing strategies.
- 2.4 The Secretary of State may at any time, by proposing a Variation pursuant to paragraph 1.1(a) of Schedule 9.3 (Variations to the Franchise Agreement), require the Franchisee to develop and/or implement any changes to the Franchise Services and/or the transfer of any Franchise Services to another Train Operator in order to deliver either of the initiatives that were examined pursuant to paragraph 2.2(d).
- 2.5 The Franchisee shall become a member and shall continue to participate in the National Community Rail Steering Group.
- 2.6 No later than three (3) months prior to the start of each Franchisee Year, the Franchisee shall provide to the Secretary of State a report ("**Community Rail Report**") setting out the distribution of the CRP Amount in full amongst the Community Rail Partnerships identified in paragraphs 2.1 and 2.2.
- 2.7 The Community Rail Report shall contain the following information:
- (a) a statement confirming that the Franchisee's distribution of funds to the Community Rail Partnerships takes account of the Secretary of State's then current published Community Rail Strategy;
 - (b) a statement confirming that the Franchisee has discussed the funding of the Community Rail Partnerships with ACoRP and has taken sufficient account of ACoRP's views;
 - (c) confirmation that the Franchisee has discussed with all Community Rail Partnerships the aims and needs of such partnerships and the funding required to achieve these;
 - (d) a table setting out the relevant portions of the CRP Amount which are to be paid to each Community Rail Partnership (on a non-indexed basis) over the next three (3) years (it being acknowledged that these amounts are likely to be different for each Community Rail Partnership);

- (e) the activities undertaken by the Franchise pursuant to paragraph 2.3 of this Schedule 13;
 - (f) from the second (2nd) CRP Report onwards, a table setting out how the CRP Project Sum has been allocated in each Franchisee Year since the Start Date and a description of the projects that have received CRP Project Sum funding; and
 - (g) such further information as the Secretary of State may from time to time request.
- 2.8 The Franchisee shall within thirty (30) days of the commencement of each Franchisee Year, make the relevant payments totalling the CRP Amount to each of the Community Rail Partnerships identified in the Community Rail Report for that year.
- 2.9 The Franchisee shall by the end of each Franchisee Year pay the CRP Project Sum to the Community Rail Partnerships for the sole purpose of funding projects proposed by the Community Rail Partnerships.
- 2.10 If and to the extent that at the end of any Franchisee Year the Franchisee has spent less than CRP Project Sum in that Franchisee Year, the Franchisee may on notice to the Secretary of State carry forward the unspent amount (excluding any unspent amount previously carried forward to that Franchisee Year) to the following Franchisee Year, and any unspent amount in the final Franchisee Year shall be returned to the Secretary of State.
- 2.11 The Franchisee shall hold an annual conference for the Community Rail Partnerships' officers and station adopters in conjunction with ACoRP to encourage the spread of best practice and to communicate plans for franchise development.
- 2.12 The Franchisee shall devise and implement, in collaboration with the relevant Community Rail Partnerships, a **"station adopters scheme"** under which members of the local community can **"adopt"** a local Station and engage in activities such as:
- (a) promotion of the Passengers Services calling at the Station;
 - (b) monitoring and reporting faults, damage and anti-social and criminal behaviour;
 - (c) carrying out minor Station cleaning and maintenance tasks and the development and cultivation of station gardens.
- 2.13 The Franchisee shall take reasonable steps to promote the station adopters scheme and provide safety and other training and support to participants.
- 2.14 In collaboration with the relevant Community Rail Partnership and other Stakeholders the Franchisee shall use reasonable endeavours to identify sources of third party funding for the Community Rail Partnerships and encourage such third parties to make funding commitments.

3. Development of Industry Systems

The Franchisee shall fully and effectively co-operate, in a manner consistent with it being a responsible Train Operator of the Franchise, with Network Rail, HS2 Limited, 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.

4. Co-operation with Industry 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 multi-modal fares schemes and Traveline (the “**Industry Schemes**”), where such Industry Schemes relate to the Franchise.

5. Co-operation with Local Authorities

5.1 General co-operation with Local Authority in respect of schemes

- (a) The Franchisee shall co-operate in good faith with any Local Authority that seeks to promote a scheme for the provision of additional or varied Passenger Services including by attending meetings, contributing to feasibility schemes and project plans and liaising with relevant industry participants including Network Rail and HS2 Limited.
- (b) Paragraph 5.1 does not oblige the Franchisee to incur any cost in the actual provision of the revised Passenger Services.

6. NOT USED.

7. NOT USED.

8. Small and Medium-sized Enterprises

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

8.2 By no later than 31 January in each year (and within one (1) month of the end of the Franchise Period) the Franchisee shall deliver to the Secretary of State a breakdown of the number of SMEs used by the Franchisee in providing the Franchise Services during the calendar year (or part thereof) which ended on the immediately preceding 31 December or at the end of the Franchise Period (as applicable).

9. Apprenticeships

9.1 The Franchisee shall at all times keep accurate and complete records of the Apprenticeships (and the training provided to apprentices) offered by the Franchisee and (if applicable) its immediate UK based supply chain in delivering the Franchise Services. In particular, in relation to each Reporting Period the Franchisee shall record:

- (a) the number of new Apprenticeships created, continuing and concluding in that Reporting Period;
- (b) the date of commencement and conclusion of each Apprenticeship; and
- (c) in relation to each Franchise Employee that commences an Apprenticeship in such Reporting Period:
 - (i) the level of such Apprenticeship as described in the Regulated Qualifications Framework;
 - (ii) the skills category (as described in the Standard Occupational Classification Codes) within which Apprenticeship falls;
 - (iii) the month and year of birth of that Franchise Employee;

- (iv) the current occupation of that Franchise Employee;
- (v) the gender of that Franchise Employee (except in relation to those Franchise Employees who do not permit disclosure);
- (vi) whether that Franchise Employee is of BAME origin (except in relation to those Franchise Employees who do not permit disclosure);
- (vii) the postcode of the location at which that Franchise Employee is principally employed at (e.g. the relevant train crew depot of train crew); and
- (viii) the first half of that Franchise Employee's residential postcode.

- 9.2 In order to comply with the Data Protection Act, the Franchisee must ensure that each Franchise Employee that commences an Apprenticeship is made aware that their Personal Data will be shared with the Rail Delivery Group and the Secretary of State in order to enable the Secretary of State to monitor the achievement of the apprenticeship targets set out in the Transport Infrastructure Skills Strategy and check for any inadvertent duplication of records. The Franchisee shall make each Franchise Employee that commences an Apprenticeship aware that their Personal Data shall be anonymised before appearing in any reports and shall be retained by the Secretary of State for a period of seven (7) years.
- 9.3 By no later than 31 January in each year (and within one (1) month of the end of the Franchise Period) the Franchisee shall deliver to the Secretary of State a breakdown of the information recorded pursuant to both paragraph 9.1 of this Schedule 13.1 and paragraph 9.1 of Schedule 13.1A (Rail Industry Initiatives and Co-operation) (if applicable) during the calendar year (or part thereof) which ended on the immediately preceding 31 December or at the end of the Franchise Period (as applicable).
- 9.4 The Franchisee shall ensure that the number of Franchise Employees who begin an Apprenticeship in any Franchisee Year shall constitute 2.5% of the total number of Franchise Employees (the "**Apprenticeships Requirement**"), provided that the Apprenticeships Requirement shall be subject to a pro rata reduction in respect of the Final Franchisee Year in the event that the Final Franchisee Year consists of less than thirteen (13) Reporting Periods and the Franchisee shall provide evidence of the satisfaction of the Apprenticeships Requirement to the Secretary of State within ten (10) days of the end of each Franchisee Year.
- 9.5 The Franchisee shall no later than six (6) months prior to the Anticipated High Speed Start Date produce and provide to the Secretary of State a draft Skills and Leadership Strategy, updated to include the strategy in respect of the High Speed Services. For the avoidance of doubt, the Skills and Leadership Strategy in force on the day immediately prior to the Integrated Operator Start Date shall continue to apply from the Integrated Operator Start Date until the High Speed Start Date.
- 9.6 The draft updated Skills and Leadership Strategy provided pursuant to paragraph 9.5 shall:
- (a) set out the comprehensive, robust and deliverable strategy of the Franchisee for providing an appropriately skilled and trained workforce of Franchise Employees based on a skills gap analysis including through the delivery of the Apprenticeships specified in the Apprenticeships Data Collection Form;
 - (b) take into account the likely short, medium and long term requirements of the Franchisee and Successor Operators including in the context of expected change to the Franchise Services (including as a result of technological change) and the age profile of the Franchise Employees; and

- (d) include a management / leadership maturity model, to help target and improve investment in developing leadership and management.
- 9.7 The Franchisee shall meet with the Secretary of State to discuss the draft updated Skills and Leadership Strategy provided pursuant to paragraph 9.5 and shall have due regard to the opinions of the Secretary of State. The updated Skills and Leadership Strategy shall be adopted by the Franchisee with effect from the High Speed Start Date and the Franchisee shall implement it in accordance with its terms from the date that it is adopted.
- 9.8 The Franchisee shall:
- (a) undertake and complete a review of its Skills and Leadership Strategy and compliance with the Apprenticeships Data Collection Form following the end of each cycle of two (2) Franchisee Years following the Integrated Operator Start Date; and
- (b) provide the Secretary of State with any proposed revisions to the Skills and Leadership Strategy and the Apprenticeships Data Collection Form arising out of such review by no later than the end of each such Franchisee Year.
- 9.9 The aim of such review shall be to update the Skills and Leadership Strategy by reference to an updated skills gap analysis and to ensure that the Skills and Leadership Strategy continues to effectively achieve its purposes to the greatest extent reasonably practicable. The review shall check compliance with the targets contained in the Apprenticeships Data Collection Form and if they have not been met shall propose robust and effective strategies and methodologies to be contained in the revised Skills and Leadership Strategy to ensure delivery in future. The review may propose amendments to the Apprenticeships Data Collection Form that are consistent with any proposed revisions to the Skills and Leadership Strategy. Any revisions to the Skills and Leadership Strategy (including the Apprenticeships Data Collection Form) shall require the consent of the Secretary of State (such consent not to be unreasonably withheld or delayed). The Franchisee shall implement any revised Skills and Leadership Strategy in accordance with its terms from the date that the Secretary of State consents to the relevant revisions.
- 9.10 For the purposes of this paragraph 9, the Franchisee shall submit the completed Apprenticeships Data Collection Form to the Rail Delivery Group for onward transmission to the Secretary of State on a quarterly basis or at such other time as the Secretary of State may specify.

10. Sustainability and other related initiatives

10.1 Sustainable Development Strategy

- (a) By no later than six (6) months prior to the Anticipated High Speed Start Date, the Franchisee shall consult with the RSSB and such other Stakeholders as agreed between the Secretary of State and the Franchisee (or, in the absence of agreement, such Stakeholders as the Secretary of State shall determine) in order to agree an update (including in respect of the High Speed Services) to:
- (i) key priority sustainable development areas;
- (ii) the outcomes associated with such key priority and sustainable development areas;
- (iii) the annual traction carbon trajectory (CO₂E/vehicle km) for the duration of the Franchise Term; and
- (iv) target levels according to the Rail Safety and Standards Board Sustainable Development Self-Assessment Framework that will be reached by the end of each cycle of three (3) Franchisee Years following the Integrated Operator Start Date.

- (b) The Franchisee shall update the Sustainable Development Strategy to reflect such consultation and the Franchisee shall propose and agree a final version of the updated Sustainable Development Strategy with the RSSB and the Secretary of State by no later than three (3) months prior to the Anticipated High Speed Start Date. Such agreed strategy shall from the High Speed Start Date be the Sustainable Development Strategy for the purposes of the Franchise Agreement, provided that in the absence of agreement between the Parties, the Sustainable Development Strategy shall be updated as determined by the Secretary of State (acting reasonably). For the avoidance of doubt, the Sustainable Development Strategy in force on the day immediately prior to the Integrated Operator Start Date shall continue to apply from the Integrated Operator Start Date until the High Speed Start Date.
- (c) The Franchisee shall at all times comply with the Sustainable Development Strategy. Any proposed amendments to the Sustainable Development Strategy must be consistent with the Integrated Services Sustainability Plan and any amendments must be agreed by the Secretary of State.
- (d) By no later than three (3) months following the end of each cycle of three (3) Franchisee Years following the Integrated Operator Start Date, the Franchisee shall procure a suitably qualified independent body (such independent body to be appointed only with the prior written approval of the Secretary of State) to undertake an assessment of performance against the Rail Safety and Standards Board's Sustainable Development Self-Assessment Framework and produce a report in respect of such assessment, such assessment to review performance against the targets set out in the Sustainable Development Strategy.
- (e) The Franchisee shall submit a copy of the assessment report produced by the independent body pursuant to paragraph 10.1(d) to the Secretary of State within six (6) months following the end of each cycle of three (3) Franchisee Years following the Integrated Operator Start Date.
- (f) Where the assessment report identifies a significant shortfall against the targets set out in the Sustainable Development Strategy, the Franchisee must as soon as reasonably practicable and in any event within two (2) months, produce an improvement plan which, in the reasonable opinion of the Secretary of State, is capable of achieving the targets set out within the Sustainable Development Strategy.
- (g) The Franchisee shall use all reasonable endeavours to implement the improvement plan referred to in paragraph 10.1(f) and improve its performance against the targets set out in the Sustainable Development Strategy against the agreed timeframes for performance as set out in the revised Sustainable Development Strategy.
- (h) The Franchisee shall, within three (3) months following the end of each Franchisee Year, provide to the Secretary of State a report showing:
 - (i) progress against the outcomes in key priority sustainable development areas;
 - (ii) progress on development of Franchise Employees to ensure they have the skills and knowledge required to deliver a sustainable franchise; and
 - (iii) proposed revisions to the Sustainable Development Strategy (such revisions to include those revisions reflecting feedback and advice from Stakeholders, and which have been consulted on with RSSB).
- (i) The Franchisee shall obtain the Secretary of State's consent to any amendments to the Sustainable Development Strategy proposed pursuant to paragraph 10.1(h) (iii) before such amendments are adopted and the Sustainable Development Strategy updated.

- (j) On request by the Secretary of State, the Franchisee shall publish (in such form as the Secretary of State may reasonably determine):
 - (i) all or any part of its Sustainable Development Strategy; and/or
 - (ii) all or any of the information described in paragraphs 10.1(h)(i) to (h)(iii).

10.2 Environmental Management and Sustainability Accreditation

- (a) The Franchisee shall at all times maintain certification pursuant to ISO14001:2015 and ISO50001:2011 or equivalent standards.
- (b) The Franchisee shall provide the Secretary of State with copies of the certification audit reports and a copy of their ISO50001 Energy Review within four (4) weeks of each recertification during the Franchise Period.

10.3 NOT USED

11. NOT USED

12. NOT USED

13. NOT USED

14. Suicide Prevention Strategy

14.1

- (a) NOT USED.
- (b) NOT USED.
- (c) The Plan that applied on the day immediately prior to the Integrated Operator Start Date shall continue to apply from the Integrated Operator Start Date until it is reviewed and updated in accordance with paragraph (d).
- (d) The Franchisee shall review and update the Plan:
 - (i) at least every twelve (12) months; and
 - (ii) immediately following any amendment to, or replacement of, the Suicide Prevention Strategy and/or the Suicide Prevention Duty Holders' Group's 9 Point Plan.

Such review and any updating shall be by reference to changing circumstances, new relevant information and any amended or replaced Suicide Prevention Strategy and/or the Suicide Prevention Duty Holders' Group's 9 Point Plan with the intention that it is kept as up to date and effective as reasonably possible. The Franchisee shall consult with the British Transport Police and wider cross-industry suicide prevention group (as appropriate) in relation to any such review and update of the Plan. The Franchisee shall deliver a copy of any revised and/or updated Plan to the Secretary of State as soon as is reasonably practicable together with written confirmation from the British Transport Police that the Plan complies with the requirements of the Suicide Prevention Strategy and the Suicide Prevention Duty Holders' Group's 9 Point Plan and accordingly remains approved by it.

- 14.2 The Franchisee shall implement the Plan as it may be revised and/or updated pursuant to paragraph 14.1 in accordance with its then prevailing provisions.

15. Safeguarding Strategy

15.1

- (a) NOT USED.
- (b) NOT USED.
- (c) The Safeguarding Strategy that applied on the day immediately prior to the Integrated Operator Start Date shall continue to apply from the Integrated Operator Start Date until it is reviewed and updated in accordance with paragraph (d).
- (d) The Franchisee shall review and update the Safeguarding Strategy:
 - (i) at least every twelve (12) months; and
 - (ii) immediately following any amendment to, or replacement of, the Safeguarding on Rail Audit.

15.2 Any review and necessary updates to the Safeguarding Strategy in accordance with paragraph 15.1 shall take into account any changes to, or replacement of the Safeguarding on Rail Audit and any other relevant circumstances that would reasonably be considered to impact the objectives contained in the Safeguarding on Rail Audit and shall ensure that the Safeguarding Strategy remains up-to-date and appropriate for delivering the objectives contained in the Safeguarding on Rail Audit.

15.6 The Franchisee shall undertake any review and necessary updates to the Safeguarding Strategy in accordance with paragraph 15.4 in consultation with the British Transport Police and such other relevant groups as the Franchisee and/or the British Transport Police consider appropriate. The Franchisee shall submit such updated Safeguarding Strategy to the British Transport Police within one (1) month of such review for its approval that the Safeguarding Strategy complies with the requirements of the Safeguarding on Rail Audit and the Franchisee shall take into account any comments or amendments proposed by:

- (a) the British Transport Police; and
- (b) such other relevant groups as the Franchisee and/or the British Transport Police consider appropriate,

as are required to ensure that the Safeguarding Strategy remains up-to-date and appropriate for delivering the objectives contained in the Safeguarding on Rail Audit.

15.7 The Franchisee shall deliver a copy of any updated Safeguarding Strategy to the Secretary of State together with written confirmation of the approval issued by the British Transport Police as soon as reasonably practicable following such approval.

15.8 The Franchisee shall implement the approved Safeguarding Strategy as it may be revised and/or updated pursuant to this paragraph 15 from time to time.

APPENDIX 1 TO SCHEDULE 13.1B

Community Rail Partnerships

The table in this Appendix (or equivalent replacement table) will be specified in accordance with Schedule 20 (IOC Confirmable Obligations).

	Community Rail Partnership	Community Rail Route
1.	Abbey Line CRP	Watford – St Albans Abbey
2.	Bentham CRP	Leeds – Morecambe/Heysham Port
3.	Chester to Shrewsbury Rail Partnership	Chester - Shrewsbury
4.	Community Rail Cumbria	Cumbrian Coast Line CRP, Carlisle – Barrow-in-Furness, Furness Line, Lancaster – Barrow-in-Furness and the Lakes Community Rail Line, Oxenholme – Windermere
5.	Crewe – Manchester Community Rail	Crewe – Manchester Piccadilly
6.	Community Rail Lancashire	East Lancashire CRP, Preston – Colne, Preston to Ormskirk CRP, Preston – Ormskirk, South Fylde CRP, Blackpool South - Preston
7.	High Peak and Hope Valley Community Rail Partnership	Buxton Line CRP, Buxton – Manchester Piccadilly, Glossop Line CRP, Glossop/Hadfield – Manchester Piccadilly, Hope Valley, Sheffield - Manchester
8.	Marston Vale CRP	Bletchley - Bedford
9.	Mid Cheshire Line CRP	Chester – Manchester Piccadilly
10.	North Cheshire CRP	Chester – Manchester Piccadilly via Warrington
11.	North Staffordshire Line	Crewe – Derby
12.	Settle - Carlisle Railway Development Corporation	Settle - Carlisle
13.	South East Manchester Community Rail Partnership	Manchester to New Mills Central, Manchester to Rose Hill via Hyde and Manchester to Hadfield as far as Broadbottom
14.	Tyne Valley CRP	Newcastle - Carlisle
15.	SW Glasgow	Glasgow Central – Barrhead
16.	RAIL 74	Glasgow Central – Hamilton Central
17.	S36 Scotland	Glasgow Central - Stranraer
18.	Heart of Wales Development Company	Shrewsbury – Swansea
19.	Cambrian Railways Partnership	Shrewsbury – Aberystwyth and Dovey Junction – Pwllheli

SCHEDULE 13.2B

Innovation Obligations

1. Innovation Strategy

- 1.1 The Innovation Strategy in force on the day immediately prior to the Integrated Operator Start Date shall continue to apply from the Integrated Operator Start Date.
- 1.2 Thereafter every one (1) year, the Franchisee shall submit to the Secretary of State for approval (such approval not to be unreasonably withheld) a revised Innovation Strategy updated in accordance with the requirements of paragraph 1.3.
- 1.3 Each Innovation Strategy submitted in accordance with this paragraph 1 must have regard to the following core requirements:
 - (a) how the Franchisee has developed, and proposes to develop during the Integrated Operator Term, its innovation capability, including leadership, employees, systems and processes, and how progress is measured;
 - (b) how the Franchisee has utilised, and proposes to utilise during the Integrated Operator Term, effective techniques for capturing ideas from employees, passengers, the community, industry partners and the supply chain; and
 - (c) how, during the Integrated Operator Term, the Franchisee will partner and collaborate with other organisations and seek third party funding (where appropriate) in order to assist bringing new technologies, processes, business models and products to the rail market, that are viable for implementation during the Integrated Operator Term.
- 1.4 The Franchisee shall at all times comply with its Innovation Strategy.

2. NOT USED.

SCHEDULE 14B

PRESERVATION OF ASSETS

Schedule 14.1B:	Maintenance of Franchise
Schedule 14.2B:	Maintenance of Operating Assets and Branding
Schedule 14.3B:	Key Contracts
	Appendix 1: List of Key Contracts
Schedule 14.4B:	Designation of Franchise Assets
	Appendix 1: List of Primary Franchise Assets
Schedule 14.5B:	Dealing with Franchise Assets
Schedule 14.6B:	Residual Value Mechanism
	Appendix 1: List of the RV Assets
Schedule 14.7B:	NOT USED

SCHEDULE 14.1B

Maintenance of Franchise

1. Maintenance as a going concern

- 1.1 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;
 - (b) a Successor Operator would be able to take over the business of providing the Franchise Services immediately at any time; and
 - (c) (without limiting (b)) a Successor Shadow Operator would be able to take over the business of providing the Shadow Operator Services immediately at any time.
- 1.2 The Franchisee's obligation under paragraph 1.1 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).
- 1.3 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.
- 1.4 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 (including, where applicable, with regard to the transfer of the Shadow Operator Services to a Successor Shadow Operator).
- 1.5 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 (including, where applicable, to any Successor Shadow Operator) following the expiry of the Franchise Period and in so doing shall plan for the recruitment and training of Franchise Employees to continue up until the end of the Franchise Term.
- 1.6 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 Term (or, to the extent applicable and where earlier, may transfer to any Successor Shadow Operator on termination of the Shadow Operator Services).

2. Post-Franchise Timetables

- 2.1 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 the Franchise Services.

2.2 The steps that the Secretary of State may reasonably request the Franchisee to take pursuant to paragraph 2.1 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 the Secretary of State 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 14.2B

Maintenance of Operating Assets and Branding

1. Operating Assets

- 1.1 The Franchisee shall maintain, protect and preserve the Operating Assets in good standing or good working order, subject to fair wear and tear.
- 1.2 Notwithstanding paragraph 14 of Schedule 18.1 (Shadow Operations), 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 (or, to the extent applicable and where earlier, transferred on termination of the Shadow Operator Services to, and used by, any Successor Shadow Operator, in the provision or operation of similar services to the Shadow Operator 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 the Secretary of State 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.

2. Spares

The obligation of the Franchisee to maintain, preserve and protect the Operating Assets under this Schedule 14.2 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.

3. Brand Licence and Branding

3.1 NOT USED.

3.2 Brand Licences

The Franchisee shall comply with its obligations under each of the Brand Licences.

3.3 Branding

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 the Franchisee in the operation and provision of the Franchise Services.

- (a) Subject to paragraphs 3.3(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 3.3(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 3.3(g), to the extent that:
- (i) the Franchisee does not provide a relevant undertaking or licence in accordance with paragraph 3.3(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 twenty eight (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 3.3(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 3.3(c) grant or procure the grant of a licence or undertaking complying with paragraphs 3.3(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 3.3(c) and the maximum length of licence or undertaking under paragraph 3.3(e).
- (g) The provisions of paragraphs 3.3(a) to 3.3(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 the Secretary of State becomes aware of whether or not any such asset is to be so used.

3.4 **Non-designation of New Brands**

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.

3.5 **Change in requirement to debrand**

- (a) By no later than 3 months prior to the end of the Franchise Period the Secretary of State may, at the Secretary of State's sole discretion, notify the Franchisee that it is not required to debrand some, or all, of the assets referred to in paragraph 3.
- (b) Should the Secretary of State notify the Franchisee that it is not required to debrand some, or all, of the assets under paragraph 3.5(a), then the provisions of paragraph 3.3(a) to 3.3(g) will not apply to the assets specified in such notice.

SCHEDULE 14.3B

Key Contracts

1. Key Contracts

1.1 This Schedule sets out the rights of the Secretary of State to:

- (a) designate certain contracts or categories of contracts as Key Contracts where the Secretary of State considers that such contracts or categories of contract are necessary for the purposes of securing continuity of the Franchise Services by a Successor Operator on expiry of the Franchise Period (or, to the extent applicable and where earlier, by a Successor Shadow Operator on termination of the Shadow Operator Services); and
- (b) in accordance with paragraph 5, require the Franchisee to procure that a counterparty to a Key Contract enters into a Direct Agreement with the Secretary of State.

This Schedule 14.3 shall apply to all contracts designated as Key Contracts from time to time.

1.2

- (a) The Key Contracts as at the Integrated Operator Start Date are set out in Appendix 1 (List of Key Contracts) to this Schedule 14.3.
- (b) The Franchisee shall enter into any and all Key Contracts which are necessary for the Franchise Agreement to continue in accordance with clause 5 (Duration of the Franchise Agreement).
- (c) Where at any time after the Integrated Operator Start Date the Franchisee proposes to enter into any agreement, contract, licence or other arrangement which falls within one of the categories listed in Appendix 1 (List of Key Contracts) to this Schedule 14.3 the Franchisee shall:
 - (i) 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
 - (ii) comply with the provisions of paragraph 5.1 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, Appendix 1 (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, the Secretary of State 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

6.1 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 1 TO SCHEDULE 14.3B

List of Key Contracts

Subject to any de-designations by the Secretary of State under paragraph 3 of Schedule 14.3 (Key Contracts), the following items have as at the Integrated Operator Start Date been agreed between the Parties, or determined in accordance with Schedule 20 (IOC Confirmable Obligations), 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 and all side agreements relating to such relevant Property Lease;
3. any Rolling Stock Related Contract including the Rolling Stock Leases listed in Table 1 (Original Rolling Stock), Table 2 (Specified Rolling Stock) and Table 3 (Unspecified Additional Rolling Stock) of Appendix 1 (*The Composition of the Train Fleet*) to Schedule 1.6 (The Rolling Stock);
4. NOT USED;
5. any contract or arrangement for the lending, seconding, hiring, contracting out, supervision, training, assessment, or accommodation by another Train Operator or other third party of any train drivers, conductors or other train crew used by the Franchisee in the provision of the Passenger Services or the Shadow Operator Services;
6. any contract or arrangement for the subcontracting or delegation to another Train Operator or other third party of the provision of any of the Passenger Services or the Shadow Operator Services (whether or not the consent of the Secretary of State is required to such subcontracting or delegation under paragraph 4 of Schedule 1.1 (Franchise Services and Service Development));
7. any contract or arrangement with a Train Operator or other third party (other than an Access Agreement) for the provision to the Franchisee of train dispatch, performance or supervision of platform duties, security activities, evacuation procedures, advice or assistance to customers, assistance to disabled customers, operation of customer information systems, cash management or ticket issuing systems administration;
8. any contract or arrangement with a Train Operator or other third party for the provision of breakdown or recovery, and track call services to assist in the provision of the Passenger Services or the Shadow Operator Services;
9. any contract or arrangement for the supply of spare parts or Spares;
10. any contract or arrangement for the maintenance of track and other related infrastructure;
11. any licences of Marks to the Franchisee;
12. any contract or arrangement relating to the operation of smart ticketing;
13. any licence of any CRM System or Yield Management System; and
14. any contract or arrangement for the provision or lending of Computer Systems (other than the CRM System and Yield Management System) that the Secretary of State reasonably considers is essential for the delivery of the Franchise Services.

SCHEDULE 14.4B

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.
- 1.3 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. 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 table in Appendix 1 (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 Integrated Operator Start Date, unless designated earlier in accordance with Schedule 14.4A (Designation of Franchise Assets);

- (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;
- (g) any licence of any CRM System and/or Yield Management System, on the date of such licence;
- (h) an RV Asset on the date in which such RV Asset is brought into operational use as specified in the applicable Certification of Completion;
- (i) Actual Passenger Demand information (and all Intellectual Property Rights in respect of the same), on the date such information is supplied to the Secretary of State pursuant to paragraph 1.1 of Schedule 1.5 (Information about Passengers);
- (j) any property and rights comprised in Committed Obligations and designated by the Secretary of State as Primary Franchise Assets pursuant to paragraph 10 of Schedule 6.2 (Committed Obligations), on the date of such designation;
- (k) the Primary Franchise Assets designated under the Functional Requirement Assets transfer process in paragraph 8 of Schedule 18.2 (Accepted Programme Specific Requirements), on the date of such designation;
- (l) any assets purchased through the Franchisee completing its obligations under Schedule 18 (Shadow Operator), the Accepted Programme and/or the Transitional Programme, on the date that such asset is purchased by the Franchisee; and
- (m) any assets which are de-designated as RV Assets pursuant to paragraph 10.8(a) of Schedule 18.1 (Shadow Operations), on the Integrated Operator Start Date;

- (n) any assets designated by the Secretary of State as Primary Franchise Assets pursuant to paragraph 10.7 of Schedule 18.1 (Shadow Operations), on the date of such designation; and
- (o) any Fixed or Non-Current Assets with a useful economic life, as calculated by applying GAAP accounting assumption as appropriate to the asset, of over one year which are purchased by the Franchisee during the Integrated Operator Period, on the date on which ownership of such non-current assets transfers to the Franchisee.

2.2 Any Primary Franchise Asset which is designated under paragraph 2.1(m), (n) or (o) of this Schedule 14.4 shall transfer to a Successor Operator at nil value.

3. Designation of Additional Primary Franchise Assets

3.1 The Secretary of State may at any time and from time to time, by serving notice on the Franchisee, designate any or all of the Franchise Assets as Primary Franchise Assets.

3.2 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.

3.3 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 the commitment not to de-designate.

4. Designation during last twelve (12) months of Franchise Period

4.1 If the Secretary of State designates a Franchise Asset as a Primary Franchise Asset under paragraph 3 at any time during the last twelve (12) months of the Franchise Period then, within twenty eight (28) days of such designation, the Secretary of State may, subject to paragraph 4.2, de-designate such Primary Franchise Asset by serving notice on the Franchisee. Such de-designation shall take effect upon delivery of such notice.

4.2 Where, the Secretary of State has given a commitment not to de-designate a Primary Franchise Asset pursuant to paragraph 3.3, the Secretary of State shall not de-designate such Primary Franchise Asset pursuant to paragraph 4.1 without first obtaining the prior written consent of the Franchisee.

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 the Secretary

of State's 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. NOT USED.

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 Integrated Operator 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 NOT USED.

10.2 The Secretary of State may, at any time during the Franchise Period, by serving notice on the Franchisee:

(a) cause a Franchise Asset which is not a Primary Franchise Asset to cease to be designated as a Franchise Asset. Such Franchise Asset shall cease to be designated on the date specified in such notice; or

(b) subject to paragraph 10.3, cause a particular Primary Franchise Asset to cease to be designated as such. Such Primary Franchise Asset shall cease to be designated on the date specified in such notice.

10.3 Where, the Secretary of State has given a commitment not to de-designate a Primary Franchise Asset pursuant to paragraph 3.3 or any other provision of this Agreement, the Secretary of State shall not de-designate such Primary Franchise Asset pursuant to paragraph 10.2(b) without first obtaining the prior written consent of the Franchisee.

10.4 The Secretary of State's rights pursuant to paragraph 10.2(b) 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 (1) year prior to the expiry of the Franchise Term.

11. Amendment of the List of Primary Franchise Assets

The table in Appendix 1 (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.

APPENDIX 1 TO SCHEDULE 14.4B

List of Primary Franchise Assets

The following table of Primary Franchise Assets is to be confirmed in accordance with Schedule 20 (IOC Confirmable Obligations).

Description of Primary Franchise Asset*	Commitment not to de-designate	To Transfer to Successor Operator at Nil Value
[INSERT DETAILS]	[INSERT DETAILS]	[INSERT DETAILS]
[INSERT DETAILS]	[INSERT DETAILS]	[INSERT DETAILS]

**Note that the Secretary of State may elect to designate under Schedule 14.4 as Primary Franchise Assets any assets delivered by the Franchisee as part of a Committed Obligation under Schedule 6.2 (Committed Obligations).*

SCHEDULE 14.5B

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 the Secretary of State may reasonably require.

SCHEDULE 14.6B

Residual Value Mechanism

1. Provisions relating to RV Assets

1.1 The provisions of paragraphs 3, 4, 7, 8 and 10 to 12 of Schedule 14.4 (Designation of Franchise Assets) (inclusive) shall not apply in respect of any RV Asset.

1.2 De-Designation of RV Assets as Primary Franchise Assets

The Secretary of State may, at any time during the Franchise Period, by serving notice on the Franchisee cause a particular RV Asset designated as a Primary Franchise Asset pursuant to paragraph 2.1(h) of Schedule 14.4 (Designation of Franchise Assets) to cease to be designated as such on the occurrence of any of the following:

- (a) such RV Asset is lost, destroyed or otherwise beyond repair after the date upon which it is designated as a Primary Franchise Asset pursuant to paragraph 2.1(h) of Schedule 14.4 (Designation of Franchise Assets) and such RV Asset is not replaced; or
- (b) the Secretary of State and the Franchisee agree in writing at any time during the Franchise Period that such RV Asset shall cease to be so designated as a Primary Franchise Asset; or
- (c) for an RV Asset that is an Infrastructure Manager Fixture Asset the applicable Station Access Conditions or Depot Access Conditions are amended at any time after the date of designation of such RV Asset such that the Franchisee ceases to be responsible under the applicable Station Access Conditions or Depot Access Conditions (as the case may be) for the maintenance, repair and renewal of such RV Asset.

Such RV Asset shall cease to be designated as a Primary Franchise Asset with effect from the date specified in any notice served by the Secretary of State pursuant to this paragraph 1.2 and the table in Appendix 1 to Schedule 14.6 (List of the RV Assets) shall be deemed to be amended and thereafter shall be amended to take account of any such de-designation.

1.3 Process for issue of a Certificate of Completion for Additional RV Assets

- (a) Within twenty (20) days of the date upon which an Additional RV Asset is brought into operational use the Franchisee shall provide to the Secretary of State such information as is required by the Secretary of State for, and in the detail needed for demonstrating that such Additional RV Asset has been brought into operational use and evidencing the actual capital cost incurred by the Franchisee on the procurement of such Additional RV Asset including the following:
 - (i) information described in paragraph 9 of Schedule 14.4 (Designation of Franchise Assets), including such information as the Secretary of State may require pursuant to paragraph 9.2 of Schedule 14.4 (Designation of Franchise Assets);
 - (ii) information which shows the actual date upon which such Additional RV Asset was brought into operational use (including photographic evidence or any other kind of record which shows that such Additional RV Asset has been brought into operational use);
 - (iii) in respect of an Additional RV Asset that is an Infrastructure Manager Fixture Asset, written confirmation from the relevant Infrastructure Manager that:

- (A) such Additional RV Asset will be owned by the Franchisee and remain the unencumbered asset of the Franchisee for the duration of the asset life of such Additional RV Asset or the duration of the Franchise Period (whichever is the shorter);
 - (B) the Franchisee has the responsibility under the Station Access Conditions or the Depot Access Conditions (as the case may be) applicable in relation to such Station or Depot (as the case may be) to maintain, repair and renew such Additional RV Asset from the date upon which such Additional RV Asset property is brought into operational use for the duration of the asset life of such Additional RV Asset or the duration of the Franchise Period (whichever is the shorter);
 - (iv) information evidencing the actual capital cost of procuring such Additional RV Asset (including receipts and other supporting evidence) or where all information required to evidence the actual capital cost of procuring such Additional RV Asset is not yet available the Franchisee's reasonable estimate of such actual capital cost with a commentary explaining how the estimate has been arrived at;
 - (v) information which shows that such Additional RV Asset satisfies the requirements of the Committed Obligations to which it relates;
 - (vi) information required by paragraph 2.1; and
 - (vii) such other information as the Secretary of State may reasonably require for the purposes of verifying the actual capital costs incurred by the Franchisee on the procurement of such Additional RV Asset.
- (b) Subject to receipt of the information required in paragraph 1.3(a) and none of the events described in paragraph 1.2 having occurred, the Secretary of State shall issue to the Franchisee a certificate of completion ("**Certificate of Completion**") which shall specify for the purposes of this Agreement the date upon which the relevant Additional RV Asset was brought into operational use provided that nothing in this paragraph 1.3(b) shall oblige the Secretary of State to issue a Certificate of Completion in respect of any Additional RV Asset:
- (i) if the Secretary of State, acting reasonably is not satisfied that such Additional RV Asset will at the time of such designation be vested in the Franchisee;
 - (ii) if the Secretary of State reasonably determines that such Additional RV Asset does not satisfy the requirements of the Committed Obligation to which it relates; or
 - (iii) where the confirmation from the relevant Infrastructure Manager referred in paragraph 1.3(a)(iii) has not been issued.
- (c) The Secretary of State may, prior to the issue of a Certificate of Completion in respect of an Additional RV Asset, exercise the Secretary of State's rights under paragraph 6 (Right to Inspect) of Schedule 11.2 (Management Information) to inspect an Additional RV Asset for the purposes of satisfying the Secretary of State that such Additional RV Asset satisfies the requirements of the Committed Obligation to which it relates.
- (d) Where the Franchisee is only able to provide an estimate of the capital cost of procuring an Additional RV Asset pursuant to paragraph 1.3(a)(iv) above it shall notify the Secretary of State of the actual capital cost of procuring the Additional RV Asset (with receipts and other supporting evidence) as soon as reasonably practicable and in any event within six months of the date of issue of a Certificate of Completion of such Additional RV Asset. The Franchisee shall provide the Secretary of State with such further information as the

Secretary of State may reasonably require for the purposes of verifying the actual capital costs incurred by the Franchisee on the procurement of such Additional RV Asset.

1.4 Adjustments to the Transfer Value

If:

- (a) the Franchise Agreement is extended as contemplated in clause 5 (Duration of the Franchise Agreement) then the Secretary of State shall adjust the RV Asset Transfer Value applicable to each RV Asset by depreciating each such RV Asset on a straight line basis from the date specified for such RV Asset in Column 3 of Appendix 1 to this Schedule 14.6 ("**Planned Delivery Date**") until the end of the Franchise Period (as extended) and so that:
- (i) the Revised RV Asset Transfer Value will be the residual value of the RV Asset following such depreciation as at the end of the Franchise Period (as extended) or, if the RV Asset has been fully depreciated on that basis at that time, nil; and
 - (ii) from the date of the extension of the Franchise Agreement Column 2 of the table in Appendix 1 to this Schedule 14.6 (List of the RV Assets) shall be deemed to be and shall be restated in the amounts of the Revised RV Asset Transfer Value; or
- (b) the actual capital cost incurred by the Franchisee in procuring any Additional RV Asset is less than the amount specified in Column 5 of the table in Appendix 1 to this Schedule 14.6 (List of the RV Assets) in respect of any such Additional RV Asset, then:
- (i) the Secretary of State shall adjust the RV Asset Transfer Value applicable to such Additional RV Asset by using the same principles as were specified in the Financial Model and Record of Assumption for the calculation of the initial RV Asset Transfer Value except that actual capital cost for such Additional RV Asset shall replace the capital cost specified for such Additional RV Asset in Column 5 of the table of Appendix 1 to this Schedule 14.6 (List of the RV Assets) in order to calculate the Revised RV Asset Transfer Value. Such adjustment shall be deemed to take effect from the date upon which a Certificate of Completion is issued including in the circumstance where the actual capital cost is notified to the Secretary of State pursuant to paragraph 1.3(d) after the date of issue of a Certificate of Completion; and
 - (ii) Column 2 of the table in Appendix 1 to this Schedule 14.6 (List of the RV Assets) shall be restated and shall be restated in the amounts of the Revised RV Asset Transfer Value such restatement to be deemed to be effective from the date of issue of a Certificate of Completion.
- (c) For the purposes of this paragraph 1.4:
- (i) "**RV Asset Transfer Values**" means each of the transfer values relating to the RV Assets as specified in Column 2 of the table in Appendix 1 to this Schedule 14.6 (List of RV Assets);
 - (ii) "**Revised RV Asset Transfer Values**" means each of the RV Asset Transfer Values as adjusted by the Secretary of State in accordance with the provisions of paragraph 1.4(a) or paragraph 1.4(b) (as applicable).

1.5 No New RV Assets

For the avoidance of doubt, no new or additional assets shall be designated as RV Assets during the Integrated Operator Period and the provisions of paragraph 1.3 and 1.4(b) of this Schedule

14.6, shall only apply in respect of Additional RV Assets which have been designated as RV Assets prior to the Integrated Operator Start Date but which have not been the subject of a Certificate of Completion prior to the Integrated Operator Start Date.

2. Maintenance Requirements for RV Assets

- 2.1 At the same time as the Franchisee provides the information required pursuant to paragraph 1.3(a) in respect of any Additional RV Asset, the Franchisee shall submit to the Secretary of State a schedule of condition specifying the condition of such Additional RV Asset as at the date upon which such Additional RV Asset was brought into operational use as specified in the applicable Certificate of Completion. Such schedule of condition must be approved by the Secretary of State and shall be in respect of such aspects of an Additional RV Asset as the Secretary of State may reasonably require. The Franchisee shall ensure that each RV Asset is maintained, preserved and protected in at least the same condition, subject to fair wear and tear, as specified in the applicable schedule of condition as approved by the Secretary of State in respect of such RV Asset pursuant to this paragraph 2.1 and/or paragraph 2.1 of Schedule 14.6A (Residual Value Mechanism). In respect of any RV Asset that is an Infrastructure Manager Fixture Asset the Franchisee shall ensure that any schedule of condition prepared as required by this paragraph 2.1 shall comply with the Franchisee's maintenance obligations relating to such Infrastructure Manager Fixture Asset under the applicable Station Access Conditions and/or Depot Access Conditions (as the case may be).
- 2.2 Subject to paragraph 2.3, where the Franchisee has failed to demonstrate to the reasonable satisfaction of the Secretary of State that it has complied with its maintenance obligations in paragraph 2.1 in respect of any RV Asset then the Secretary of State may by notice in writing to the Franchisee require that the RV Asset Transfer Value payable by a Successor Operator required pursuant to the Supplemental Agreement to pay to the Franchisee the RV Asset Transfer Value for such RV Asset ("**Relevant Successor Operator**") is adjusted downwards by an amount that is equal to the amount that is agreed by the Franchisee and the Relevant Successor Operator (or on failure to agree, as reasonably determined by the Secretary of State) as being the amount reasonably expected to be incurred by the Relevant Successor Operator for putting such RV Asset in the condition required pursuant to paragraph 2.1.
- 2.3 The provisions of paragraph 2.2 shall not apply in circumstances where the Franchisee and the Relevant Successor Operator agree that the Franchisee shall either:
- (a) at the Franchisee's own cost, rectify any relevant non-compliance with the requirements of paragraph 2.1; or
 - (b) indemnify the Relevant Successor Operator (the form of such indemnity to be in a form that is acceptable to the Relevant Successor Operator) against the reasonable costs of putting the relevant RV Asset in the condition required by paragraph 2.1.

APPENDIX 1 TO SCHEDULE 14.6B

List of the RV Assets

The following table of RV Assets is to be confirmed in accordance with Schedule 20 (IOC Confirmable Obligations).

Column 1	Column 2	Column 3	Column 4	Column 5
Description of the RV Assets	RV Asset Transfer Value (£) at Expiry Date	Planned Delivery Date	Is RV Asset an Infrastructure Manager Fixture Asset (Yes/No)	Capital Cost (£)

SCHEDULE 14.7B

NOT USED

SCHEDULE 15B

OBLIGATIONS ASSOCIATED WITH TERMINATION

Schedule 15.1B:	Reletting Provisions
Schedule 15.2B:	Conduct of Business Provisions
Schedule 15.3B:	Handover Package
	Appendix 1: Form of Handover Package
	Appendix 2: Form of Shadow Operator Handover Package
Schedule 15.4B:	Provisions Applying on and after Termination
	Appendix 1: Template Form of Transfer Scheme
	Appendix 2: Template Form of Supplemental Agreement

SCHEDULE 15.1B

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:

- (a) provide all or some of the Passenger Services under a franchise agreement;
- (b) provide all or some of the Shadow Operator Services under an agreement; and/or
- (c) provide all or some of the Passenger Services and the Shadow Operator Services under a franchise agreement

or alternatively to enter into an agreement as set out in this paragraph 1.1 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 services equivalent to 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 Part 1 (Franchise Services) of Schedule 1.1 (Franchise Services and Service Development), Schedule 14 (Preservation of Assets) and this Schedule 15 (Obligations Associated with Termination).

2. Preparation for Reletting

2.1 The Franchisee shall, if so requested by the Secretary of State provide the Secretary of State and the Secretary of State's 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 the Secretary of State's duties under section 30 of the Act) relating to the services equivalent to the Franchise Services (or any part thereof), without undergoing a tendering process,

provided that the exercise of such access rights by the Secretary of State and the Secretary of State's representatives and advisers shall not unduly interfere with the continuing provision and operation of the Franchise Services by the Franchisee.

3. Data Site Information

3.1 The Franchisee shall, at the request of the Secretary of State, make available to the Secretary of State and the Secretary of State's representatives and advisers:

- (a) the information relating to the Franchise Services as specified in the document in the agreed terms marked **DSMI** (the "**Data Site Monitor and Index**"); and
- (b) such other information as they shall reasonably require in connection with the matters referred to in paragraph 2.1,

in each case, by no later than three (3) months after the date of any such request. For the purposes of this paragraph 3 the information referred to in paragraphs 3.1(a) and 3.1(b) shall be the "**Data Site Information**".

3.2 The Data Site Monitor and Index shall be amended and updated by the Secretary of State from time to time. Such amended and updated Data Site Monitor and Index shall, from the date that the Franchisee receives notification from the Secretary of State of any such amendment or update, be the applicable Data Site Monitor and Index for the purposes of this paragraph 3.

3.3 The Franchisee shall prepare and present the Data Site Information in such manner and in such format (including in disaggregated form) as the Secretary of State may specify in the Data Site Monitor and Index or otherwise require, and shall provide such assistance as the Secretary of State may require in connection with the verification and the updating of such Data Site Information.

3.4 The Franchisee shall provide such confirmation in relation to the accuracy of:

- (a) the contents of the documents referred to in paragraph 2.1; and
- (b) any Data Site Information uploaded to such electronic data site as the Secretary of State may require pursuant to paragraph 3.5,

in each case, as the Secretary of State shall require from time to time.

3.5 The Franchisee shall upload the Data Site Information to such electronic data site as the Secretary of State 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.

3.6 The Franchisee shall:

- (a) comply with its obligations under paragraph 2.1 and this paragraph 3 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;
- (b) 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 five (5) Weekdays. Such response shall include any further information requested by the Secretary of State in relation to such query; and
- (c) nominate a person to whom:
 - (i) all queries or requests for information pursuant to paragraph 3.6(b);
 - (ii) requests for access to premises pursuant to paragraph 5; and

(iii) requests for access to employees,

shall be addressed and who shall be responsible for complying with any such queries or requests for information and such requests for access to employees and premises. The Franchisee shall notify the Secretary of State (the Secretary of State's representatives and advisers) of the name and contact details of such person.

3.7 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 services equivalent to 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 3.8, that the Franchisee reorganises the business of providing services equivalent to 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.

3.8 NOT USED.

3.9 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 3, 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 3 the Secretary of State may:

- (a) require the Franchisee 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 3.

3.10 To the extent reasonably practicable, prior to taking any of the actions referred to in paragraph 3.9, the Secretary of State shall allow the Franchisee a reasonable opportunity to make representations to the Secretary of State concerning the exercise by the Secretary of State of the Secretary of State's rights under paragraph 3.9 but the Secretary of State shall not be obliged by those representations to refrain from exercising any of the actions specified under paragraph 3.9.

4. Non-Frustration of Transfer to Successor Operator

4.1 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;
- (b) to prevent, prejudice or frustrate the transfer as a going concern of the business of providing the Shadow Operator Services at the end of the Franchise Period or upon termination of the Shadow Operator Services to a Successor Shadow Operator; or
- (c) 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 preventative, prejudicial or frustrating action or steps.

4.2 Subject to the restrictions set out in paragraph 4.1 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.

5. Inspection Rights during the Tendering/Reletting Process

5.1 Without limiting any other rights of the Secretary of State under the Franchise Agreement and subject to paragraph 5.3, the Franchisee shall permit the undertaking of inspections (including the taking of inventories) or surveys of:

- (a) trains;
- (b) Stations;
- (c) Depots;
- (d) sidings; and/or
- (e) other premises owned or occupied by the Franchisee or any of its Affiliates or used in connection with the provision of the Franchise Services by the Franchisee or any of its Affiliates,

("Inspections") by the Secretary of State (or the Secretary of State's 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, and who carry suitable identification and evidence of authorisation ("Nominee")) as the Secretary of State may reasonably require in connection with any Tendering/Reletting Process.

5.2 The Franchisee shall provide a travel permit(s) which will allow the Secretary of State or a Nominee to travel free of charge on the Routes in order to carry out the Inspections.

5.3 The Secretary of State shall use reasonable endeavours to ensure that any Inspections shall be undertaken so as not to unduly interfere with the continuing provision and operation of the Franchise Services by the Franchisee.

SCHEDULE 15.2B

Conduct of Business Provisions

1. Conduct of Business Provisions

1.1 The provisions set out in this Schedule 15.2 (Conduct of Business Provisions) shall apply from the Integrated Operator Start Date until the Expiry Date.

2. 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) is not in the ordinary course of business and, when aggregated with any other variation or addition which takes effect during the Integrated Operator Period, represents an increase in the remuneration of a Franchise Employee of no more than the amount determined in accordance with the following formula:

$\frac{MAWE + JAW E + SAWE + DAWE}{4}$	
where:	
MAWE	is the change in the Average Weekly Earnings between March in the preceding twelve (12) months and the corresponding March one (1) year before, expressed as a percentage;
JAW E	is the change in the Average Weekly Earnings between June in the preceding twelve (12) months and the corresponding June one (1) year before, expressed as a percentage;
SAWE	is the change in the Average Weekly Earnings between September in the preceding twelve (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 twelve (12) months and the corresponding December one (1) 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 (6) 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 shall be permitted to make a decrease in the remuneration of any Franchise Employee 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 the Integrated Operator 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.

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 the Secretary of State's 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).

3. Terms of Employment of New Employees

3.1 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), 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.

4. Changes in Numbers and Total Cost of Employees

4.1 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 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 one per cent (1%) during the Integrated Operator Period.

5. Percentage Allocations

- (a) The Franchisee shall appoint and maintain for the duration of the Integrated Operator Term a dedicated resource responsible for the review and management of Percentage Allocations in relation to Rail Products.
- (b) The Franchisee shall ensure that it manages and requests changes (including by disputing Percentage Allocations under the Ticketing and Settlement Agreement) to the Percentage Allocations in relation to Rail Products in such manner as would reasonably be expected from a skilled and experienced Train Operator bearing revenue risk in relation to its franchise and seeking to maximise its profit consistent with its other obligations under its franchise agreement.
- (c) Each Reporting Period the Franchisee shall provide to the Secretary of State written confirmation from a statutory director of the Franchisee of whether the Franchisee has complied with its obligations under this paragraph 5. It shall be a contravention of the Franchise Agreement if any such written confirmation from a statutory director of the Franchisee is, in any material respect, untrue, inaccurate and/or misleading.
- (d) Except to the extent that the Secretary of State may consent from time to time the Franchisee shall not take any action or step which may result in its Percentage Allocation in respect of any Rail Product being reduced or increased. The Franchisee shall notify the Secretary of State before taking any such action or step and upon becoming aware of any other person proposing to take any action or step which may have the same effect. The Franchisee shall take such action as the Secretary of State may reasonably request in order to prevent any such reduction or increase, including submitting any dispute to any relevant dispute resolution procedures.

6. Voting on Inter-Operator Scheme Councils

6.1 The Franchisee shall give the Secretary of State reasonable notice of:

- (a) any meeting of:
 - (i) a scheme council of an Inter-Operator Scheme on which the Franchisee is represented; or
 - (ii) a scheme management group of any Inter-Operator Scheme:
 - (A) in which the Franchisee has a permanent position; or

(B) where the Franchisee employs a member of such group;

- (b) the resolutions to be voted upon at any such meeting; and
- (c) the Franchisee's voting intentions (and, if different, what the Franchisee reasonably considers its voting intentions would be if it were bearing cost and revenue risk).

6.2 The Franchisee shall (subject to paragraph 7):

- (a) attend all meetings referred to in paragraph 6.1, unless otherwise directed by the Secretary of State in writing;
- (b) vote at any such meeting in the manner required by the Secretary of State; and
- (c) provide to the Secretary of State copies of the minutes of any such meeting as soon as reasonably practicable after receipt of same.

7. Successor Operator

7.1 Where the Franchisee has been notified by the Secretary of State that a relevant 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 of a scheme council or scheme management group as referred to in paragraph 6.1;
- (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.

7.2 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 7.1(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.

7.3 The Secretary of State shall reasonably determine the way the Franchisee should vote on any resolutions referred to the Secretary of State in accordance with paragraph 7.2, having regard to the transfer of the Franchise Services as a going concern at the end of the Franchise Period.

7.4 Where paragraph 7 applies, the Franchisee shall vote at any meeting referred to in paragraph 6.1 in accordance with any agreement pursuant to paragraph 7.2 or determination pursuant paragraph 7.3.

8. Train Maintenance

8.1 The Franchisee shall procure that heavy maintenance of the Train Fleet is undertaken in accordance with a standard expected of a competent, skilled and experienced train operator.

8.2 The Franchisee shall seek approval from the Secretary of State for any changes to the heavy maintenance regime for the Train Fleet where such change will result in a material increase or decrease to the cost including the reduction or increase of any lease payments for the relevant Rolling Stock (such approval not to be unreasonably withheld or delayed). If the Secretary of State does not confirm the Secretary of State's approval to the Franchisee within one (1) month

of receiving a request in respect of such the Secretary of State shall be deemed to have approved the change requested.

SCHEDULE 15.3B

Handover Package

1. Handover Package Status

1.1 During:

- (a) the ICWC Term, the Franchise has been obliged pursuant to paragraph 1.1 of Schedule 15.3A (Handover Package) to:
 - (i) provide to the Secretary of State, and maintain and update, the Handover Package;
 - (ii) provide to the Secretary of State, and maintain and update, the Shadow Operator Handover Package; and
 - (iii) provide to the Secretary of State, and revise and keep up to date, 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) the Integrated Operator Term, the Franchisee shall:
 - (i) maintain the Handover Package and the Shadow Operator Handover Package and update those at least every three (3) Reporting Periods; and
 - (ii) in respect of the information referred to in paragraph 1.1(a)(iii), 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:

- (a) any Successor Operator will have immediate access to the Handover Package on the expiry of the Franchise Period (provided that any Successor Operator that is solely a Successor Shadow Operator shall not be required to have such access); and
- (b) any Successor Shadow Operator will have immediate access to the Shadow Operator Handover Package on the expiry of the Franchise Period or (if earlier) on termination of the Shadow Operator Services.

1.3 The Franchisee shall also ensure that the Key Contacts List is provided to the Secretary of State within twenty four (24) hours of the receipt of any Termination Notice or Readiness Review Failure Termination Notice.

1.4 From the date that the Station Asset Management Plan or the Station Social and Commercial Development Plan is created pursuant to Schedule 1.7 (Stations) the Franchisee shall update the Handover Package to include the Station Asset Management Plan and the Station Social and Commercial Development Plan and shall update the Station Asset Management Plan and the Station Social and Commercial Development Plan included in the Handover Package pursuant to this paragraph 1.4 whenever such plans are updated in accordance with Schedule 1.7 (Stations).

2. Director's Certificate

- 2.1 At the same time as the Franchisee is required to provide the Annual Business Plan to the Secretary of State as required by paragraph 10.2 of Schedule 11.2 (Management Information), the Franchisee shall provide to the Secretary of State the latest version of the Handover Package (updated as required pursuant to paragraph 1.1(b)(i) of this Schedule 15.3) together with:
- (a) a certificate signed by a statutory director of the Franchisee, addressed to the Secretary of State, which confirms that:
 - (i) the Handover Package contains the information specified in Appendix 1 (Form of Handover Package) to this Schedule 15.3 (and such other information specified from time to time by the Secretary of State); and
 - (ii) such information is accurate as at the date of the certificate; and
 - (b) a document setting out all the changes that have been made to the Handover Package since the last version of the Handover Package provided to the Secretary of State pursuant to this paragraph 2.1.
- 2.2 At the same time as the Franchisee is required to provide the Shadow Operator Annual Review Checklist to the Secretary of State as required by Schedule 18.4 (Shadow Operator Annual Review), the Franchisee shall provide to the Secretary of State the latest version of the Shadow Operator Handover Package (updated as required pursuant to paragraph 1.1(b)(i) of this Schedule 15.3) together with:
- (a) a certificate signed by a statutory director of the Franchisee, addressed to the Secretary of State, which confirms that:
 - (i) the Shadow Operator Handover Package contains the information specified in Appendix 2 (Form of Shadow Operator Handover Package) to this Schedule 15.3 (and such other information specified from time to time by the Secretary of State); and
 - (ii) such information is accurate as at the date of the certificate; and
 - (b) a document setting out all the changes that have been made to the Shadow Operator Handover Package since the last version of the Shadow Operator Handover Package provided to the Secretary of State pursuant to this paragraph 2.2.

APPENDIX 1 TO SCHEDULE 15.3B

Form of Handover Package

1. All information in the Handover Package must be provided electronically in a form that is acceptable to the Secretary of State.

2. **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 list 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. **Asset Register**

A list 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.

6. **Safety Certificate**

A complete copy of the Safety Certificate, an electronic copy of the Franchisee's application for the Safety Certificate and full details of the Franchisee's safety management system in place to support the Safety Certificate.

7. **Key Contacts**

A list of key contacts relating to the Franchise Services (excluding the Shadow Operator Services) to include all Key Personnel. This must include operations, commercial, personnel and public affairs departments (or in each case their nearest equivalents). This list must include the name, address and office telephone numbers of such key contacts (including any out of business hours contact details that such key contacts will usually provide to the Franchisee for emergency or business continuity reasons) and a brief description of the person's role and responsibilities in the business.

APPENDIX 2 TO SCHEDULE 15.3B

Form of Shadow Operator Handover Package

1. All information in the Shadow Operator Handover Package must be provided electronically in a form that is acceptable to the Secretary of State.

2. **Key Contracts**

A list of all Key Contracts relating to the Shadow Operator Services 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 Key Contracts relating to the Shadow Operator Services unless otherwise agreed by the Secretary of State.

3. **Primary Franchise Asset Register**

A list of all Primary Franchisee Assets owned or operated by the Franchisee and which are used, intended to be used or required for the performance of the Shadow Operator Services, together with their location.

4. **Key Contacts**

A list of key contacts relating to the Shadow Operator Services to include all Key Shadow Operator Personnel. This must include operations, commercial, personnel and public affairs departments (or in each case their nearest equivalents). This list must include the name, address and office telephone numbers of such key contacts (including any out of business hours contact details that such key contacts will usually provide to the Franchisee for emergency or business continuity reasons) and a brief description of the person's role and responsibilities in the business.

5. **Intellectual Property**

A list of all Franchisee Material relating to the Shadow Operator Services, including details of the purpose of the Franchisee Material and the location in which it is stored.

6. **Employees**

A list of all Shadow Operator Employees together with the role which each individual undertakes.

7. **Contractors**

A list of all Shadow Operator Contractors who are Key Shadow Operator Personnel together with the role that each such Shadow Operator Contractor undertakes.

SCHEDULE 15.4B

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 the Secretary of State 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 the Secretary of State's 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 the Secretary of State's nominee shall be obliged, in connection with such novation, to agree to assume responsibility for any unperformed obligation, liability or consequences of a breach of the relevant agreement 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 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 the Secretary of State 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 one or more Successor Operators have been appointed, each such Successor Operator; and
 - (b) 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 make appropriately skilled and qualified Franchise Employees reasonably available to attend such meetings with the Secretary of State, any Successor Operator, Network Rail, HS2 Limited, any rolling stock lessor and/or and other relevant third party as are reasonably required in order to determine:
- (a) 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:
 - (i) Access Agreements;
 - (ii) Property Leases;
 - (iii) agreements in relation to Shared Facilities;
 - (iv) Rolling Stock Leases;
 - (v) Rolling Stock Related Contracts;
 - (vi) any other Key Contract; and
 - (b) 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

3.1 Option Arrangements

- (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 fourteen (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 fourteen (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 fourteen (14) days after service of such notice.

3.2 Supplemental Agreement

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.

3.3 Payment of Estimated Transfer Price

- (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) the Secretary of State's 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) the Secretary of State's 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.

3.4 Possession of Franchise Assets

On the coming into force of a Transfer Scheme, the Franchisee shall deliver up to the Secretary of State (or the Secretary of State's nominee) possession of the Primary Franchise Assets transferred under such Transfer Scheme.

3.5 Transfer of Primary Franchise Assets to a Successor Shadow Operator

- (a) At any time during the Shadow Operator Termination Assistance Period or within the period which is fourteen (14) days before the expiry of the Franchise Period, the Franchisee shall, upon receipt of a request from the Secretary of State:
- (i) take such actions and execute such agreements as may be necessary to transfer all Primary Franchise Assets that the Successor Shadow Operator may (in the Secretary of State's reasonable opinion) require to provide services similar and/or equivalent to the Shadow Operator Services to the Successor Shadow Operator at nil value with full title guarantee and free from all encumbrances and other rights of whatever nature exercisable by any third party;
 - (ii) transfer any and all documentation (which shall, for the avoidance of doubt, be Franchisee Background Material) relating to the Primary Franchise Assets referred to in paragraph (i) to the Successor Shadow Operator;
 - (iii) assign or novate any contracts relating to the Primary Franchise Assets referred to in paragraph (i) to the Successor Shadow Operator;
 - (iv) provide the Successor Shadow Operator with such assistance and/or information as the Successor Shadow Operator and/or the Secretary of State reasonably requires

in order to enable the Successor Shadow Operator to receive the full benefit of, maintain and operate the Primary Franchise Assets referred to in paragraph (i); and

- (v) where the relevant Primary Franchise Assets are physical assets deliver such Primary Franchise Assets to such location at such date and time as the Secretary of State or the Franchisee may reasonably request.
- (b) Paragraph 3.5(a) applies to all Primary Franchise Assets other than Key Contracts, which shall be subject to the provisions of paragraph 4.3 of this Schedule 15.4.

4. Associated Obligations on Termination

4.1 Assistance in Securing Continuity

- (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).

4.2 Access

On the expiry of the Franchise Period, the Franchisee shall grant the Secretary of State and the Secretary of State's 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.

4.3 Key Contracts

- (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.

4.4 Change of Name

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.

4.5 Property Leases

- (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 the Secretary of State 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 the Secretary of State's 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 the Secretary of State's 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 the Secretary of State's 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 the Secretary of State may direct, subject, where applicable, to the consent of the relevant Infrastructure Manager. 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 the Secretary of State's agents may have access to and use free of charge any information contained in any Computer System or in hard copy format as the Secretary of State sees fit (for the purposes of continuing the operation of the Franchise Services).

6. Maintenance Records

- 6.1 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

- 7.1 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 On the expiry of the Franchise Period and without prejudice to the provisions of paragraph 14 of Schedule 18.1 (Shadow Operations), the Franchisee shall grant to any Successor Operator licences of any Intellectual Property Rights which:
- (a) are owned by or licensed to the Franchisee;
 - (b) were not owned by or licensed to it immediately prior to the Start Date;
 - (c) have not been designated as a Primary Franchise Asset;
 - (d) do not represent or constitute a Mark; and
 - (e) 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.
- 8.2 When agreeing the terms on which Intellectual Property Rights are 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 Rights in accordance with this paragraph 8. 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).

- 8.3 Any licence of any Intellectual Property Rights 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. Such licence shall be free of charge and royalty-free for a minimum of three (3) months.
- 8.4 If the licence of any Intellectual Property Rights is for a period in excess of three (3) months, 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 Rights. 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.
- 8.5 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 Rights 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 Rights or has the right to license them and the licensing of such Intellectual Property Rights and the subsequent use of the Intellectual Property Rights 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

- 9.1 The Franchisee shall immediately on the expiry of the Franchise Period make available to the Secretary of State and/or the Secretary of State's nominee:
- (a) passenger numbers information specified in paragraph 1 of Schedule 1.5 (Information about Passengers), in such format and to such level of disaggregation as the Secretary of State and/or the Secretary of State's nominee may reasonably require; and
 - (b) the CRM Data and Yield Management Data.

**APPENDIX 1 TO SCHEDULE 15.4B
Template Form of Transfer Scheme**

Dated [INSERT DATE]

**TRANSFER SCHEME
OF
THE SECRETARY OF STATE FOR TRANSPORT
MADE PURSUANT TO SCHEDULE 2 OF THE RAILWAYS ACT 2005**

**IN FAVOUR OF
[INSERT NAME OF SUCCESSOR OPERATOR]**

**IN RESPECT OF
CERTAIN PROPERTY, RIGHTS AND LIABILITIES
OF
[INSERT NAME OF FRANCHISEE]**

Secretary of State for Transport
33 Horseferry Road
London SW1P 4DR

TRANSFER SCHEME

Whereas:

- (A) [INSERT NAME OF 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 [INSERT DATE] (the “**Franchise Agreement**”).
- (B) The Franchise Agreement terminated or is to terminate on [INSERT DATE] and [INSERT NAME OF 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 the Secretary of State 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 [INSERT DATE] 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 [INSERT DATE].

SEAL REF NO:

THE CORPORATE SEAL OF
THE SECRETARY OF STATE
FOR TRANSPORT IS
HEREUNTO AFFIXED:



**Authenticated by authority of the Secretary
of State for Transport**

SCHEDULE TO THE TRANSFER SCHEME

[LIST RELEVANT FRANCHISE ASSETS TO BE TRANSFERRED TO SUCCESSOR OPERATOR]

APPENDIX 2 TO SCHEDULE 15.4B

Template Form of Supplemental Agreement

Dated [INSERT DATE]

[INSERT NAME OF OUTGOING FRANCHISEE]

- and -

[INSERT NAME OF SUCCESSOR OPERATOR]

[Template] SUPPLEMENTAL AGREEMENT

to the transfer scheme dated [INSERT DATE] made
by the Secretary of State for Transport in respect of
certain property rights and liabilities of
[INSERT NAME OF OUTGOING FRANCHISEE]

Secretary of State for Transport
33 Horseferry Road
London SW1P 4DR

THIS SUPPLEMENTAL AGREEMENT is made on [INSERT DAY] [INSERT YEAR]

BETWEEN:

- (1) [INSERT NAME OF OUTGOING FRANCHISEE] whose registered office is at [INSERT ADDRESS OF REGISTERED OFFICE] (the "Transferor"); and
- (2) [INSERT NAME OF SUCCESSOR OPERATOR] whose registered office is at [INSERT ADDRESS OF 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 [INSERT DATE] (the "Franchise Agreement").
- (B) The Franchise Agreement terminated or is to terminate on [INSERT DATE] 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 [INSERT DATE] 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;

"**DfT Funded Assets**" means those property, rights and liabilities that are legally or beneficially owned by the Franchisee and which are funded through the following schemes, funds or budgets:

- (a) NOT USED;
- (b) the Minor Works' Budget; [or]
- (c) an Approved CCI Scheme; [or]

(d) [ANY OTHER RELEVANT FRANCHISE SPECIFIC SCHEME, FUND OR BUDGET]³⁵.

"Estimated Completion Payment" has the meaning ascribed to that term in Clause 2.1;

"Net Asset Statement" means the statement to be drawn up pursuant to Clause 2.2;

"Net Asset Value" means the aggregate of the amounts of the Relevant Franchise Assets, the Relevant Contract Liabilities, the Relevant Debits and Credits and the Relevant Employee Liabilities as shown in the Net Asset Statement agreed or determined pursuant to Clause 2.2;

"Purchase Price" has the meaning ascribed to that term in Clause 2.1;

"Relevant Contract Liabilities" means such rights and liabilities of the Transferor as may be transferred to the Transferee on the expiry of the Franchise Period in relation to any Licence, Access Agreement or Property Lease under paragraphs 1 and 4.5 of Schedule 15.4B (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 (4) 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);

35 **Note to Bidders:** This will be populated on a Franchise-specific and a bidder-specific basis to reflect any other relevant funds, budgets or schemes which are used to purchase Franchise assets.

"Taxation" comprises all forms of taxation, duties, contributions and levies of the United Kingdom whenever imposed and (except in so far as attributable to the unreasonable delay or default of the Transferee) all penalties and interest relating thereto;

"TOGC" has the meaning assigned to that term in Clause 6.2;

"Transfer Date" means the date and, where relevant, the time on or at which the Transfer Scheme comes into force;

"Transfer Regulations" means the Transfer of Undertakings (Protection of Employment) Regulations 2006 (as amended, replaced or substituted from time to time);

"Transferring Assets and Liabilities" has the meaning assigned to that term in Clause 2.1; and

"Undisclosed Employee" has the meaning assigned to that term in Clause 7.1(d).

Construction and Interpretation

1.2 In this Agreement terms and expressions defined in the Franchise Agreement shall have the same meaning and the terms **"contract of employment"**, **"collective agreement"**, **"employee representatives"** and **"trade union"** shall have the same meanings respectively as in the Transfer Regulations.

2. **TRANSFER PRICE**

2.1 **Amount and Payment**

The price for the transfer of:

- (a) the Relevant Franchise Assets;
- (b) the Relevant Contract Liabilities;
- (c) the Relevant Debits and Credits; and
- (d) the Relevant Employee 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 [£INSERT AMOUNT], as determined under paragraph 3.3 of Schedule 15.4B (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 15.4B (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 2.1.

2.2 **Net Asset Statement**

The Transferee shall procure that, as soon as practicable and in any event not later than two (2) 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 (4) 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.

2.5 **Adjustment of Price**

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 fourteen (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 fourteen (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 fourteen (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 (5) 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 thirty (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 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

7.1 Transfer Regulations

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, to the extent provided by the Transfer Regulations, 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, to the extent provided by the Transfer Regulations, 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 15.3B (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 or her 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.

7.2 Transferee's Indemnities

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 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 13(2)(d) and 13(6) of the Transfer Regulations concerning measures envisaged by the Transferee in relation to the Relevant Employees.

7.4 **Details of Relevant Employees**

Without prejudice to the Transferor's duties under the Transfer Regulations, the Transferor warrants to the Transferee that it has (to the extent not made available to the Secretary of State under Schedule 15.4B (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 twelve (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 twelve (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

8.1 Variations in Writing

No variation of this Agreement shall be effective unless in writing and signed by duly authorised representatives of the parties.

8.2 Partial Invalidity

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.

8.3 Further Assurance

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.

8.4 Notices

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 [INSERT NAME OF TRANSFEROR] at:

Address: [INSERT ADDRESS]

Email Address: [INSERT EMAIL ADDRESS]

Attention: [INSERT NAME]

(b) in the case of the Transferee to [INSERT NAME OF TRANSFEREE] at:

Address: [INSERT ADDRESS]

Email Address: [INSERT EMAIL ADDRESS]

Attention: [INSERT NAME]

Any such notice or other communication shall be delivered by email transmission, 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 (2) Weekdays from the time of posting.

8.5 Counterparts

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.

8.6 **Third Parties**

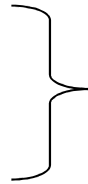
This Agreement does not create any rights under the Contracts (Rights of Third Parties) Act 1999 which is enforceable by any person who is not a party to it.

8.7 **Governing Law and Jurisdiction**

This 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 this Agreement.

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

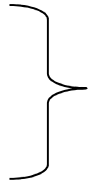
SIGNED FOR AND ON
BEHALF OF THE **[INSERT
NAME OF TRANSFEROR]:**



DIRECTOR:

DIRECTOR/SECRETARY:

SIGNED FOR AND ON
BEHALF OF THE **[INSERT
NAME OF 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);

	(a) in the case of a Season Ticket Fare, the number of journeys which the purchaser of the Fare is estimated to make from (and including) the Transfer Date to
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$\frac{A}{B}$ equals:	(and including) the last day on which the Fare is valid (including any extensions to its original period of validity) divided by the total number of journeys which the purchaser of the Fare is estimated to make with that Fare (as determined in each case in accordance with Schedule 28 of the Ticketing and Settlement Agreement);
	(b) in the case of any other Fare which entitles the holder thereof to make more than two journeys, the number of days for which the Fare continues to be valid after the Transfer Date (including any extensions to its original period of validity) divided by the total number of days for which such Fare is valid on issue (except to the extent that it can reasonably be estimated what proportion of the journeys which could be made on issue of the Fare have not been made prior to the Transfer Date); or
	(c) in the case of any other Fare, zero; and

E	<p>equals, if $\frac{A}{B}$ is greater than zero:</p> <p>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,</p>
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and for these purposes a Credit or Debit shall be deemed to be received when the relevant Fare is Accepted for Clearing (as defined in the Ticketing and Settlement Agreement).

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 (as defined in the Ticketing and Settlement Agreement) relate to a period after the Transfer Date.
5. Rights and liabilities in respect of any contract, 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

Rights and Liabilities	Value
Any liability to make payment in respect of goods and/or services provided to the Transferor prior to the Transfer Date where the due date for such payment is after the Transfer Date	Amount payable under such contract, lease, licence or other equivalent arrangement for the goods and/or services provided to the Transferor
Any rights in respect of which payment has already been made by the Transferor	Monetary amounts so paid, subject to any provision being made for such rights not being exercisable against any other person
Any liabilities in respect of which payment has already been received by the Transferor	Monetary amounts so received
Any liability resulting from any breach of or failure by the Transferor to comply with the terms of any such contract, lease, licence or other 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. CRM Data, Yield Management Data and Actual Passenger Demand information (and all Intellectual Property Rights in respect of the same) shall be valued at nil.
7. The Stored Credit Balance held by the Franchisee at the Transfer Date shall be valued at the monetary amount so held.
8. Any DfT Funded Assets shall be valued at nil.
9. 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.
10. Any RV Asset shall be valued at an amount that is equivalent to the RV Asset Transfer Value of such RV Asset as specified in Column 2 of the table in Appendix 1 (List of the RV Assets) to Schedule 14.6 (Residual Value Mechanism) of the Franchise Agreement, as such RV Asset Transfer Value may be adjusted or deemed to have been adjusted pursuant to paragraphs 1.4 or 2.2 of Schedule 14.6 (Residual Value Mechanism) of the Franchise Agreement.
11. NOT USED.
12. NOT USED.
13. NOT USED.
14. NOT USED.
15. Any other property, rights or liabilities shall be valued on the basis of a willing vendor and purchaser and ongoing usage within the railway industry.

SCHEDULE 16B

PENSIONS

Schedule 16B:	Pensions ³⁶
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36 Note to Bidders: drafting for Schedule 16B (with any changes to associated definitions) will be provided by the Department.

SCHEDULE 17B

CONFIDENTIALITY AND FREEDOM OF INFORMATION

Schedule 17B:	Confidentiality and Freedom of Information
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SCHEDULE 17B

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 and 10 inclusive of this Schedule 17, 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

2.1 Each Party may disclose any data or information acquired by it under or pursuant to the Franchise Agreement or information relating to a dispute arising under the Franchise Agreement without the prior written consent of the other Party if such disclosure is made in good faith:

- (a) to any Affiliate of such Party or outside consultants or advisers of such Affiliate, upon obtaining from such Affiliate and/or such outside consultants or advisers of such Affiliate an undertaking of confidentiality equivalent to that contained in paragraph 1;
- (b) to any outside consultants or advisers engaged by or on behalf of such Party and acting in that capacity, upon obtaining from such consultants or advisers an undertaking of confidentiality equivalent to that contained in paragraph 1;
- (c) to any lenders, security trustee, bank or other financial institution (and its or their advisers) from which such Party is seeking or obtaining finance, upon obtaining from any such person an undertaking of confidentiality equivalent to that contained in paragraph 1;
- (d) to the extent required by Law or pursuant to an order of any court of competent jurisdiction or under the Dispute Resolution Rules or the rules of any other dispute resolution procedures to which a dispute is referred in accordance with the Franchise Agreement or the rules of a recognised stock exchange or a formal or informal request of any taxation authority;
- (e) to any insurer, upon obtaining from such insurer an undertaking of confidentiality equivalent to that contained in paragraph 1;
- (f) to any director, employee or officer of such Party, to the extent necessary to enable such Party to perform its obligations under the Franchise Agreement or to protect or enforce its rights under the Franchise Agreement; or
- (g) by the Franchisee, to the ORR, the Passengers' Council or a Local Authority.

2.2 The Secretary of State may disclose the Confidential Information of the Franchisee:

- (a) on a confidential basis to any Central Government Body for any proper purpose of the Secretary of State or of the relevant Central Government Body;
- (b) to Parliament and Parliamentary Committees or if required by any Parliamentary reporting requirement;
- (c) to the extent that the Secretary of State (acting reasonably) deems disclosure necessary or appropriate in the course of carrying out its public functions;
- (d) on a confidential basis to a professional adviser, consultant, supplier or other person engaged by any of the entities described in paragraph 2.2(a) of this Schedule 17 (including any benchmarking organisation) for any purpose relating to or connected with the Franchise;
- (e) on a confidential basis for the purpose of the exercise of its rights under this Agreement, including but not limited to its right of audit, assessment or inspection pursuant to paragraph 6 of Schedule 11.2 (Management Information), its rights pursuant to Schedule 15.1 (Reletting Provisions);
- (f) on a confidential basis to a Local Authority or other relevant Stakeholder to the extent that the Secretary of State (acting reasonably) deems such disclosure necessary or appropriate for the purposes of the development and/or implementation of any proposal promoted by (or on behalf of) such Local Authority or other relevant Stakeholder in relation to the provision of additional, varied and/or extended Passenger Services, introduction of new stations or enhancements to Stations or other infrastructure schemes which impact on the Franchise; or
- (g) on a confidential basis to a proposed successor, transferee or assignee of the Secretary of State in connection with any assignment, novation or disposal of any of its rights, obligations or liabilities under this Agreement,

and for the purposes of the foregoing, references to disclosure on a confidential basis shall mean disclosure subject to a confidentiality agreement or arrangement containing terms no less stringent than those placed on the Secretary of State under this paragraph 2.2 of this Schedule 17.

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 and/or Successor Shadow Operator) in such form and at such times as the Secretary of State 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 the Secretary of State's 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 the Secretary of State's 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 the Secretary of State under Schedule 13 (Rail Industry Initiatives and Innovation Obligations) including any analyses, statistics and other information derived from such reports and accounts;
- (g) the results of any monitoring or measurement of the performance of the Franchisee in the provision of the Franchise Services (including any information provided under Schedule 11 (Franchise Performance Meetings and Management Information));
- (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 (or similar) specified in Schedule 7 (IOC Performance Regime);
- (j) the results of any assessment or inspection under Schedule 11.2 (Management Information);
- (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 include in the Secretary of State's 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;
- (m) 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; and
- (n) such information as the Secretary of State may reasonably require to publish at or around the possible termination of the Shadow Operator Services in order to secure continuity of the provision and operation of the Shadow Operator 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 the Secretary of State has previously notified the Franchisee and the Franchisee does not demonstrate to the reasonable satisfaction of the Secretary of State within fourteen (14) days of such notification that the publication of such information would, in the reasonable opinion of the Franchisee, have a material adverse effect on its business. If the Franchisee attempts so to demonstrate to the Secretary of State but the Secretary of State is not so satisfied, the Secretary of State shall allow seven (7) 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, HS2 Limited, the ORR, other Train Operators, any operators of services for the carriage of goods by rail, the Passengers' Council and/or any Local Authority of any information relating to the development of the Train Service Requirement in accordance with Schedule 1.1 (Franchise Services and Service Development) and/or paragraphs 39 to 42 of Schedule 18.2 (Accepted Programme Specific Requirements) and/or paragraphs 8 to 15 of Schedule 18.3 (Transitional Programme Specific Requirements).

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 the Secretary of State's 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 the functions of the Comptroller and Auditor General under the Exchequer and Audit Department Act 1921, the National Audit Act 1983 and the Government Resources and Accounts Act 2000, disclose information which the Comptroller and Auditor General 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 the Secretary of State's information disclosure obligations under the Freedom of Information Act and/or the Environmental Information Regulations.

9.2 Notwithstanding paragraph 10 (Redactions), 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 (2) Weekdays 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 (5) Weekdays of the Secretary of State's request (or within such other period as the Secretary of State may specify); and
 - (c) provide all necessary assistance as reasonably requested by the Secretary of State to enable the Secretary of State 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 the Secretary of State's 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 Subject to paragraph 9 (Freedom of Information - General Provisions), by no later than the date which is:
- (a) thirty (30) Weekdays after the date of this Agreement (in respect of the Franchise Documents referred to in paragraph (a) of the definition thereof);
 - (b) thirty (30) Weekdays after the date of notification by the Secretary of State to the Franchisee of another agreement that is required for publication (in respect of the Franchise Documents referred to in paragraph (e) of the definition thereof); and
 - (c) thirty (30) Weekdays after the date of any document varying the terms of any Franchise Document,

the Franchisee shall 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 (the "**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; and
- (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 the Secretary of State's 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.