

Dated 11th June 2014

- (1) THE SECRETARY OF STATE FOR TRANSPORT
- (2) GOVIA THAMESLINK RAILWAY LIMITED

TSGN FRANCHISE AGREEMENT

RAIL PUBLIC REGISTER COPY

REDACTED IN ACCORDANCE WITH FOIA 2000

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THIS AGREEMENT is dated

2014

BETWEEN

- (1) **THE SECRETARY OF STATE FOR TRANSPORT**, whose principal address is at 33 Horseferry Road, London SW1P 4DR (the "**Secretary of State**"); and
- (2) **GOVIA THAMESLINK RAILWAY LIMITED** (Company Number 07934306), whose registered office is at 3rd Floor, 41-51 Grey Street, Newcastle upon Tyne NE1 6EE (the "**Franchisee**").

WHEREAS

- (A) The Secretary of State wishes to appoint a franchisee to provide railway passenger services within the Franchise and expects his franchisee, on the terms of the Franchise Agreement, actively to seek, in all reasonable business ways, greatly improved performance over the Franchise Term from its employees, its Train Fleet and other assets, and from Network Rail and its other suppliers, so as to deliver to the passenger the best railway passenger service that can be obtained from the resources that are available to it.
- (B) The Franchisee wishes to be appointed as the Secretary of State's franchisee for the Franchise and intends, on the terms of this Agreement, actively to seek, in all reasonable business ways, greatly improved performance over the Franchise Term from its employees, its Train Fleet and other assets, and from Network Rail and its other suppliers, so as to deliver to the passenger the best railway passenger service that can be obtained from the resources that are available to it.
- (C) The following provisions of this Agreement are intended to reflect and give effect to the matters referred to in Recitals (A) and (B) inclusive.

1. **INTERPRETATION**

1.1 In the Franchise Agreement, except to the extent the context otherwise requires:

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

- | | | |
|-----|------------|--|
| (i) | ABD | Data for determining
Annual Benchmarks,
Annual Breach Ticketless |
|-----|------------|--|

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

(xxiv)	STNRCS¹	STNR Costs Schedule
(xxv)	STNRP²	STNR Programme
(xxvi)	STNRRR³	STNR Reporting Requirements
(xxvii)	STNRSOW⁴	STNR Scope of Work
(xxviii)	TP	Train Plan;
(xxix)	TSD	assumptions in relation to the TGN SEFT Deed;
(xxx)	TSR1, TSR2, TSR3, TSR4, TSR5, TSR6 and TSR7	Train Service Requirements; and
(xxxii)	TTSM	Ticketless Travel Survey Methodology; and
(xxxiii)	CMSP⁵	CMS Passenger Model
(xxxiii)	TSSL⁶	TS Sub Lease Head of Terms
(xxxiv)	TSSLU⁷	Draft TS Sub Lease Undertaking

- (g) references in any of the agreements comprising the Franchise Agreement to Recitals, clauses, Schedules, Parts, paragraphs and Appendices are to Recitals, clauses, Schedules, Parts of Schedules, paragraphs of Schedules and Appendices of Schedules of that agreement, unless expressly specified to the contrary, and the Schedules and Appendices form part of the agreement in which they appear;
- (h) references in any Schedule in any of the agreements comprising the Franchise Agreement to a Part, paragraph or Appendix are references to a Part, paragraph or Appendix of that Schedule (or the relevant Part of a Schedule), unless expressly specified to the contrary;

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- ¹ 17 January 2018 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.
- ² 17 January 2018 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.
- ³ 17 January 2018 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.
- ⁴ 17 January 2018 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.
- ⁵ 05 November 2014 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.
- ⁶ 05 November 2014 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.
- ⁷ 05 November 2014 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

- (i) headings and references to headings shall be disregarded in construing the Franchise Agreement;
- (j) references to any enactment include any subordinate legislation made from time to time under such enactment and are to be construed as references to that enactment as for the time being amended or modified or to any enactment for the time being replacing or amending it and references to any subordinate legislation are to be construed as references to that legislation as for the time being amended or modified or to any legislation for the time being replacing or amending it;
- (k) references to an agreement or any other document shall be construed as referring to that agreement or document as from time to time supplemented, varied, replaced, amended, assigned or novated;
- (l) references to any particular provisions of any agreement or any other document shall be construed to include any other provisions of, or incorporated in, that agreement or other document which the Secretary of State reasonably considers have an equivalent effect or are intended to fulfil the same function;
- (m) words importing the masculine gender include the feminine and vice-versa, and words in the singular include the plural and vice-versa;
- (n) wherever provision is made for the giving or issuing of any notice, endorsement, consent, approval, waiver, certificate or determination by any person, unless otherwise specified, such notice, endorsement, consent, approval, waiver, certificate or determination shall be in writing and the words "notify", "endorse", "consent", "approve", "waive", "certify" or "determine" and other cognate expressions shall be construed accordingly;
- (o) references to materials, information, data and other records shall be to materials, information, data and other records whether stored in electronic, written or other form;
- (p) references to the Franchisee bidding for Train Slots or a Timetable shall mean the final action incumbent on the Franchisee under the Network Code to confirm to Network Rail its interests in the Train Slots to which that confirmation relates, and "bid" shall be construed accordingly;
- (q) references to the period of validity of any Fare are references to its period of validity excluding any rights of any purchaser thereof to extend such period under the Passenger's Charter, any equivalent document, or the terms and conditions attaching to such Fare (including any applicable conditions of carriage) in the event of the cancellation or delay of any of the railway passenger services for which such Fare is valid;
- (r) references to stations at which any train calls include stations at which such train commences or terminates its journey;
- (s) references to "railway passenger services" are to be construed subject to Section 40 of the Railways Act 2005;
- (t) references to the provision of railway passenger services include the organisation of the relevant train movements and making the necessary arrangements with Network Rail or any other relevant Facility Owner;

- (u) references in lower case letters to terms defined in clause 2 shall be construed, where relevant, as being references to the terms defined as such in the franchise agreement or relevant agreement made under Section 30 of the Act or Section 6 of the Railways Act 2005 with any other Train Operator;
 - (v) amendments to or variations of contracts or arrangements include assignments, novations or other transfers of rights and/or obligations (in whole or in part) under such contracts or arrangements;
 - (w) references to sums of money being expended by the Franchisee shall be to such sums exclusive of Value Added Tax;
 - (x) the words "shall not be liable" are to be construed as meaning that no contravention of the Franchise Agreement and no Event of Default shall arise as a result of the occurrence of the matter to which such words relate;
 - (y) references to a "contravention of the Franchise Agreement" (and cognate expressions) are to be construed as meaning a breach of the Franchise Agreement; and
 - (z) wherever provision is made for the Franchisee to "procure" or "ensure" the delivery of an obligation under the Franchise Agreement, unless otherwise specified, that provision shall be construed as a primary obligation on the Franchisee to deliver that obligation.
- 1.2 This Agreement and the Conditions Precedent Agreement together constitute a single agreement, which is a "franchise agreement" for the purposes of the Act.

2. DEFINITIONS

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

"16 to 25 Railcard"	means a Discount Card issued under the Discount Fare Scheme referred to in paragraph (a)(ii) of the definition of Discount Fare Scheme;
"2010 Nominal Ticket Sales"	has the meaning given to it in paragraph 3 of Schedule 5.4 (Regulation of Fares Basket Values);
"2010 Ticket Revenue"	has the meaning given to it in paragraph 4.1 of Schedule 5.4 (Regulation of Fares Basket Values);
"Accepted" or "Acceptance"	shall have the meaning given to such term in the HLOS Phase 2 MSA;
"Access Agreement"	has the meaning given to the term "access agreement" in Section 83(1) of the Act;
"Act"	means the Railways Act 1993 and any regulations or orders made thereunder;
"Actual Operating Costs"	means:

- (a) the Franchisee's total operating expenses for the period being reviewed as stated in its profit and loss account, including any of the following operating expenses that are payable during that period:
- (i) amounts payable to the Secretary of State and Network Rail (excluding Revenue);
 - (ii) taxation;
 - (iii) shareholder distributions including dividends;
 - (iv) interest payments or other financing charges due and paid (including any charges due and paid in respect of any bonding arrangements);
 - (v) capital expenditure (net of grants received); and
 - (vi) lease payments in relation to on-balance sheet leased assets,

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

- (A) interest relating to on-balance sheet leased assets;
 - (B) depreciation;
 - (C) amortisation; and
 - (D) bad debt provisions; and
- (b) either:
- (i) plus any reduction in the total amount owing by the Franchisee to creditors over that period; or
 - (ii) less any increase in the total amount owing by the Franchisee to creditors over that period,

where creditors:

(A) include any persons owed amounts by the Franchisee in respect of operating expenses, including the types of expenses set out in paragraphs (a)(i) to (a)(v) inclusive, provisions and deferred income balances; but

(B) exclude persons owed amounts by the Franchisee in respect of lease liabilities in relation to on-balance sheet leased assets and liabilities in relation to grants received for the purchase of fixed assets;

“Actual Passenger Demand” has the meaning given to it in paragraph 1.1 of Schedule 1.5 (Information about Passengers);

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

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

377/208;

377/209;

377/210;

377/213;

377/214; and

377/215;

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

“Advance Purchase Train-specific Fares”	has the meaning given to it under the Ticketing and Settlement Agreement;
“Affiliate”	means, in respect of any person, any person by which that person is Controlled or which is Controlled by that person, or any person which is Controlled by any other Affiliate of that person;
“[REDACTED⁸]”⁹	means the agreement for the provision of information technology services between the Franchisee and [REDACTED¹⁰] (as amended and supplemented from time to time);
“Aggregated Qualifying Change”	<p>means two or more Changes which:</p> <p>(a) are notified or agreed (in the case of a Change which is a Variation pursuant to paragraph 1.1 of Schedule 9.5 (Variations to the Franchise Agreement and Incentivising Beneficial Changes)); or</p> <p>(b) a party has become aware of (in the case of any other kind of Change),</p> <p>in a Franchisee Year (the “Aggregation Year”) which individually do not exceed the Threshold Amount for the Aggregation Year taken alone but do exceed it when taken together. For the avoidance of doubt, where the Changes arise in different Franchisee Years, for the purposes of determining whether in aggregate they exceed the Threshold Amount:</p> <p>(c) the net present value of the adjustment in Franchise Payments which would result from a Run of the Financial Model in respect of each Change shall be calculated in accordance with the</p>

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Derogations

8 Date of redaction 23/04/2018 - 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 17 January 2018 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

10 Date of redaction 23/04/2018 - 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.

process described in the definition of Qualifying Change; and

- (d) there will be an Aggregated Qualifying Change where the aggregate of the net present values of those Changes exceeds the Threshold Amount for the Aggregation Year;

“Agreed Marketing Spend” has the meaning given to such term in paragraph 4.1 of Schedule 6.2 (TSGN Franchise Specific Provisions);

“Alliance Agreement” has the meaning given to such term in paragraph 11.2 of Schedule 13 (Information and Industry Initiatives);

“Alternative Scheme” means a Committed Obligation proposed by the Franchisee in place of a Specimen Scheme in accordance with paragraph 8 of Part 2 of Schedule 6.1 (Committed Obligations and Related Provisions);

“Alternative TSR” has the meaning given to such term in paragraph 1.2 of Schedule 1.1 (Service Development);

“Ancillary Revenue” means revenue received by the Franchisee in respect of:

- (a) parking of vehicles at stations;
- (b) the provision of Light Maintenance Services and heavy maintenance services;
- (c) the provision of Station Services but only in respect of the Station Services specified in paragraphs 3.1(b) and 3.2 of Schedule 1.6 (Franchise Services);
- (d) the sub leasing, hiring or licensing of rolling stock vehicles or other assets;
- (e) the sale of advertising space at Stations and on trains;
- (f) the lending, seconding, hiring or contracting out of Franchise Employees to other Train Operators;
- (g) the letting of property;
- (h) the provision of Charter Services;
- (i) the provision of consultancy services;

- (j) retail commission;
- (k) the sale of an asset to the extent that any such sale is permitted under the Franchise Agreement;
- (l) the sale of goods or services provided principally for consumption or use on the relevant train including meals, light refreshments, newspapers, magazines, books, entertainment materials, phone cards or Wi-Fi;
- (m) commission from taxi bookings;
- (n) income associated with the provision by third party operators of Wi-Fi at Stations;
- (o) the operation of a shuttle bus service linking Luton Airport Parkway Station with Luton Airport; and
- (p) ¹¹ **revenue in respect of OTW Ancillary Services and OTW Additional Services (each as defined in paragraph 21 of Part 1 (List of Committed Obligations) of Schedule 6.1 (Committed Obligations and Related Provisions)) provided that any profits in respect of such OTW Ancillary Services and/or OTW Additional Services shall not count towards the profit share under paragraph 7 of Schedule 8.1 (Franchise Payments),**

provided that:

- (i) Ancillary Revenue shall exclude any revenue derived from the sale of goods or services under an arrangement which by itself would entitle a purchaser of such goods or services to travel on the Passenger

¹¹ 09/012/2016 (Date of Deed of Amendment) Contract insertion agreed by the Secretary of State and the Franchisee.

- Services without the need to purchase a Fare; and
- (ii) Ancillary Revenue shall include:
- (A) any amounts received from Network Rail excluding any amounts payable to the Secretary of State pursuant to paragraph 6 of Schedule 2.2 (Security of Access Agreements, Rolling Stock Leases, Station and Depot Leases), paragraphs 6.4 and 7 of Schedule 6.2 (TSGN Franchise Specific Provisions) and Schedule 8.4 (Track Access Adjustments and Station Charge Adjustments); and
- (B) income in the nature of compensation received by the Franchisee from any person in respect of costs, losses or liabilities incurred by the Franchisee whether under or in respect of a contract or otherwise including:
- (1) as provided under paragraph (A) above,
- (2) under any TRSP Document, Rolling Stock Related Contract or contract of insurance; and

- (3) loss of revenue but only to the extent that such revenue is comprised in this definition of Ancillary Revenue; but
- (4) excluding any amounts (and where relevant compensation) received in respect of or related to any Fare, Penalty Fare, Discount Cards, Railcards, multi-model schemes, concessionary fares schemes or integrated transport schemes or any other similar or equivalent arrangement; and

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

“Ancillary Service”¹²

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

“Annual Audited Accounts”

means the accounts of the Franchisee which:

- (a) comply with paragraph 3.11 of Schedule 13 (Information and Industry Initiatives); and
- (b) are delivered to the Secretary of State by the Franchisee in accordance with paragraph 3.9 of Schedule 13 (Information and Industry Initiatives) and certified by the Franchisee's auditors as true and fair;

“Annual Benchmark”

means any of the Annual Cancellations Benchmark, Annual Peak Short Formation

¹² 05 November 2014 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

Benchmark and Annual TOC Minute Delay Benchmark;

“Annual Benchmark Table”

means, in relation to:

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

“Annual Breach Performance Level”

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

“Annual Breach Ticketless Travel Benchmark”

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

“Annual Cancellations Benchmark”

means for each Performance Calculation Year, each of the benchmarks specified in the Annual Cancellations Benchmark Table for that Performance Calculation Year provided that where a Performance Calculation Year is shorter than 13 Reporting Periods then the Annual Cancellations Benchmark for that Performance Calculation Year shall be as determined pursuant to paragraph 5.1(a) of Schedule 7.1 (Performance Benchmarks);

“Annual Cancellations Benchmark Table”

means the table set out in Part 2 of Appendix 1 of Schedule 7.1 (Performance Benchmarks);

“Annual Cap Performance Level”

means, in relation to an Annual Cancellations Benchmark and an Annual TOC Minute Delay Benchmark (as the case may be) for any Performance Calculation Year, the number set out in Column 2 of the Annual Cancellations

Benchmark Table or the Annual TOC Minute Delay Benchmark Table (as the case may be);

[DELETED¹³]

- “Annual Franchise Payment”** means, in relation to any Franchisee Year, the amount determined in accordance with Schedule 8.2 (Annual Franchise Payments);
- “Annual Franchise Payment Components”** means the values of “FXD”, “VCRPI”, “VCAWE”, “PRPI” and “ARRPI” specified for each Franchisee Year in the table set out in the Appendix (Figures for Calculation of Annual Franchise Payments) to Schedule 8.2 (Annual Franchise Payments);
- “Annual Intermediate Peak Short Formation Payment Level”** means, in relation to the Annual Peak Short Formation Benchmark for any Performance Calculation Year, the number set out in Column 2 of the Annual Peak Short Formation Benchmark Table and in the row of that table for that Performance Calculation Year;
- “Annual Management Accounts”** means the management accounts of the Franchisee which:
- (a) comply with paragraph 3.10 of Schedule 13 (Information and Industry Initiatives); and
 - (b) are delivered to the Secretary of State by the Franchisee in accordance with paragraph 3.6 of Schedule 13 (Information and Industry Initiatives);
- “Annual Peak Short Formation Benchmark”** means for each Performance Calculation Year, each of the benchmarks specified in the Annual Peak Short Formation Benchmark Table for that Performance Calculation Year provided that where a Performance Calculation Year is shorter than 13 Reporting Periods then the Annual Peak Short Formation Benchmark for that Performance Calculation Year shall be as determined pursuant to paragraph 5.1(b) of Schedule 7.1 (Performance Benchmarks);

“Annual Peak Short Formation Benchmark Table”	means the table set out in Part 2 of Appendix 2 of Schedule 7.1 (Performance Benchmarks);
“Annual Season Ticket”	means a Season Ticket Fare which is valid in Standard Class Accommodation from (and including) the day on which it first comes into effect until (but excluding) the day which falls 12 months after such day;
“Annual Target Performance Level”	means, in relation to an Annual Benchmark, the number set out in Column 3 of the Annual Benchmark Table relating to that Annual Benchmark and in the row of that table for that Performance Calculation Year;
“Annual Target Ticketless Travel Benchmark”	means, in relation to a Performance Calculation Year, the benchmark for that Performance Calculation Year as specified in Column 2 of the table in Part 3 of the Appendix to Schedule 6.2 (TSGN Franchise Specific Provisions) provided that where a Performance Calculation Year is shorter than 13 Reporting Periods then the Annual Target Ticketless Travel Benchmark for that Performance Calculation Year shall be as determined pursuant to paragraph 2.6(a) of Schedule 6.2 (TSGN Franchise Specific Provisions);
“Annual Ticketless Travel Benchmark”	means any of the Annual Breach Ticketless Travel Benchmark and Annual Target Ticketless Travel Benchmark;
“Annual TOC Minute Delay Benchmark”	means, for each Performance Calculation Year, each of the benchmarks specified in the Annual TOC Minute Delay Benchmark Table for that Performance Calculation Year provided that where a Performance Calculation Year is shorter than 13 Reporting Periods then the Annual TOC Minute Delay Benchmark for that Performance Calculation Year shall be as determined pursuant to paragraph 5.1(c) of Schedule 7.1 (Performance Benchmarks);
“Annual TOC Minute Delay Benchmark Table”	means the table set out in Part 2 of Appendix 3 of Schedule 7.1 (Performance Benchmarks);
“Assisted Passenger Reservation System”	means the system known as the Assisted Passenger Reservation System as described in the Code of Practice as published in September 2010 (version 2 – valid from 1 September 2010);
“Assumed Revenue”	means in relation to any Reporting Period the amount determined as such in accordance with

paragraph 3 of Schedule 8.1 (Franchise Payments);

- “ATOC”** means the Association of Train Operating Companies including any of its successors and assigns;
- “Average Weekly Earnings”** means the United Kingdom average weekly earnings measure excluding bonuses as published from time to time by the Office for National Statistics or, if such measure shall cease to be published or if, in the reasonable opinion of the Secretary of State, there is a material change in the basis of such measure, such other alternative index as the Secretary of State may, after consultation with the Franchisee, determine to be appropriate in the circumstances;
- “Bank”** means a person which has a permission under Part 4A of the Financial Services and Markets Act 2000 to carry on the regulated activity of accepting deposits thereunder and which is reasonably acceptable to the Secretary of State;
- “Bank Holiday”** means any day other than a Saturday or Sunday on which banks in the City of London are not open for business;
- “Benchmark”** means any of the Cancellations Benchmark, TOC Minute Delay Benchmark and Peak Short Formation Benchmark;
- “Benchmark Table”** means, in relation to:
- (a) any Cancellations Benchmark, the Cancellations Benchmark Table; and
 - (b) any Peak Short Formation Benchmark, the Peak Short Formation Benchmark Table; and
 - (c) any TOC Minute Delay Benchmark, the TOC Minute Delay Benchmark Table;
- “Bid Fares Policy”** means the document in the agreed form marked **“BFP”** and which complies with the requirements of paragraph 2 of Schedule 5.8 (Fares Regulation Information and Monitoring);
- “Bid Profit Stream”** means the estimated total operating profit of the Franchisee from the date that the Change of Control (pursuant to paragraph 2.3 of Schedule 10.3 (Events of Default and Termination Events) is to occur until the Expiry Date as shown in the profit and loss forecast in the

Initial Business Plan (without taking into account any Updated Business Plan) calculated in real terms as at the date of the Change of Control and applying the prevailing discount rate per annum (in real terms) stated in HM Treasury's "Green Book Appraisal Guidelines" (such rate being 3.5 per cent. per annum (in real terms) as at the date of the Franchise Agreement);

"Bond Provider"

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

"Bond Year"

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

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

"Brand Licence"

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

"Breach Initial Period Benchmark"

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

"Breach Performance Level"

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

"Breach Period Performance Level"

means, in relation to a Benchmark for any Breach Reporting Period, the numbers set out in Column 5 of the Benchmark Table relating to

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

“Breach Reporting Periods”	means any of the 6 th to 12 th Reporting Periods in the first Performance Calculation Year;
“Breach Ticketless Travel Benchmark”	means, in relation to a Ticketless Travel Survey Period, the benchmark relevant for that Ticketless Travel Survey Period in that Performance Calculation Year as specified in Column 3 of the table in Part 2 of the Appendix to Schedule 6.2 (TSGN Franchise Specific Provisions);
“British Transport Police”	means the British Transport Police created pursuant to Section 18 of the Railways and Transport Safety Act 2003 (or any successor or successors to its statutory policing functions);
“Business Action Plan”	means an action plan produced by the Franchisee in relation to the delivery of any aspect of the Franchise Services (including in respect of any outcome anticipated by its Business Plan, in accordance with paragraph 2.6 of Schedule 13 (Information and Industry Initiatives));
“Business Continuity Plan” and “BCP”	a business continuity and disaster recovery plan (including a Force Majeure Events recovery plan) required to be produced, maintained and implemented by the Franchisee in accordance with paragraph 3.3 of Schedule 10.4 (Force Majeure);
“Business Plan”	means the Initial Business Plan or any Updated Business Plan, as the context requires, to be delivered in accordance with paragraphs 2.1 and 2.2 of Schedule 13 (Information and Industry Initiatives);
“Calculation Year”	<p>means:</p> <ul style="list-style-type: none"> <li data-bbox="762 1547 1406 1644">(a) the period of 13 Reporting Periods starting with the first Reporting Period commencing in January 2015; or <li data-bbox="762 1677 1406 1834">(b) each subsequent and non-overlapping period of 13 Reporting Periods during the Franchise Period commencing the day after the last day of the preceding Calculation Year, <p>provided that the final Calculation Year may be shorter or longer than 13 Reporting Periods as follows:</p>

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

“Cancellation”

means a Passenger Service:

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

“Cancellations Benchmark”

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

“Cancellations Benchmark Table”

means the table set out in Part 1 of Appendix 1 (Cancellations Benchmark Table) of Schedule 7.1 (Performance Benchmarks);

“Cancellations Performance Sum”

means the amount of an adjustment to a Franchise Payment to be determined in accordance with paragraph 3.2 of Schedule 7.1 (Performance Benchmarks);

“Capacity Mitigation Plan”	has the meaning given to it in paragraph 8.1(a) of Schedule 1.1 (Service Development);
“Capital Expenditure”	has the meaning given to it in paragraph 2.4 of Schedule 9.5 (Variations to the Franchise Agreement and Incentivising Beneficial Changes);
“Cascaded Rolling Stock”	has the meaning given to it in paragraph 2.5 of Schedule 2.2 (Security of Access Agreements, Rolling Stock Leases, Station and Depot Leases);
“Certificate of Commencement”	means the certificate to be issued by the Secretary of State pursuant to the Conditions Precedent Agreement;
“Change”¹⁴	means if and whenever any of the following occurs: <ul style="list-style-type: none"> (a) an event set out in any Secretary of State Risk Assumption specified in Schedule 9.3 (Secretary of State Risk Assumptions); (b) a direction by the Secretary of State pursuant to paragraph 6.3(ii) or paragraph 6.3(iii) of Schedule 6.4 (Integration of the Southern Franchise Services); (c) a Charge Variation; (d) a Change of Law (excluding any Change of Law to the extent that it results in an adjustment to the Franchise Payments pursuant to Schedule 8.4 (Track Access Adjustments and Station Charge Adjustments)); (e) a change to the Train Service Requirement previously in force pursuant to the issue of an amended or new Train Service Requirement in accordance with paragraph 8.5 of Schedule 1.1 (Service Development); (f) the issue of any TSR (TDR) Amendments pursuant to paragraph

¹⁴ Date of change 05/11/2014

- 5.7 of Schedule 1.1 (Service Development) or, subject to paragraph 5.10(b) of Schedule 1.1 (Service Development), any TSR (TDR) Amendments ceasing to have effect in accordance with paragraph 5.9 of Schedule 1.1 (Service Development);
- (g) the Franchisee is required to take any action pursuant to paragraph 11.1(a) and/or paragraph 11.1(b) of Schedule 1.1 (Service Development);
 - (h) the Secretary of State effects an amendment to a Discount Fare Scheme, introduces a new Discount Fare Scheme or ceases to approve a Discount Fare Scheme for the purposes of Section 28 of the Act;
 - (i) the Secretary of State approves an amendment or proposed amendment to an Inter-Operator Scheme, as referred to in paragraph (a) of the definition of Inter-Operator Scheme to the extent and only to the extent that the Franchisee makes a saving as a consequence of such amendment or proposed amendment;
 - (j) the imposition, subject to the provisions of paragraph 2.6 of Schedule 4 (Persons with Disabilities and Disability Discrimination), of any increased access charges in respect of EA Requirements at Franchisee Access Stations;
 - (k) the Secretary of State exercises his power pursuant to paragraph 5 of Schedule 5.7 (Changes to Fares and Fares Regulation) to alter the obligations of and restrictions on the Franchisee under Schedule 5 (Fares);
 - (l) the Franchisee is obliged to charge Value Added Tax on a Fare or there is an increase or decrease in the rate of Value Added Tax which it must charge on such Fare, in either case due to a change in the Value Added Tax treatment of the provision of Passenger Services;
 - (m) the Secretary of State exercises his rights pursuant to paragraph 2.5(b) of Schedule 2.2 (Security of Access,

Rolling Stock, Leases, Station and Depot Leases);

- (n) a Variation to the terms of the Franchise Agreement pursuant to paragraph 1 of Schedule 9.5 (Variations to the Franchise Agreement and Incentivising Beneficial Changes);
- (o) the Start Date is a date that is later than 0200 on 14 September 2014 for reasons solely attributable to any act or omission by the Secretary of State except where:
 - (i) the Secretary of State exercises his rights pursuant to Clauses 4.2 or 4.3 of the Conditions Precedent Agreement to alter such Start Date; or
 - (ii) the relevant acts or omissions of the Secretary of State arise as a result of or in connection with any failure by the Franchisee to satisfy any of the conditions precedent set out in the Conditions Precedent Agreement; or
- (p) the Combined Effective Date is a date that is later or earlier than 0200 on 26 July 2015 provided that:
 - (i) if such Change:
 - (A) is a Qualifying Change and arises because the Combined Effective Date is a date which is later than the 0200 on 26 July 2015 there shall be a further Qualifying Change on the occurrence of the actual Combined Effective Date; and/or
 - (B) has occurred because the Franchisee has

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

- (ii) the provisions of paragraph 5 of Schedule 9.1 shall automatically apply without the need for the service of a notice as contemplated under that paragraph;
- (q) either:
 - (i) the Secretary of State, in his absolute discretion, elects at any time within two months of the occurrence of a Force Majeure Event that such event shall be treated as a Change; or
 - (ii) a Force Majeure Event that continues with the effect of preventing the Franchisee from delivering, wholly or mainly, the Passenger Services for more than two consecutive months;
- (r) the Secretary of State exercises his discretion pursuant to paragraph 4.4 of

Schedule 6.2 (TSGN Franchise Specific Provisions) to increase or decrease the amount of the Agreed Marketing Spend;

- (s) the exercise by the Secretary of State of his rights pursuant to paragraph 1.7 of Schedule 7.1 (Performance Benchmarks);
- (t) the circumstances specified in paragraph 5.7(c) of Schedule 6.4 (Integration of the Southern Services) occur;
- (u) the Secretary of State exercises his rights to vary the provisions of Schedule 7.2 (PEM Regime) in the manner contemplated in paragraph 6.2 of Schedule 7.2;
- (v) the exercise by the Secretary of State of his rights pursuant to paragraph 19.2 of Schedule 13 (Information and Industry Initiatives);
- (w) any two or more of the foregoing that the Secretary of State groups together in accordance with any procedures issued by him pursuant to paragraph 1.4 of Schedule 9.5 (Variations to the Franchise Agreement and Incentivising Beneficial Changes);

“Change of Control”

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

“Change of Law”

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

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

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

- (i) excluding any changes in Taxation;

- (ii) excluding any changes which were foreseeable at the date of the Franchise Agreement, and for this purpose, but without limitation, there shall be regarded as foreseeable any Legislation which on the date of the Franchise Agreement has been published:
- (A) in a draft parliamentary bill as part of a government departmental consultation paper;
 - (B) in a parliamentary bill;
 - (C) in a draft statutory instrument; or
 - (D) as a proposal in the Official Journal of the European Communities except to the extent that such proposal is intended to apply solely within member states other than the United Kingdom,

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

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

Legislation which does not apply only to the railway industry;

“Charge Variation”

means a variation:

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

“Charging Review”

means:

- (a) the exercise by the ORR of its powers under:
 - (i) Part 7 of Schedule 7 of the Track Access Agreement to which the Franchisee is a party on the Start Date or any Replacement Agreement which is or is deemed to be a Relevant Agreement in accordance with the definition of that term;
 - (ii) Condition F11.5 of the Station Access Conditions in relation to any station which is not an Independent Station; or
 - (iii) Condition 42.5 of the Independent Station Access Conditions in relation to any station which is an Independent Station;
- (b) the following by the ORR of the procedure in Schedule 4A of the Act;
- (c) the exercise by the ORR of any of its powers or the following of any other procedure, which, in the Secretary of State's reasonable opinion:
 - (i) has an equivalent effect to; or
 - (ii) is intended to fulfil the same function as,

any of the powers referred to in paragraphs (a) or (b) in relation to any Relevant Agreement. For this purpose,

Relevant Agreement includes any Relevant Agreement which is not the subject of any previous Charging Review; or

- (d) any amendment to a Relevant Agreement, or entry into a new Relevant Agreement which is approved by the ORR to the extent that it relates to an Incremental Output Statement Charge or a scheme to which that charge relates;

“Charter Service”

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

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

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

“Child Price”

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

[REDACTED¹⁵]

- "Class 377 Lot 10A Units"** means the 12 dual voltage class 377 four car units ordered by the Southern Franchisee pursuant to a manufacture and supply agreement dated 8 March 2002 (as amended from time to time);
- "Class 377 Lot 10B Units"** means the 11 dual voltage class 377 four car units ordered by the Southern Franchisee pursuant to a manufacture and supply agreement dated 5 March 2008 (as amended from time to time);
- "Class 377 Sub-Lease"¹⁶** **means:**
- (a) (in relation to the period commencing on the date of the 2017 LSER Capacity Enhancement Deed of Amendment and expiring on the end date of the LSER Franchise Agreement) the Class 377 (2017 LSER Capacity Enhancement) Sub-Lease Version 1 together with the 2016 OHA; and**
- (b) (in relation to the period commencing on the end date of the LSER Franchise Agreement and ending [REDACTED¹⁷] and the end of the Franchise Term) the Class 377 (2017 LSER Capacity Enhancement) Sub-Lease Version 2;**

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Derogations

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- ¹⁵ 5 November 2014 (Date of Redactions Approval) – Where text has been omitted from the document this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.
- ¹⁶ 08/09/2017 (Date of Deed of Amendment) Agreed by the Secretary of State and Franchisee.
- ¹⁷ 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.

"Class 377 (2017 LSER Capacity Enhancement) Sub-Lease Version 1"¹⁸

means the sub-lease in relation to the period commencing on the date of the 2017 LSER Capacity Enhancement Deed of Amendment and expiring on the end date of the LSER Franchise Agreement for the Class 377 (2017 LSER Capacity Enhancement) Units between the Franchisee and the LSER Franchisee in the form set out in Schedule 3 of the 2017 LSER Capacity Enhancement Deed of Amendment;

"Class 377 (2017 LSER Capacity Enhancement) Sub-Lease Version 2"¹⁹

means the sub-lease in relation to the period commencing on the end date of the LSER Franchise Agreement and expiring on the earlier of [REDACTED²⁰] and the date of expiry of the Franchise Term for:

(a) the Class 377 (2017 LSER Capacity Enhancement) Units; and

(b) the Class 377 (2016 OHA) Units,

between the Franchisee and the successor operator to the LSER Franchisee in the form set out in Schedule 4 of the 2017 LSER Capacity Enhancement Deed of Amendment;

"Class 377 (2016 OHA) Units"²¹

means the 8 units of Class 377 units with numbers 377501 to 377508, and "Class 377 (2016 OHA) Units" shall mean any one of the Class 377 (2016 OHA) Units;

¹⁸ 08/09/2017 (Date of Deed of Amendment) Agreed by the Secretary of State and Franchisee.

¹⁹ 08/09/2017 (Date of Deed of Amendment) Agreed by the Secretary of State and Franchisee.

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 08/09/2017 (Date of Deed of Amendment) Agreed by the Secretary of State and Franchisee.

"Class 377 (2017 LSER Capacity Enhancement) Units"²²	means the 17 units of Class 377 rolling stock (being numbers 377509 – 377523 and 377163 to 377164), and "Class 377 (2017 LSER Capacity Enhancement) Unit" shall mean any one of the Class 377 (2017 LSER Capacity Enhancement) Units;
"Closed Scheme Employees"	has the meaning given to it in paragraph 2.2 of Schedule 16 (Pensions);
"Closure"	means a discontinuance or closure under Part 4 of the Railways Act 2005 of any of the Passenger Services or of any network on which the Passenger Services may be operated or of any of the Stations or of any part of such network or Station;
"CMS Passenger Model"²³	means the model in the agreed terms marked "CMSP" as may be subsequently revised in accordance with paragraph 14.1 of Schedule 6.2 (TSGN Franchise Specific Provisions)"
"Code of Practice"	means the code of practice for protecting the interests of users of railway passenger services or station services who have disabilities, as prepared, revised from time to time and published by the Secretary of State pursuant to Section 71B of the Act;
"Collateral Agreement"	means an agreement which is required to be entered into by the Franchisee with Network Rail or any other franchisee as a condition to any Access Agreement of which the Franchisee is the beneficiary;
"Combined Effective Date"	means the date upon which the Franchisee commences the operation of the Southern Franchise Services, such date currently anticipated to be 26 July 2015 or such earlier or later date as may be required by the Secretary of State (in consultation with the Franchisee);
"Combined Effective Date Transfer Scheme"	has the meaning given to such term in paragraph 3.1 of Schedule 6.4 (Integration of the Southern Franchise Services);

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Derogations

²² 08/09/2017 (Date of Deed of Amendment) Agreed by the Secretary of State and Franchisee.

²³ 5 November 2014 (Date of DOA) - Contract insertion agreed by the Secretary of State and Franchisee.

- “Committed Obligations”** means any of the Franchisee's obligations listed in Part 1 (List of Committed Obligations) to Schedule 6.1 (Committed Obligations and Related Provisions);
- “Community Rail Partnership”** means any not-for-profit organisation of the same name that has an interest in the development of responsive and good quality railway passenger services;
- “Community Rail Route”** means any Route in respect of which the Secretary of State determines that any relevant Community Rail Partnership has an interest;
- “Commuter Fare”** means any:
- (a) Weekly Season Ticket, Monthly Season Ticket, Quarterly Season Ticket and Annual Season Ticket (and their equivalent ITSO products) between each London Station and any other such station or other station;
 - (b) unrestricted Single Fare and unrestricted Return Fare (and their equivalent ITSO products) between each London Station; and
 - (c) unrestricted Single Fare and unrestricted Return Fare (and their equivalent ITSO products) from each Suburban Station to each London Station (but not in the other direction);
 - (d) PAYG Peak Fare or PAYG Off-Peak Fare (and their equivalent ITSO products) between each London Station and any other such station (and if and when CPAY is introduced the CPAY equivalent Peak and Off Peak fares); and
 - (e) any Flexi Season Ticket that may be offered for unlimited travel between each London Station and any other such station or other station but which has restrictions on the permitted times of use or the volume of travel allowed. These restrictions may include permitting travel only on fewer than five days a week or outside Peak hours,
- for which the Franchisee is entitled to be allocated all or part of the revenue therefrom pursuant to the Ticketing and Settlement Agreement;

- "Commuter Fares Basket"** means the grouping of Commuter Fares:
- (a) determined by the Secretary of State pursuant to Schedule 5.3 (Allocation of Fares to Fares Baskets);
 - (b) for the purposes of regulating aggregate Prices or Child Prices, as the case may be, in accordance with Schedule 5.4 (Regulation of Fares Basket Values);
 - (c) amended by the Secretary of State from time to time in accordance with Schedule 5.7 (Changes to Fares and Fares Regulation); and
 - (d) set out in the Commuter Fares Document;
- "Commuter Fares Document"** means:
- (a) for the period commencing from the Start Date until the Combined Effective Date, the document in the agreed terms marked **CFD1**;
 - (b) for the period commencing from the Combined Effective Date until the end of the Franchise Period, the document in the agreed terms marked **CFD2**,
- in each case, as the same may be amended from time to time in accordance with Schedule 5.7 (Changes to Fares and Fares Regulation);
- "Compulsory Inter-available Flow"** has the meaning given to it in the Ticketing and Settlement Agreement;
- "Computer System"** means computer hardware and computer software, including licensed third party software and data protocols;
- "Condition L Compensation Amounts"** has the meaning given to such term in paragraph 7.5(e) of Schedule 6.2 (TSGN Franchise Specific Provisions);
- "Conditions Precedent Agreement"** means the agreement between the Secretary of State and the Franchisee of even date herewith specifying certain conditions to be satisfied or waived by the Secretary of State prior to the issue of a Certificate of Commencement;
- "Confidential Information"** has the meaning given to it in paragraph 1 of Schedule 17 (Confidentiality and Freedom of Information);

“Connection” means a connection (however described) between any of the Passenger Services provided by the Franchisee and any other railway passenger service provided by it or any other Train Operator or any bus, ferry or shipping service and cognate phrases shall be construed accordingly;

“Connection Agreement” means any agreement entered into by the Franchisee and Network Rail on or before the Start Date or the Combined Effective Date (as the case may be) relating to the connection of a Depot to the relevant part of the network;

“Contingency Plan” has the meaning given to it in paragraph 1(a)(iv) of Schedule 10.4 (Force Majeure);

“Contract Manager” means a person appointed from time to time by the Franchisee to fulfil certain duties including to manage the Franchise Agreement on behalf of the Franchisee and to facilitate the performance by the Franchisee of its obligations under the Franchise Agreement;

“Control” means, in respect of a person, that another person (whether alone or with others and whether directly or indirectly and whether by the ownership of share capital, the possession of voting power, contract or otherwise):

- (a) has the power to appoint and/or remove all or the majority of the members of the board of directors or other governing body of that person or of any other person which Controls that person;
- (b) controls or has the power to control the affairs and policies of that person or of any other person which Controls that person;
- (c) is the parent undertaking of that person or of any other person which Controls that person; or
- (d) possesses or is, or will be at a future date, entitled to acquire:
 - (i) 30 per cent. or more of the share capital or issued share capital of, or of the voting power in, that person or any other person which Controls that person;

- (ii) such part of the issued share capital of that person or any other person which controls that person as would, if the whole of the income of such person were distributed, entitle him to receive 30 per cent. or more of the amount so distributed; or
- (iii) such rights as would, in the event of the winding-up of that person or any other person which controls that person or in any other circumstances, entitle him to receive 30 per cent. or more of the assets of such person which would then be available for distribution;

“CPAY”

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

“Creating”

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

“CRM Data”²⁴

means Personal Data (including any or all of name, address, e-mail address, full IP address and ticket purchasing history, credit and debit card details) collected by or on behalf of the Franchisee relating to persons travelling on or purchasing tickets for travel on the Passenger Services or other services for the carriage of passengers by railway including On-Train Wi-Fi Services and shall for the avoidance of doubt include such Personal Data that is collected, input, processed by or on behalf of the Franchisee and/or held on the On-Train Wi-Fi Solution and/or via the provision of the On-Train Wi-Fi Services.

²⁴ 09/12/2016 (Date of Deed of Amendment) Contract change agreed by the Secretary of State and the Franchisee.

"CRM Data Processor"	means any Data Processor who, from time to time, is processing or has processed CRM Data on behalf of the Franchisee;
"CRM System"	means any system (whether a Computer System or otherwise) for the collection of CRM Data and/or onto which CRM Data is input, processed and/or held as such system may be amended or altered from time to time;
"Crossrail Programme"	means the programme of planning, preparatory, construction, tunnelling, station building, rebuilding and enhancement and engineering activities and works and the procurement of rolling stock and other assets and equipment being undertaken for the purposes of building the east west cross London railway system specified in the Crossrail Act 2008;
"Current Franchisee Accounting Year"	has the meaning given to it in paragraph 7.4(a) of Schedule 8.1 (Franchise Payments);
"Customer Report"	means a report to be published by the Franchisee for passengers which shall include the information specified in paragraph 11 of Schedule 6.2 (TSGN Franchise Specific Provisions), the first of such reports to be published on the Start Date to be in substantially the same form as the document in agreed terms marked "CR" ;
"DAFLs"	means the Depot Agreement for Lease (as defined in the MDCTA) in respect of the 'Three Bridges Depot' and 'Hornsey Depot' between Network Rail, Siemens PLC (registered number 727817), the FCC Franchisee, the TMM (as such term is defined in the TRSP MSA) and the Secretary of State;
"Data Controller"	has the same meaning as in the Data Protection Act;
"Data Processor"	has the same meaning as in the Data Protection Act;
"Data Protection Act"	means the Data Protection Act 1998 and any guidance issued from time to time by the Information Commissioner's Office;
"Dataset"	means Appendix 5 (Environmental Impact Monitoring Dataset) to Schedule 13 (Information and Industry Initiatives) as the same may be amended from time to time by the Secretary of State (acting reasonably);

“Data Site Information”	has the meaning given to it in paragraph 2.2(e) of Schedule 15.1 (Reletting Provisions);
“Data Subject”	has the same meaning as in the Data Protection Act;
“Deed of Accession”	has the meaning given to such term in the MDCTA;
“Default Performance Level”	means, in relation to a Benchmark for any Reporting Period, the numbers set out in Column 4 of the Benchmark Table relating to that Benchmark and in the row of that table for that Reporting Period;
“Delay Repay Compensation” ²⁵	means compensation (including DR15 Compensation) payable to a holder of a ticket when such holder’s journey is delayed as more particularly described in the Passenger Charter and in the tables in paragraphs 18.6(a) and 18.6(c)(i) of Part 1 of Schedule 6.1 (Committed Obligations and Related Provisions);
“Delayed Cascade Mitigation Plan”	has the meaning given to it in paragraph 2.7(c) of Schedule 2.2 (Security of Access Agreements, Rolling Stock Leases, Station and Depot Leases);
“Departure Station”	has the meaning given to it in paragraph 2(b) of Appendix 2 to Schedule 4 (Persons with Disabilities and Disability Discrimination);
“Depot”	means a depot in respect of which the Franchisee has entered into a Depot Lease;
“Depot Access Conditions”	means the document entitled “National Depot Access Conditions”;
“Depot Lease”	means: <ul style="list-style-type: none"> (a) with effect from the Start Date any lease for the following depots: <ul style="list-style-type: none"> (i) Bedford Cauldwell Depot; (ii) Bedford Midland Road Depot; and

²⁵ 09 December 2016 (Date of DOA) – Contract variation agreed by the Secretary of State and Franchisee.

- (iii) Hornsey Depot; and
- (b) including, with effect from the Combined Effective Date, any lease for the following depots:
 - (i) Brighton Depot;
 - (ii) Bognor Regis Depot;
 - (iii) Eastbourne Depot;
 - (iv) Littlehampton Depot;
 - (v) Selhurst Depot;
 - (vi) Stewarts Lane Depot;
 - (vii) Streatham Hill Depot; and
- (c) any other lease of a depot in relation to which the Franchisee becomes the Facility Owner at any time during the Franchise Period;

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

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

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

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

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

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

“Disaster” means, other than those specified in paragraphs 1(a) or 1(b) of Schedule 10.4 (Force Majeure), any unplanned interruption or event which

significantly prevents or impairs the ability of the Franchisee to provide the Franchise Services (in whole or in part) or the ability of the Franchisee to operate systems or equipment relevant to the provision of the Franchise Services (in whole or in part);

“Discount Card”

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

“Discount Fare Scheme”

means:

- (a) each of the following discount fare schemes:
 - (i) ATOC Disabled Persons Railcard Scheme dated 23 July 1995 between the participants therein;
 - (ii) ATOC Young Persons Railcard Scheme dated 23 July 1995 between the participants therein; and
 - (iii) ATOC Senior Railcard Scheme dated 23 July 1995 between the participants therein; or
- (b) any other discount fare scheme approved from time to time by the Secretary of State for the purposes of Section 28 of the Act,

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

“Disputed Cancellation”

means a Passenger Service:

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

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

“Disputed Partial Cancellation”

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

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

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

“Dispute Resolution Rules”

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

“Disputes Secretary”

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

“DR15 Compensation”²⁶

means the delay repay compensation payable to passengers by the Franchisee (subject to the validation and authentication of any such delay repay compensation claim by the Franchisee using the measures applicable from time to time pursuant to paragraphs 18.6(d) and 18.6(e) of Part 1 to Schedule 6.1 (Committed Obligations and Related Provisions)) in circumstances where the Passenger Services on which the passenger is travelling and in respect of which such passenger holds a valid ticket is delayed by 15 minutes but less than 30 minutes;

²⁶ 09 December 2016 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

- "DR15 Effective Date"²⁷** means **11 December 2016;**
- "DR15 Operational Costs"²⁸** means, in relation to any Reporting Period, the operational costs to be incurred in respect of the introduction and implementation of the DR15 Compensation as determined pursuant to paragraph 5.5 of Schedule 8.1 (Franchise Payments);
- "DR15 Operational Costs Balancing Payment"²⁹** means in relation to any Reporting Period the adjustments to Franchise Payments determined pursuant to paragraph 5.5(b) of Schedule 8.1 (Franchise Payments);
- "DR15 Operational Costs Balancing Payment Date"³⁰** means:
- (a) in the case of a DR15 Operational Costs Balancing Payment falling due other than at the end of the Franchise Period, the first Payment Date falling no less than seven days after the determination of such DR15 Operational Costs Balancing Payment in accordance with paragraph 5.5(b) of Schedule 8.1 (Franchise Payments); or
 - (b) in the case of a DR15 Operational Costs Balancing Payment falling due at the end of the Franchise Period, the date that is 30 days after the date upon which such DR15 Operational Costs

²⁷ 09 December 2016 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

²⁸ 09 December 2016 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

²⁹ 09 December 2016 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

³⁰ 09 December 2016 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

Balancing Payment is determined in accordance with paragraph 5.5(b) of Schedule 8.1 (Franchise Payments);

[REDACTED³¹]

“EA”	means the Equality Act 2010;
“EA Claim”	has the meaning given to it in paragraph 3.1 of Schedule 4 (Persons with Disabilities and Disability Discrimination);
“EA Requirements”	means the duties of a provider of services under Sections 20(3), 20(5) and Sections 20(9)(a) and 20(9)(b) in relation to Section 20(4) of the EA;
“Emergency Events”	has the meaning given to it in paragraph 1(e) of Schedule 10.4 (Force Majeure);
“EMV”	means contactless payment cards that conform to the international standards issued by EMVCo (owned by American Express, Discover, JCB, MasterCard, UnionPay and Visa) which manages, maintains and enhances the EMV1 integrated circuit card specifications;
“Enforcement Plan of the Day”	means the Plan of the Day excluding any: <ul style="list-style-type: none"> (a) additions to such Plan of the Day of any railway passenger service which are not included in the Timetable; (b) omissions from such Plan of the Day of any Passenger Services included in the Timetable; and/or (c) rescheduling in such Plan of the Day of any Passenger Services from its scheduling in the Timetable, in each case:

³¹ 5 November 2014 (Date of Redactions Approval) – Where text has been omitted from the document this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

- (i) as proposed by the Franchisee in breach of its obligations in paragraph 4 of Schedule 1.2 (Operating Obligations); or
- (ii) as agreed by the Franchisee in breach of its obligations in paragraph 3 of Schedule 1.2 (Operating Obligations);

“Enhanced Compensation”	means (at the passenger’s choice) either two free journeys anywhere on the Franchise valid for not less than 12 months or national rail travel vouchers to the value of a Single Fare for a journey between the Stations for which the relevant passenger’s Season Ticket Fare is valid;
“Environmental Data Implementation Plan”	has the meaning given in paragraph 19.1 of Schedule 13 (Information and Industry Initiatives);
“Environmental Information Regulations”	means the Environmental Information Regulations 2004;
“Equivalent Fare”	has the meaning given to it in paragraph 6.1 of Schedule 5.7 (Changes to Fares and Fares Regulation);
“Equivalent Flow”	has the meaning given to it in paragraph 6.1(b) of Schedule 5.7 (Changes to Fares and Fares Regulation);
“ERTMS”	means the European Rail Traffic Management System;
“ERTMS Enabled Network”	has the meaning given to such term in paragraph 6.1(a)(iv) of Schedule 6.2 (TSGN Franchise Specific Provisions);
“ERTMS Programme”	means the implementation of ERTMS on the routes specified in the Proposed ERTMS Implementation Plan;
“Escrow Documents”	has the meaning given to it in paragraphs 1.1 of Schedule 9.2 (Identity of the Financial Model etc.);
“Estimated Profit Stream”	means estimated total operating profit of the Franchisee from the date that the Change of Control (pursuant to paragraph 2.3 of Schedule 10.3 (Events of Default and Termination Events) is to occur until the Expiry Date as reasonably determined by the Secretary of

State. In reasonably determining the Estimated Profit Stream the Secretary of State shall:

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

- (ii) after taking into account:
 - (A) Franchise Payments;
 - (B) all extraordinary and exceptional items, as defined under GAAP;
 - (C) the Franchisee's normal pension contributions in relation to the Franchise Sections and any other pension schemes to the extent connected with the Franchise;
 - (D) any payments to Affiliates of the Franchisee (including management fees and royalty fees) except to the extent that such payments exceed the amount determined in accordance with the formula set out in paragraph (a)(v) of the definition of "Relevant Profit" in paragraph 7 of Schedule 8.1 (Franchise Payments); and
 - (E) any sums capitalised in relation to maintenance expenditure on rolling stock or other capital equipment; and
- (d) calculate amounts in real terms as at the date of the Change of Control and apply the prevailing discount rate per annum (in real terms) stated in HM Treasury's "Green Book Appraisal Guidelines" (such rate being as at the

date of the Franchise Agreement 3.5 per cent. per annum (in real terms));

- “Estimated Revisions”** has the meaning given to it in paragraph 9 of Schedule 9.1 (Financial and Other Consequences of Change);
- “Evening Peak”** means, in relation to any Passenger Service, the period between 1600 and 1859 (inclusive) during a Weekday or such other continuous three hour period between 1200 and 2359 (inclusive) as the Secretary of State may specify from time to time;
- “Event of Default”** means any of the events set out in paragraph 2 of Schedule 10.3 (Events of Default and Termination Events);
- “Excluded Data”** has the meaning given to it in paragraph 19.1 of Schedule 13 (Information and Industry Initiatives);
- “Expiry Date”** means the later of
- (a) 01:59 on 19 September 2021; or
 - (b) the time and date to which the Franchise Agreement is continued in accordance with paragraph 1.2 of Schedule 18 (Additional Reporting Periods);
- “Facilitation Fee”** has the meaning given to it in paragraph 4.2 of Schedule 10.3 (Events of Default and Termination Events);
- “Facility Owner”** has the meaning given to the term facility owner in Section 17(6) of the Act;
- “Fare”** means:
- (a) the right, exercisable against one or more Train Operators, subject to any applicable rights or restrictions and the payment of the relevant price, to make one or more journeys on the network or to carry on such a journey an item of luggage or an animal (where this right does not arise under the relevant conditions of carriage except on the payment of a fee) and, where applicable, to obtain goods or services from a person; and
 - (b) for the purposes only of Schedules 5.3 (Allocation of Fares to Fares Baskets) to 5.8 (Fares Regulation Information

and Monitoring) (inclusive) and the definitions of Commuter Fare, Protected Fare, Return Fare, Single Fare, Protected Weekly Season Ticket, Protected Return Fare and paragraph (b) of the definition of Season Ticket Fare, a Fare as defined under paragraph (a) that is:

- (i) valid for a journey or journeys on the Passenger Services included in the Timetable or other railway passenger services which are required to be included in another relevant Train Operator's passenger timetable by the Secretary of State;
- (ii) sold under the Travelcard Agreement;
- (iii) a Cross London Ticket (as defined in the Through Ticketing (Non Travelcard) Agreement); or
- (iv) sold under the Pay As You Go Agreement utilising TTL Smartmedia as defined in that agreement;

"Fare Year"	means the period from 1 January in any year to 31 December in the same year;
"Fares Basket"	means either the Commuter Fares Basket or the Protected Fares Basket;
"Fares Document"	means any of the Commuter Fares Document and the Protected Fares Document;
"Fares Setting Round"	has the meaning given to it in the Ticketing and Settlement Agreement;
"FCC Franchisee"	means the franchisee under the franchise agreement dated 12 December 2005 (as amended from time to time) and made between the Secretary of State and First Capital Connect Limited (Company Number 05281077) and where there are references to the successor operator to the FCC Franchisee that reference shall include any successor operator directly or indirectly of all or any part of the franchise services operated by the FCC Franchisee (including where the successor operator is the current FCC Franchisee appointed under a new

franchise agreement) provided that where all or part of any such franchise services are transferred to the Franchisee then the Franchisee shall not be a successor operator for the purposes of this definition;

"Financial Action Plan"	means any action plan produced by the Franchisee pursuant to paragraph 3.3(f) of Schedule 13 (Information and Industry Initiatives), where the level of its financial performance specified in the Management Accounts is worse than forecast by the Franchisee in its current Business Plan;
"Financial Conduct Authority"	means the UK Financial Conduct Authority with company registered number 01920623 or such other regulatory body which may succeed or replace it from time to time;
"Financial Model"	means the Franchisee's financial model in the agreed terms marked FM deposited with the Secretary of State on the date of the Franchise Agreement in accordance with Schedule 9.2 (Identity of the Financial Model etc.) as may be subsequently revised in accordance with Schedule 9.2 (Identity of the Financial Model etc.);
"Financier"	has the meaning given to it under the HLOS Phase 2 MSA;
"First Profit Share Threshold"	has the meaning given to it in paragraph 7 of Schedule 8.1 (Franchise Payments);
"Flow"	has the meaning given to it in the Ticketing and Settlement Agreement;
"Force Majeure Event"	means any of the events described as such in paragraph 1 of Schedule 10.4 (Force Majeure) where the conditions specified in paragraph 2 of Schedule 10.4 (Force Majeure) are satisfied;
"Forecast Modified Revenue"	means, in relation to any Reporting Period, the items specified in the definition of Modified Revenue, as most recently forecast for that Reporting Period pursuant to paragraph 3.3 of Schedule 13 (Information and Industry Initiatives);
"Forecast Operating Costs"	means, in relation to any Reporting Period, the items specified in the definition of Actual Operating Costs, as most recently forecast for that Reporting Period pursuant to paragraph 3.3 of Schedule 13 (Information and Industry Initiatives);

"Forecast Passenger Demand"

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

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

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

"Franchise"

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

"Franchise Agreement"

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

"Franchise Assets"

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

"Franchise Documents"

means:

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

"Franchise Employee"

means:

- (a) any employee of the Franchisee from time to time; and

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

"Franchise Letting Process Agreement"

means the agreement so entitled dated in or around March 2012 between the Secretary of State and the Franchisee entered into by the Franchisee as part of its proposal to secure the provision and operation of the Franchise Services;

"Franchise Manager"

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

"Franchise Payment"

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

"Franchise Performance Meeting"

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

"Franchise Period"

means the period commencing on the Start Date and ending on the Expiry Date or, if earlier, the date of termination of the Franchise Agreement pursuant to Clauses 4.2(b) or 4.3(b) of the Conditions Precedent Agreement or Schedule 10 (Remedies, Termination and Expiry);

“Franchise Sections”	has the meaning given to it in paragraph 1 of Schedule 16 (Pensions);
“Franchise Services”	means such of the Passenger Services, the Light Maintenance Services, the Station Services and the Ancillary Services as the Franchisee may provide or operate from time to time, including any of such services as the Franchisee may delegate or subcontract or otherwise secure through any other person from time to time in accordance with the Franchise Agreement;
“Franchise Term”	means the period commencing on the Start Date and expiring on the Expiry Date;
“Franchisee Access Station”	means any station at which the Passenger Services call (other than any Station);
“Franchisee Accounting Year”	means any period of 12 months during the Franchise Period, beginning on 1 July and ending on 30 June, except that the first and last Franchisee Accounting Years may be for a period of less than 12 months and the first Franchisee Accounting Year shall begin on the Start Date and the last Franchisee Accounting Year shall end on the last day of the Franchise Period;
“Franchisee Year”	means any period of 12 months during the Franchise Period, beginning on 1 April and ending on 31 March, except that the first and last Franchisee Years may be for a period of less than 12 months and the first Franchisee Year shall begin on the Start Date and the last Franchisee Year shall end on the last day of the Franchise Period;
“Freedom of Information Act”	means the Freedom of Information Act 2000;
“Funding Deed”	means the deed made between the Secretary for State, the Franchisee and the Parent dated the date of the Franchise Agreement specifying arrangements relating to the funding for the Franchisee by the Parent and giving rights to the Secretary of State in relation to such funding;
Funding Deed Guarantee	means the deed entered into between the Secretary of State and the Ultimate Parents on or about the date hereof under which the Ultimate Parents provide to the Secretary of State a joint and several guarantee in respect of the obligations of the Parent under the Funding Deed;

"Further Electrostar Units"	means the three four car class 377/2 units as particularly described under the Further Electrostar Units Sub Lease;
"Further Electrostar Units Sub Lease"	a sublease for the Further Electrostar Units entered into between Southern Railway Limited and First Capital Connect Limited and dated 2 December 2011;
"FY Revenue Balancing Amount"	means an amount determined pursuant to paragraph 5 of Schedule 8.1 (Franchise Payments);
"FY Revenue Balancing Date"	means: (a) in the case of an FY Revenue Balancing Amount determined pursuant to paragraph 5 of Schedule 8.1 (Franchise Payments) the first Payment Date falling no less than seven days after that determination; or (b) in the case of any FY Revenue Balancing Amount falling due in respect of the final Franchisee Year and which has not been made during the Franchise Period, the date determined in accordance with paragraph 6 of Schedule 8.1 (Franchise Payments);
"GAAP"	means generally accepted accounting principles in the United Kingdom, as derived from and including the accounting requirements of the Companies Act 2006, 'Statements of Standard Accounting Practice', 'Financial Reporting Standards', abstracts issued by the Urgent Issues Task Force of the Accounting Standards Board and, where appropriate, International Financial Reporting Standards and the listing rules of the Financial Conduct Authority, in each case, as at the date of the Franchise Agreement;
"Gross Revenue"	means, in relation to any period and any Fare, the gross revenue to the Franchisee (or any relevant predecessor of the Franchisee) attributable to such Fare over the relevant period, excluding any applicable Value Added Tax, costs, commissions or other expenses which may be paid or incurred in connection with such Fare;

"Half Franchisee Year" ³²	means any period of six or seven Reporting Periods during the Franchisee Year as follows:
	(a) Reporting Periods one to six in any Franchisee Year beginning on 1 April; and
	(b) Reporting Periods seven to thirteen in any Franchisee Year, except that the first and last Half Franchisee Year may be for a period of less than six or seven Reporting Periods and the first Half Franchisee Year shall begin on the Start Date and the last Half Franchisee Year shall end on the last day of the Franchise Period;
"Handover Package"	means a package containing the information and objects specified in the Appendix to Schedule 15.3 (Handover Package) and such other information and objects as the Secretary of State may reasonably specify from time to time;
"HLOS Franchisee Operating Lease"	has the meaning given to such term in paragraph 4.7(a)(ii) of Schedule 6.4 (Integration of the Southern Franchise Services);
"HLOS Phase 2 Core Units"	means the 29 x 4 car units to be procured by the Southern Franchisee pursuant to the HLOS Phase 2 MSA;
"HLOS Phase 2 Financier"	has the meaning given to such term in paragraph 4.7(a) of Schedule 6.4 (Integration of the Southern Franchise Services);
"HLOS Phase 2 Financing Procurement Process"	has the meaning given to such term in paragraph 4.7(a) of Schedule 6.4 (Integration of the Southern Franchise Services);
"HLOS Phase 2 MSA"	means the manufacture and supply agreement dated 30 July 2013 and entered into by Bombardier Transportation UK Limited and Southern Railway Limited;

³² 09/12/2016 (Date of Deed of Amendment). Contract insertion agreed by the Secretary of State and the Franchisee.

**"HLOS Phase 2 MSA
Associated Documents"**

means:

- (a) any escrow agreement entered into by the Southern Franchisee pursuant to clause 27 of the HLOS Phase 2 MSA in respect of the HLOS Phase 2 Core Units;
- (b) each guarantee in the form set out in Schedule 3 of the HLOS Phase 2 MSA granted by Bombardier Inc. in favour of the Southern Franchisee (either in its capacity as operator or as Financier under the HLOS Phase 2 MSA) and any confirmation thereof by Bombardier Inc.; and
- (c) any Certificate (as defined in the HLOS Phase 2 MSA) issued from time to time pursuant to the terms of the HLOS Phase 2 MSA;

**"HLOS Phase 2 Purchased
Equipment"**

means the HLOS Phase 2 Core Units and the HLOS Phase 2 Spares and Special Tools;

**"HLOS Phase 2 Spares and
Special Tools"**

means the spares and special tools purchased by the Southern Franchisee pursuant to the HLOS Phase 2 MSA or the HLOS Phase 2 Spares Supply Agreement;

**"HLOS Phase 2 Spares
Supply Agreement"**

means the spares supply agreement entered into on 30 July 2013 between the Southern Railway Limited and Bombardier Transportation UK Limited;

**"HLOS Southern Operating
Lease"**

means the lease entered into between the relevant rolling stock provider and the Southern Franchisee as such lease is transferred to the Franchisee on or immediately prior to the Combined Effective Date pursuant to a novation under paragraph 4.5(a) of Schedule 6.4 (Integration of the Southern Franchise Services) or under the Combined Effective Date Transfer Scheme;

"Hot Standby"

means any rolling stock vehicle specified in the Train Plan which:

- (a) is operationally ready to provide the Passenger Services in the Timetable;
- (b) is not already assigned to the delivery of any Passenger Service in the Timetable; and

- (c) will only be used to deliver such Passenger Services if:
 - (i) a rolling stock vehicle scheduled to deliver such Passenger Services is unable to so deliver; and
 - (ii) Actual Passenger Demand could only be met by the deployment in service of such rolling stock vehicle;

“HY On-Train Wi-Fi Solution Balancing Amount”³³ means an amount determined pursuant to the formula in respect of “HYOTWSPBAR” at paragraph 8.1 of Schedule 8.1 (Franchise Payments);

“HY On-Train Wi-Fi Solution Balancing Amount Date”³⁴ means:

- (a) in the case of any HY On-Train Wi-Fi Solution Balancing Amount determined pursuant to paragraph 8.2 of Schedule 8.1 (Franchise Payments) the first Payment Date falling no less than seven days after that determination; or
- (b) in the case of any HY On-Train Wi-Fi Solution Balancing Amount falling due in respect of the final Half Franchisee Year and which has not been made during the Franchise Period, the date determined in accordance with paragraph 8.4 of Schedule 8.1 (Franchise Payments);

“Incremental Output Statement Charge” means the charge to which that description is commonly given, first introduced into Relevant Agreements in April 2001;

“Independent PEM Audit” has the meaning given to such term in paragraph 2.7 to Schedule 7.2 (PEM Regime);

“Independent Station Access Conditions” has the meaning given to it in the Access Agreement to which it relates;

³³ 09/12/2016 (Date of Deed of Amendment). Contract insertion agreed by the Secretary of State and the Franchisee.

³⁴ 09/12/2016 (Date of Deed of Amendment). Contract insertion agreed by the Secretary of State and the Franchisee.

“Independent Station”	has the meaning given to it in paragraph 2.6 of Schedule 8.4 (Track Access Adjustments and Station Charge Adjustments);
“Individual Station Charge Adjustment”	has the meaning given to it in paragraph 2 of Schedule 8.4 (Track Access Adjustments and Station Charge Adjustments);
“Industrial Action”	has the meaning given to it in paragraph 1(f) of Schedule 10.4 (Force Majeure);
“Industry Schemes”	has meaning given to it in paragraph 10 of Schedule 13 (Information and Industry Initiatives);
“Initial Business Plan”	means the business plan to be provided by the Franchisee to the Secretary of State as described in paragraph 2.1 of Schedule 13 (Information and Industry Initiatives);
“Initial Dataset”	has the meaning given in paragraph 19.1 of Schedule 13 (Information and Industry Initiatives);
“Initial Period”	has the meaning given to it in paragraph 7.5 of Schedule 9.1 (Financial and Other Consequences of Change);
“Initial Permanent Fare”	has the meaning given to it in the Ticketing and Settlement Agreement;
“Integrated Transport Schemes”	means those schemes which relate to the integration of any form of transport with the Franchise Services;
“Intellectual Property Rights”³⁵	means any patent, know-how, trade mark or name, service mark, design right (in each case whether registered or unregistered), copyright, rights in passing off, database right, rights in commercial or technical information, any other rights in any invention, discovery or process and any other intellectual property rights, whether registered or unregistered and including applications for the grant of any such rights and all rights or forms of protection having equivalent or similar

³⁵ 17 January 2018 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

effect in each case in the United Kingdom and anywhere else in the world;**“Interest Rate”**

means a rate equivalent to two per cent. per annum above the base lending rate published by Royal Bank of Scotland plc (or such other bank as the Secretary of State may, after consultation with the Franchisee, determine from time to time) during any period in which an amount payable under the Franchise Agreement remains unpaid;

“Inter-Operator Schemes”

means:

- (a) each of the following schemes which relate to arrangements between the Franchisee and other participants in the railway industry:
 - (i) ATOC Staff Travel Scheme dated 23 July 1995 between the participants named therein;
 - (ii) Ticketing and Settlement Agreement;
 - (iii) ATOC LRT Scheme dated 23 July 1995 between the participants named therein;
 - (iv) Travelcard Agreement dated 15 October 1995 between London Regional transport and the parties named therein;
 - (v) Through Ticketing (Non-Travelcard) between London Regional transport and the parties named therein;
 - (vi) National Rail Enquiry Scheme dated 11 June 1996 between the participants named therein; and
 - (vii) the Pay As You Go Agreement; and
- (b) any other scheme, agreement and/or contract of a similar or equivalent nature as may from time to time during the Franchise Period amend, replace or substitute, in whole or in part, any of

such schemes, agreements and/or contracts; and

(c) any Discount Fare Scheme;

"Investment Asset"	means the Franchise Assets designated as such pursuant to paragraph 2.2 of Schedule 14.4 (Designation of Franchise Assets);
"Investment Asset Request Date"	means each anniversary of the Start Date provided that the final Investment Asset Request Date shall be the date 13 months prior to the end of the Franchise Term and there shall not be an Investment Asset Request Date on the anniversary of the Start Date where this would occur within 12 months of such final Investment Asset Request Date;
"Invitation to Tender"	means the Invitation to Tender issued by the Secretary of State in September 2013 as part of the procurement process pursuant to which the Franchise Agreement was entered into;
"IOP"	means ITSO on Prestige;
"IOP Agreement"	means an agreement between the Secretary of State and Transport for London for the acceptance of ITSO Certified Smartmedia;
"IOP London Products"	means ITSO products equivalent to products currently accepted, retailed or fulfilled under the Travelcard Agreement and the Through Ticketing (Non-Travelcard) Agreement;
"ITSO"	means (as the context may require) both: <ul style="list-style-type: none"> (a) the non profit distributing organisation run by its members for the benefit of members and users of smartcards, supported by the Department for Transport; and (b) the common specification it has created to enable the use of interoperable smartcards in transport and other areas;
"ITSO Certified Smartmedia"	means the contactless smartcards, devices or other media designed to hold fare and travel information with the monetary or other value encoded which have been fully certified by ITSO;
"Joint Performance Improvement Plan"	has the meaning given to it in the Network Code;

“Key Contacts List”

means the list which contains the name, address, home, office and mobile telephone numbers, and a brief description of the person's role and responsibilities in the business in respect of all directors (statutory or otherwise) and the managers with responsibility for a department/function within the Franchisee's business (and in particular managers in the operations, commercial, personnel and public affairs departments (or in each case their nearest equivalents));

“Key Contract”

means:

- (a) each agreement and contract listed in the Appendix (List of Key Contracts) to Schedule 14.3 (Key Contracts) as at the date of the Franchise Agreement; and
- (b) any other agreement, contract, licence or other arrangement to which the Franchisee is a party or under which the Franchisee is the beneficiary from time to time which is designated as such pursuant to Schedule 14.3 (Key Contracts),

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

“Key Personnel”

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

“Law”

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

“Lead Operator”

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

“Legislation”

means any enactment or subordinate legislation, rule, regulation, order, directive or other provision including those of the European Community, which has, in each case, the force of Law in the United Kingdom or any part of it,

but excluding any order under Section 1 of the Transport and Works Act 1992;

“Licences”

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

“Light Maintenance Service”

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

“Local Authority”

means:

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

- (f) any other body or instrument of local or regional government specified by the Secretary of State from time to time;
- "Lock-up Period"** has the meaning given to it in paragraph 3.2 of Schedule 12 (Financial Obligations and Covenants);
- "London Peak Station"** means any of the following stations at which the Passenger Services call:
- (a) Kensington (Olympia);
 - (b) London Blackfriars;
 - (c) London Bridge;
 - (d) London Kings Cross;
 - (e) London St Pancras International;
 - (f) London Victoria; or
 - (g) Moorgate;
- "London Station"** means any station served by the Railway Passenger Services in the Zones and any Zone to or from which a passenger may travel from or to such station;
- "2017 LSER Capacity Enhancement Deed of Amendment"**³⁶ means the Deed of Amendment (2017 LSER Capacity Enhancement) to the Franchise Agreement between the parties dated 8 September 2017;
- "2017 LSER Cascade"**³⁷ means, in relation to each Class 377 (2017 LSER Capacity Enhancement) Unit, its delivery from the Franchisee to the LSER Franchisee under the Class 377 (2017 LSER Capacity Enhancement) Sub-Lease Version 1 and "Cascaded" and "Cascade" shall be construed accordingly;
- "LSER Franchisee"** means the franchisee under the franchise agreement dated 29 November 2005 (as amended from time to time) and made between the Secretary of State and London & South Eastern Railway Limited (Company Number 04860660) and where there are references to

³⁶ 08/09/2017 (Date of Deed of Amendment) Agreed by the Secretary of State and the Franchisee

³⁷ 08/09/2017 (Date of Deed of Amendment) Agreed by the Secretary of State and the Franchisee

the successor operator to the LSER Franchisee that reference shall include any successor operator directly or indirectly of all or any part of the franchise services operated by the LSER Franchisee (including where the successor operator is the current LSER franchisee appointed under a new franchise agreement) provided that where all or part of any such franchise services are transferred to the Franchisee then the Franchisee shall not be a successor operator for the purposes of this definition;

"LSER Franchise Agreement"³⁸

the franchise agreement dated 10 September 2014 (as amended from time to time) made between the Secretary of State and the LSER Franchisee;

"LSER Thameslink Trading Agreements "

means each and all of the following agreements:

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

³⁸ 08/09/2017 (Date of Deed of Amendment) Agreed by the Secretary of State and Franchisee.

Eastern Railway Limited provides train crew to First Capital Connect Limited;

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

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

“Maintenance Contract”

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

“Major Flow Operator”

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

“Managed Station”

means:

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

or any other station used in connection with the provision of the Franchise Services where Network Rail becomes the Facility Owner during the Franchise Period;

“Managed Station Area”

means the premises comprising part or parts of a Managed Station to be occupied by the Franchisee on or after the Start Date or the Combined Effective Date (as the case may be)

and to be used for or in connection with the provision of the Franchise Services;

"Management Accounts"

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

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

"Mandatory Modification"

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

"Manufacturer"

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

"Marketing Plan"

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

- (a) the advertising and promotion of the Passenger Services for the purposes of generating growth in revenue and passenger travel;
- (b) the building and promotion of its brand;
- (c) advertising and promotion of the benefits of the Thameslink Programme (including the advertising and promotion of the introduction and benefits of the new Class 700 rolling stock and the additional capacity and performance improvements that will be introduced as a result of the Thameslink Programme); and
- (d) the provision of customer information, publication of Customer Reports and public relations regarding the management of disruption and the timetable changes during the Thameslink Programme in a manner that is consistent with the relevant customer information and public relations outputs of Network Rail (and

other relevant parties) and co-ordinated with it recognising that Network Rail has the lead role in matters relating to the Thameslink Programme,

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

“Marks”

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

“MDCTA”

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

“Minor Works”

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

“Minor Works Budget”

means:

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

$$£300,000 \times \frac{n_1}{365}$$

where:

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

- (b) in respect of the period commencing from the second Franchisee Year until the end of that Franchisee Year (being 31 March 2016) an amount determined as follows:

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

where:

n₂ is the number of days from the Combined Effective Date until the end of the second Franchisee Year (being 31 March 2016); and

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

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

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

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

$$£600,000 \times RPI$$

where:

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

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

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

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

“Modified Revenue” means:

(a) the sum of:

- (i) the Franchisee's total revenue for the period being reviewed as stated in its profit and loss account:
 - (A) including any amounts receivable from the Secretary of State or Network Rail, any Ancillary Revenue and any interest; but
 - (B) excluding the proportion of income recognised in the profit and loss account in relation to grants received in respect of capital expenditure; and
- (ii) the opening cash balance for the period being reviewed excluding:
 - (A) any cash held for the exclusive purpose of the provision of the Performance Bond;
 - (B) Revenue; and
 - (C) the amount equivalent to:
 - (1) any cash that is held pursuant to any restrictive terms under any agreement and that, consequently, cannot be used for general operating purposes;
 - (2) any cash capable of being drawn down but not actually received,

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

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

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

"Monthly Season Ticket"	means a Season Ticket Fare which is valid in Standard Class Accommodation from (and including) the day it first comes into effect until (but excluding) the day which falls one month after such day;
"Morning Peak"	means, in relation to any Passenger Service, the period between 0700 and 0959 (inclusive) during a Weekday or such other continuous three hour period as the Secretary of State may specify from time to time;
"National Rail Enquiry Scheme"	means the telephone information scheme run by ATOC, providing information to callers regarding rail journeys throughout the country;
"National Rail Timetable"	means the passenger timetable published by Network Rail (currently twice per annum) specifying the timings and stopping patterns of all passenger railway services in Great Britain;
"network agreements"	has the meaning given to it in paragraph 3.2 of the Appendix (Conditions Precedent) to the Conditions Precedent Agreement;
"Network Change"	has the meaning given to it in the Network Code;
"Network Code"	means the document known as the Network Code and formerly known as the Railtrack Track Access Conditions 1995 (as subsequently replaced or amended from time to time) or any equivalent code or agreement;
"Network Rail"	means in respect of:

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

“Network Rail Cancellation” means a Passenger Service:

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

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

“Network Rail Partial Cancellation”

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

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

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

“New Insurance Arrangements”

shall have the meaning given to it in paragraph 2.2(b) of Schedule 2.2 (Security of

Access Agreements, Rolling Stock Leases, Station and Depot Leases);

"New Results"

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

"New Station"

means:

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

"No Breach Reporting Period"

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

"Non-Fares Basket Fare"

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

"NPS Benchmarks"

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

"NPS Benchmark Level" ³⁹

(a) in relation to each Calculation Year falling within the period from the Start

Date until the Calculation Year ending in January 2019, the benchmark relating to each NPS Indicator as set out in Column 2 of the table in Part 1 to Appendix 1 to Schedule 7.2 (PEM Regime); and

(b) in relation to each Calculation Year falling within the period from the Calculation Year commencing from the first Reporting Period in January 2019 until the end of the Franchise Term, the benchmark relating to each NPS Indicator as set out in Column 2 of the table in Part 2 to Appendix 1 to Schedule 7.2 (PEM Regime);

"NPS Floor Level"⁴⁰

(a) in relation to each Calculation Year falling within the period from the Start Date until the Calculation Year ending in January 2019, the benchmark relating to each NPS Indicator as set out in Column 3 of the table in Part 1 to Appendix 1 to Schedule 7.2 (PEM Regime); and

(b) in relation to each Calculation Year falling within the period from the Calculation Year commencing from the first Reporting Period in January 2019 until the end of the Franchise Term, the benchmark relating to each NPS Indicator as set out in Column 3 of the table in Part 2 to Appendix 1 to Schedule 7.2 (PEM Regime);

"NPS Indicator"⁴¹

means each of the indicators as set out in Column 1 of each of the tables set out in Part 1 and Part 2 of the Appendix 1 to Schedule 7.2 (PEM Regime) (respectively);

"N PS Survey"

means a passenger satisfaction survey in respect of the Franchise Services to be carried out by Passengers' Council as described in paragraph 4 of Schedule 7.2 (PEM Regime);

"OBS Set Up Costs"⁴²

means the amounts incurred or to be incurred by the Franchisee on the following and in

⁴⁰ Date of change 12/02/2016

⁴¹ Date of change 12/02/2016

⁴² 16/01/2017 (Date on Deed of Amendment) Contract insertion agreed by the Secretary of State and the Franchisee.

relation to the recruitment of the Additional On Board Supervision Staff:

- (a) external consultancy recruitment costs;
- (b) costs for training the Additional On Board Supervision Staff;
- (c) uniform, equipment, phone data charges, Office 365 licence charges, Envoy ticket machine charges (including maintenance charges, licence fees and warranty and support costs) and other charges required in respect of the duties of the Additional On Board Supervision Staff; and
- (d) medical costs and room booking charges;

"OBS Set Up Costs and Payroll Amounts Balancing Payment"⁴³

means in relation to any Reporting Period the adjustments to Franchise Payments determined pursuant to paragraph 5.7(b) of Schedule 8.1 (Franchise Payments);

"OBS Set Up Costs and Payroll Amounts Balancing Payment Date"⁴⁴

means:

- (a) in the case of a OBS Set Up Costs and Payroll Amounts Balancing Payment falling due other than at the end of the Franchise Period, the first Payment Date falling no less than seven days after the determination of such OBS Set Up Costs and Payroll Amounts Balancing Payment in accordance with paragraph 5.7(b) of

⁴³ 16/01/2017 (Date on Deed of Amendment) Contract insertion agreed by the Secretary of State and the Franchisee.

⁴⁴ 16/01/2017 (Date on Deed of Amendment) Contract insertion agreed by the Secretary of State and the Franchisee.

Schedule 8.1 (Franchise Payments); or

- (b) in the case of a OBS Set Up Costs and Payroll Amounts Balancing Payment falling due at the end of the Franchise Period, the date that is 30 days after the date upon which such OBS Set Up Costs and Payroll Amounts Balancing Payment is determined in accordance with paragraph 5.7(b) of Schedule 8.1 (Franchise Payments);

"Off-Peak" means, in relation to any Passenger Service, the period of time outside of the Peak;

"Off-Peak Passenger Services" means Passenger Services other than Peak Passenger Services;

"OFST Operational Costs"⁴⁵ means, in relation to any Reporting Period, the operational costs incurred by the Franchisee in complying with its obligations pursuant to paragraph 22 of Part 1 of Schedule 6.1 (Committed Obligations and Related Provisions) as determined pursuant to paragraph 5.6 of Schedule 8.1 (Franchise Payments);

"OFST Operational Costs Balancing Payment"⁴⁶ means in relation to any Reporting Period the adjustments to Franchise Payments determined pursuant to paragraph 5.6(b) of Schedule 8.1 (Franchise Payments);

"OFST Operational Costs Balancing Payment Date"⁴⁷ means:

- (c) in the case of a OFST Operational Costs Balancing Payment falling due other than at the end of the

⁴⁵ 16/01/2017 (Date on Deed of Amendment) Contract insertion agreed by the Secretary of State and the Franchisee.

⁴⁶ 16/01/2017 (Date on Deed of Amendment) Contract insertion agreed by the Secretary of State and the Franchisee.

⁴⁷ 16/01/2017 (Date on Deed of Amendment) Contract insertion agreed by the Secretary of State and the Franchisee.

Franchise Period, the first Payment Date falling no less than seven days after the determination of such OFST Operational Costs Balancing Payment in accordance with paragraph 5.6(b) of Schedule 8.1 (Franchise Payments); or

- (d) in the case of a OFST Operational Costs Balancing Payment falling due at the end of the Franchise Period, the date that is 30 days after the date upon which such OFST Operational Costs Balancing Payment is determined in accordance with paragraph 5.6(b) of Schedule 8.1 (Franchise Payments); and

"2016 OHA"⁴⁸

means the Amendment and Restatement Agreement dated 9 December 2016 (effective from 11 December 2016) relating to an Operating Hire Agreement of Class 377 Passenger Rolling Stock dated 19 December 2014 between the Franchisee and the LSER Franchisee in relation to the subleasing of 8 x Class 377 units (numbers 377501 to 377508) to the LSER Franchisee until the end date of the LSER Franchise Agreement;

"Old Results"

means in relation to any Change, the following as produced in accordance with Schedule 9.1 (Financial and Other Consequences of Change) by or following the Run of the Financial Model in respect of the immediately preceding Change (or, in relation to the first Change only, the following as at the date hereof): the values of "FXD", "VCRPI", "VCAWE", "PRPI" and "ARRPI" to be specified for each Franchisee Year in the Appendix (Figures for Calculation of Annual

⁴⁸ 08/09/2017 (Date of Deed of Amendment) Agreed by the Secretary of State and the Franchisee

Franchise Payments) to Schedule 8.2 (Annual Franchise Payments);

"One Off Season Ticket Refund"⁴⁹

shall have the meaning given to it in paragraph 22.3 of Part 1 of Schedule 6.1 (Committed Obligations and Related Provisions);

"On Train Wi-Fi Solution Payment"⁵⁰

means in relation to any Reporting Period the adjustment to Franchise Payments determined pursuant to paragraph 8 of Schedule 8.1 (Franchise Payments);

"Operating Assets"

has the meaning given to it in paragraph 1.1 of Schedule 14.2 (Maintenance of Operating Assets);

"Operational Model"

means the following models in the agreed terms marked **OM**:

- (a) the revenue model;
- (b) the performance model;
- (c) all cost models; and
- (d) any other relevant models that have generated input to the Financial Model;

"ORR"

means the Office of Rail Regulation established by Section 15 of the Railways and Transport Safety Act 2003 and having duties and obligations as set out in the Act;

"Outstanding Contract Price"

has the meaning given to such term in paragraph 4.6(a)(ii) of Schedule 6.4 (Integration of the Southern Franchise Services);

"OTW Payment"⁵¹

means any payment by the Secretary of State to the Franchisee pursuant to paragraph 21.11.2 of Part 1 (List of Committed Obligations) of Schedule 6.1

⁴⁹ 16/01/2017 (Date on Deed of Amendment) Contract insertion agreed by the Secretary of State and the Franchisee.

⁵⁰ 09/12/2016 (Date of Deed of Amendment). Contract insertion agreed by the Secretary of State and the Franchisee.

⁵¹ 09/12/2016 (Date of Deed of Amendment). Contract insertion agreed by the Secretary of State and the Franchisee.

(Committed Obligations and Related Provisions);

- “Parent”** means Govia Limited (Company Number 03278419) whose registered office is at 3rd Floor, 41-51 Grey Street, Newcastle upon Tyne NE1 6EE;
- “Partial Cancellation”** means a Passenger Service which is included in the Enforcement Plan of the Day and which Passenger Service:
- (a) misses a stop;
 - (b) completes 50 per cent. or more, but less than 100 per cent. of its scheduled journey as prescribed in the Enforcement Plan of the Day; or
 - (c) arrives at its final destination scheduled in the Enforcement Plan of the Day more than 120 minutes late,
- in each case, for reasons which are attributed to the Franchisee pursuant to its Track Access Agreement;
- “Participating Employer”** has the meaning given to it in the Pension Trust;
- “Pass Rate”** means:
- (a) in respect of a Reporting Period, the pass rate for each QuEST Service Schedule calculated in accordance with paragraph 3.1 of Schedule 7.2 (PEM Regime); and
 - (b) in respect of a Calculation Year the pass rate for each QuEST Service Schedule calculated in accordance with paragraph 3.2 of Schedule 7.2 (PEM Regime);
- “Passenger Carrying Capacity”** means, in relation to a Passenger Service:
- (a) the capacity of the rolling stock vehicles (as stated in Schedule 1.7 (The Train Fleet) or determined by the Secretary of State in accordance with paragraph 2.4 of Schedule 1.7 (The Train Fleet)) from which the Passenger Service is formed; or
 - (b) for the purposes of Schedule 7.1 (Performance Benchmarks) only, the

number of vehicles specified for such Passenger Service in the Train Plan;

- “Passenger Change Date”** means a date upon which significant changes may be made to the Timetable in accordance with or by virtue of the Network Code;
- “Passenger Services”** means the Franchisee's railway passenger services as specified in any Timetable and/or Plan of the Day including those railway passenger services which the Franchisee may delegate or subcontract or otherwise secure through any other person from time to time in accordance with the Franchise Agreement;
- “Passenger's Charter”** means:
- (a) for the period commencing from the Start Date until the Combined Effective Date, the Franchisee's service commitments to its passengers in the agreed terms marked **PC1**; and
 - (b) for the period commencing from the Combined Effective Date until the end of the Franchise Period, the Franchisee's service commitments to its passengers in the agreed terms marked **PC2**,
- as each such document is amended or replaced from time to time with the prior written consent of the Secretary of State in accordance with paragraph 4 of Schedule 1.4 (Passenger Facing Obligations);
- “Passengers’ Council”** means the passengers’ council established under Section 19 of the Railways Act 2005;
- “Pay As You Go Agreement”** means an agreement dated 16 October 2009 between Transport Trading Limited and train operators operating in London enabling joint ticketing and the acceptance of each other's tickets using smartmedia technology under the name “Pay as You Go”;
- “PAYG Peak Fare”** means a Fare which is a Permanent Fare and which entitles the purchaser to make a single journey under the Pay As You Go Agreement in Standard Class Accommodation between and within the PAYG Zones for which the fare is valid, at any time;
- “PAYG Off-Peak Fare”** means a Fare which is a Permanent Fare and which entitles the purchaser to make a single journey under the Pay As You Go Agreement in Standard Class Accommodation between and

within the PAYG Zones for which the fare is valid, at any time on Saturdays and Sundays and at such times as the Franchisee may designate on Mondays to Fridays (where such Fare need not be valid between 6.30am and 9.30am or between 4.00pm and 7.00pm but must be valid at all other times) and which may take into account the different directions of travel;

"PAYG Zone"

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

Rickmansworth;

Carpenders Park;

Chorleywood;

Chalfont and Latimer;

Amersham;

Bushey;

Watford Junction; and

Watford High Street;

"Payment Date"

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

"Payroll Amounts"⁵²

means the employment costs of each Additional On Board Supervision Staff (such employment costs to be composed of salary (as such may be increased following the 6 months employment review), national insurance, any pension contributions, allowances, retail commissions and overtime) that the Franchisee is required to pay in a Reporting Period."

"Peak"

means the Morning Peak and the Evening Peak;

"Peak Passenger Service"

means any Passenger Service that:

⁵² 16/01/2017 (Date on Deed of Amendment) Contract insertion agreed by the Secretary of State and the Franchisee.

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

provided that:

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

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

“Peak Short Formation Benchmark”	means any of the performance levels in respect of the capacity operated in delivering the Peak Passenger Services as set out in the Peak Short Formation Benchmark Table;
“Peak Short Formation Benchmark Table”	means the table set out in Part 1 of Appendix 2 (Peak Short Formation Benchmark Table) of Schedule 7.1 (Performance Benchmarks);
“PEM”	has the meaning given to it in paragraph 5 of Schedule 7.2 (PEM Regime);
“PEM Benchmarks”	mean any of the PEM Benchmark Level, PEM Ceiling Level and PEM Floor Level;
“PEM Benchmark Level ”	means, in relation to each Calculation Year, the performance level specified as such for that Calculation Year in the first row of the table in Appendix 3 of Schedule 7.2 (PEM Regime);
“PEM Ceiling Level ”	means, in relation to each Calculation Year, the performance level specified as such for that Calculation Year in the third row of the table in Appendix 3 of Schedule 7.2 (PEM Regime);
“PEM Floor Level”	means, in relation to each Calculation Year, the performance level specified as such for that Calculation Year in the second row of the table in Appendix 3 of Schedule 7.2 (PEM Regime);
“PEM Payment”	means any payment payable by the Secretary of State to the Franchisee or the Franchisee to the Secretary of State as such payment is calculated pursuant to paragraph 5 of Schedule 7.2 (PEM Regime);
“Penalty Fare”	means the imposition of a penalty upon any person making a journey on the Passenger Services without a ticket which is valid for such journey;
“Penalty Fares Scheme”	means the schemes contained in the document in the agreed form marked “PFS” ;
“Pension Trust”	means the pension trust governing the Railways Pension Scheme;
“Pensions Committee”	has the meaning given to it in the Railways Pension Scheme;
“Percentage Allocation”	has the meaning given to such term under the Ticketing and Settlement Agreement;
“Performance Bond”	means the performance bond to be provided to the Secretary of State in the form set out in Appendix 1 to Schedule 12 (Financial Obligations and Covenants), as replaced or

amended from time to time in accordance with Schedule 12 (Financial Obligations and Covenants);

“Performance Calculation Year”

means:

- (a) the period of 13 Reporting Periods starting on the Start Date (that day inclusive); and
- (b) each subsequent and non-overlapping period of 13 Reporting Periods during the Franchise Period commencing the day after the last day of the preceding Performance Calculation Year,

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

“Performance Sum Adjustment Date”

means:

- (a) in the case of each Cancellations Performance Sum, TOC Minute Delay Performance Sum or Short Formation Performance Sum determined pursuant to paragraphs 3.2, 3.3 or 3.4 (respectively) of Schedule 7.1 (Performance Benchmarks), the first Payment Date falling no less than seven days after that determination; or
- (b) in the case of a Cancellations Performance Sum, TOC Minute Delay Performance Sum or Short Formation Performance Sum falling due in respect of the final Franchisee Year and which has not been made during the Franchisee Period the date determined in accordance with paragraph 3.6 of Schedule 7.1 (Performance Benchmarks);

“Period of Sustained Poor Performance”

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

“Permanent Fare”

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

“Permitted Aggregate Increase”

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

“Permitted Individual Increase”	has the meaning given to it in paragraph 2.2 of Schedule 5.5 (Regulation of Individual Fares);
“Personal Data”	has the same meaning as in the Data Protection Act and includes Sensitive Personal Data as defined therein;
“Personal Data Legislation”	has the meaning given to it in paragraph 5 of Schedule 1.5 (Information about Passengers);
“Placed in Escrow”	means: <ul style="list-style-type: none"> (a) in respect of the Financial Model, delivery of the Financial Model: <ul style="list-style-type: none"> (i) dated the date of the Franchise Agreement; and (ii) adjusted to the extent necessary to reflect any time elapsed between the actual Start Date or actual Combined Effective Date (as appropriate) and the date assumed to be the Start Date or the Combined Effective Date in the Initial Business Plan; and (iii) where Schedules 9.1 (Financial and Other Consequences of Change) and 9.2 (Identity of Financial Model etc.) apply, audited following a Run of the Financial Model and updated with any Revised Inputs; and (b) in respect of the Operational Model, delivery of: <ul style="list-style-type: none"> (i) the Operational Model dated the date of the Franchise Agreement; (ii) the Operational Model adjusted to the extent necessary to reflect any time elapsed between the actual Start Date or the actual Combined Effective Date (as appropriate) and the date assumed to be the Start Date or the Combined Effective Date (as appropriate) in the Initial Business Plan; and

(iii) where Schedules 9.1 (Financial and Other Consequences of Change) and 9.2 (Identity of Financial Model etc.) apply, the inputs to the Financial Model derived therefrom following an audit of a Run of the Financial Model; and

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

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

“Plan of the Day”

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

“Power of Attorney”

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

“PR2013”

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

“Preceding 13 Reporting Periods”

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

“Preceding Year Ticket Price”

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

“Previous Franchise Agreement”

means:

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

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

“Price”

means, in respect of any Fare, the price of such Fare before the deduction of any applicable discount to which a purchaser may be entitled,

as notified to RSP in accordance with Schedule 5 to the Ticketing and Settlement Agreement;

- “Primary Franchise Assets”** means:
- (a) the property, rights and liabilities of the Franchisee listed in the Appendix (List of Primary Franchise Assets) to Schedule 14.4 (Designation of Franchise Assets); and
 - (b) any other property, rights and liabilities of the Franchisee which is or are designated as such pursuant to Schedule 14.4 (Designation of Franchise Assets),
- but excluding such property, rights or liabilities as may, in accordance with the terms of the Franchise Agreement, cease to be so designated;
- “Prior Train Operator”** has the meaning given to it in paragraph 2.5 of Schedule 2.2 (Security of Access Agreements, Rolling Stock Leases, Station and Depot Leases);
- “Process”** has the same meaning as in the Data Protection Act 1998;
- “profit”** means profit before corporation tax, determined in accordance with GAAP;
- “Projected Revenue”** means the revenue in any Fare Year which is projected to be attributable to any Fare, determined in accordance with paragraph 3 of Schedule 5.4 (Regulation of Fares Basket Values);
- “Property Lease”** means any Depot Lease, any lease in respect of a Managed Station Area, any lease in respect of Shared Facilities or Station Lease and any agreement or lease of a similar or equivalent nature (whether in respect of any such facility or otherwise) which the Franchisee may enter into with a person who has an interest in a network or a railway facility which is to be used for or in connection with the provision or operation of the Franchise Services;
- “Proposed ERTMS Implementation Plan”** means Network Rail’s plans for the implementation of the ERTMS Programme as more particularly described in the document in agreed terms marked **ERTMSP**;

- “Protected Fare”** means a Protected Return Fare or a Protected Weekly Season Ticket;
- “Protected Fares Basket”** means the grouping of Protected Fares:
- (a) determined by the Secretary of State pursuant to Schedule 5.3 (Allocation of Fares to Fares Baskets);
 - (b) for the purposes of regulating their aggregate Prices or Child Prices, as the case may be, in accordance with Schedule 5.4 (Regulation of Fares Basket Values);
 - (c) amended by the Secretary of State from time to time in accordance with Schedule 5.7 (Changes to Fares and Fares Regulation); and
 - (d) set out in the Protected Fares Document;
- “Protected Fares Document”** means:
- (a) for the period commencing from the Start Date until the Combined Effective Date, the document in the agreed terms marked **PFD1**; and
 - (b) for the period commencing from the Combined Effective Date until the end of the Franchise Period, the document in the agreed terms marked **PFD2**,
- in each case, as the same may be amended from time to time in accordance with Schedule 5.7 (Changes to Fares and Fares Regulation);
- “Protected Proposal”** has the meaning given to it in paragraph 1.9 of Schedule 9.5 (Variations to the Franchise Agreement and Incentivising Beneficial Changes);
- “Protected Return Fare”** means in respect of a Fare for a Flow:
- (a) for which there was a Saver Return Fare in February 2003, a Return Fare for each such Flow in respect of which the Franchisee is entitled or obliged from time to time to set the Price or Child Price under the Ticketing and Settlement Agreement, subject to the following additional rights and restrictions:

- (i) it shall be valid for no less than one month;
- (ii) it shall be valid all day on a Saturday or Sunday and from no later than 1030 on any other day;
- (iii) it need not be valid for any journey:
 - (A) beginning between 1500 and 1900 on any day other than a Saturday or Sunday;
 - (B) where such journey begins from a London Station or any station between any London Station and Reading station, Watford station, Luton station, or Stevenage station (inclusively); and
 - (C) which is in a direction away from London; or
- (b) for which there was no Saver Return Fare in February 2003, a Return Fare for each such Flow in respect of which the Franchisee is entitled or obliged from time to time to set the Price or Child Price under the Ticketing and Settlement Agreement,

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

“Protected Weekly Season Ticket”

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

“Public Sector Operator”

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

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

“Qualifying Change”

means a Change which:

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

“Quarterly Season Ticket”

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

“QuEST Benchmark”

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

“QuEST Benchmark Level”⁵³

(a) in relation to each Calculation Year falling within the period from the Start Date until the Calculation Year ending in January 2019, the benchmark relating to each QuEST Indicator for that Calculation Year as set out in Column 2 of the table in

Part 1 to Appendix 2 to Schedule 7.2 (PEM Regime); and

(b) in relation to each Calculation Year falling within the period from the Calculation Year commencing from the first Reporting Period in January 2019 until the end of the Franchise Term, the benchmark relating to each QuEST Indicator for that Calculation Year as set out in Column 2 of the table in Part 2 to Appendix 2 to Schedule 7.2 (PEM Regime);

“QuEST CCTV Services Inspection”

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

“QuEST CCTV Services”

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

“QuEST Floor Level”⁵⁴

(a) in relation to each Calculation Year falling within the period from the Start Date until the Calculation Year ending in January 2019, the benchmark relating to each QuEST Indicator for that Calculation Year as set out in Column 3 of the table in Part 1 to Appendix 2 to Schedule 7.2 (PEM Regime); and

(b) in relation to each Calculation Year falling within the period from the Calculation Year commencing from the first Reporting Period in January 2020 until the end of the Franchise Term, the benchmark relating to each QuEST Indicator for that Calculation Year as set out in Column 3 of the table in Part 2 to Appendix 2 to Schedule 7.2 (PEM Regime);

“QuEST Indicator”⁵⁵

means each of the indicators as set out in Column 1 of each of the tables set out in Part 1 and Part 2 of the Appendix 2 to Schedule 7.2 (PEM Regime) (respectively);

“QuEST Inspections”

has the meaning given to such term in paragraph 2.4 of Schedule 7.2 (PEM Regime);

“QuEST Register”

means the register of the facilities and services which exist at a Station or on a QuEST Train,

⁵⁴ Date of change 12/02/2016

⁵⁵ Date of change 12/02/2016

which register is to be used for carrying out QuEST Inspections, Independent PEM Audits, SoS Audits or SoS Quest Inspections, as such register is required pursuant to paragraph 2.3 of Schedule 7.2 (PEM Regime);

“QuEST Service Schedules”

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means each of the service schedules contained in the document in the agreed form marked “Revised QuSS”;

“QuEST Service Specification”

means the specification set out in paragraph 1 of a QuEST Service Schedule;

“QuEST Station Services Inspection”

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

“QuEST Station Services”

means the services and specification set out in the QuEST Service Schedules 1 to 18;

“QuEST Train”

means a train engaged in the provision of Passenger Services;

“QuEST Train Services Inspection”

means an inspection of the QuEST Train Services on a vehicle comprised within a QuEST Train in accordance with the requirements of Schedule 7.2 (PEM Regime);

“QuEST Train Services”

means the services and specification set out in the QuEST Service Schedules 20 to 29;

“Railcards”

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

“Rail Products”

has the meaning given to such term under the Ticketing and Settlement Agreement;

“Rail Safety and Standards Board”

means Rail Safety and Standards Board Limited a company registered in England with registered number 04655675 whose registered office is at Block 2, Angel Square, 1 Torrens Street, London EC1V 1NY;

“Railway Group”

means the committee responsible for cross industry co-ordination in respect of rail safety legislation and industry safety standards chaired by the Rail Safety and Standards Board;

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

Fares or Protected Fares for the period of 12 months which ended 31 March 2010 or such other reference period as the Secretary of State may require pursuant to paragraph 3.1(a) of Schedule 5.7 (Changes to Fares and Fares Regulation);

“Regulated Child Price”

means the Child Price that is permitted to be charged by the Franchisee in respect of any Fare in any Fare Year, determined in accordance with paragraph 2.1 of Schedule 5.5 (Regulation of Individual Fares);

“Regulated Price”

means the Price that is permitted to be charged by the Franchisee in respect of any Fare in any Fare Year, determined in accordance with paragraph 2.1 of Schedule 5.5 (Regulation of Individual Fares);

“Regulated Value”

means the Value of any Fares Basket that is permitted in any Fare Year, determined in accordance with paragraph 4.1 of Schedule 5.4 (Regulation of Fares Basket Values);

“Relevant Agreement”

means any Property Lease or Access Agreement in relation to any stations or network which may be used from time to time by the Franchisee in connection with the Franchise Services, as replaced or amended from time to time. If and to the extent that:

- (a) following the effective date of any Charge Variation, the Franchisee enters into any Replacement Agreement;
- (b) the effect of that Charge Variation is reflected in the terms of the Replacement Agreement; and
- (c) the Secretary of State has consented to such Replacement Agreement being entered into and constituting a Replacement Agreement for the purposes of this definition,

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

“Relevant Delay”

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

“Relevant Profit”

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

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

notice from the Secretary of State to the Franchisee;

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

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

“Reporting Year”

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

“Request for Information”

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

“Retail Prices Index”

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

“Return Fare”

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

“Revenue”⁵⁷

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

⁵⁷ 16/01/2017 (Date on Deed of Amendment) Contract insertion agreed by the Secretary of State and the Franchisee.

- (a) the sale of tickets of any type for the carriage of passenger by railway (including revenue allocated to the Franchisee through the Ticketing and Settlement Agreement or otherwise);
- (b) the sale of any Discount Cards or Railcards;
- (c) a Penalty Fare;
- (d) a concessionary scheme, multi-modal scheme or integrated transport scheme,

provided that:

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

"Review Date"

means:

- (a) 31 July 2014; or
- (b) such later date as may be notified to the Franchisee by the Secretary of

State pursuant to clause 4.2 or clause 4.3 of the Conditions Precedent Agreement;

"Revised Inputs"	has the meaning given to it in paragraph 4.2 of Schedule 9.1 (Financial and Other Consequences of Change);
"Rolling Stock Lease"	means any agreement for the leasing of rolling stock vehicles to which the Franchisee is a party as at the Start Date or the Combined Effective Date (as the case may be) and any agreement of a similar or equivalent nature (including, any agreement or arrangement for the subleasing, hiring, licensing or other use of rolling stock vehicles) to which the Franchisee is a party from time to time during the Franchise Term whether in addition to, or replacement or substitution for, in whole or in part, any such agreement;
"Rolling Stock Related Contract"	means any Rolling Stock Lease, Maintenance Contract or Technical Support Contract;
"Rolling Stock Unit"	means the smallest number of rolling stock vehicles which are normally comprised in a train used by the Franchisee in the provision of the Passenger Services;
"Route"	means any route specified in the Timetable over which the Franchisee has permission to operate the Passenger Services pursuant to any Track Access Agreement;
"Route Efficiency Benefit Share Mechanism" or "REBS"	means the route-level efficiency benefit sharing mechanism introduced by the ORR in its determination for the control period commencing on 1 April 2014 or any similar arrangement under which the benefits of any outperformance (or downsides of failure to achieve efficiency targets) are to be shared between Network Rail and train operators at route level;
"RP Revenue Balancing Amount"	means in relation to any Reporting Period the adjustment to Franchise Payments determined pursuant to paragraph 4 of Schedule 8.1 (Franchise Payments);
"RP Revenue Balancing Date"	means: <ul style="list-style-type: none"> (a) in the case of an RP Revenue Balancing Amount as determined pursuant to paragraph 4 of Schedule 8.1 (Franchise Payments) the first Payment Date falling no less than seven days after each such determination; or

- (b) in the case of any RP Revenue Balancing Amount falling due in respect of the final Franchisee Year and which has not been made during the Franchise Period, the date determined in accordance with paragraph 6 of Schedule 8.1 (Franchise Payments);

"RSP"	means Rail Settlement Plan Limited;
"Run of the Financial Model"	means an operation of the Financial Model with the Revised Inputs and which complies with the requirements of Schedule 9.1 (Financial and Other Consequences of Change);
"Safety Authorisation"	means the authorisation issued by the ORR under the Safety Regulations authorising the Franchisee's safety management system (as defined in those regulations) and the provisions adopted by the Franchisee to meet the requirements that are necessary to ensure safe design, maintenance and operation of the relevant infrastructure on the Routes;
"Safety Certificate"	means the certificate issued by the ORR under the Safety Regulations, certifying its acceptance of the Franchisee's safety management system (as defined in those regulations) and the provisions adopted by the Franchisee to meet the requirements that are necessary to ensure safe operation on the Routes;
"Safety Regulations"	means The Railways and Other Guided Transport Systems (Safety) Regulations 2006;
"Saver Return Fare"	means a return fare which is shown as a saver fare in the fares manuals and systems of the RSP as at the date of such manuals;
"Season Ticket Bond"	means the season ticket bond to be provided to the Secretary of State in respect of the Franchisee's liabilities under certain Fares and Season Ticket Fares in the form set out in Appendix 2 to Schedule 12 (Financial Obligations and Covenants) and such other bond as may replace it from time to time under Schedule 12 (Financial Obligations and Covenants);
"Season Ticket Fare"	means: <p>(a) for the purposes of Schedule 12 (Financial Obligations and Covenants) and the definition of Season Ticket Bond only, a Fare which entitles the purchaser to make an unlimited number of journeys in any direction</p>

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

- (b) for all other purposes, a Fare which entitles the purchaser to make, without further restriction except as to class of accommodation, an unlimited number of journeys in any direction during the period for which, and between the stations and/or the zones for which, such Fare is valid;

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

Passenger Service in the Train Plan, a plan implemented by the Franchisee:

- (a) to minimise the disruption arising from such prevention or restriction of access by operating, during such period of disruption, the best possible level of service given such disruption, including by:
 - (i) keeping service intervals to reasonable durations;
 - (ii) keeping extended journey times to reasonable durations; and
 - (iii) managing any resulting overcrowding;
- (b) to:
 - (i) return the level of service to that level specified in the Timetable as soon as reasonably practicable; and
 - (ii) prior to the attainment of the level of service specified in paragraph (b)(i), operate any reduced level of service agreed with Network Rail for the purpose of minimising such disruption pursuant to paragraph (a);
- (c) in accordance with the principles of service recovery set out in the ATOC "Approved Code of Practice: Contingency Planning for Train Service Recovery - Service Recovery 2009" or any document of a similar or equivalent nature; and
- (d) where the particulars of such plan in relation to the requirements of paragraphs (a) and (b) have been:
 - (i) agreed at an initial and, where required, subsequent telephone conference between the Franchisee, Network Rail and any other affected Train Operator; and
 - (ii) on each occasion, recorded in an official control log by the

relevant Region Control
Manager of Network Rail,

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

“Settlement Proposal”

has the meaning given to it in paragraph 3.2 of Schedule 4 (Persons with Disabilities and Disability Discrimination);

“Shared Facilities”

means those facilities in respect of which the Franchisee and Network Rail carry out their respective activities concurrently;

“Short Formation Performance Sum”

means the amount of an adjustment to a Franchise Payment to be determined in accordance with paragraph 3.3 of Schedule 7.1 (Performance Benchmarks);

“Significant Alterations”

shall, in relation to any proposed new or amended Timetable, include alterations from the then current Timetable which result in, or are likely to result in:

- (a) the addition or removal of railway passenger services;
- (b) changes to stopping patterns or destinations or origin;
- (c) changes of timings for first/last trains by more than ten minutes;
- (d) changes to clockface (or near clockface) service patterns (meaning the provision of railway passenger services at a specified time or times relative to the hour); and/or
- (e) significant changes to journey times and/or key connections at the Station or at other stations at which relevant railway passenger services call;

“Single Fare”

means a Fare which entitles the purchaser to make, without further restrictions as to the time of day for which the Fare is valid, on any one day, one journey in Standard Class Accommodation between the stations and/or the zones for which the Fare is valid;

“Small and Medium-sized Enterprises (“SMEs”)

means any individual micro, small or medium sized enterprise meeting the requirements set out in EU Recommendation 2003/36 and broadly falling into one of three categories, based on a combination of:

- (a) the number of employees; and
- (b) either its turnover **or** its balance sheet total.

The three categories are:

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

“SoS Audits”

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

“SoS Quest Inspections”

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

“South East Flexible Ticketing Programme”

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

“Southern Franchise Services”

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

“Southern Franchisee”

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

“Southern SEFT Deed”	has the meaning given to in paragraph 2.2 of Schedule 5.9 (ITSO Certified Smartmedia);
“Southern Services”	means such railway passenger services and station services as were provided or operated from time by time by the Southern Franchisee (or any successor to the Southern Franchisee) immediately prior to the Combined Effective Date;
“Southern Trading Agreements”	<p>means each and all of the following agreements:</p> <ul style="list-style-type: none"> (a) the sublease dated 8 March 2002 and entered into between Southern Railway Limited and First Capital Connect Limited in respect of the Class 377 Lot 10A units as subsequently amended to include the Additional Electrostar Units; (b) the sublease dated 5 March 2008 and entered into between Southern Railway Limited and First Capital Connect Limited in respect of the Class 377 Lot 10B units; and (c) the Further Electrostar Units Sub Lease, <p>in each case, as transferred to the Franchisee pursuant to the Start Date Transfer Scheme;</p>
“Spares”	means parts and components of rolling stock vehicles which are available for the purpose of carrying out maintenance services on rolling stock vehicles;
“Specifically Included Change of Law”	has the meaning given to it in the definition of Change of Law;
“Specimen Scheme”	means the Committed Obligations set out in paragraphs 6.28, 6.31, 7.3 and 12.6 of Part 1 of Schedule 6.1 (Committed Obligations and Related Provisions);
“Specimen Scheme Output”	means, for each Specimen Scheme, the output intended to be achieved by that Specimen Scheme, as set out in the relevant paragraph of Part 1 (List of Committed Obligations) of Schedule 6.1 (Committed Obligations and Related Provisions);
“SPP Compensation Amounts”	has the meaning given to such term in paragraph 7.3(c) of Schedule 6.2 (TSGN Franchise Specific Provisions);

"Stakeholder"	means the Passengers' Council and any relevant Local Authority and organisations who can reasonably be considered to have a legitimate and proper interest in the Passenger Services including Community Rail Partnerships representing Community Rail Routes designated as such by the Secretary of State;
"Standard Class Accommodation"	means, in respect of any train or service, accommodation which is available to the purchaser of any Fare which, taking into account any rights or restrictions relating to that Fare (other than restrictions relating to accommodation on that train or service), entitles such purchaser to make a journey on that train or service (provided that any accommodation on such train which may have been reserved by such purchaser shall be deemed to have been made so available if, had it not been so reserved, it would have been available for use by such purchaser);
"Start Date"	means the time and date stated in the Certificate of Commencement as being the time at and date on which the Franchisee is to commence operating the Franchise Services, which shall either be: <ul style="list-style-type: none"> (a) 0200 on 14 September 2014; or (b) such later time and date as may be notified to the Franchisee by the Secretary of State pursuant to Clause 4.2 or Clause 4.3 of the Conditions Precedent Agreement;
"Start Date Transfer Scheme"	has the meaning given to it in clause 5.1 of the Conditions Precedent Agreement;
"Station"	means: <ul style="list-style-type: none"> (a) any station in respect of which the Franchisee has entered into a Station Lease; or (b) any New Station at which the Franchisee becomes the Facility Owner;
"Station Access Conditions"	means the document entitled "National Station Access Conditions 1996 (England and Wales)";
"Station Charge Adjustment"	means any adjustment to payments under an Access Agreement determined in accordance with paragraph 2 of Schedule 8.4 (Track Access Adjustments and Station Charge Adjustments);

"Station/Depot Change Compensation Amounts"	has the meaning given to such term in paragraph 6.4 of Schedule 2.2 (Security of Access Agreements, Rolling Stock Leases, Station and Depot Leases);
"Station Lease"	means: <ul style="list-style-type: none"> (a) any lease of a station that the Franchisee is a party to as at the Start Date or the Combined Effective Date (as the case may be); or (b) a lease of any other station to which the Franchisee becomes the Facility Owner at any time during the Franchise Period;
"Station Proposal for Change"	has the meaning given to the term "Proposal for Change" under the Station Access Conditions or any proposal or arrangement which, in the reasonable opinion of the Secretary of State, has a similar effect;
"Station Service"	means any service specified in paragraph 3 of Schedule 1.6 (Franchise Services) which may be provided by the Franchisee at the Stations;
"Station Sublease"	means a lease or sub lease of premises comprising part or parts of a Station exclusively occupied by another Train Operator;
"Stewarts Lane Depot Enhancement"⁵⁸	means the roof access enhancement work to be carried out by or on behalf of the Franchisee at Stewarts Lane Depot;
"Stored Credit Balance"	means any monetary amount held by the Franchisee which a passenger can apply at a future date to the purchase of a Fare (and stored in any medium);
"STNR Contract"⁵⁹	means any of the contracts or arrangements (excluding any licences to be obtained as required by paragraph 3.1(b) of Appendix 1 of Schedule 5.9 (ITSO Certified Smartmedia) and [REDACTED⁶⁰]

⁵⁸ 08/09/2017 (Date of Deed of Amendment) Agreed by the Secretary of State and Franchisee.

⁵⁹ 17 January 2018 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

⁶⁰ 16 May 2018 (Date of Redactions Approval) – Where text has been omitted from the document this is because the Secretary of State has decided to exclude the

entered into or to be entered into, varied or supplemented by the Franchisee for the purposes of the implementation, operation and maintenance of the STNR System including each of the Franchisee’s contracts entered into or to be entered into with the following (as amended, varied or supplemented in accordance with paragraph 3.7): [REDACTED⁶¹]

“STNR Project”⁶²

has the meaning given to it in Appendix 1 of Schedule 5.9 (ITSO Certified Smartmedia);

“STNR System”⁶³

has the meaning given to it Appendix 1 of Schedule 5.9 (ITSO Certified Smartmedia);

[REDACTED⁶⁴]

[REDACTED⁶⁵]

[REDACTED⁶⁶]

“Subsidiary Change Date”

has the meaning given to it in Part D of the Network Code;

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text in accordance with the provisions within the Freedom of Information Act 2000.

- ⁶¹ 16 May 2018 (Date of Redactions Approval) – Where text has been omitted from the document this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.
- ⁶² 17 January 2018 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.
- ⁶³ 17 January 2018 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.
- ⁶⁴ 5 November 2014 (Date of Redactions Approval) – Where text has been omitted from the document this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.
- ⁶⁵ 5 November 2014 (Date of Redactions Approval) – Where text has been omitted from the document this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.
- ⁶⁶ 5 November 2014 (Date of Redactions Approval) – Where text has been omitted from the document this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

- “Suburban Station”** means any station which is not a London Station and which is listed below or which is closer to London than (and on the same line as) the following stations:
- Shoeburyness, Southend Victoria, Southminster, Marks Tey (excluding Sudbury branch), Audley End (but not including Stansted Airport), Ashwell & Morden, Arlesey, Harlington, Bletchley (excluding Bedford branch), Aylesbury, Haddenham & Thame Parkway, Twyford (including Henley branch), Earley, Fleet, Alton, Whitley, Christ's Hospital, Brighton (excluding Coastway), Windsor & Eton Riverside, East Grinstead, Crowborough, Wadhurst, Paddock Wood (including the line between Strood and Paddock Wood), Maidstone East, Canterbury East, Margate;
- “Successor Operator”** means a Train Operator succeeding or intended by the Secretary of State to succeed (and whose identity is notified to the Franchisee by the Secretary of State) the Franchisee in the provision or operation of all or any of the Franchise Services including, where the context so admits, the Franchisee where it is to continue to provide or operate the Franchise Services following termination of the Franchise Agreement;
- “Successor Operator Timetable”** has the meaning given to it in paragraph 8(a) of Schedule 14.1 (Maintenance of Franchise);
- “Supplemental Agreement”** means a supplemental agreement between the Franchisee and a Successor Operator to be entered into pursuant to a Transfer Scheme, being substantially in the form of Appendix 2 to Schedule 15.4 (Provisions Applying on and after Termination), but subject to such amendments as the Secretary of State may reasonably make thereto as a result of any change of circumstances (including any Change of Law) affecting such supplemental agreement between the date of the Franchise Agreement and the date on which the relevant Transfer Scheme is made and subject further to paragraph 3.2 of Schedule 15.4 (Provisions Applying on and after Termination);
- “Target Passenger Demand”** means the higher of Actual Passenger Demand and Forecast Passenger Demand or any other level of passenger demand specified by the Secretary of State not being greater than the higher of Actual Passenger Demand or Forecast Passenger Demand;

“Target Performance Level”	means, in relation to a Benchmark for any Reporting Period, the number set out in Column 2 of the Benchmark Table relating to that Benchmark and in the row of that table for that Reporting Period;
“Target Ticketless Travel Benchmark”	means, in relation to a Ticketless Travel Survey Period, the benchmark for that Performance Calculation Year as specified in Column 2 of the table in Part 2 of the Appendix to Schedule 6.2 (TSGN Franchise Specific Provisions);
“Taxation”	means any kind of tax, duty, levy or other charge whether or not similar to any in force at the date of the Franchise Agreement and whether imposed by a local, governmental or other competent authority in the United Kingdom or elsewhere;
“Technical Support Contract”	means a contract for technical support to which the Franchisee is a party, relating to the rolling stock vehicles used in the provision of the Passenger Services;
“Tendering/Reletting Process”	has the meaning given to it in paragraph 2.1(b) of Schedule 15.1 (Reletting Provisions);
“Termination Event”	has the meaning given to it in paragraph 3 of Schedule 10.3 (Events of Default and Termination Events);
“Termination Notice”	means a notice from the Secretary of State to the Franchisee terminating the Franchise Agreement following an Event of Default or a Termination Event in accordance with Schedule 10.2 (Termination and Expiry);
“TGN Franchise Services”	TGN Franchise Services means such of the: <ul style="list-style-type: none"> (a) railway passenger services, station services, light maintenance services and ancillary services as provided from time by time by the FCC Franchisee (or any successor to the FCC Franchisee) immediately prior to the Start Date; and (b) railway passenger services and the Transfer Stations that are to transfer to the Franchisee from the LSER Franchisee (or any successor operator to the LSER Franchisee) on or around the Passenger Change Date occurring in December 2014;

“TGN SEFT Deed”	has the meaning given to it in paragraph 2.1 of Schedule 5.9 (ITSO Certified Smartmedia);
“TGN Services”	means the railway passenger services and station services comprised in the TGN Franchise Services;
“Thameslink Programme”	means the scheme promoted by Network Rail formerly known as “Thameslink 2000” as described in its 2005 Transport and Works Act 1992 application, to enhance the network and relevant stations to allow for the operation of up to 12-car trains and up to 24 trains per hour between Midland Mainline/Great Northern and London Bridge/Elephant & Castle or such other capacity derived from the specification as is agreed by the Secretary of State, Network Rail and all relevant stakeholders;
“Threshold Amount”	<p>means, for any Franchisee Year, an amount, whether positive or negative, which is determined in accordance with the following formula:</p> $TA = FAT \times RPI$ <p>where:</p> <p>TA is the Threshold Amount for any Franchisee Year;</p> <p>FAT is the amount for the relevant Franchisee Year specified in Column 4 of the table in Schedule 9.4 (Component of FAT: Definition of Threshold Amount) provided that for the Franchisee Year commencing on 1 April 2021 (Year 8), FAT shall be:</p> <ul style="list-style-type: none"> (a) if the Secretary of State has not exercised his rights pursuant to paragraph 1.2 of Schedule 18 (Additional Reporting Periods) to extend the Franchise Period, the amount specified in Column 4 of the row of the table in Schedule 9.4 (Component of FAT: Definition of Threshold Amount) referred to as “Year 8 (Part Year – Core)” in that table; or (b) if the Secretary of State has exercised his rights pursuant to paragraph 1.2 of Schedule 18 (Additional Reporting Periods) to extend the Franchise Period, the aggregate of the amounts specified

in Column 4 of the rows of the table in Schedule 9.4 (Component of FAT: Definition of Threshold Amount) referred to as "Year 8 (Part Year – Core)" and "Year 8 (Part Year – Extension)" in that table;

RPI is ascertained as follows:

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

where:

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

ORPI means the Retail Prices Index for January 2014,

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

"Through Ticketing (Non-Travelcard) Agreement"

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

"Ticketing and Settlement Agreement"

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

"Ticketless Travel Benchmark"

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

"Ticketless Travel Payment Adjustment"

means a payment adjustment made to Franchise Payments as determined in accordance with paragraph 2.4 of Schedule 6.2 (TSGN Franchise Specific Provisions);

"Ticketless Travel Payment Adjustment Date"

means:

- (a) in the case of any Ticketless Travel Payment Adjustment determined pursuant to paragraph 2.4 of Schedule 6.2 (TSGN Franchise Specific Provisions), the first Payment Date falling no less than seven days after the relevant determination; and
- (b) in the case of any Ticketless Travel Payment Adjustment falling due in

respect of the final Performance Calculation Year and which has not been made during the Franchise Period, the date that is 30 days from the date on which the Secretary of State notifies the Franchisee of the amount of such Ticketless Travel Payment Adjustment;

- “Ticketless Travel Rate”** means, for any Ticketless Travel Survey Period, that proportion (expressed as a percentage to three decimal places) of passengers estimated by the Ticketless Travel Survey for that Ticketless Travel Survey Period to be travelling on the Passenger Services without a valid ticket or other valid permission to travel;
- “Ticketless Travel Survey”** means the survey carried out by or on behalf of the Secretary of State in each Ticketless Travel Survey Period to determine the Ticketless Travel Rate for such period;
- “Ticketless Travel Survey Methodology”** means the document in the agreed terms marked **TTSM**;
- “Ticketless Travel Survey Period”** means such day or days as are determined by the Secretary of State falling within each of the following periods:
- (a) the first to the third Reporting Period (inclusive) to fall in any Performance Calculation Year;
 - (b) the fourth to the sixth Reporting Period (inclusive) to fall in any Performance Calculation Year;
 - (c) the seventh to the ninth Reporting Period (inclusive) to fall in any Performance Calculation Year; and
 - (d) the tenth to the thirteenth Reporting Period (inclusive) to fall in any Performance Calculation Year;
- “Timetable”** means the timetable which reflects the working timetable issued by Network Rail at the conclusion of its timetable development process, containing the departure and arrival times of:
- (a) all Passenger Services which call at Stations and Franchisee Access Stations; and
 - (b) principal Connections at those stations and other stations;

“Timetable Development Rights”	<p>means all or any of the rights of the Franchisee under any Track Access Agreement to:</p> <ul style="list-style-type: none"> (a) operate Passenger Services and ancillary movements by virtue of that Track Access Agreement; (b) deliver any required notification and/or declaration to Network Rail in respect of its intention to exercise any rights; (c) make or refrain from making any bids for Train Slots, in each case before any relevant priority dates provided for in, and in accordance with, the Network Code; (d) surrender any Train Slots allocated to the Franchisee by Network Rail in accordance with the Network Code; (e) object to, make representations, appeal or withhold consent in respect of any actual or proposed act or omission by Network Rail; and (f) seek from Network Rail additional benefits as a condition to granting any consent to any actual or proposed act or omission by Network Rail;
“Timetabling and Train Planning Compliance Investigation”	has the meaning set out in paragraph 2.1 of Schedule 1.2 (Operating Obligations);
“TLP Milestone Incentive Payment”	has the meaning given to such term in Schedule 6.3 (TLP/TRSP Related Provisions);
“TOC Minute Delay Benchmark”	means any of the performance levels in respect of Minutes Delay attributable to the Franchisee set out in the TOC Minute Delay Benchmark Table;
“TOC Minute Delay Benchmark Table”	means the table set out in Part 1 of Appendix 3 (TOC Minute Delay Benchmark Table) to Schedule 7.1 (Performance Benchmarks);
“TOC Minute Delay Performance Sum”	means the amount of an adjustment to a Franchise Payment to be determined in accordance with paragraph 3.4 of Schedule 7.1 (Performance Benchmarks);
“Total Actual Operating Costs”	means the sum of the Actual Operating Costs for the relevant Reporting Period and each of the 12 preceding Reporting Periods during the Franchise Term (or the sum of the Actual Operating Costs for the relevant Reporting Period and all of the Reporting Periods that have

elapsed since the Start Date where insufficient Reporting Periods have elapsed to enable the former calculation to be made);

“Total Forecast Modified Revenue”

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

“Total Forecast Operating Cost”

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

“Total Modified Revenue”

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

“Track Access Adjustment”

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

“Track Access Agreement”

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

“Train Fleet”

means:

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

“Train Mileage”

means, in relation to any period, the aggregate train mileage covered during such period by each train used in the provision of the Passenger Services (excluding, any train mileage covered as a result of positioning or other movements of rolling stock vehicles

outside the Timetable) and **"Train Miles"** shall be construed accordingly;

"Train Operator"

means a franchisee or franchise operator, either of which operate railway passenger services pursuant to a franchise agreement or a Public Sector Operator;

"Train Plan"

means the plan and/or diagram of the Franchisee for the operation of trains and train formations under the Timetable set out in the document in the agreed terms marked **TP** and any other Train Plan developed in accordance with Schedule 1.1 (Service Development) except that when used in Schedule 7.1 (Performance Benchmarks), it shall have the meaning given to it in paragraph 2.15 of Schedule 7.1 (Performance Benchmarks);

"Train Service Requirement"

means the train service requirement more particularly described in paragraph 1 of Schedule 1.1 (Service Development) as such train service requirement may subsequently be amended or replaced in accordance with Schedule 1.1 (Service Development);

"Train Slots"

shall have the meaning given to it in the Network Code;

"Transfer Scheme"

means a transfer scheme made by the Secretary of State under Section 12 and Schedule 2 of the Railways Act 2005 (or equivalent statutory provision) pursuant to paragraph 3.1 of Schedule 15.4 (Provisions Applying on and after Termination), being substantially in the form of Appendix 1 to Schedule 15.4, but subject to such amendments as the Secretary of State may make thereto as a result of any change of Law affecting such transfer scheme or other change of circumstances between the date of the Franchise Agreement and the date on which such scheme is made;

"Transfer Scheme Certificate"

has the meaning given to such term under the MDCTA;

"Transfer Stations"

has the meaning given to such term in paragraph 8.3(b) of Schedule 6.2 (TSGN Franchise Specific Provisions);

"Transport Act"

means the Transport Act 2000;

"Transport Direct"

means the website offering free information for door to door travel for both public transport and car journeys around Great Britain;

“Transport for London” or “TfL”	means Transport for London as established under the Greater London Authority Act 1999;
“Transport Trading Limited” or “TTL”	means Transport Trading Limited (registered number 03914810) a wholly owned subsidiary of Transport for London;
“Travelcard Agreement”	means the agreement of that name referred to in paragraph (a)(iv) of the definition of Inter-Operator Schemes;
“Traveline”	means the telephone enquiry service providing information on all public transport across the United Kingdom;
“TRSP Documents”	means: <ul style="list-style-type: none"> (a) the MDCTA; (b) the TRSP MSA (c) the Train Services Agreement between Siemens PLC (registered number 727817), the FCC Franchisee and Cross London Trains Limited (registered number 07813033); (d) the rolling stock Lease between Cross London Trains Limited (registered number 07813033) and the FCC Franchisee; (e) the DAFLs; (f) the Payment Deeds in respect of the ‘Three Bridges Depot’ and ‘Hornsey Depot’ between the Secretary of State, Siemens PLC (registered number 727817) and the FCC Franchisee; (g) the Deeds of Undertakings in respect of the ‘Three Bridges Depot’ and ‘Hornsey Depot’ between the Secretary of State, Siemens PLC (registered number 727817) and the FCC Franchisee; (h) the Connection Agreements in respect of the ‘Three Bridges Depot’ and ‘Hornsey Depot’ between Network Rail Siemens PLC (registered number 727817) and the FCC Franchisee; (i) the Connection Agreement in respect of Tilgate Sidings and Three Bridges Depot between (1) Network Rail (2) Siemens PLC (registered number 727817), the FCC Franchisee and

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

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

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

"TRSP MSA"

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

"Trustee"

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

"TSI"

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

"TSR (TDR) Amendment"

has the meaning given in paragraph 5.7 of Schedule 1.1 (Service Development);

[REDACTED⁶⁷]

[REDACTED⁶⁸]

⁶⁷ 5 November 2014 (Date of Redactions Approval) – Where text has been omitted from the document this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

⁶⁸ 5 November 2014 (Date of Redactions Approval) – Where text has been omitted from the document this is because the Secretary of State has decided to exclude

“Turnaround Time”	means the time specified in the Train Plan between the completion of a Passenger Service in accordance with the Timetable and the commencement of the next Passenger Service in accordance with the Timetable on the same day using some or all of the same rolling stock vehicles;
“Turnover”	means, in relation to any period, the aggregate revenue (excluding any applicable Value Added Tax) accruing to the Franchisee from the operation of the Franchisee and the receipt of Franchise Payments during such period;
Ultimate Parents	means each of The Go-Ahead Group PLC (registered number 02100855 and having its registered office at 3 rd Floor, 41-51 Grey Street, Newcastle Upon Tyne NE1 6EE) and Keolis S.A. (registered in France under number 552 111 809 and having its registered office at 9 rue de Caumartin, 75009, Paris, France) who are parties to the Funding Deed Guarantee;
“Umbrella Agreement”	has the meaning given to it under the MDCTA;
“Updated Business Plan”	means the revised business plan to be provided prior to the start of each Franchisee Year (other than the first Franchisee Year) in accordance with paragraph 2.2 of Schedule 13 (Information and Industry Initiatives);
“Unregulated Fare”	means any Fare that is not a Commuter Fare or a Protected Fare;
“Value”	means at any time the aggregate of the Projected Revenue of each Fare in a Fares Basket at that time;
“Value Added Tax”	means value added tax as provided for in the Value Added Tax Act 1994;
“Variation”	means a variation to the terms of the Franchise Agreement pursuant to paragraph 1 of Schedule 9.5 (Variations to the Franchise Agreement and Incentivising Beneficial Changes);
“Weekday”	means any day other than a Saturday, a Sunday or a Bank Holiday save that when used in paragraph 6 of Schedule 6.3 (TLP/TRSP Related

Provisions) a Weekday shall not include any day falling between 27 December and 31 December (both days inclusive) in any calendar year;

“Weekly Season Ticket”

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

“Yield Management Data”

means data collected by or on behalf of the Franchisee for the purpose of or in connection with managing or setting the prices at which any tickets for travel on the Passenger Services are sold and/or any quotas and/or restrictions applying to such tickets including:

- (a) the number of passengers travelling upon any particular Passenger Service;
- (b) the ticket types held by such passengers;
- (c) the prices paid by such passengers for such tickets; and
- (d) the dates and/or times between which such tickets were made available to purchase at such prices;

“Yield Management System”

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

“Zone”

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

3. COMMENCEMENT

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

- (a) paragraph 2 of Schedule 2.2 (Security of Access Agreements, Rolling Stock Leases, Station and Depot Leases);
- (b) paragraph 2 of Schedule 2.3 (Third Party Delivery of Passenger Services and Other Franchisees);

- (c) paragraph 4.3 of Schedule 4 (Persons with Disabilities and Disability Discrimination);
 - (d) Schedule 5.1 (Purpose, Structure and Construction);
 - (e) Schedule 5.3 (Allocation of Fares to Fares Baskets);
 - (f) Schedule 5.7 (Changes to Fares and Fares Regulation);
 - (g) paragraphs 2.1 and 8.1 of Part 1 (List of Committed Obligations) of Schedule 6.1 (Committed Obligations and Related Provisions);
 - (h) Schedule 9 (Changes and Variations);
 - (i) Schedule 10 (Remedies, Termination and Expiry);
 - (j) paragraph 2 of Schedule 11 (Agreement Management Provisions);
 - (k) paragraph 4 of Schedule 12 (Financial Obligations and Covenants);
 - (l) paragraphs 1, 5, 6, 7 and 8 of Schedule 13 (Information and Industry Initiatives);
 - (m) Schedule 14.3 (Key Contracts);
 - (n) Schedule 17 (Confidentiality and Freedom of Information); and
 - (o) Schedule 19 (Other Provisions).
- 3.2 The other provisions of the Franchise Agreement shall take effect and become binding upon the parties on the Start Date, as stated in the Certificate of Commencement issued pursuant to the Conditions Precedent Agreement.

4. **TERM**

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

5. **GENERAL OBLIGATIONS**

- 5.1 The Franchisee shall perform its obligations under the Franchise Agreement in accordance with its terms and with that degree of skill, diligence, prudence and foresight which would be exercised by a skilled and experienced Train Operator who bears farebox revenue risk in relation to the operation of its franchise.
- 5.2 Any obligation on the part of the Franchisee to use all reasonable endeavours shall:
- (a) extend to consequent obligations adequately to plan and resource its activities, and to implement those plans and resources, with all due efficiency, economy; and

- (b) include a requirement to act in such a manner as a skilled and experienced Train Operator bearing farebox revenue risk in relation to its franchise and seeking to maximise its profit consistent with its other obligations under its franchise agreement would reasonably be expected to act.
- 5.3 The Franchisee shall co-operate with the Secretary of State and act reasonably and in good faith in and about the performance of its obligations and the exercise of its rights pursuant to the Franchise Agreement.
- 5.4 The Secretary of State shall act reasonably and in good faith in and about the performance of his obligations and the exercise of his rights pursuant to the Franchise Agreement.

6. COMPLIANCE WITH LAWS

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

7. ENTIRE AGREEMENT

- 7.1 This Agreement and the Conditions Precedent Agreement contain the entire agreement between the parties in relation to the subject matter of the Franchise Agreement and supersede all prior agreements and arrangements between the parties other than any confidentiality agreements or undertakings which the Franchisee may have entered into with the Secretary of State in connection with his proposal to secure the provision of the Passenger Services under the Franchise Agreement.
- 7.2 The Franchisee hereby acknowledges that it is not entering into this Agreement and the Conditions Precedent Agreement in reliance on any warranties, representations or undertakings howsoever or to whomsoever made except in so far as such warranties, representations or undertakings are:
- (a) contained in the Franchise Agreement; or
 - (b) embodied in any warranties, representations or undertakings contained in the long form report provided by the Department for Transport in respect of:
 - (i) the TGN Franchise Services dated 30 August 2012 in respect of the South Eastern franchise and 5 September 2012 in respect of the Thameslink Great Northern franchise; and
 - (ii) the Southern Franchise Services dated 14 August 2012.
- 7.3 The Franchisee hereby acknowledges and agrees with the Secretary of State (for himself and as trustee for each of the other persons referred to therein) to the disclaimer of liability which is contained in the section entitled "Important Notice" contained in any document supplied by or on behalf of the Secretary of State in connection with the Franchise Agreement, the process leading to the entering into of the Franchise Agreement, or the Franchise Services (including any Invitation to Tender issued in connection therewith).
- 7.4 The Franchisee irrevocably and unconditionally waives any right which it may otherwise have to claim damages in respect of and/or to rescind this Agreement

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

8. **GOVERNING LAW**

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

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

SEAL REF No.

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

)
)
)

Authenticated by authority of the
Secretary of State for Transport

SIGNED FOR AND ON BEHALF OF
GOVIA THAMESLINK RAILWAY LIMITED

)
)
)

Director: -----

Director/Secretary: -----

SCHEDULE 1

Passenger Service Obligations

Schedule 1.1:	Service Development
Schedule 1.2:	Operating Obligations
Schedule 1.3:	Not Used
Schedule 1.4:	Passenger Facing Obligations
Schedule 1.5:	Information about Passengers
Schedule 1.6:	Franchise Services
Schedule 1.7:	Train Fleet [REDACTED⁶⁹]

⁶⁹ 23 October 2014 (Date of Redactions Approval) – Where text has been omitted from the document this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

SCHEDULE 1.1**Service Development****1. Train Service Requirement - Purpose And Responsibility**

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

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

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

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

Secretary of State issues a replacement Train Service Requirement which is different from such Train Service Requirement (the "**Alternative TSR**") in which case a Change under paragraph (e) of the definition of Change shall occur provided that such Change shall only apply in respect of the differences between the Alternative TSR and the relevant Train Service Requirement which would otherwise be in force. The Secretary of State shall issue an Alternative TSR if the Timetable as inherited from a Train Operator under a Previous Franchise Agreement and to be operated by the Franchisee during the period from the Start Date until the Passenger Change Date in December 2015 is materially inconsistent with TSR1, TSR2 or TSR3, in each case, in relation to the period during which such TSR1, TSR2 or TSR3 (as the case may be) is to apply (as specified in paragraphs 1.2(a), 1.2(b) and 1.2(c) (respectively)).

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

2. **Train Plan**

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

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

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

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

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

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

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

3. **Not Used**

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

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

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

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

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

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

- (g) ensure that the relevant Timetable Development Rights to implement the proposed Timetable change are not exercised prior to the publication of the report and to exercise such Timetable Development Rights in the manner indicated in the report.

5. **Timetable Development Rights**

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

- (b) Network Rail exercising its flexing rights from time to time under the Track Access Agreement or the Network Code in respect of such Train Slots;
- (c) Network Rail exercising its other rights from time to time under the Track Access Agreement or the Network Code; or
- (d) the exercise by the ORR of its powers pursuant to Section 22C of the Act.

5.7

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

5.8 Following issue of any TSR (TDR) Amendment pursuant to paragraph 5.7 the Franchisee shall, unless otherwise agreed by the Secretary of State, continue to use all reasonable endeavours to amend and/or enter into such Access Agreements as may be necessary or desirable from time to time to obtain the timetable development rights that it requires to secure a Timetable that enables it to operate railway passenger services that comply with the Train Service Requirement without such TSR (TDR) Amendment.

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

- (a) unless otherwise required by the Secretary of State, cease to have effect on the date (if any) on which the first Timetable comes into effect after the

Franchisee has obtained the Timetable Development Rights that it requires to secure a Timetable that enables it to operate railway passenger services that comply with the Train Service Requirement without any such TSR (TDR) Amendment; and

- (b) amount to a Change unless the TSR (TDR) Amendment has been issued in consequence of Network Rail exercising the rights referred to in paragraphs 5.6(b) and 5.6(c) in which case there shall be no Change.
- 5.10 With effect from the date on which any TSR (TDR) Amendment ceases to have effect in accordance with paragraph 5.9:
- (a) the Train Service Requirement without such TSR (TDR) Amendment shall thereafter apply; and
 - (b) there shall be a further Change (which for these purposes shall be deemed to be a Qualifying Change) to the extent necessary so as, with effect from such date, to disapply the effect of the Change referred to in paragraph 5.9(b) in respect of such TSR (TDR) Amendment.
- 5.11 The Franchisee shall exercise its Timetable Development Rights so as to ensure, so far as reasonably practicable that:
- (a) the stopping patterns of Passenger Services are placed at approximately evenly-spaced intervals, taking into account the reasonable needs of passengers; and
 - (b) journey times between stations are minimised.
6. **Certification and Notification by Franchisee of Exercising Timetable Development Rights**
- 6.1 Before exercising any Timetable Development Right to bid for Train Slots, the Franchisee shall provide a certificate addressed to the Secretary of State and signed by a statutory director of the Franchisee confirming that its proposed exercise of that Timetable Development Right will be compliant with its obligation specified in paragraph 5.3.
- 6.2 If requested by the Secretary of State, the Franchisee agrees to demonstrate to the reasonable satisfaction of the Secretary of State that the Franchisee's certificate referred to in paragraph 6.1 is a true and accurate confirmation of compliance with its obligation specified in paragraph 5.3.
- 6.3 The Franchisee shall:
- (a) keep the Secretary of State fully informed of any discussions with Network Rail in relation to the matters referred to in this Schedule 1.1 which may, in the reasonable opinion of the Franchisee, have a material bearing on the ability of the Franchisee to deliver the Train Service Requirement or meet the requirements of paragraph 5.11 or paragraph 7 of this Schedule 1.1 through the Timetable and shall, if required to do so by the Secretary of State, supply copies of any related correspondence to the Secretary of State; and
 - (b) update any notification under this paragraph 6.3 and/or certification under paragraph 6.1 as soon as reasonably practicable, if at any time it elects or is required to modify any aspect of its exercise of its Timetable

Development Rights following Network Rail's proposed or actual rejection or modification of its bid or any part of it or for any other reason.

7. **Planning to meet Target Passenger Demand**

7.1 **Capacity and Timetable Planning**

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

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

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

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

- (a) minimising, so far as is possible the amount by which Target Passenger Demand exceeds the provision of Passenger Carrying Capacity on the affected Passenger Services;
- (b) ensuring, so far as is possible, that such excess is not unduly concentrated on any particular Route or Passenger Service; and
- (c) minimising, so far as is possible, the extent to which passengers are required to stand:
 - (i) on boarding in the case of any Off-Peak Passenger Service; and
 - (ii) 20 minutes after boarding (or such other time period as the Secretary of State may stipulate) in respect of any Peak Passenger Service.

7.3

- (a) Subject to paragraph 7.3(b), the Franchisee shall in preparing its Timetable and its Train Plan take full and proper account of its calculation of Forecast Passenger Demand and use all reasonable endeavours to ensure that the

Train Fleet is deployed in an optimal manner for the purposes of complying with its obligations under sub paragraphs 7.1 and 7.2 above.

- (b) The Franchisee shall in preparing its Timetable and Train Plan deploy the entire Train Fleet (excluding reasonable planning requirements for the allocation of Hot Standbys or other rolling stock vehicles to be out of service due to maintenance requirements, Mandatory Modifications or any other reason agreed with the Secretary of State (such agreement not to be unreasonably withheld or delayed)) in delivering the Passenger Services:
 - (i) during each Peak; and
 - (ii) at such times during each Off Peak where such deployment of the entire Train Fleet is reasonably required to meet the Franchisee's obligations pursuant to sub paragraphs 7.1 and 7.2 above.
- 7.4 The Franchisee shall submit its proposed Train Plan to the Secretary of State as soon as reasonably practicable after Network Rail has published the working timetable on which the Timetable is to be based.
- 7.5 Without prejudice to the provisions of paragraph 2 of Schedule 1.2 (Operating Obligations) the Secretary of State may notify the Franchisee of:
 - (a) any respect in which he considers that the Train Plan does not comply with the requirements of this Schedule 1.1; and
 - (b) any revisions that he requires to address such non-compliance,and the Franchisee shall revise the Train Plan in accordance with the Secretary of State's requirements.
- 7.6 If the Franchisee considers that any of the revisions that the Secretary of State requires pursuant to paragraph 7.5(b) are not required for the Train Plan to comply with this Schedule 1.1 then:
 - (a) it shall nevertheless make such revisions;
 - (b) it may subsequently refer the question as to whether such revisions were so required for resolution in accordance with such dispute resolution procedure as the parties may agree or, in the absence of agreement, in accordance with the Dispute Resolution Rules; and
 - (c) following determination of any such dispute, the Secretary of State and the Franchisee shall take such steps as are required to give effect to such determination (including, where relevant, by making such amendments to the Train Plan as are necessary to give effect to such determination). The Franchisee shall provide the certification required by paragraph 7.7 in respect of any such amended Train Plan.
- 7.7 The Franchisee shall submit its final Train Plan to the Secretary of State prior to the commencement of the Timetable to which it relates. Subject to paragraph 7.8 any such Train Plan shall be certified by a statutory director of the Franchisee as being true and accurate and including the minimum capacity specified in the applicable Train Service Requirement.

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

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

8.1

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

- (i) remedy the circumstances leading to the Franchisee being unable to prepare a Timetable and/or a Train Plan which meets the requirements of paragraph 7.1; and/or
- (ii) minimise, so far as is possible, the amount by which Target Passenger Demand exceeds the provision of Passenger Carrying Capacity on the affected Passenger Services;
- (iii) ensure, so far as is possible, that such excess is not unduly concentrated on any particular Route or Passenger Service; and
- (iv) minimise, so far as is possible, the extent to which passengers are required to stand:
 - (A) on boarding in the case of any Off-Peak Passenger Service; and
 - (B) 20 minutes after boarding (or such other time period as the Secretary of State may stipulate) in respect of any Peak Passenger Service,

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

- (b) The Capacity Mitigation Plan shall (unless the Secretary of State specifies to the contrary) include the Franchisee's informed estimate of Forecast Passenger Demand, in such format and to such level of disaggregation as the Secretary of State may reasonably require. Without limitation such specification may require the Franchisee to present options to address relevant issues through:
 - (i) alterations to the Train Service Requirement;
 - (ii) modification of rolling stock or the acquisition of additional or replacement rolling stock;
 - (iii) alterations to Fares; and/or
 - (iv) alterations or enhancements to any track, signalling, station, depot or other relevant railway infrastructure.
 - (c) The Capacity Mitigation Plan shall provide a comprehensive analysis backed by relevant data and assumptions of:
 - (i) all cost and revenue and other financial implications of options contained within it including the potential implications for Franchise Payments;
 - (ii) the implications (if any) for the Benchmarks and Annual Benchmarks; and
 - (iii) the likely impact of options within it for existing and future passenger journeys and journey opportunities.
 - (d) The Franchisee shall meet with the Secretary of State to discuss the Capacity Mitigation Plan and provide such further information or analysis and further iterations of the Capacity Mitigation Plan as the Secretary of State shall reasonably require.
- 8.2 Prior to issuing any amended or new Train Service Requirement the Secretary of State shall provide to the Franchisee his draft of any proposed amended or new Train Service Requirement stating the date upon which he proposes that such amended or new Train Service Requirement should take effect along with the Secretary of State's view as to the changes (if any) that he proposes to make to the Benchmarks and Annual Benchmarks. On receipt of any such draft of a proposed amended or new Train Service Requirement the Franchisee shall provide to the Secretary of State if so requested its informed opinion:
- (a) with supporting reasons as to the impact of the proposed amended or new Train Service Requirement on the delivery of an optimal range of railway passenger services patterns relative to Target Passenger Demand and compliance with paragraph 7.1 of this Schedule 1.1;
 - (b) with supporting reasons as to the changes to resources and adjustment to Franchise Payments (if any) which would be required in consequence of the proposed amended or new Train Service Requirement;
 - (c) with supporting reasons as to changes (if any) to the Benchmarks and Annual Benchmarks;

- (d) of the process to be required to implement the proposed amendment to the Train Service Requirement together with a plan for the implementation of the amendment to the Train Service Requirement (including all steps required to ensure that the Franchisee can deliver a Timetable compliant with such amended or new Train Service Requirement) prepared in accordance with procedural arrangements specified by the Secretary of State pursuant to paragraph 9; and
 - (e) with supporting reasons of the likely impact of the proposed amended or new Train Service Requirement on existing and future passenger journeys and journey opportunities.
- 8.3 There may be iterations of drafts of the proposed amended or new Train Service Requirement and the Franchisee shall to the extent required by the Secretary of State have the obligations described in this paragraph 8 in respect of all such iterations.
- 8.4 Processes contained in this paragraph 8 shall take place in accordance with procedural arrangements and timescales stipulated by the Secretary of State pursuant to paragraph 9.2.
- 8.5 The Secretary of State may, in accordance with any stipulation made under paragraph 9.2, issue to the Franchisee any amended or new Train Service Requirement that he requires the Franchisee to operate and notice of the changes (if any) to the Benchmarks and Annual Benchmarks. Such amended or new Train Service Requirement will be issued prior to the commencement of the timetable development process of Network Rail for the Timetable in respect of which it is proposed to implement the change to Passenger Services arising from the amended or new Train Service Requirement. In the absence of the Secretary of State issuing any amended or new Train Service Requirement the existing Train Service Requirement will remain in full force and effect. The degree of variation from any Train Service Requirement specified when the Franchise Agreement was entered into in respect of any particular period and brought about by any amended or new Train Service Requirement issued pursuant to this paragraph 8.5 shall (where relevant) be of a magnitude no greater than that contemplated in the Invitation to Tender.
- 8.6 At the same time as the Secretary of State provides the Franchisee with a draft of any proposed amended or new Train Service Requirement pursuant to paragraph 8.2, the Secretary of State shall also provide to the Franchisee his opinion of any changes (if any) that are required to the Benchmarks and Annual Benchmarks.
9. **Procedure**
- 9.1 The Franchisee agrees that the effective operation of the provisions of this Schedule 1.1, and of provisions addressing the same or similar matters in other franchise agreements, will require certain procedural arrangements and timescales to be followed to a common timescale by the Secretary of State, the Franchisee and others.
- 9.2 The Franchisee agrees that the Secretary of State may stipulate any reasonable procedural arrangements and timescales that are to be followed by the Secretary of State and the Franchisee for these purposes (which shall be consistent with any relevant standard railway industry processes for timetable development) and that the Secretary of State may amend any such stipulation from time to time.

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

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

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

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

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

- 11.1 Where the Secretary of State considers it requisite for the purposes of better securing the delivery of railway passenger services under the Franchise Agreement, or any other franchise agreement, or for the better achievement by him of any of his duties, functions and powers in relation to railways, the Secretary of State may require the Franchisee:
- (a) to exercise or refrain from exercising any or all of its rights under any Access Agreement or any Property Lease, or any related rights under such other agreements as the Secretary of State may specify; and/or

- (b) subject to the consent of the counterparty thereto, to assign, novate or surrender its rights under any Access Agreement or Property Lease.
- 11.2 Except to the extent that the Secretary of State otherwise indicates from time to time, the Franchisee shall notify the Secretary of State of its intention to enter into or amend any Access Agreement:
- (a) where the approval of the ORR is required under the Act, not less than 10 business days before the submission to the ORR; and
 - (b) where no such approval is required, not less than 10 business days prior to entering into such amendment or Access Agreement.
- 11.3 The Franchisee shall comply with its obligations under any Access Agreement or any Property Lease to which it is a party from time to time:
- (a) to notify or consult with the Secretary of State on any matter or proposal relating to that Access Agreement or Property Lease; and
 - (b) which are contingent on a particular course of action being taken by the Secretary of State or which are otherwise expressly included in that Access Agreement or Property Lease for the benefit of the Secretary of State.
- 11.4 If and to the extent that:
- (a) the Secretary of State exercises his rights pursuant to paragraph 11.1;
 - (b) the Franchisee's compliance with the Secretary of State's requirements pursuant to paragraph 11.1 would lead to the unavoidable consequence of the Franchisee contravening any other terms of the Franchise Agreement or the occurrence of an Event of Default; and
 - (c) the Franchisee duly complies with such requirements,
- no such contravention of the Franchise Agreement or Event of Default shall have occurred.

12. **Not Used**

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

- 13.1 Any specification of railway passenger services in a Train Service Requirement shall (unless the Secretary of State states to the contrary) be regarded as relating to how those services are to be provided for in the National Rail Timetable that Network Rail publishes for passengers, and not how they are to be provided for in the working timetable that Network Rail issues to industry parties at the conclusion of its timetable development process.
- 13.2 Accordingly, the Franchisee's obligations specified in paragraph 5.3 shall be construed as an obligation to secure the requisite Train Slots in the working timetable to be issued by Network Rail at the conclusion of its timetable development process that will permit the Franchisee to operate railway passenger services that comply with the Train Service Requirement provided for in the relevant Timetable.
- 13.3 The Franchisee shall ensure, for each period between two consecutive Passenger Change Dates during the Franchise Term, that the Timetable for such period is, in

its reasonable opinion, not materially different from the relevant working timetable issued by Network Rail at the conclusion of its timetable development process.

SCHEDULE 1.2

Operating Obligations

1. Daily Operating Obligations

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

2. Capacity Compliance

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

Following the service of such a notice the Franchisee shall:

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

that day and with at least the Passenger Carrying Capacity specified in the Train Plan for that Passenger Service;

- (iii) Forecast Passenger Demand and the way that it was calculated including all evidence taken into account and assumptions used (including any divergences from then existing industry modelling standards and the reasons for such divergences); and
 - (iv) the alternative solutions considered by the Franchisee before finalising the Timetable and Train Plan and the reasons why any such alternative solutions were not adopted; and
- (b) permit the Secretary of State to carry out an audit of the extent to which the Timetable and Train Plan enables the Franchisee to operate railway passenger services that comply with the Train Service Requirement and paragraph 7 of Schedule 1.1 (Service Development) and fully co-operate with and provide all information needed to facilitate such audit.

2.2

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

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

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

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

- (a) omit from the Plan of the Day Passenger Services that are included in the Timetable; or
 - (b) reschedule in the Plan of the Day Passenger Services from their scheduling in the Timetable.
- 3.2 To the extent that any such decision or proposal may, in the reasonable opinion of the Franchisee, materially (having regard to both duration and scale) prejudice the Franchisee's ability to deliver the Timetable with the Passenger Carrying Capacity stipulated in the Train Plan the Franchisee shall explain in such notification the way in which, in its reasonable opinion, such omission or rescheduling may materially prejudice the Franchisee's ability to deliver the Timetable with the Passenger Carrying Capacity stipulated in the Train Plan.
- 3.3 The Franchisee agrees to supply to the Secretary of State from time to time, in the format required by the Secretary of State, such details of any actual or proposed omission or rescheduling of Passenger Services by Network Rail as the Secretary of State may reasonably require, including details of the steps which the Franchisee proposes to take pursuant to paragraph 3.4.
- 3.4 Where the actual or proposed omission or rescheduling of Passenger Services is one which may, in the reasonable opinion of the Secretary of State or the Franchisee, materially prejudice the Franchisee's ability to deliver the Timetable with the Passenger Carrying Capacity stipulated in the Train Plan, the Franchisee agrees (unless the Secretary of State specifically agrees otherwise) to exercise its rights under the Track Access Agreement (including the Network Code) to:
- (a) object (including submitting its objection to any relevant dispute resolution arrangements or procedures and appealing against any award or determination under such arrangements or procedures, including to the ORR);
 - (b) make representations; and
 - (c) withhold consent,
- in respect of any actual or proposed omission or rescheduling of Passenger Services by Network Rail. If the Secretary of State does not consider that the Franchisee has taken sufficient steps under this paragraph 3.4, he may require the Franchisee to exercise its rights referred to in this paragraph 3.4 in such manner as he reasonably considers appropriate in the circumstances.
- 3.5 The provisions of this paragraph 3 shall apply to any actual or proposed omission or rescheduling of Passenger Services that originates from any person other than Network Rail, as those provisions apply to Network Rail.
- 4. Timetable changes proposed by the Franchisee**
- 4.1 The Franchisee agrees, subject to paragraph 4.2, not to propose to Network Rail:
- (a) the addition to the Plan of the Day of any railway passenger services which are not included in the Timetable;
 - (b) the omission from the Plan of the Day of any Passenger Services included in the Timetable; or

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

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

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

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

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

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

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

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

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

- (c) use all reasonable endeavours to provide or secure the provision of alternative transport arrangements in accordance with paragraph 6.2.
- 6.2 The Franchisee shall use all reasonable endeavours to provide or secure the provision of alternative transport arrangements to enable passengers affected by any disruption referred to in paragraph 6.1 to complete their intended journeys in accordance with this paragraph 6.2. In particular, the Franchisee shall use all reasonable endeavours to:
- (a) ensure that such alternative transport arrangements are of reasonable quality, of a reasonably similar frequency to the Passenger Services included in the Timetable which such arrangements replace and reasonably fit for the purpose of the journey to be undertaken;
 - (b) transport passengers to, or as near as reasonably practicable to, the end of their intended journey on such Passenger Services, having particular regard to the needs of any disabled persons and, where appropriate, making additional arrangements for such disabled persons to complete their intended journey;
 - (c) provide adequate and prominent publicity of such alternative transport arrangements in advance, subject, in the case of unplanned disruption, to the Franchisee having sufficient notice of such disruption to enable it to provide such publicity;
 - (d) provide sufficient alternative transport capacity for the reasonably foreseeable demand for the disrupted Passenger Services; and
 - (e) ensure, if any planned disruption overruns, that there is a reasonable contingency arrangement for such alternative transport arrangements to continue for the duration of such overrun.

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

- 7.1 Any obligation in this Schedule 1.2 on the part of the Franchisee to use all reasonable endeavours to operate railway passenger services shall include an obligation to:
- (a) ensure (so far as it is able to do so) the provision of the Passenger Services as set out in the Plan of the Day in accordance with the Train Plan in ordinary operating conditions;
 - (b) take reasonable measures to avoid and/or reduce the impact of any disruption to the Franchise Services having regard to all the circumstances, including the reasonably foreseeable risks arising from the matters referred to in paragraph 7.2; and
 - (c) actively manage the performance by Network Rail of its contractual relationship with the Franchisee (and provide appropriate management resources for this purpose) so as to secure the best performance reasonably obtainable from Network Rail by these means (including taking the steps referred to in paragraph 7.4), having regard to all the circumstances.
- 7.2 The matters to which the Franchisee is to have regard pursuant to paragraph 7.1(b) shall include:

- (a) variations in weather and operating conditions (including Network Rail's infrastructure not being available for any reason), which may in either case include seasonal variations;
 - (b) default by, or restrictions imposed by, suppliers to the Franchisee;
 - (c) shortages of appropriately skilled or qualified Franchise Employees;
 - (d) disputes with Franchise Employees;
 - (e) the availability of the Train Fleet, having regard to maintenance requirements and any Mandatory Modifications;
 - (f) establishing reasonable Turnaround Time allowances for enabling or disabling (as appropriate) any part of a train, the rostering of any train crew and the servicing or cleaning of any rolling stock vehicles; and
 - (g) failures of rolling stock vehicles in service and contingency arrangements (including Hot Standbys and rescue traction).
- 7.3 For the purpose of taking measures in respect of any disruption to the Franchise Services in accordance with paragraph 7.1(b) and assessing the extent of any risk referred to in paragraph 7.1(b) and any such risk's reasonable foreseeability, regard shall be had both:
- (a) to the historical levels of incidence of disruption in the operation of:
 - (i) the Franchise Services;
 - (ii) similar services both by the Franchisee and/or its predecessors; and
 - (iii) other services of a type similar to the Franchise Services; and
 - (b) to potential changes in circumstances which may affect those levels.
- 7.4 The steps to which paragraph 7.1(c) refers include:
- (a) co-operating with Network Rail in the development, agreement and implementation of:
 - (i) Joint Performance Improvement Plans; and
 - (ii) recovery plans in response to failures to achieve the performance levels specified in any Joint Performance Improvement Plans;
 - (b) co-operating with Network Rail in adopting the principles set out in any Service Recovery Plans agreed between Network Rail and the Franchisee from time to time;
 - (c) undertaking a weekly review of:
 - (i) the ten most common causes of delay to the Passenger Services; and

- (ii) the ten causes of delay to the Passenger Services with the longest duration (to the extent not already reviewed in accordance with paragraph 7.4(c)(i)),
which have occurred during that week and which have been caused by the Franchisee, any other Train Operator or Network Rail;
 - (d) undertaking with Network Rail a review of the time taken to recover the Passenger Services following the occurrence of any of the events specified in paragraphs 7.4(c)(i) and 7.4(c)(ii) and seeking to identify and implement actions that reduce the delay effect of such events;
 - (e) setting up and holding regular and effective performance review meetings with Network Rail, evidenced by meeting minutes and the closure of actions agreed between the parties;
 - (f) regularly monitoring (at least every Reporting Period) the delivery of local output commitments made by Network Rail and using reasonable endeavours to specify and develop such local output commitments;
 - (g) as and when required by Network Rail, co-operating with Network Rail in improving the accuracy of future timetables by providing access to trains, other facilities and/or information;
 - (h) co-operating with Network Rail in other delay management initiatives, including the use of virtual general managers and, where appropriate, the establishment of integrated control centres;
 - (i) regularly reviewing (at least every Reporting Period) the imposition and clearance of temporary speed restrictions;
 - (j) regularly reviewing (at least every Reporting Period) the timely and efficient handover and hand-back of possessions; and
 - (k) where appropriate and where Network Rail fails to perform its obligations under the Track Access Agreement, enforcing the Franchisee's rights under such Track Access Agreement.
- 7.5 The Franchisee undertakes to reasonably co-operate with Network Rail with regard to Network Rail's management of the network, including in relation to the establishment of up to date Timetable Planning Rules (as such term is defined under the Network Code).
- 7.6 To the extent not already provided for in the Franchise Agreement, the Franchisee shall use all reasonable endeavours to ensure the performance by Network Rail of its obligations under any relevant agreement including, where appropriate or where requested by the Secretary of State, enforcing its rights against Network Rail under any such agreement.
- 7.7 When and to the extent reasonably requested by the Secretary of State, the Franchisee shall provide to the Secretary of State evidence of the steps taken by it in order to comply with its obligations under this paragraph 7.

SCHEDULE 1.3

Not Used

SCHEDULE 1.4**Passenger Facing Obligations****1. Publishing the Timetable****1.1 The First Timetable**

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

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

1.2 Timetable Revisions and Alterations

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

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

1.3 In addition, the Franchisee shall:

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

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

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

1.4 **Other Train Operators' Timetables**

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

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

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

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

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

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

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

2. **Late Timetable Changes**

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

2.2 Such information shall be provided by:

- (a) revising or adding to the information displays referred to in paragraph 1.1;

- (b) notifying the operators of the Franchisee Access Stations, as appropriate, including by providing such operators with revised posters; and
 - (c) updating the Franchisee's website.
- 2.3 The Franchisee shall revise or add to the information displays at the Stations promptly on receipt of any equivalent information relating to the railway passenger services of other Train Operators whose services call at the Stations.
- 2.4 Where the Franchisee is unable to provide the information specified in paragraph 2.1 because the relevant revisions are made on an emergency basis, the Franchisee shall notify passengers and publish the relevant revisions by way of the means contemplated by paragraph 2.2 as soon as reasonably practicable.
- 2.5 The Franchisee shall ensure that, so far as reasonably practicable (including by communication of the relevant information to persons likely to receive enquiries), passengers making enquiries regarding the Passenger Services are informed of the revised Timetable and any revised travel arrangements of the Franchisee as far in advance as is reasonably practicable.
3. **Fares Selling Restrictions**
- 3.1 **Obligation to Sell**
- The Franchisee shall sell to any person wishing to travel on the Passenger Services, on any other railway passenger services or both, the Fare he requires and which the Franchisee is entitled to sell under the Ticketing and Settlement Agreement.
- 3.2 **Restrictions on Sales**
- The Franchisee shall ensure that the purchaser of any Commuter Fare or Protected Fare:
- (a) shall be entitled, without further charge, to such rights of access and egress and other similar rights at the commencement and end of the relevant intended journey or journeys as may be reasonably necessary for such purchaser to travel on the Passenger Services;
 - (b) shall not be required to incur any cost or take any action beyond the payment of an amount equal to the Price or Child Price (as the case may be) of such Commuter Fare or Protected Fare (as the case may be) and, in relation to the issue of a Season Ticket Fare, the completion of such identity card as the Franchisee may reasonably require; and
 - (c) shall not be required to pay an amount in respect of a seat reservation or other similar right which it may be compulsory for such purchaser to have in order to make a journey with such Commuter Fare or Protected Fare (as the case may be) on a Passenger Service.
- 3.3 The Franchisee shall procure that for any:
- (a) Protected Return Fare, Single Fare which is a Commuter Fare or Return Fare which is a Commuter Fare, each such Fare shall be offered for sale wherever and whenever any other Fare (not being a Season Ticket Fare) for a journey between the same origin and destination stations is offered for sale; and

- (b) Protected Weekly Season Ticket or Season Ticket Fare which is a Commuter Fare, each such Fare shall be offered for sale at all staffed ticket offices at which Fares for a journey between the same origin and destination stations are sold and otherwise wherever and whenever any Season Ticket Fare is offered for sale,
- in each case, either by it or its agents (except persons acting in such capacity by virtue of having been appointed under Parts II to VI of Chapter 9 of the Ticketing and Settlement Agreement or by being party to the Ticketing and Settlement Agreement).
- 3.4 Where the Franchisee sets a limit on the number of Commuter Fares or Protected Fares that may be used on any particular train, such limit shall be the greater of:
- (a) the number of seats in Standard Class Accommodation on such train; and
- (b) the capacity of Standard Class Accommodation of the rolling stock vehicles comprising such train according to the tables set out in Schedule 1.7 (The Train Fleet).
- 3.5 The Franchisee shall not sell or offer to sell:
- (a) any Fare in respect of which the:
- (i) Prices are regulated under Schedules 5.4 (Regulation of Fares Basket Values) and 5.5 (Regulation of Individual Fares), at prices that are greater than the Prices set for such Fares from time to time in accordance with Schedules 5.4 (Regulation of Fares Basket Values) and 5.5 (Regulation of Individual Fares); and
- (ii) Child Prices are regulated under Schedules 5.4 (Regulation of Fares Basket Values) and 5.5 (Regulation of Individual Fares), at prices that are greater than the Child Prices set for such Fares from time to time in accordance with Schedules 5.4 (Regulation of Fares Basket Values) and 5.5 (Regulation of Individual Fares);
- (b) any Fare which has a validity of 13 or more months, except to the extent required to do so under the terms of the Ticketing and Settlement Agreement.
- 3.6 The Franchisee shall not sell or offer to sell any Fares at a discount (whether by the issue of Discount Cards or otherwise) or offer a reduction to the price of a Fare except as may otherwise be permitted pursuant to paragraph 3.7.
- 3.7 Nothing in paragraph 3.6 shall prevent the giving of any discount or reduction to which the purchaser of a Fare may be entitled by virtue of:
- (a) presenting a Discount Card (or any equivalent replacement thereof) issued by the Franchisee or another train operator pursuant to any scheme in force at the Start Date or the Combined Effective Date (as the case may be) or pursuant to the operation of Law or any discount permitted by the Secretary of State; or
- (b) the Passenger's Charter or the passenger's charter of any other train operator; or

- (c) the National Rail Conditions of Carriage (as such term is defined under the Ticketing and Settlement Agreement).

3.8 **Agents of the Franchisee**

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

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

3.9 **Additional Ancillary Services**

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

- (a) which are ancillary to the railway passenger service for which such Commuter Fare or Protected Fare (as the case may be) was purchased (including, charges in respect of car parking or catering services); and
- (b) which such purchaser is not obliged to purchase.

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

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

3.11 Percentage Allocations

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

3.12 Revenue Shortfalls

If at any time there is a shortfall in the amount of Revenue attributable to any Reporting Period and such shortfall is caused by cash collection, fraud by any Franchise Employee or default in payment by a purchaser of any Fare or accounting losses then the Franchisee shall, by way of adjustment to Franchise Payments and on the next Payment Date falling no less than 7 days from the date upon which any such shortfall is identified by the Secretary of State and notified to the Franchisee, pay to the Secretary of State the amount of any such shortfall. Where any such shortfall is identified by the Secretary of State and notified to the Franchisee on or after the Franchise Period then the Franchisee shall pay to the Secretary of State (as a debt) the amount of any such shortfall on the date which is 30 days after receipt of any such notification.

3.13 Penalty Fares

- (a) The Franchisee shall on or before the Start Date introduce and implement a penalty fares scheme in substantially the same form as the document in agreed terms marked **PFS** (the "**Penalty Fares Scheme**"). Any Penalty Fares Scheme introduced pursuant to this paragraph 3.13(a) shall be updated on or before the Combined Effective Date as considered necessary by the Franchisee for the purposes of ensuring that the Penalty Fares Scheme can be utilised in relation to the Southern Franchise Services. The Franchisee shall be responsible for obtaining any approval required from the Secretary of State under Section 130 of the Act in respect of any Penalty

Fares Scheme (including any updates to such scheme) required to be implemented pursuant to this paragraph 3.13(a).

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

4. **Passenger's Charter**

4.1 **Content**

The Franchisee shall:

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

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

4.3 **Publishing the Passenger's Charter**

The Franchisee shall publicise its Passenger's Charter by:

- (a) providing copies to the Secretary of State and the Passengers' Council at least seven days before it comes into effect;
- (b) providing copies to passengers, free of charge, at each staffed Station and in the case of any revision thereto, providing such copies at least seven days before such revision comes into effect;

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

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

- 4.4 The Franchisee shall also provide at each staffed Station the then current passenger's charter of any other Train Operator whose trains call there, subject to the provision of such passenger's charter to the Franchisee by such other Train Operator.
- 4.5 The Franchisee shall provide copies of its Passenger's Charter to the operators of Franchisee Access Stations to enable such operators to publish it.

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

The Franchisee shall:

- (a) make all payments and provide all Enhanced Compensation which passengers may reasonably expect to be made or provided from time to time under the terms of the Passenger's Charter (whether or not the Franchisee is legally obliged to do so); and
 - (b) use all reasonable endeavours to make passengers aware of their right to claim compensation pursuant to the Passenger's Charter when the circumstances giving rise to that right arise including by making appropriate announcements to passengers on trains and at stations and making compensation claim forms readily available to passengers,
- 4.7 The Franchisee shall use all reasonable endeavours:
 - (a) to comply with any other obligations, statements and representations; and
 - (b) to meet any other standards or targets of performance,as are comprised in its Passenger's Charter from time to time.

5. **Cycles**

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

6. **Statutory Notices**

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

SCHEDULE 1.5**Information about Passengers****1. Passenger Numbers Information**

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

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

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

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

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

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

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

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

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

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

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

1.5 **Manual Passenger Counts**

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

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

- (a) The technology to be used for the purpose of paragraph 1.2 shall be:
 - (i) **[REDACTED⁷⁰]**

70 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) fitted to at least 30% of each class of rolling stock included in the Train Fleet from time to time; and
 - (iii) deployed by the Franchisee on each Passenger Service (for the entire duration of that Passenger Service) at least twice on each day, twice on a Saturday and twice on a Sunday (or such less frequent requirement as may be stipulated by the Secretary of State) in each period of not less than 12 weeks as the Secretary of State may from time to time specify for this purpose. This means that, for example, in relation to any individual Passenger Service, the passenger counting technology must have been deployed on that Passenger Service at least twice on a Monday, at least twice on a Tuesday and so on and so forth during the relevant period.
 - (b) The Franchisee shall comply with its obligation under sub paragraph (a) above by no later than the date falling two years from the Start Date.
- 1.7 The Parties acknowledge that the information supplied under paragraph 1.1 above, may constitute Confidential Information to which Schedule 17 (Confidentiality and Freedom of Information) applies.
2. **Not Used.**
3. **CRM Data**
- 3.1 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.
- 3.2 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.
- 3.3 Any consent referred to in paragraph 3.2 shall be sought in such manner as shall from time to time be approved by the Secretary of State (such approval not to be unreasonably withheld or delayed) and shall be on terms such as shall permit, in each case in compliance with the Data Protection Act:
- (a) the Franchisee to disclose such CRM Data to any Successor Operator and/or the Secretary of State; and
 - (b) any such Successor Operator to process such CRM Data in the manner contemplated by paragraph 3.2.

4. **Yield Management Data**

- 4.1 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).
- 4.2 If and to the extent that the collection, use and/or processing of any Yield Management Data is subject to the Data Protection Act then paragraphs 3.1(a), 3.2, 3.3 and 5 of this Schedule 1.5 shall apply in respect of Yield Management Data in the same way as they apply to CRM Data.

5. **Personal Data - General Provisions**

- 5.1 In respect of any Personal Data processed by the Franchisee, including CRM Data, the Franchisee agrees that it shall (i) comply with the Data Protection Act and all other legislation relating to the protection and use of personal information (including the Privacy and Electronic Communications (EC Directive) Regulations 2003) (all such legislation collectively being the ("**Personal Data Legislation**") to the extent that such legislation applies to it and (ii) procure that its agents or sub-contractors shall do the same.
- 5.2 Pursuant to paragraph 5.1, 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.
- 5.3 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 5.3; and
 - (ii) Process CRM Data only on behalf of the Franchisee, only for the purpose(s) as defined by the Franchisee and only in accordance with instructions received from the Franchisee from time to time;
 - (b) the Franchisee shall, and shall procure that any CRM Data Processor which it appoints shall, at all times have in place appropriate technical and organisational measures against unauthorised or unlawful processing of

CRM Data and against accidental loss or destruction of, or damage to, CRM Data and that such measures shall:

- (i) reflect the level of harm, damage and/or distress that might be suffered by the Data Subject to whom the CRM Data relates in the event of a breach of the measures as set out herein;
 - (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 5.3(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 a 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 5;
- (d) the Franchisee shall, and shall procure that any CRM Data Processor which it appoints shall, at all times take reasonable steps to ensure the reliability of its/their personnel who have access to the CRM Data and ensure they are aware of the obligations of the Franchisee or the CRM Data Processor (as appropriate) in relation to the same; 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).

SCHEDULE 1.6**Franchise Services****1. Franchise Services**

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

2. Restrictions relating to Franchise Services

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

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

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

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

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

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

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

3. **Station Services**

3.1 The Station Services shall comprise:

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

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

4. **Light Maintenance Services**

4.1 Light Maintenance Services shall comprise:

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

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

5. **Ancillary Services**

The Franchisee may carry out the following Ancillary Services:

- (a) the selling, lending or hiring of any goods or rights and the provision of any services (whether for a charge or not) on any train used in the provision of the Passenger Services where such goods or services are sold or provided principally for consumption or use on the relevant train, including the sale of any Fares, meals, light refreshments, newspapers, magazines, books, entertainment materials or phone cards;
- (b) the provision of any service at any station which, if provided on a train used in the provision of the Passenger Services, would fall within paragraph 5(a) or which, if provided at a Station, would fall within paragraph 3 and which, in each case, is made available only or principally to persons at such stations who either are about to travel or have recently travelled on a train used in the provision of the Passenger Services;
- (c) in any Reporting Period, the subleasing, hiring or licensing of up to ten per cent. of the rolling stock vehicles used in the provision of the Passenger Services (such percentage to be determined by reference to the aggregate period of time for which such rolling stock vehicles are sub-let, hired or licensed and the aggregate period of time for which they are used in the provision of the Passenger Services);
- (d) the lending, seconding, hiring or contracting out during any Reporting Period to another person or persons (whether for a charge or not) of:
 - (i) up to one per cent. of the number of Franchise Employees as at the Start Date or the Combined Effective Date (as the case may be) for over ninety per cent. of their normal working hours during such Reporting Period (including on a full-time basis); and
 - (ii) one per cent. of any other Franchise Employees as at the Start Date or the Combined Effective Date (as the case may be),

provided that this paragraph shall not apply to any employee lent, seconded, hired or contracted out under any of paragraphs 5(a) to 5(c) inclusive and 5(e) to 5(p) inclusive, or engaged in any other activity which is permitted under this Schedule 1.6;
- (e) any heavy maintenance of rolling stock vehicles which does not fall within the Light Maintenance Services, carried out on behalf of any other person at the following Depot(s):
 - (i) with effect from the Start Date:
 - (1) Bedford Cauldwell Depot;
 - (2) Bedford Midland Road Depot; and

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

licensing (on an exclusive basis or otherwise) of any part or all of a Station or Depot to such other person);

- (m) such other activity or business as may be reasonably necessary for the purpose of providing any other Franchise Services or complying with the Franchise Agreement, provided that it could not reasonably be carried out by or through an Affiliate of the Franchisee;

(mm) ⁷¹ the On-Train Wi-Fi Services (as defined in paragraph 21.1 of Part 1 (List of Committed Obligations) of Schedule 6.1 (Committed Obligations and Related Provisions));"

- (n) the subleasing to any other person of the following property which is not comprised in a Station or Depot:
- (i) none;
- (o) the provision or operation of Charter Services, subject to the Train Mileage of such Charter Services not exceeding in any Reporting Period two per cent. of the scheduled Train Mileage of Passenger Services provided by the Franchisee in such Reporting Period;
- (p) the provision of consultancy services reasonably ancillary to the provision of the other Franchise Services; and
- (q) any services or activity not falling within paragraphs 3, 4 or 5(a) to 5(p), subject to the gross value of any such services or activity (excluding any attribution of costs) not exceeding £25,000 per annum in each Franchisee Year, per item and in aggregate, £250,000 per annum in each Franchisee Year provided that in the second and each subsequent Franchisee Year, these amounts will be increased by "RPI", and "RPI" shall have the meaning given to it in Schedule 8.2 (Annual Franchise Payments).

6. Affiliates of the Franchisee

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

⁷¹ 09/12/2016 (Date of Deed of Amendment) Contract insertion agreed by the Secretary of State and the Franchisee.

SCHEDULE 1.7⁷²**The Train Fleet****1. The Composition of the Train Fleet**

The Train Fleet consists of:

- 1.1 the rolling stock vehicles set out in Table 1, with the capacity characteristics referred to in Column 4 of Table 1, until the date specified in Column 6 of Table 1. Except as may otherwise be specified in Column 1 of Table 1 all rolling stock vehicles set out in Table 1 shall be part of the Train Fleet from the Start Date;
- 1.2 from the dates set out in Column 1 of Table 2 until the lease expiry dates referred to in Column 6 of Table 2, the additional rolling stock vehicles referred to against those dates, having (unless otherwise agreed by the Secretary of State):
 - (a) in the case of any additional rolling stock vehicles of the same class as any original rolling stock vehicles:
 - (i) at least the capacity specified in respect of such original rolling stock vehicles or such other capacity as may be set out in Table 2; and
 - (ii) reliability, capability and quality that is at least equal to the reliability, capability and quality of such original rolling stock vehicles; and
 - (b) in the case of any other additional rolling stock vehicles referred to in Table 2:
 - (i) at least the capacity specified in respect of any original rolling stock vehicles that are, in the reasonable opinion of the Secretary of State, most similar to such additional rolling stock vehicles or such other capacity as may be set out in Table 2; and
 - (ii) reliability, capability and quality that is, in the reasonable opinion of the Secretary of State, at least equal to the reliability, capability and quality of any original rolling stock vehicles that are, in the reasonable opinion of the Secretary of State, most similar to such additional rolling stock vehicles.

⁷² 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.

- 1.3 The Passenger Carrying Capacity of any rolling stock vehicles shall be as set out in Tables 1 or 2 or as determined by the Secretary of State in accordance with paragraph 2.4 (as applicable).
- 1.4 [REDACTED⁷³]
- 1.5 [REDACTED⁷⁴]
2. **Changes to the Train Fleet**
- 2.1 The Franchisee shall maintain the composition of the Train Fleet during the Franchise Term, unless the Secretary of State otherwise agrees, such that there are no changes to the Train Fleet, including changes:
- (a) to the classes or types;
 - (b) to the interior configurations; or
 - (c) which may reduce the journey time capabilities,
- of any rolling stock vehicles specified in the Train Fleet.
- 2.2 The Franchisee shall procure that the rolling stock vehicles described in the Tables below, with the capacity and other characteristics referred to there, are available for deployment in the provision of the Passenger Services to the extent required by the Timetable and Train Plan during the periods referred to there.
- 2.3 During the Franchise Term, the Franchisee shall advise the Secretary of State of any rolling stock vehicles damaged beyond economic repair or likely to be unavailable for service for a period of three consecutive Reporting Periods or more.
- 2.4 If any change is made to the Train Fleet in accordance with this Schedule 1.7, the Secretary of State may, after consulting the Franchisee, notify the Franchisee of the Passenger Carrying Capacity of any rolling stock vehicles or class of rolling stock vehicles comprising the Train Fleet following such change.

⁷³ 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.

⁷⁴ 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.

Table 1[REDACTED⁷⁵]

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Derogations

⁷⁵ 5 November 2014 (Date of Redactions Approval) – Where text has been omitted from the document this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

Table 2[REDACTED⁷⁶]

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Derogations

⁷⁶ 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.

APPENDIX TO SCHEDULE 1.7⁷⁷

Part 1

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⁷⁷ 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.

Part 2 to Appendix⁷⁸

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⁷⁸ 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.

Part 3 to Appendix⁷⁹

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Derogations

⁷⁹ 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.

PART 4 TO APPENDIX⁸⁰

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Derogations

⁸⁰ Where text has been omitted from the document this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

SCHEDULE 2

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

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

SCHEDULE 2.1**Asset Vesting and Transfer****1. Vesting of Property Leases**

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

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

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

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

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

- (a) a lease of each Station, on or before the expiry of the Station Lease relating to each such Station (each such lease, once granted, shall be a Station Lease for the purposes of the Franchise Agreement);
- (b) a lease of each Depot, on or before the expiry of the Depot Lease relating to each such Depot (each such lease, once granted, shall be a Depot Lease for the purposes of the Franchise Agreement);
- (c) a supplemental lease relating to any Station or Depot, as soon as practicable following the successful completion of any procedure (including obtaining any requisite approval from the ORR) for including additional land within the demise of such Station or Depot (as the case may be) and each such supplemental lease, once granted, shall be a Station Lease or a Depot Lease (as the case may be) for the purposes of the Franchise Agreement; and
- (d) a lease of any Network Rail owned station or depot, which:
 - (i) the Secretary of State consents to or requires the Franchisee to be a party to; and
 - (ii) the Franchisee was not a party to on the date hereof, but which has been contemplated by the Franchise Agreement,

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

of the Franchise Agreement and any such station or depot (as the case may be) shall be a Station or Depot for the purposes of the Franchise Agreement.

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

SCHEDULE 2.2**Security of Access Agreements, Rolling Stock Leases, Station and Depot Leases****1. Novation of Access Agreements during the Franchise Term**

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

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

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

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

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

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

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

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

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

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

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

- 2.1 The Franchisee shall not:

- (a) execute any Rolling Stock Related Contracts[REDACTED⁸¹];
- (b) exercise any option or other discretion in any Rolling Stock Related Contract that would result in any increased payment or delay in delivery being made by or to the Franchisee or the relevant counterparty or which may result in it being reasonably likely to be unable to comply with the terms of the Franchise Agreement; or
- (c) amend or waive the terms of any Rolling Stock Related Contract,

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

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

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

⁸¹ 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.

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

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

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

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

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

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

2.6

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

2.7

- (a) Where the Secretary of State exercises his right pursuant to paragraph 2.5(b) to make the Cascaded Rolling Stock available for use by the Prior Train Operator during a specified period the Franchisee shall not be liable for any failure to comply with its obligations under the Franchise Agreement to the extent that:
 - (i) such failure to comply arises directly as a result of the Franchisee being unable to use the Cascaded Rolling Stock; and
 - (ii) the Franchisee uses all reasonable endeavours to comply with the relevant obligations notwithstanding the unavailability of the Cascaded Rolling Stock.
- (b) The Franchisee shall notify the Secretary of State as soon as reasonably practicable if it becomes aware of any material risk that a Relevant Delay will occur. If a Relevant Delay does occur the Franchisee shall use all

reasonable endeavours to mitigate the impact on the delivery of the Franchise Services of the unavailability of the Cascaded Rolling Stock at the expected time including by identifying and proposing value for money alternative sources of replacement rolling stock.

- (c) If a Relevant Delay has occurred or the Secretary of State believes that there is a material risk that a Relevant Delay will occur he may serve a notice on the Franchisee requiring it to produce a plan to a reasonable specification provided with the notice to remedy or mitigate the impact of the delayed availability of the Cascaded Rolling Stock ("**Delayed Cascade Mitigation Plan**"). Such specification may include measures to be implemented by the Franchisee to mitigate the direct or indirect impact of the Relevant Delay on the Prior Train Operator or any other affected Train Operator. The Delayed Cascade Mitigation Plan shall provide a comprehensive analysis backed by relevant data and assumptions of:
- (i) all cost and revenue and other financial implications of options contained within it including the potential implications for Franchise Payments;
 - (ii) the implications (if any) for the Benchmarks and Annual Benchmarks; and
 - (iii) the likely impact of options within it for existing and future passenger journeys and journey opportunities.

The Franchisee shall meet with the Secretary of State to discuss the Delayed Cascade Mitigation Plan and provide such further information or analysis and further iterations of the Delayed Cascade Mitigation Plan as the Secretary of State shall reasonably require.

3. **Assignment of Property Leases during the Franchise Term**

- 3.1 The Franchisee shall (other than on termination of the Franchise Agreement, for which the provisions of paragraph 4.5 of Schedule 15.4 (Provisions Applying on and after Termination) shall apply) following receipt of a notice purporting to terminate a Property Lease or on becoming aware of any proceedings or any other steps having or purporting to have similar effect, if requested by the Secretary of State, assign its interest under all or any Property Leases to the Secretary of State or as he may direct, subject where applicable to the agreement of any other party to such Property Lease or the ORR.
- 3.2 Such assignment shall be on such terms as the Secretary of State may reasonably require, including:
- (a) that the Franchisee shall not be released from any accrued but unperformed obligation, the consequences of any antecedent breach of a covenant or obligation in the Property Leases or any liability in respect of any act or omission under or in relation to the Property Lease prior to, or as at the date of, any such assignment (except to the extent that the Secretary of State or his nominee agrees to assume responsibility for such unperformed obligation, such liability or the consequences of such breach in connection with the relevant assignment); and
 - (b) that neither the Secretary of State nor his nominee shall be obliged, in connection with such assignment, to agree to assume responsibility for any unperformed obligation, liability or consequences of a breach referred to in

paragraph 3.2(a), and the Franchisee shall indemnify the Secretary of State or his nominee, as the case may be, on an after-tax basis against any costs, losses, liabilities or expenses suffered or incurred in relation thereto.

3.3 The Franchisee shall, on the occurrence of any of the circumstances specified in paragraph 3.1 in relation to any other Train Operator who is a party to a Property Lease to which the Franchisee is also party, agree to the assignment of such Train Operator's interest under the relevant Property Lease to the Secretary of State or as he may direct, subject, where applicable, to the consent of Network Rail. The provisions of paragraph 3.2 shall apply to any such assignment.

3.4 The Franchisee shall notify the Secretary of State on becoming aware of any circumstances which might lead to the Secretary of State being able to require the Franchisee to assign its interest or agree to the assignment of another Train Operator's interest under this paragraph 3.

4. **Station and Depot Leases**

4.1 The Franchisee shall at all times enforce its rights under any Station Lease or Depot Lease.

4.2 The Franchisee shall:

- (a) comply with its obligations; and
- (b) use all reasonable endeavours to require any counterparty to comply with any such counterparty's obligations,

under any Station Lease or Depot Lease.

4.3 The Franchisee shall not:

- (a) terminate or agree to terminate in whole or in part, or take or omit to take any other action which might result in the termination of any Station Lease or Depot Lease;
- (b) assign all or part of its interest under any Station Lease or Depot Lease; or
- (c) sublet the whole or substantially the whole of the property comprised in any Station Lease or Depot Lease,

except to the extent that the Secretary of State may otherwise agree from time to time (such agreement not to be unreasonably withheld if the Franchisee has made arrangements, reasonably satisfactory to the Secretary of State, for the continued operation of such Station or Depot (as the case may be) for the remainder of the Franchise Term or if consent to the Closure of the relevant Station or Depot has been granted).

5. **Station Subleases**

5.1 Unless the Secretary of State agrees otherwise, the Franchisee shall not sublet to any of its Affiliates any part of the property comprised in any Property Lease except on terms that any such subletting:

- (a) (other than any subletting to an Affiliate which is a Train Operator) is terminable without compensation immediately upon the termination of the Franchise Agreement; and

- (b) is excluded from the provisions of Part II of the Landlord and Tenant Act 1954 and the Tenancy of Shops (Scotland) Act 1949.

5.2 If so requested by the Secretary of State, the Franchisee shall:

- (a) extend each Station Sublease on the same terms for such period as the Secretary of State may request (including a period equivalent to the franchise term of the Train Operator who is the lessee under such Station Sublease); and
- (b) if such Station Sublease terminates (which for the purposes of this paragraph 5.2(b) shall include the termination, at or around the time of termination of the Previous Franchise Agreement, of a station sublease in respect of which the Franchisee was the lessor), grant a new Station Sublease on the same terms to such Train Operator and for such period as the Secretary of State may request (including a period equivalent to the franchise term of the Train Operator who is the lessee under such Station Sublease),

subject, where required, to the consent of Network Rail (and, if required, the relevant sub-lessee) and to the duration of the relevant Station Lease.

5.3 The Franchisee shall notify the Secretary of State immediately on it becoming aware of any event which might give the Franchisee a right to forfeit or terminate any Station Sublease. The Franchisee shall notify the Secretary of State if it wishes to forfeit or terminate any such Station Sublease but shall not (without the Secretary of State's prior written consent) effect such forfeiture or termination until the date which occurs three months after the date of such notice.

6. **Station/Depot Change Proposals**

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

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

6.2 If and to the extent requested by the Secretary of State the Franchisee shall, following consultation with the Secretary of State:

- (a) respond to any Depot Proposal for Change or Station Proposal for Change (as the case may be) as may be directed by the Secretary of State; and
- (b) exercise such rights as it may have under the relevant Property Lease or Access Agreement in such manner and take such action as the Secretary of State may require in relation to any Station Proposal for Change or Depot Proposal for Change (including in relation to any agreement of the amount of any compensation payable whether under condition C3.4 of the Stations Access Conditions or condition C3.2 of the Depot Access Conditions (as

appropriate) or otherwise and including submitting any relevant dispute to any relevant dispute resolution procedures). The Franchisee shall not, without the consent of the Secretary of State, agree or propose to agree a value in relation to any indemnity or other compensation payable in relation to any Station Proposal for Change or Depot Proposal for Change whether under condition C3.4 of the Stations Access Conditions or condition C3.2 of the Depot Access Conditions (as appropriate) or otherwise.

- 6.3 The Franchisee shall ensure that any claim it makes to Network Rail or otherwise pursuant to paragraph 6.2(b) is disaggregated such that any claims relating to loss of Revenue, loss of Ancillary Revenue and increased costs are separately identified in any such claim. The Franchisee shall not amend, agree or propose to amend, the provisions relating to the payment of compensation under the condition C3.4 of the Stations Access Conditions or condition C3.2 of the Depot Access Conditions (as appropriate) (including by agreeing or proposing to agree any commercial agreements or arrangements which will have the effect of excluding the application of the provisions of condition C3.4 of the Stations Access Conditions or condition C3.2 of the Depot Access Conditions (as appropriate) without the consent of the Secretary of State.
- 6.4 The Franchisee shall pay to the Secretary of State any sums due to be received by the Franchisee from Network Rail or any other third party directly or indirectly in relation to a Station Proposal for Change or Depot Proposal for Change (as the case may be) to the extent that such sums relate to compensation for loss of Revenue ("**Station/Depot Change Compensation Amounts**"). Any Station/Depot Change Compensation Amounts shall be paid by the Franchisee to the Secretary of State on the next Payment Date falling no less than 7 days following the date upon which such Station/Depot Change Compensation Amount is due to be paid by Network Rail (or any other relevant third party) to the Franchisee under the relevant Access Agreement provided that where any such Station/Depot Change Compensation Amount is due to be paid on a date which falls on or after the Franchise Period then such Station/Depot Change Compensation Amount shall be paid (as a debt) by the Franchisee to the Secretary of State within 30 days following the date upon which such Station/Depot Change Compensation Amount falls due to be paid by Network Rail (or any other relevant third party) under the relevant Access Agreement.

SCHEDULE 2.3**Third Party Delivery of Passenger Services and Other Franchisees****1. Subcontracting any Passenger Services**

- 1.1 Subject to paragraph 1.2, the Franchisee may not subcontract or delegate the provision of the Passenger Services without the prior written consent of the Secretary of State.
- 1.2 The Franchisee may subcontract or delegate the provision of the Passenger Services, provided that:
- (a) the Secretary of State receives prior written notice of any such subcontracting or delegation;
 - (b) the Franchisee continues to be party to all Access Agreements and Property Leases necessary to provide such Passenger Services and to enjoy all relevant access and operational rights thereunder;
 - (c) the Franchisee continues to specify and control the terms and conditions (subject to the requirements of the Inter-Operator Schemes) on which such Passenger Services are to be provided, including the determination of the Price or Child Price (as the case may be) of any Fares;
 - (d) the Train Mileage of the Passenger Services so delegated or subcontracted does not exceed five per cent. of the aggregate scheduled Train Mileage of the Franchisee in any Reporting Period; and
 - (e) the Franchisee continues to perform its obligations under Schedule 1.1 (Service Development) in respect of any subcontracted or delegated services.
- 1.3 Any such subcontracting or delegation shall not relieve the Franchisee from any of its obligations under the Franchise Agreement, including its obligations under this paragraph 1 and Schedule 14 (Preservation of Assets).

2. Other Franchisees

- 2.1 If the franchise agreement of another franchisee terminates or a railway administration order is made in respect of another franchisee, the Franchisee shall co-operate with any reasonable request of the Secretary of State to ensure:
- (a) that the services provided or operated by such other franchisee may continue to be provided or operated by any successor Train Operator or the railway administrator; and
 - (b) that the benefit of any arrangements between the Franchisee and such other franchisee which were designated as a key contract under such franchise agreement immediately prior to its termination or to a railway administration order being made will continue to be provided to any successor Train Operator or to the railway administrator.
- 2.2 The benefit of any arrangements of the type referred to in paragraph 2.1(b) shall be provided on substantially the same terms as previously obtained by the

relevant franchisee, subject to paragraph 11 of Schedule 19 (Other Provisions) and paragraph 2.3, provided that the Secretary of State may exclude or modify any terms agreed or amended by such franchisee in the 12 months preceding the date on which such franchisee's franchise agreement was terminated or the date on which the relevant railway administration order was made which were, in the Secretary of State's reasonable opinion, to the material detriment of such franchisee's business. The benefit of such arrangements shall be provided for such period as the Secretary of State may reasonably require to allow the relevant Train Operator or railway administrator to renegotiate such arrangements or make alternative arrangements.

- 2.3 The Franchisee shall notify the Secretary of State of its intention to terminate any contract with any other Train Operator which is designated as a "Key Contract" under that Train Operator's franchise agreement and shall give that Train Operator sufficient notice to enable it to make suitable alternative arrangements for its passengers without causing disruption to the railway passenger services provided by such Train Operator.
- 2.4 If the franchise agreement of another franchisee terminates in contemplation of the entry into or entry into effect of a new franchise agreement with the same franchisee in respect of all or a material part of the relevant railway passenger services, the Franchisee shall waive any event of default or other right it may have to terminate any agreement with such franchisee arising out of such termination, provided that the entry into or entry into effect of such new franchise agreement takes place.
- 2.5 References in this paragraph 2 to a franchisee include references to any franchise operator of that franchisee.

SCHEDULE 2.4**Other Franchise Operations****1. Rolling Stock Testing and Commissioning**

1.1 Without prejudice to the provisions set out in Schedule 6.3 (TLP/TRSP Related Provisions) the Franchisee shall, to the extent reasonably requested by the Secretary of State and subject to payment of the Franchisee's reasonable costs by the relevant third party, co-operate with any third party which the Secretary of State may specify (including a Successor Operator, a rolling stock vehicle manufacturer, Network Rail or the Secretary of State) in connection with the testing and commissioning of new rolling stock vehicles or any new equipment to be fitted to rolling stock vehicles (whether such rolling stock vehicles are new or otherwise). Such co-operation shall not unreasonably disrupt the provision and operation of the Franchise Services and may include:

- (a) the movement of test trains within and around depots;
- (b) making available suitably qualified personnel to operate test trains along the Routes and provide information on the Routes;
- (c) making Train Slots available for such purposes;
- (d) granting or procuring the grant of access to the third party and its representatives to any relevant facilities; and
- (e) the delivery of rolling stock vehicles to specific locations.

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

2.1 Except to the extent that the Secretary of State agrees otherwise, the Franchisee shall not:

- (a) cease to operate;
- (b) cease to secure the operation of; or
- (c) propose to terminate the use of,

any Station (or part of a Station) or any railway passenger service over a Route where such cessation or proposal might result in a Closure.

2.2 If any procedures are commenced under Part 4 of the Railways Act 2005 in relation to a Closure, the Franchisee shall, at its own cost and to the extent so requested by the Secretary of State, take such action as the Secretary of State may require in order to enable the Secretary of State to comply with any duty imposed on him under Part 4 of the Railways Act 2005 in relation to such Closure.

3. **Staffing at Stations/Proposals to de-staff Stations**

3.1 The Franchisee shall ensure that:

- (a) all day staffing continues to be provided at each High Usage Station where all day staffing was provided immediately prior to the Start Date, the Combined Effective Date or the LSER Station Transfer Date (as the case may be) ("**Fully Staffed High Usage Station**");
- (b) as soon as reasonably practicable from the Start Date, the Combined Effective Date or the LSER Station Transfer Date (as the case may be) (and in any event within 12 months from the Start Date, the Combined Effective Date or the LSER Station Transfer Date (as the case may be)), all day staffing is provided at each High Usage Station which is not a Fully Staffed High Usage Station ("**Other High Usage Station**");
- (c)
 - (i) for each Low Usage Station in respect of which all day staffing was not provided immediately prior to the Start Date, the Combined Effective Date or the LSER Station Transfer Date (as the case may be), it provides, subject to paragraph 3.2 and 3.3, staff presence of the same specification in terms of the times of the day during which staff are present as was provided at such Low Usage Station immediately prior to the Start Date, the Combined Effective Date or the LSER Station Transfer Date (as the case may be); and
 - (ii) for each Low Usage Station in respect of which all day staffing was provided immediately prior to the Start Date, the Combined Effective Date or the LSER Station Transfer Date (as the case may be), it provides, subject to paragraph 3.2 and 3.3, staff presence throughout the hours as are required under Schedule 17 of the Ticketing and Settlement Agreement. For the avoidance of doubt, the Franchisee shall not be required to notify and obtain the written consent of the Secretary of State under paragraph 3.2 and 3.3 before implementing the provision of such staff presence at such Low Usage Stations;
- (d) in deploying staff for the purposes of this paragraph 3.1, it acts as a reasonable efficient and skilled Train Operator. Accordingly the Franchisee shall ensure that staff deployed in the fulfilment of its obligations under this paragraph 3.1 are assigned to duties that mean that they are reasonably deployed on platforms, ticket offices and station concourses so that their availability to provide reasonable assistance and advice to passengers (as needed) is visible to passengers; and
- (e) for the purposes of this paragraph 3:
 - (i) "**all day staffing**" means at least one Franchisee Employee being present at a station between the period commencing 5 minutes prior to the scheduled arrival or departure time (as the case may be) of the First Train and five minutes after the actual arrival or departure time (as the case may be) of the Last Train;

- (ii) **"First Train"** means the first timetabled Passenger Service to arrive at or depart from such Fully Staffed High Usage Station or Other High Usage Station (as the case may be);
- (iii) **"High Usage Station"** means a station at which the Passenger Services call and where the total aggregate number of entries and exits exceed 1,000,000 (one million) as reported in the document published by the ORR and entitled "Estimates of station usage 2011-12";
- (iv) **"Last Train"** means the last timetabled Passenger Service to arrive at or depart from such Fully Staffed High Usage Station or Other High Usage Station (as the case may be);
- (v) **"Low Usage Station"** means a station at which the Passenger Services call and which is not a High Usage Station; and
- (vi) **"LSER Station Transfer Date"** means the date upon which the Franchisee becomes the Facility Owner in respect of a Transfer Station.

3.2 If the Franchisee proposes to take any step on or after the Start Date, the Combined Effective Date or the LSER Station Transfer Date (as the case may be) which would result in a Station ceasing to be staffed in accordance with the requirements of paragraph 3.1 it shall provide at least eight weeks' written notice of such proposal to the Secretary of State and the relevant Passengers' Council.

3.3 The Franchisee shall:

- (a) obtain the written consent of the Secretary of State (which such consent shall be in addition to and separate from any Secretary of State's approval required in relation to such de-staffing proposals whether pursuant to the Ticketing and Settlement Agreement or otherwise); and
- (b) have regard to the views and representations of the Passengers' Council, before implementing any proposals pursuant to paragraph 3.2.

3.4 The Franchisee acknowledges that its obligations in this paragraph 3 are in addition to and do not limit its obligations to comply with the requirements set out in Chapter 6 and Schedule 17 of the Ticketing and Settlement Agreement in respect of minimum opening times at Regulated Stations (as such term is defined under the Ticketing and Settlement Agreement).

4. **Royal Train**

4.1 The Franchisee shall, if and to the extent requested by any person (including Rail Express Systems Limited) and subject to the payment by such person of any reasonable costs of the Franchisee, co-operate in the provision by such person of railway passenger services for Her Majesty Queen Elizabeth II or any successor head of state or members of the family or representatives of either of them.

- 4.2 The provision of railway services for Her Majesty Queen Elizabeth II or any successor head of state or members of the family or representatives of either of them may include:
- (a) running a "sweeper" train in front of the royal train;
 - (b) having spare locomotives on standby as rescue traction; and/or
 - (c) carrying out security requirements or co-operating with other persons in ensuring that security requirements are carried out prior to calling at any station on the Routes.

SCHEDULE 2.5**Transport, Travel and Other Schemes**

1. **Not Used**
2. **Not Used**
3. **Not Used**
4. **Discount Fare Schemes**
 - 4.1 If the Secretary of State:
 - (a) effects, or proposes to effect, an amendment to a Discount Fare Scheme;
 - (b) introduces any new Discount Fare Scheme; or
 - (c) ceases to approve a Discount Fare Scheme,
for the purposes of Section 28 of the Act, such amendment, intended amendment, introduction or cessation of approval shall be a Change.
 - 4.2 The Secretary of State shall provide a reasonable opportunity to the Franchisee to make representations to him before amending, introducing or ceasing to approve a Discount Fare Scheme pursuant to paragraph 4.1.
 - 4.3 The Franchisee shall supply to the Secretary of State, in respect of any Discount Fare Scheme referred to in paragraph 4.1, such information within such period as the Secretary of State may reasonably require for the purposes of determining the financial effect of any such amendment, intended amendment, introduction or cessation of approval.
5. **Inter-Operator Schemes**
 - 5.1 The Franchisee shall participate in and comply with its obligations under the terms of each of the Inter-Operator Schemes.
 - 5.2 Without limiting paragraphs 5.1 and 5.3, the Franchisee agrees to be bound by Parts IV and V of Chapter 4 of the Ticketing and Settlement Agreement and shall not amend, or agree or propose to amend, the Ticketing and Settlement Agreement without the prior written consent of the Secretary of State.
 - 5.3 The Franchisee shall not amend, or agree or propose to amend, any Inter-Operator Scheme other than in accordance with its terms.
 - 5.4 The Franchisee shall:
 - (a) provide reasonable notice to the Secretary of State of any proposal to amend any Inter-Operator Scheme which it intends to make or of which it receives notification and which, in its opinion, is reasonably likely materially to affect the provision of the Franchise Services; and
 - (b) have regard to the Secretary of State's views in respect of any such proposal.

5.5 If an amendment is effected or proposed to be effected to an Inter-Operator Scheme which requires the consent or approval of the Secretary of State in accordance with the terms thereof, such amendment shall be treated as a Change to the extent and only to the extent that the Franchisee makes a saving as a consequence of such amendment or proposed amendment.

6. Voting on Inter-Operator Scheme Councils

6.1 The Franchisee shall give the Secretary of State reasonable notice of:

- (a) any meeting of:
 - (i) a scheme council of an Inter-Operator Scheme on which the Franchisee is represented; or
 - (ii) a scheme management group of any Inter-Operator Scheme:
 - (A) in which the Franchisee has a permanent position; or
 - (B) where the Franchisee employs a member of such group;
- (b) the resolutions to be voted upon at any such meeting; and
- (c) the Franchisee's voting intentions.

6.2 The Franchisee shall:

- (a) attend such meetings referred to in paragraph 6.1 as the Secretary of State may notify to it from time to time;
- (b) vote at any such meeting in the manner required by the Secretary of State; and
- (c) provide to the Secretary of State copies of the minutes of any such meeting as soon as reasonably practicable after receipt of same.

SCHEDULE 3

Not Used

SCHEDULE 4

Persons with Disabilities and Disability Discrimination

Schedule 4: Persons with Disabilities and Disability Discrimination

Appendix 1: Minor Works

Appendix 2: Alternative Transport

SCHEDULE 4**Persons with Disabilities and Disability Discrimination****1. Relationship with other obligations relating to persons with disabilities**

1.1 The Franchisee acknowledges that its obligations in this Schedule 4 are in addition to and do not limit its obligations to comply with:

- (a) the EA and any regulations imposed by it;
- (b) any applicable condition(s) in any of its Licences (including in respect of persons with disabilities); and
- (c) any other of the requirements of the Franchise Agreement.

1.2 This Schedule 4 sets out:

- (a) specific arrangements which apply in respect of physical alterations to stations to facilitate accessibility and use by Disabled Persons; and
- (b) specific obligations of the Franchisee directed at meeting the needs of persons with disabilities.

2. Physical Alterations and Accessibility of Stations

2.1 In respect of physical alteration works at stations to facilitate accessibility and use by Disabled Persons, it is acknowledged by the Franchisee that:

- (a) there is limited funding available to the Secretary of State to assist franchisees and/or franchise operators with the carrying out of those works;
- (b) consequently, there is a need for such works to be carried out over a period of time to reflect the availability of funding, and for such works to be prioritised with regard to where there is the greatest need and/or where physical alterations can have the greatest effect; and
- (c) the Secretary of State's national programme of works of physical alterations at stations addresses these issues in a structured way.

2.2 The Franchisee shall:

- (a) co-operate reasonably with and assist the Secretary of State in the development and furtherance by the Secretary of State of the programme described in paragraph 2.1(c) by providing to the Secretary of State:
 - (i) information concerning the usage of Stations (including, where and to the extent reasonably practicable, usage of Stations by Disabled Persons); and
 - (ii) advice as to the most economic way in which accessibility for Disabled Persons could, in the Franchisee's reasonable opinion, be improved at Stations;

- (b) co-operate reasonably with other Train Operators and/or Network Rail to seek to ensure that, where it would be advantageous to do so, having regard to the needs of Disabled Persons, any planned work on the Stations to facilitate accessibility and use by Disabled Persons is, so far as reasonably practicable, co-ordinated with other work to be carried out at the Stations and/or other parts of the network; and
 - (c) use all reasonable endeavours to secure sources of grant funding (other than from itself or an Affiliate) for improving accessibility for Disabled Persons at Stations (in addition to any funding secured through the Secretary of State pursuant to paragraph 2.5), including from Local Authorities, local development agencies and the Lottery Commission. The Franchisee shall notify the Secretary of State of:
 - (i) any such additional funding which it secures; and
 - (ii) the terms on which such additional funding has been granted.
- 2.3 In participating in any multi-modal fares scheme, the Franchisee shall use all reasonable endeavours to secure, through the planning and development of such scheme, improvements in disabled access to the entrances of any relevant station, including within and in the immediate proximity of such station.
- 2.4 If, during the Franchise Term:
- (a) the Franchisee has complied with its obligations in Section 20(4) and Section 20(9), as varied by paragraph 2(3) of Schedule 2, of the EA (to take such steps as are reasonable to provide a reasonable alternative method of making services at a Station accessible to a Disabled Person to avoid a Disabled Person being placed at a substantial disadvantage by a physical feature at a Station) and its obligations in paragraph 2.7 concerning Minor Works; and
 - (b) notwithstanding such compliance, the Franchisee reasonably considers it is still required to carry out or procure physical works of alteration at a Station in order to comply with the EA Requirements in respect of that Station, and, in so carrying out or procuring, would incur expenditure which it would not otherwise have an obligation to incur,
- the Franchisee may seek funding from the Secretary of State in respect of that expenditure.
- 2.5 If the Franchisee seeks funding from the Secretary of State under paragraph 2.4, and demonstrates to the Secretary of State's satisfaction that the criteria in paragraph 2.4 have been satisfied, then the Secretary of State may agree to adjust the amount of Franchise Payments in respect of some or all of the works and/or expenditure. In considering his response to any such request, the Secretary of State will have regard to the availability of funding and the priorities set out in the national programme described in paragraph 2.1(c), together with any other available sources of funding described in paragraph 2.2(c). If and to the extent the Secretary of State agrees to adjust Franchise Payments in accordance with this paragraph 2.5 in any Franchisee Year:
- (a) the Secretary of State shall make such adjustment to the Franchise Payments; and

- (b) the Franchisee shall spend such additional funds:
 - (i) in order to comply with the EA Requirements referred to in paragraph 2.4(b); and
 - (ii) in accordance with any conditions the Secretary of State may notify the Franchisee of.

2.6 If and to the extent the Franchisee is required to pay any increased access charges as a result of additional expenditure required to be incurred by another station Facility Owner for the purpose of complying with the EA Requirements in respect of a Franchisee Access Station, provided that the Franchisee:

- (a) notifies the Secretary of State within seven days of becoming aware of any proposal for the increase in such charges (or the works to which they relate); and
- (b) complies with the Secretary of State's reasonable directions regarding the exercise of any rights the Franchisee may have in respect thereof,

the imposition of the increased access charges shall be a Change.

2.7 The Franchisee shall:

- (a) establish and manage the Minor Works' Budget to fund the carrying out of Minor Works. For the purposes of this paragraph 2.7, **Minor Works** means small scale physical alterations or additions to improve accessibility of Stations to Disabled Persons, not involving substantial works of construction or reconstruction. The Minor Works:
 - (i) may, but shall not necessarily include, the Minor Works described in Appendix 1 of this Schedule 4;
 - (ii) shall not include any works which Network Rail, the Franchisee or any other person has a separate obligation to carry out, except where:
 - (A) such obligation is an obligation of the Franchisee under the EA; or
 - (B) the inclusion of such works would lead to the acceleration of the timescale for their completion and the Secretary of State gives his consent pursuant to paragraph 2.7(a)(iii);
 - (iii) shall only include works other than those permitted by paragraphs 2.7(a)(i) and (a)(ii) with the prior consent of the Secretary of State; and
 - (iv) must comply with the standards provided for in the Code of Practice, unless otherwise agreed with the prior consent of the Secretary of State;
- (b) as soon as reasonably practicable (and in any event within four months) after the Start Date and thereafter before the start of each Franchisee Year:

- (i) develop a Minor Works' Programme and consult with the Disabled Persons Transport Advisory Committee and relevant Passengers' Council in relation thereto;
 - (ii) in conjunction with its activities in paragraph 2.7(b)(i), and, consistent with its obligations under paragraph 2.2(b), liaise with Network Rail and other Train Operators as necessary with regard to the determination and implementation of each Minor Works' Programme; and
 - (iii) following the consultation and liaison described in paragraphs 2.7(b)(i) and 2.7(b)(ii), obtain the Secretary of State's prior approval (such approval not to be unreasonably withheld) of each Minor Works' Programme;
- (c) carry out or procure the carrying out of the Minor Works' Programme in each Franchisee Year and in doing so, spend at least the amount of the Minor Works' Budget for the relevant Franchisee Year in such Franchisee Year (unless otherwise agreed by the Secretary of State);
 - (d) report progress to the Secretary of State in determining and carrying out the Minor Works' Programme no less than once every three Reporting Periods; and
 - (e) co-operate, as the Secretary of State may reasonably require, with Network Rail or any other person seeking to carry out or procure Minor Works at the Stations or any other stations.

3. **Dealing with Claims Relating to Stations**

- 3.1 If the Franchisee receives notification of a claim under the EA in respect of any alleged non-compliance with the EA Requirements or otherwise in respect of any Station (an "**EA Claim**") then the Franchisee shall:
- (a) notify the Secretary of State within seven days of receiving notification of the EA Claim. The Franchisee shall at the same time notify the Secretary of State of any reasonable alternative methods of making services at the Station accessible to Disabled Persons that it has considered and/or put in place pursuant to Section 20(4) and Section 20(9), as varied by paragraph 2(3) of Schedule 2, of the EA;
 - (b) if required by the Secretary of State, defend the EA Claim or any aspect of the EA Claim (which may include appealing the judgment). The Secretary of State will, subject to paragraph 3.4, pay the Franchisee's reasonable costs of:
 - (i) any defence or appeal required by the Secretary of State; and/or
 - (ii) compliance with the Secretary of State's instructions in accordance with paragraph 3.1(c); and
 - (c) act in accordance with the reasonable instructions of the Secretary of State to defend the EA Claim (or any aspect of it) as required under paragraph 3.1(b) and shall not (without the prior consent of the Secretary of State) settle or enter into any compromise in relation to the EA Claim (or the relevant aspect of it), including by entering into mediation.

- 3.2 If, in the reasonable opinion of the Franchisee, it will be more cost effective to settle the EA Claim rather than act in accordance with the Secretary of State's requirement under paragraph 3.1, it shall produce for the Secretary of State's approval a settlement proposal, setting out the terms of the Franchisee's proposals to make an offer to the Disabled Person making the EA Claim and its reasons for making such offer (the "**Settlement Proposal**").
- 3.3 If the Secretary of State does not accept the Settlement Proposal and still requires the Franchisee to defend the EA Claim (or any aspect of it) then the Franchisee shall defend the EA Claim in accordance with paragraph 3.1.
- 3.4 If the Franchisee is required to defend an EA Claim where it has submitted a Settlement Proposal to the Secretary of State and an award is made in respect of the EA Claim in favour of the person bringing it which is higher than the figure set out in the Settlement Proposal, then, subject to paragraph 3.5, the Secretary of State shall pay to the Franchisee:
- (a) the difference between such an award and the figure set out in the Settlement Proposal; and
 - (b) the further reasonable costs incurred or payable by the Franchisee in defending the EA Claim, to the extent that such costs have not already been paid by the Secretary of State under paragraph 3.1(b).
- 3.5 The Secretary of State shall not have any obligation to make the payments described in paragraphs 3.1(b) or 3.4 where it is determined or, if no declaration or determination by the court on this point has been sought or made, the Secretary of State, in his reasonable opinion, considers that the Franchisee has not taken such steps as it is reasonable, in all the circumstances of the case, for it to take to provide a reasonable alternative method of making services at the Station accessible to Disabled Persons.
4. **Specific additional obligations relating to persons with disabilities**
- 4.1 Not used.
- 4.2 The Franchisee shall establish and implement procedures necessary to:
- (a) record the making of reservations for seating accommodation for and/or the provision of assistance to, persons with disabilities which are made through the Assisted Passenger Reservation System (or whatever system may replace it from time to time for the purposes of the Secretary of State's Guidance on Disabled People's Protection Policies) and where the Franchisee is responsible for making the reservation and/or delivering the seating accommodation or assistance reserved. Any helpline established by the Franchisee for the purposes of making reservations for seating accommodation for and/or the provision of assistance to, persons with disabilities shall be provided free of charge;
 - (b) record whether such seating accommodation and/or assistance is actually provided; and
 - (c) provide such records to the Secretary of State on his request.
- 4.3 Where the Franchisee's Disabled People's Protection Policy:
- (a) has been established before the date of the Franchise Agreement; and

- (b) has not been revised and approved by the Secretary of State to take into account the Secretary of State's most recent published Guidance on Disabled People's Protection Policies as at the date of the Franchise Agreement,

the Franchisee shall within six months of the date of the Franchise Agreement revise its Disabled People's Protection Policy such that it complies with that guidance, and obtain the Secretary of State's approval of the revised version.

- 4.4 The Franchisee shall comply with the requirements set out in Appendix 2 (Alternative Transport) of this Schedule 4 in respect of the provision of alternative means of transportation for persons with disabilities.

APPENDIX 1 TO SCHEDULE 4**Minor Works**

1. Providing additional signage, where it does not currently exist, to allow better way finding around the station by Disabled Persons.
2. Removing:
 - 2.1 thresholds (above 15 millimetres) which do not comply with the Code of Practice; or
 - 2.2 fewer than three steps,

from the entrances to booking halls or platforms to enable those facilities to have step-free access.
3. Providing contrasting manifestations on glazed areas where contrasting manifestations do not currently exist.
4. Providing additional handrails around the station where handrails do not currently exist and where the Franchisee reasonably believes they may be required by a Disabled Person.
5. Providing new accessible stair nosings where stair nosings do not currently exist.
6. Providing new tactile surfaces, including at the top and bottom of flights of steps (but excluding at platform edges) where tactile surfaces do not currently exist.
7. Providing additional seating that is accessible to Disabled Persons, but not replacing existing seating.
8. Providing induction loops for ticket office windows where induction loops do not currently exist.
9. Replacing non-standard fittings with fittings that are compliant with the Code of Practice in existing disabled toilets, which would include replacing non-standard fittings in respect of toilet bowls and sinks, but would not include making major changes to plumbing or to the dimensions of the toilet area.
10. Providing dropped kerbs at drop off/set down points or station car parks to enable access/egress thereto where dropped kerbs do not currently exist.
11. Marking out existing car-parking bays for use by persons with disabilities which comply with the Code of Practice, where such car parking bays do not currently comply.

APPENDIX 2 TO SCHEDULE 4**Alternative Transport**

1. References in this Appendix 2 to passengers are references to passengers with disabilities who are wheelchair users or otherwise severely mobility impaired.
2. Subject to paragraph 4, where:
 - (a) a passenger wants to travel on a Passenger Service; and
 - (b) the design of the station at which the passenger's journey on such Passenger Service is to start (the "**Departure Station**") or finish (the "**Destination Station**") prevents the passenger from using that station to access or disembark from that Passenger Service,

the Franchisee shall provide alternative transport for that passenger in accordance with paragraph 3.
3. The Franchisee shall provide alternative transport for the passenger referred to in paragraph 2:
 - (a) from the Departure Station to the next station at which the Passenger Service is scheduled to call and at which it is possible for the passenger to access that Passenger Service;
 - (b) to the Destination Station, from the station closest to such station at which the Passenger Service is scheduled to call and which it is possible for the passenger to use to disembark from that Passenger Service; and/or
 - (c) to or from such other station as the Franchisee may, having regard to the journey and the needs of the passenger, agree,

and, in any case, at no cost additional to the price of the Fare which would otherwise be payable for the passenger's rail journey.
4. The Franchisee's obligations under this Appendix 2 are subject to:
 - (a) reasonable prior notice of the passenger's requirement for alternative transport; and
 - (b) the availability of suitable alternative transport (provided that the Franchisee has used all reasonable endeavours to ensure that it has arrangements in place to meet requirements for the provision of such alternative transport).

SCHEDULE 5

Fares

- Schedule 5.1: Purpose, Structure and Construction**
- Schedule 5.2: Franchisee's Obligation to Create Fares**
- Schedule 5.3: Allocation of Fares to Fares Baskets**
- Schedule 5.4: Regulation of Fares Basket Values**
- Schedule 5.5: Regulation of Individual Fares**
- Schedule 5.6: Exceeding the Regulated Value, Regulated Price or Regulated Child Price**
- Schedule 5.7: Changes to Fares and Fares Regulation**
- Schedule 5.8: Fares Regulation Information and Monitoring**
- Schedule 5.9: ITSO Certified Smartmedia**

SCHEDULE 5.1**Purpose, Structure and Construction****1. Purpose of Schedule 5****Purpose of provisions relating to Creating Fares**

- 1.1 The purpose of Schedule 5.2 (Franchisee's Obligation to Create Fares) is to ensure that Commuter Fares and Protected Fares are Created in accordance with the Ticketing and Settlement Agreement and appropriate restrictions are placed on the Franchisee's ability to Create Fares.

Purpose of Fares Regulation

- 1.2 The purpose of Schedules 5.3 (Allocation of Fares to Fares Baskets) to 5.8 (Fares Regulation Information and Monitoring) (inclusive) is to provide for the regulation of Fares by the Secretary of State pursuant to Section 28 of the Act.

- 1.3 For the purpose of regulating Fares, each Fare that is to be regulated shall be allocated in accordance with this Schedule 5 to one of the following Fares Baskets:

- (a) the Commuter Fares Basket; or
- (b) the Protected Fares Basket.

- 1.4 The Secretary of State's regulation of Fares places a limit on the Price or Child Price of each Fare that is allocated by the Secretary of State to a Fares Basket. The limit on the Price or Child Price of each Fare is set by reference to:

- (a) the overall increase of the Prices and the Child Prices of all Fares in a Fares Basket; and
- (b) the individual increase in the Price or the Child Price of each Fare in a Fares Basket.

- 1.5 Subject to the more detailed provisions of Schedules 5.4 (Regulation of Fares Basket Values) and 5.5 (Regulation of Individual Fares):

- (a) the overall increase of the Prices and the Child Prices of all Fares in a Fares Basket may not exceed the Retail Prices Index + one per cent. per annum in respect of each Fare Year; and
- (b) the increase in the Price or the Child Price of any individual Fare in a Fares Basket may not exceed the Retail Prices Index + three per cent. per annum in respect of each Fare Year.

- 1.6 The Secretary of State may alter these limits, and other aspects of the regulation of Fares, in accordance with the more detailed provisions of Schedule 5.7 (Changes to Fares and Fares Regulation).

2. Structure of Schedule 5

- 2.1 Schedule 5.2 (Franchisee's Obligation to Create Fares) sets out or refers to the Franchisee's obligations to Create Fares.

- 2.2 Schedule 5.3 (Allocation of Fares to Fares Baskets) sets out the allocation of Fares to Fares Baskets.
- 2.3 Schedule 5.4 (Regulation of Fares Basket Values) sets out the limits applicable to the overall increase in Prices and Child Prices of all Fares in a Fares Basket.
- 2.4 Schedule 5.5 (Regulation of Individual Fares) sets out the limits applicable to the increase in the Price or Child Price of any individual Fare in a Fares Basket.
- 2.5 Schedule 5.6 (Exceeding the Regulated Value, Regulated Price or Regulated Child Price) sets out the consequences of the Franchisee exceeding:
- (a) the Regulated Value of any Fares Basket; or
 - (b) the Regulated Price or Regulated Child Price of any Fare.
- 2.6 Schedule 5.7 (Changes to Fares and Fares Regulation) sets out the Secretary of State's ability to vary the foregoing provisions.
- 2.7 Schedule 5.8 (Fares Regulation Information and Monitoring) sets out Fares regulation information and monitoring provisions.
- 2.8 Schedule 5.9 (ITSO Certified Smartmedia) sets out the provisions relating to the ITSO Certified Smartmedia.

3. **Construction**

References to "**Fare**"

- 3.1 For the purposes of:
- (a) Schedule 5.2 (Franchisee's Obligation to Create Fares), Fare shall have the wide meaning given to it in paragraph (a) of that definition; and
 - (b) Schedules 5.3 (Allocation of Fares to Fares Baskets) to 5.8 (Fares Regulation Information and Monitoring) (inclusive), Fare shall have the narrow meaning given to it in paragraph (b) of that definition.
- 3.2 References in this Schedule 5 to a Fare shall, except to the extent the context otherwise requires, be construed as references to the Fare which is or can be Created by the Lead Operator for the Flow to which the Fare relates or, if such Flow is not a Compulsory Inter-available Flow, any Fare which the Franchisee has Created or can Create in respect of that Flow as the Secretary of State may specify.

Fares Documents

- 3.3 In the event that, in the Secretary of State's reasonable opinion, there is an immaterial inconsistency between the Fares, the maximum Price or Child Price (as the case may be) for any Fare recorded by RSP in 2010 or the 2010 Nominal Ticket Sales:
- (a) described in or determined in accordance with this Schedule 5; and
 - (b) described in the relevant Fares Document,
- the relevant Fares Document shall prevail.

3.4 In the event that, in the Secretary of State's reasonable opinion, there is a material inconsistency between the Fares, the maximum Price or Child Price (as the case may be) for any Fare recorded by RSP in 2010 or the 2010 Nominal Ticket Sales:

- (a) described in or determined in accordance with this Schedule 5; and
- (b) described in the relevant Fares Document,

this Schedule 5 shall prevail.

Setting of Child Prices

3.5 Any requirement under this Schedule 5 to set a Child Price in respect of a Fare shall be satisfied by the Franchisee Creating either:

- (a) a Fare which is only valid for use by persons under the age of 16; or
- (b) a Fare which is valid for use:
 - (i) by any person at a price; and
 - (ii) by persons under the age of 16 at a discounted price relative to the price set pursuant to paragraph 3.5(b)(i).

New Stations

3.6 Subject to paragraph 3.2, the Secretary of State may include within the definitions of:

- (a) Fares Basket;
- (b) Commuter Fare; and
- (c) Protected Fare,

Fares to or from any New Station, on such basis as he may, after consultation with the Franchisee, reasonably determine and references in this Schedule 5 to Fares Basket, Commuter Fare, Protected Fare and Fares and other relevant definitions shall be construed accordingly. At the request of the Secretary of State, the Bid Fares Policy shall be amended as is required to give effect to any such determination by the Secretary of State.

SCHEDULE 5.2**Franchisee's Obligation to Create Fares****1. Creation of Commuter Fares and Protected Fares**

The Franchisee shall ensure that each Commuter Fare and each Protected Fare has been Created in accordance with the Bid Fares Policy (as the same may be amended from time to time in accordance with Schedule 5.8 (Fares Regulation, Information and Monitoring)) and to the extent it is entitled or obliged to do so under the terms of the Ticketing and Settlement Agreement.

2. Restrictions on Creation of Fares

2.1 The Franchisee shall set the Child Price for any Fare that it Creates so that that Fare may be purchased by or for a person under the age of 16 for an amount which is no greater than the lowest amount that would be paid if that person were the holder of a 16 to 25 Railcard with no minimum fare (as amended or replaced from time to time) and whose purchase was made without condition.

2.2 The Franchisee shall not Create or agree to Create any:

- (a) Fare with a validity of 13 or more months; or
- (b) Discount Card,

without the consent of the Secretary of State (such consent not to be unreasonably withheld).

SCHEDULE 5.3**Allocation of Fares to Fares Baskets****1. Allocation of Fares to Fares Baskets**

1.1 On or prior to the Start Date the Secretary of State shall allocate each Commuter Fare and each Protected Fare to the relevant Fares Basket in accordance with this Schedule 5.3.

1.2 Subject to paragraph 2, every Commuter Fare shall be allocated by the Secretary of State to the Commuter Fares Basket and every Protected Fare shall be allocated by the Secretary of State to the Protected Fares Basket.

2. Designation of Non-Fares Basket Fares

2.1 On or prior to the Start Date, the Secretary of State shall:

(a) separately (or in aggregate with other Fares of the same type in the opposite direction or for similar journeys that have the same Price or Child Price as the case may be) rank, in descending order according to their Gross Revenue for the period of 12 months which ended 31 March 2010:

(i) all Commuter Fares; and

(ii) all Protected Fares;

(b) aggregate, following such ranking:

(i) those Commuter Fares with the lowest Gross Revenue, until the total of the aggregated Gross Revenue of such fares accounts for up to five per cent. of the aggregate Reference Revenue of all Commuter Fares; and

(ii) those Protected Fares with the lowest Gross Revenue, until the total of the aggregated Gross Revenue of such fares accounts for up to five per cent. of the aggregate Reference Revenue of all Protected Fares; and

(c) designate, following such aggregation:

(i) those Commuter Fares referred to in paragraph 2.1(b)(i) as Non-Fares Basket Fares; and

(ii) those Protected Fares referred to in paragraph 2.1(b)(ii) as Non-Fares Basket Fares.

2.2 Without prejudice to the Secretary of State's right to require the content of a Fares Basket to change at any time prior to the Start Date or the Combined Effective Date (as the case may be) or, thereafter, prior to the commencement of any Fares Setting Round, pursuant to paragraph 1 of Schedule 5.7 (Changes to Fares and Fares Baskets), any Commuter Fare or Protected Fare that is also designated as a Non-Fares Basket Fare shall not be allocated to the relevant Fares Basket.

- 2.3 The Secretary of State may de-designate any Non-Fares Basket Fare pursuant to paragraph 1.1 of Schedule 5.7 (Changes to Fares and Fares Regulation).

SCHEDULE 5.4**Regulation of Fares Basket Values****1. Value of Fares Basket not to exceed Regulated Value**

Subject to paragraph 1.3 of Schedule 5.6 (Exceeding the Regulated Value, Regulated Price or Regulated Child Price) the Franchisee shall procure that the Value of a Fares Basket at any time in any Fare Year does not exceed its Regulated Value for that Fare Year.

2. Value

The Value of a Fares Basket at any time shall be the aggregate of the Projected Revenue of each Fare in that Fares Basket at that time.

3. Projected Revenue**3.1** The Projected Revenue of any Fare at any time shall be an amount equal to:

$P \times 2010 \text{ Nominal Ticket Sales}$

where:

P is the Price or Child Price (as the case may be) of that Fare at that time; and

2010 Nominal Ticket Sales is the number of nominal ticket sales of that Fare for 2010 ascertained as follows:

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

where:

A is the aggregate Gross Revenue recorded by RSP as attributable to sales of that Fare and any other Fare with which it was aggregated under paragraph 2.1(a) of Schedule 5.3 (Allocation of Fares to Fares Baskets) for the period of 12 months which ended 31 March 2010; and

B is the Price or Child Price (as the case may be) for that Fare recorded by RSP in February 2010.

4. Regulated Value**4.1** The Regulated Value of a Fares Basket for any Fare Year shall be an amount equal to:

2010 Ticket Revenue x PPAI

where:

2010 Ticket Revenue is the aggregate Gross Revenue recorded by RSP as attributable to sales of all Fares in that Fares Basket for the period of 12 months which ended 31 March 2010;

PPAI is:

- (a) in respect of the Fare Year commencing 1 January 2011, the Permitted Aggregate Increase for that Fare Year; and
- (b) in respect of each Fare Year commencing on or after 1 January 2012, the product of the Permitted Aggregate Increase for each Fare Year between that Fare Year and the Fare Year which begins on 1 January 2011 (inclusively).

4.2 **82 The Permitted Aggregate Increase in any Fare Year shall be an amount equal to:**

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

where:

PAI is the Permitted Aggregate Increase in that Fare Year;

RPI is an amount equal to:

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

where:

RPI-1 is the Retail Prices Index for the July of the calendar year preceding that Fare Year; and

RPI-2 is the Retail Prices Index for the July of the calendar year preceding the calendar year referred to in the definition of RPI-1; and

82 7 December 2015 (Date of Contract Change Letter) – Contract variation agreed by the Secretary of State and Franchisee.

k is equal to 0 for the Fare Years commencing on 1 January 2014, 1 January 2015, 1 January 2016, 1 January 2017, 1 January 2018, 1 January 2019 and 1 January 2020, and is equal to +1 for any other Fare Year.

SCHEDULE 5.5

Regulation of Individual Fares

1. Price or Child Price not to exceed Regulated Price or Regulated Child Price

1.1 The Franchisee shall procure that the Price or Child Price (as the case may be) of:

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

in any Fare Year does not exceed the Regulated Price or Regulated Child Price (as the case may be) for such Fare in that Fare Year.

1.2 The Franchisee shall procure that the Price or Child Price (as the case may be) of any Season Ticket Fare shall be the same in both directions.

2. Regulated Price

2.1 The Regulated Price or the Regulated Child Price (as the case may be) for any Fare in any Fare Year shall be an amount equal to the greater of:

- (a) Preceding Year Ticket Price + £0.10p; and
- (b) Preceding Year Ticket Price x PII

where:

Preceding Year Ticket Price for the Fare Year commencing 1 January 2011, is the maximum Price or Child Price (as the case may be) for that Fare recorded by RSP in 2010 and, for any subsequent Fare Year, is the maximum Price or Child Price (as the case may be) recorded by RSP in the Fare Year preceding that Fare Year, provided that such maximum Price or Child Price (as the case may be) complied with the requirements of this Schedule 5. If such maximum Price or Child Price (as the case may be) did not so comply, then such maximum Price or Child Price (as the case may be) shall be the last Price or Child Price (as the case may be) recorded by RSP which did so comply; and

PII is the Permitted Individual Increase in any Fare Year, as determined in accordance with paragraph 2.2.

- 2.2 **83** The Permitted Individual Increase in any Fare Year shall be an amount equal to:

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

where:

PII is the Permitted Individual Increase in that Fare Year;

RPI is an amount equal to:

$$\frac{RPI_{-1}}{RPI_{-2}}$$

where: **RPI-1** is the Retail Prices Index for the July of the calendar year preceding that Fare Year; and

RPI-2 is the Retail Prices Index for the July of the calendar year preceding the calendar year referred to in the definition of **RPI-1**;

k is equal to 0 for the Fare Years commencing on 1 January 2014, 1 January 2015, 1 January 2016, 1 January 2017, 1 January 2018, 1 January 2019 and 1 January 2020, and is equal to +1 for any other Fare Year; and

f is equal to 0 for all Fare Years commencing on or after 1 January 2016.

- 2.3 Where:

- (a) the Franchisee sets the Price or Child Price (as the case may be) of any Commuter Fare or Protected Fare in any Fare Year; and
- (b) the Secretary of State reasonably determines that the Price or Child Price (as the case may be) of such Commuter Fare or Protected Fare was set solely for the purpose of increasing the value of the Preceding Year Ticket Price in the next Fare Year,

the Preceding Year Ticket Price for the purposes of determining the Regulated Price or Regulated Child Price (as the case may be) pursuant to paragraph 2.1 in the next Fare Year shall be the maximum Price or Child Price (as the case may be) prior to such setting that complied with the requirements of this Schedule 5, as recorded by RSP in the relevant preceding Fare Year.

83 7 December 2015 - (Date of Contract Change Letter) – Contract variation agreed by the Secretary of State and Franchisee.

3. Compulsory Inter-available Flows

Where the Franchisee:

- (a) as Lead Operator for a Compulsory Inter-available Flow, is responsible for setting the Price or Child Price (as the case may be) of a Commuter Fare for that Flow; and
- (b) has notified RSP of the Price or Child Price (as the case may be) of that Commuter Fare in any Fares Setting Round,

the Franchisee shall not increase the Price or Child Price (as the case may be) of that Commuter Fare in the same Fares Setting Round without the consent of either the Secretary of State or each other Train Operator which provides railway passenger services for such Flow.

SCHEDULE 5.6**Exceeding the Regulated Value, Regulated Price or Regulated Child Price****1. Exceeding the Regulated Value**

- 1.1 If the Franchisee is in contravention of paragraph 1 of Schedule 5.4 (Regulation of Fares Basket Values) in respect of either the Commuter Fares Basket or the Protected Fares Basket it shall reduce the Price or Child Price of Fares in the relevant Fares Basket at the next available opportunity and, in any event, at the next Fares Setting Round, so as to comply with the requirements of paragraph 1 of Schedule 5.4 (Regulation of Fares Basket Values) from such date.
- 1.2 It shall not be a contravention of paragraph 1 of Schedule 5.4 (Regulation of Fares Basket Values) if and to the extent that:
- (a) the Value of the Commuter Fares Basket exceeds its Regulated Value in any Fare Year;
 - (b) such excess is caused by the Price or Child Price of any relevant Commuter Fare being set pursuant to the terms of the Ticketing and Settlement Agreement by another person (other than an Affiliate); and
 - (c) the Franchisee does not have a reasonable opportunity, under any procedure for consulting or notifying Train Operators of alterations to the Prices and Child Prices of Fares under the Ticketing and Settlement Agreement or otherwise, to alter some or all of the other Commuter Fares in the Commuter Fares Basket so as to avoid the Value of the Commuter Fares Basket exceeding its Regulated Value.
- 1.3 If and to the extent that the circumstances described in paragraph 1.2 prevail in any Fare Year, the Franchisee shall not subsequently increase during that Fare Year, or any subsequent Fare Year, the Price or Child Price of any Commuter Fare in the Commuter Fares Basket which it is entitled to set pursuant to the terms of the Ticketing and Settlement Agreement, unless, following such increase, the Franchisee would, otherwise than under paragraph 1.3, comply with the provisions of paragraph 1 of Schedule 5.4 (Regulation of Fares Basket Values) in relation to the Commuter Fares Basket.
- 1.4 Where circumstances described in paragraph 1.2 prevail in any Fare Year, the Franchisee shall not be required to reduce the Price or Child Price of any other Commuter Fare at any time during that Fare Year, or any subsequent Fare Year, where such Price or Child Price has previously been set in a Fares Setting Round.

2. Exceeding the Regulated Price or Regulated Child Price

- 2.1 If the Franchisee is in contravention of paragraph 1 of Schedule 5.5 (Regulation of Individual Fares):
- (a) it shall reduce the Price or Child Price of any relevant Fare at the next available opportunity and, in any event, at the next Fares Setting Round, so as to comply with the requirements of paragraph 1 of Schedule 5.5 (Regulation of Individual Fares) from such date.

SCHEDULE 5.7**Changes to Fares and Fares Regulation****1. Changes to Fares Baskets**

1.1 The Secretary of State may require the content of the Commuter Fares Basket or the Protected Fares Basket (as the case may be) to change in accordance with the following:

- (a) where the Secretary of State is not satisfied that the Price or Child Price of any Non-Fares Basket Fare is reasonably constrained by the Price or Child Price of other Fares which:
 - (i) have been set in respect of the same, or part of the same, Flow as such Non-Fares Basket Fare, or a Flow which is reasonably proximate to the Flow on which such Non-Fares Basket Fare has been set; and
 - (ii) have been included in the relevant Fares Basket,the Secretary of State may de-designate any Non-Fares Basket Fare and include such Non-Fares Basket Fare in the relevant Fares Basket;
- (b) where any Commuter Fare for a Flow has been included in the Commuter Fares Basket, the Secretary of State may require the inclusion in the Commuter Fares Basket of any Weekly Season Ticket, Monthly Season Ticket, Quarterly Season Ticket, Annual Season Ticket, unrestricted Single Fare or unrestricted Return Fare that existed on that Flow in February 2010;
- (c) where any Protected Fare for a Flow has been included in the Protected Fares Basket, the Secretary of State may require the inclusion in the Protected Fares Basket of any Protected Return Fare or Protected Weekly Season Ticket that existed on that Flow in February 2003; and/or
- (d) where the Secretary of State changes the Reference Revenue and/or the Gross Revenue of any Fare pursuant to paragraph 3.1(a) and/or (b) then, in relation to the Fares Basket in which such Fare is or would be included, and without limiting paragraphs 1.1(a) to (c) inclusive, the Secretary of State may also:
 - (i) make any of the changes to such Fares Basket contemplated by this paragraph 1.1;
 - (ii) designate any Fare as a Non-Fares Basket Fare in accordance with the provisions (other than the requirement that such designation occurs on or prior to the Start Date) of paragraph 2 of Schedule 5.3 (Allocation of Fares to Fares Baskets); and/or
 - (iii) de-designate any Non-Fares Basket Fare and include such Non-Fares Basket Fare in the relevant Fares Basket.

- 1.2 The Secretary of State shall serve notice in writing on the Franchisee:
 - (a) at any time prior to the Start Date; and
 - (b) thereafter, no later than the commencement of any Fares Setting Round, to require any Fare to be included in a Fares Basket or to designate any Fare as a Non-Fares Basket Fare pursuant to paragraph 1.1.
2. **Changes to the 2010 Nominal Ticket Sales**
- 2.1 The Franchisee may, in the event of any significant change to the pattern of travel on the Passenger Services during the Franchise Term, apply to the Secretary of State for the value of factors A and/or B in the formula for determining 2010 Nominal Ticket Sales in paragraph 3 of Schedule 5.4 (Regulation of Fares Basket Values) to be adjusted to take account of such changes, such that:
 - (a) the value of factor A is re-calculated by using the Gross Revenue in respect of the sales of the relevant Fares for the most recently completed period of 12 months ending 31 March; and/or
 - (b) the value of factor B is recalculated by using the Price or Child Price (as the case may be) of the relevant Fares recorded by RSP in the month of February during such period.
- 2.2 The Secretary of State shall act reasonably in relation to any such application but shall not under any circumstances be obliged to accept any such application in whole or in part. The Secretary of State shall be entitled to impose conditions upon any such acceptance, including conditions requiring that the value of both factors A and B are adjusted and/or are adjusted in respect of any or all Fares in the relevant Fares Basket.
3. **Changes to the Reference Revenue, Gross Revenue, 2010 Nominal Ticket Sales and/or 2010 Ticket Revenue**
- 3.1 The Secretary of State may, by notice in writing served on the Franchisee no later than the date of commencement of any Fares Setting Round, require:
 - (a) the Reference Revenue of any Fares Basket to be calculated by reference to a different reference period for the purpose of paragraph 2 of Schedule 5.3 (Allocation of Fares to Fares Baskets) than the period of 12 months ended 31 March 2010; and/or
 - (b) the Gross Revenue of all Commuter Fares and Protected Fares to be re-calculated for the purpose of paragraph 2 of Schedule 5.3 (Allocation of Fares to Fares Baskets) by reference to a different reference period than the period of 12 months ended 31 March 2010; and/or
 - (c) the value of factor A in the formula for determining the 2010 Nominal Ticket Sales in paragraph 3 of Schedule 5.4 (Regulation of Fares Basket Values) to be re-calculated in respect of any Fare by reference to a different reference period than the period of 12 months ended 31 March 2010; and/or
 - (d) the value of factor B in the formula for determining the 2010 Nominal Ticket Sales in paragraph 3 of Schedule 5.4 (Regulation of Fares Basket Values)

to be re-calculated in respect of any Fare by reference to a different reference date other than February 2010; and/or

- (e) the 2010 Ticket Revenue in respect of any Fares Basket to be re-calculated for the purpose of paragraph 4 of Schedule 5.4 (Regulation of Fares Basket Values) by reference to a different reference period than the period of 12 months ended 31 March 2010.

3.2 Where, in accordance with paragraph 3.1(e), the 2010 Ticket Revenue in respect of any Fares Basket is re-calculated by reference to a different reference period, the value of "PPAI" in paragraph 4 of Schedule 5.4 (Regulation of Fares Basket Values) shall be determined solely by reference to the product of the Permitted Aggregate Increase for each Fare Year beginning after the end of such reference period.

3.3 Any revision pursuant to paragraph 3.1 or 3.2 shall take effect upon commencement of the next Fare Year to commence after the Fares Setting Round referred to in paragraph 3.1.

4. **Changes to Prices**

The Franchisee may from time to time submit proposals to the Secretary of State to increase any Prices or Child Prices beyond the levels permitted under Schedules 5.4 (Regulation of Fares Basket Values) and 5.5 (Regulation of Individual Fares) in connection with any proposed or actual improvement in any aspect of the Passenger Services relating to such Fares. The Secretary of State shall consider any such proposal and may (at his sole discretion) require the Franchisee to implement any such proposal in whole or in part.

5. **Changes to Fares Regulation**

The parties agree that the Secretary of State shall have the power at any time and on more than one occasion to alter the obligations of, and restrictions on, the Franchisee under Schedule 5.1 (Purpose Structure and Construction), Schedules 5.2 (Franchisee's Obligation to Create Fares) to 5.8 (Fares Regulation Information and Monitoring) inclusive for any Fare Year, or part thereof (including alteration of the value of "k" under paragraph 4.2 of Schedule 5.4 (Regulation of Fares Basket Values) and/or paragraph 2.2 of Schedule 5.5 (Regulation of Individual Fares) and/or alteration of the value of "f" under paragraph 2.2 of Schedule 5.5 (Regulation of Individual Fares)). The exercise by the Secretary of State of his powers under this paragraph 5 shall be a Change and any alteration to the value of "k" under paragraph 4.2 of Schedule 5.4 (Regulation of Fares Basket Values) and/or paragraph 2.2 of Schedule 5.5 (Regulation of Individual Fares) in respect of the Fare Year commencing 1 January 2014 shall be a Qualifying Change.

Changes to Compulsory Inter-available Flows

5.1 Where:

- (a) pursuant to Clause 4-7 of the Ticketing and Settlement Agreement, the consent of the Secretary of State is requested for the abolition of a Compulsory Inter-available Flow (the "**Reference Flow**") in respect of which any Fare Created would be a Commuter Fare or a Protected Fare (the "**Reference Fare**"); and
- (b) a Flow exists, which, in the Secretary of State's opinion, is substantially similar to the Reference Flow (the "**Equivalent Flow**"),

the Secretary of State may, as a condition of granting his consent to the abolition of the Reference Flow, by written notice to the Franchisee, require any Fare Created in respect of the Equivalent Flow which has substantially the same characteristics as the Reference Fare to be included in a Fares Basket (the "**Equivalent Fare**").

5.2 The Secretary of State shall not issue any such notice in respect of an Equivalent Fare unless the provisions of such notice have first been approved by the Ticketing and Settlement Scheme Council (as defined in the Ticketing and Settlement Agreement) or a delegate of such council.

5.3 The Price and Child Price of any Equivalent Fare in the first Fare Year in which it is to be introduced shall be no greater than the maximum permitted Price or Child Price in that Fare Year of the relevant Reference Fare, as if such Reference Fare had not been abolished.

6. **Change of Lead Operator/Major Flow Operator**

6.1 The Franchisee shall not without the Secretary of State's prior approval, agree to any request under the Ticketing and Settlement Agreement that it cease to be Lead Operator in respect of any Flow.

6.2 The Franchisee shall inform the Secretary of State if it becomes the Lead Operator in respect of any Flow. Upon the Franchisee becoming the Lead Operator in respect of any Flow, the Secretary of State may without limiting paragraph 3, exercise his rights pursuant to paragraph 3 in relation to the relevant Fares Basket.

6.3 The Franchisee shall inform the Secretary of State if it ceases to be a Major Flow Operator in respect of any Flow.

7. **Changes to Fares Documents**

7.1 Following:

- (a) any allocation of Fares to any Fares Basket pursuant to Schedule 5.3 (Allocation of Fares to Fares Baskets); or
- (b) any subsequent adjustment thereof pursuant to this Schedule 5.7,

the Secretary of State shall set out in the Commuter Fares Document and/or the Protected Fares Document (as the case may be) all Fares then included in the relevant Fares Basket and, as soon as reasonably practicable thereafter, the Secretary of State shall issue or reissue (as the case may be) such Fares Document(s) to the Franchisee.

8. **Changes to the Bid Fares Policy**

8.1 Where the Secretary of State exercises any of his rights specified in any of paragraphs 1 to 8 of this Schedule 5.7, it is acknowledged that changes to the Bid Fares Policy may be required in order for the Fares Created in accordance with the Bid Fares Policy to be consistent with those which would be Created consistently with the Good Operator Standard (as such term is defined in paragraph 2.3 of Schedule 5.8 (Fares Regulation Information and Monitoring)).

8.2 Accordingly, in complying with its obligations under paragraph 2.3 of Schedule 5.8 (Fares Regulation Information and Monitoring) in respect of the Fares Setting Round in which any changes resulting from an exercise of the Secretary of State's

rights first take effect, the Franchisee is required to propose such changes to the Bid Fares Policy as are necessary to reflect those changes and in these circumstances the provisions of paragraph 3 of Schedule 5.8 (Fares Regulation Information and Monitoring) shall apply.

SCHEDULE 5.8

Fares Regulation Information and Monitoring

1. Purpose

1.1 This Schedule sets out:

- (a) the terms and conditions and the further restrictions that are placed on the Franchisee's ability to Create Fares, in addition to those contained in Schedules 5.1 (Purpose, Structure and Construction) to 5.7 (Changes to Fares and Fares Regulations) and Schedule 5.9 (ITSO Certified Smartmedia); and
- (b) information and monitoring provisions which apply to all Fares Created.

1.2 The Secretary of State bears Revenue risk in relation to the Franchise because of the particular commercial circumstances that apply to it. In consequence of this it is acknowledged that it is necessary and proportionate for this Franchise Agreement to include provisions which are different from those which apply where a franchisee takes fare box revenue risk. Accordingly this Schedule 5.8 contains mechanisms, to address this issue including:

- (a) the absence of the normal commercial incentives which a franchisee would have to maximise fare box revenue;
- (b) perverse incentives to price off demand so as to reduce operating costs or to increase non farebox revenue at the expense of Revenue,

as required to protect the interests of passengers and tax payers and the long term value of the Franchise.

2. The Bid Fares Policy

2.1 The Bid Fares Policy is in the agreed terms marked **BFP** and includes a clear and quantified description of the planned structure and policy to be adopted by the Franchisee in respect of:

- (a) the Creation of Protected Fares and Commuter Fares; and
- (b) the Creation of Unregulated Fares between London (as a minimum) and the following stations:
 - (i) Bedford;
 - (ii) Brighton;
 - (iii) Cambridge;
 - (iv) Eastbourne;
 - (v) Gatwick Airport;
 - (vi) Luton Airport Parkway;

- (vii) Peterborough;
- (viii) St Albans; and
- (ix) Stevenage,

in each case such planned structure and policy being compliant with the requirements of this Schedule 5 and the terms of the Ticketing and Settlement Agreement.

2.2 Subject to paragraph 2.3 and paragraph 3 of this Schedule 5.8, for each Fares Setting Round during the Franchise Term, the Franchisee shall Create each Fare on the basis specified in the Bid Fares Policy in respect of such Fare.

2.3 The Franchisee shall, in respect of every Fares Setting Round:

- (a) consider whether changes are necessary to the Bid Fares Policy or the price or terms of any Fare Created in accordance with it; and
- (b) if so, consider what the changes to the Bid Fares Policy or any such Fare should be,

in each case to the extent that a skilled and experienced Train Operator bearing the farebox revenue risk in relation to the Franchise and seeking to maximise its profit consistent with its other obligations under the Franchise Agreement (including compliance with Schedule 5.4 (Regulation of Fares Basket Value) and Schedule 5.5 (Regulation of Individual Fares)) would reasonably be expected to do so (the "**Good Operator Standard**").

3. **Changes to the Bid Fares Policy**

3.1 By no later than week 4 of each Fares Setting Round, the Franchisee shall provide to the Secretary of State:

- (a) details (including supporting documentation) of any Fare where, in the reasonable opinion of the Franchisee, the Creation of such Fare on the basis set out in the Bid Fares Policy would not be consistent with the Good Operator Standard together with:
 - (i) a detailed explanation of the reasons for the Franchisee's opinion pursuant to paragraph 3.1(a) and, if applicable, an explanation of the changes that would need to be made to the Bid Fares Policy to ensure that any Fares Created in any subsequent Fares Setting Rounds would be consistent with the Good Operator Standard;
 - (ii) the details of such alternative Fare (including the Price or Child Price (as the case may be) and the terms of such alternative Fare) that it wishes to Create in place of the Fare contained in the Bid Fares Policy (plus supporting documentation to evidence that such Fare would comply with the Good Operator Standard (as applicable) ("**Alternative Fare**")); and
 - (iii) written confirmation from a statutory director of the Franchisee which confirms that the Alternative Fare complies with the Good Operator Standard. It shall be a

contravention of the Franchise Agreement if any such written confirmation from a statutory director of the Franchisee pursuant to this paragraph 3.1 is, in the reasonable opinion of the Secretary of State, in any material respect, untrue, inaccurate and/or misleading.

3.2 On receipt of the information required by paragraph 3.1, the Secretary of State may by no later than week 9 of the Fares Setting Round, by notice to the Franchisee:

- (a) confirm his agreement to the modification of the Bid Fares Policy as proposed by the Franchisee pursuant to paragraph 3.1 and the Bid Fares Policy as so modified shall apply indefinitely or for such alternative period as the Secretary of State may specify; or
- (b) decline to agree the modification, in which case the provisions of paragraph 3.3 shall apply.

If the Secretary of State does not notify the Franchisee within the time specified, the Secretary of State shall be deemed to have declined to agree.

3.3 Where the Secretary of State declines (or is deemed to have declined) to agree a modification to the Bid Fares Policy he shall be entitled to refer the question on whether:

- (a) the Creation of the affected Fare as specified in the Bid Fares Policy is inconsistent with the Good Operator Standard; and/or
- (b) the proposed Alternative Fare and associated modification of the Bid Fares Policy complies with the Good Operator Standard,

in each case, for resolution in accordance with such dispute resolution procedure as the Secretary of State and the Franchisee may agree or, in the absence of agreement, in accordance with the Dispute Resolution Rules. Until the determination of any such dispute the Franchisee shall Create the affected Fare(s) as specified in the Bid Fares Policy. Following determination of any such dispute the Secretary of State and the Franchisee shall take such steps as are required to give effect to such determination (including by making the required modification to the Bid Fares Policy and by the Franchisee making such necessary changes to the affected Fare at the next available opportunity and, in any event, at the next Fares Setting Round).

4. **Fare Information**

4.1 The Franchisee shall provide to the Secretary of State by no later than week 12 of each Fares Setting Round, a summary (to such level of detail or generality as the Secretary of State may reasonably require) of the Prices and Child Prices of each Commuter Fare, Protected Fare and Unregulated Fare that it is intending to set in accordance with the provisions of paragraphs 2 and 3.

4.2 The Franchisee shall provide any information required pursuant to this paragraph 4 in such form (including by electronic data transfer) as the Secretary of State may reasonably require.

4.3 The Franchisee shall make available, or procure that RSP makes available, to the Secretary of State, for any Fares Setting Round during the Franchise Term, such details (including the proposed Prices or Child Prices) of the Initial Permanent Fare

of any Commuter Fare or Protected Fare or Unregulated Fare for each such Fares Setting Round as the Secretary of State may reasonably request from time to time.

5. Monitoring

5.1 The Franchisee shall provide to the Secretary of State:

- (a) such access as the Secretary of State may require to information pertaining to the Prices or Child Prices of Commuter Fares and Protected Fares and the Prices or Child Prices of Unregulated Fares from time to time; and
- (b) such further information as the Secretary of State may require for the purpose of:
 - (i) determining the Gross Revenue of the Franchisee in relation to any particular Fare or Fares or any particular period; or
 - (ii) determining whether to agree or decline to agree pursuant to paragraph 3.2.

5.2 By no later than week 17 of each Fares Setting Round, the Franchisee will provide to the Secretary of State written confirmation from a statutory director of the Franchisee of whether the Franchisee has complied with its obligations under this Schedule 5 during each such Fares Setting Round. It shall be a contravention of the Franchise Agreement if any such written confirmation from a statutory director of the Franchisee pursuant to this paragraph 5.2 is, in the reasonable opinion of the Secretary of State, in any material respect, untrue, inaccurate and/or misleading.

5.3 The Franchisee shall take such action as the Secretary of State may require following receipt of any details from the Franchisee pursuant to paragraph 4 in order to ensure that the Franchisee will comply with the provisions of Schedule 5.2 (Franchisee's Obligation to Create Fares) to this Schedule 5.8 (inclusive).

Schedule 5.9**ITSO Certified Smartmedia****1. General Obligations**

- 1.1 The Franchisee shall use all reasonable endeavours to co-operate with Network Rail and other Train Operators in relation to the provision of equipment to permit the use of ITSO Certified Smartmedia.
- 1.2 The Franchisee shall use all reasonable endeavours to:
- (a) co-operate with other Train Operators in relation to the introduction of flexible ticketing schemes by such other Train Operators (including flexible season tickets and/or flexible ticketing schemes based on ITSO Certified Smartmedia);
 - (b) develop an approach to the use of ITSO Certified Smartmedia to facilitate use of more sophisticated ticket types and demand management over time;
 - (c) facilitate the use of ITSO Certified Smartmedia on IOP within the Zones for the IOP London Products;
 - (d) accept, retail and fulfil on ITSO Certified Smartmedia the IOP London Products and all products that are currently accepted, retailed and fulfilled under the Ticketing and Settlement Agreement;
 - (e) co-operate with other Train Operators who either have or will have ITSO Certified Smartmedia functionality, to ensure reciprocal operation of ITSO Certified Smartmedia;
 - (f) promote the inter-availability of any smartmedia related ticketing schemes and shall join any ATOC approved smartmedia related ticketing scheme such as the South East Flexible Ticketing Programme; and
 - (g) co-operate with relevant passenger transport executives, local authorities and TfL as well as other train operators in relation to any proposals to convert any multi-modal fare schemes to use ITSO Certified Smartmedia.
- 1.3 The Franchisee will co-operate with TfL, the Secretary of State and relevant Train Operators in making such reasonable changes to joint ticketing products as are reasonably required to permit TfL to generate sufficient additional revenue to meet the IOP operating and maintenance costs as set out in the IOP Agreement subject to:
- (a) TfL meeting the Franchisee's reasonable and demonstrable costs as agreed in advance by the Secretary of State that are directly associated with the changes to such joint ticketing products;
 - (b) any necessary changes to, or derogations from, fares regulation being granted by the Secretary of State; and
 - (c) the Franchisee not being obliged to make any payment or transfer of revenue to TfL to cover TfL's IOP operating and maintenance costs as defined in the scope of the IOP Agreement, except in the case of a change

where the Franchisee has agreed to pay for all or part of TfL's operating and maintenance costs associated with that change.

1.4 The Franchisee shall ensure that:

- (a) any smartcard or smartmedia ticketing technology (and any amendment, extension or replacement thereof) inherited, used or introduced by the Franchisee (whether on a permanent or a trial basis) is at all times compliant with the ITSO specification TS1000 v2.1.4 and operating requirement (or such subsequent ITSO specification as the Franchisee and Secretary of State may agree). This obligation shall not prevent the Franchisee from progressing additional ticket developments involving wave and pay technology, bar code technology or EMV standards which may not be ITSO compliant; and
- (b) any smart card and ITSO Certified Smartmedia readers introduced by the Franchisee (whether on a permanent or temporary basis) must:
 - (i) be compliant with the ITSO specification; and
 - (ii) conform to EMV level 1 certification (hardware) and must be capable of being upgraded whilst in operation to EMV level 2 (application).

1.5 The Franchisee shall undertake such actions as the Secretary of State may reasonably require in connection with the introduction of smartcard or smartmedia ticketing on the network. Except where such further action is required to be undertaken in any TGN SEFT Deed or Southern SEFT Deed (as the case may be) to be entered into by the Franchisee pursuant to paragraph 2.1 or paragraph 2.2 (respectively), the Secretary of State will reimburse the reasonable costs incurred by the Franchisee in complying with any such requirement of the Secretary of State provided that, prior to incurring such costs, the Franchisee has obtained the Secretary of State's approval of the same.

1.6 On the introduction of ITSO Certified Smartcard ticketing system in relation to the Franchise, the Franchisee shall continue to provide and make available (and where applicable effectively maintain) such ITSO Certified Smartmedia ticketing system (including any associated ITSO Certified Smartmedia product retailing equipment, cards, readers and validators) and the ITSO Certified Smartmedia as so introduced.

2. **SEFT Deeds**

TGN Franchise Services

2.1 On or after the Start Date and at the direction of the Secretary of State the Franchisee shall enter into a deed with the Secretary of State for the implementation of the SEFT Programme in respect of the TGN Franchise Services (the "**TGN SEFT Deed**"). The TGN SEFT Deed shall be:

- (a) on such terms as may be specified by the Secretary of State;
- (b) based on the assumptions contained in the document in agreed terms marked **TSD**; and
- (c) supplemental to the Franchise Agreement and be construed together with the Franchise Agreement.

Southern Franchise Services

2.2 On or after the Combined Effective Date and at the direction of the Secretary of State the Franchisee shall enter into a deed with the Secretary of State for the implementation of the SEFT Programme in respect of the Southern Franchise Services (the "**Southern SEFT Deed**"). The Southern SEFT Deed shall be:

- (a) on such terms as may be specified by the Secretary of State;
- (b) based on the assumptions contained in the document in agreed terms marked **SSD**; and
- (c) supplemental to the Franchise Agreement and be construed together with the Franchise Agreement.

2.3 The Franchisee shall from the Combined Effective Date and for the duration of the Franchise Term continue to provide and make available (and where applicable effectively maintain) such ITSO Certified Smartmedia ticketing system (including any associated ITSO Certified Smartmedia product retailing equipment, cards, readers and validators) and the ITSO Certified Smartmedia as introduced and operated by the Southern Franchisee (or a successor to the Southern Franchisee) immediately prior to the Combined Effective Date.

3. Flexible Ticketing Pilot Scheme

Where, prior to the Start Date or the Combined Effective Date (as the case maybe), the FCC Franchisee (or a successor to the FCC Franchisee) or the Southern Franchisee (or a successor to the Southern Franchisee) (as the case may be) participated in any flexible ticketing pilot scheme organised by the Secretary of State (or a nominee on his behalf) the Franchisee shall continue to so participate in such flexible ticketing pilot scheme on the same basis as the FCC Franchisee (or a successor to the FCC Franchisee) or the Southern Franchisee (or a successor to the Southern Franchisee) (as the case may be).

4. CPAY Acceptance

4.1 Where, prior to the Start Date or the Combined Effective Date (as the case maybe), the FCC Franchisee (or a successor to the FCC Franchisee) or the Southern Franchisee (or a successor to the Southern Franchisee) (as the case may be) entered into an agreement (which for the purposes of this paragraph 4 shall include participation in a pilot scheme) with TfL for the introduction and operation of CPAY then the Franchisee shall, to the extent required by TfL, enter into such agreement for the introduction or operation of CPAY on the same basis as the FCC Franchisee (or a successor to the FCC Franchisee) or the Southern Franchisee (or a successor to the Southern Franchisee) (as the case may be).

4.2 Where, prior to the Start Date or the Combined Effective Date (as the case may be), the FCC Franchisee (or a successor to the FCC Franchisee) or the Southern Franchisee (or a successor to the FCC Franchisee) (as the case may be) has not entered into any agreement for the introduction or operation of CPAY with TfL then the Franchisee shall co-operate in good faith with TfL to facilitate the introduction and operation of CPAY in connection with the provision of the Franchise Services.

5. The STNR Project⁸⁴

The provisions contained in Appendix 1 to this Schedule 5.9 shall apply in respect of the implementation of smart ticketing arrangements for the purposes of the Franchise. The Franchisee and the Secretary of State shall each comply with their respective obligations comprised in that Appendix.

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Derogations

⁸⁴ 17 January 2018 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

Appendix 1 to Schedule 5.9⁸⁵**1. Definitions**

In this Appendix the words and expressions defined in this paragraph 1 shall (unless the context requires otherwise) have the meanings given to them below:

[REDACTED⁸⁶]

[REDACTED⁸⁷]

“Dependency Item” means an aspect of the STNR Scope of Work which is subject to a dependency on another train operator and/or RDG;

[REDACTED⁸⁸]

“Listed STNR Contracts” has the meaning given to it in paragraph 3.1(b);

[REDACTED⁸⁹]

“RDG” means the Rail Delivery Group, the body responsible for discharging the functions of ATOC from 24 October 2016;

“SEFT Deed” means the deed of amendment of the Franchise Agreement between the Secretary of State and the Franchisee dated 30 September 2014;

“Smart Ticket” has the meaning given to such term in the STNR Scope of Work;

“STNR Completion” means that:

- (a) all aspects of the STNR System have been fully delivered, installed and commissioned in accordance with the requirements set out in the STNR Scope of Work;**
- (b) the testing and certification requirements set out in paragraph 6.2 of the STNR Scope of Work have been achieved; and**
- (c) all aspects of the STNR System are available and functioning in public use;**

“STNR Costs Report” has the meaning given to it in paragraph 6.2(a);

“STNR Costs Schedule” means the schedule of costs as detailed in the document in the agreed terms marked “STNRCS”;

[REDACTED⁹⁰]

“STNR Obligations” means the Franchisee’s obligations in respect of the STNR Project pursuant to this Appendix 1;

“STNR Programme” means the programme for the delivery and the implementation of the STNR System and delivery of the STNR Obligations as set out in the document in the agreed terms marked “STNRP”;

“STNR Project” means the project for implementing and operating an interoperable smart ticketing solution on the National Rail Network allowing passengers to make complete journeys on the National Rail Network using a smartcard as a ticket. For the purpose of this definition, “National Rail Network” has the meaning given to it in the National Rail Conditions of Travel;

“STNR Project Steering Committee” means the committee established by the Secretary of State and composed of his representatives, to oversee the implementation of the STNR Project or any such other person or body authorised by the Secretary of State for such purpose;

“STNR Quarter” means a period of three (3) successive Reporting Periods provided that the first shall commence on 10 December 2017 and the last shall end on the last day of the Franchise Period;

“STNR Reporting Period” means any of the Reporting Periods specified in the STNR Costs Schedule, being the Reporting Periods in respect of which Forecast

⁹⁰ 16 May 2018 (Date of Redactions Approval) – Where text has been omitted from the document this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

of STNR Completion and the date of expiry or termination of the Franchise Agreement;

“STNR Reporting Requirements” means the reporting requirements in respect of the STNR Project set out in the document in the agreed terms marked “STNRRR”;

“STNR Scope of Work” means the scope of works, services and activities in respect of the STNR Project as set out in the document in the agreed terms marked “STNRSOW” and comprising:

- (a) subject to paragraph (b) below, the generic specification for the STNR Project;**
- (b) Annex A which lists those elements of the generic specification for the STNR Project as are, or are not, to be delivered, performed and complied with by the Franchisee pursuant to this Appendix 1 and to the extent of any conflict or inconsistency between the generic specification and Annex A, Annex A shall take precedence over the generic specification;**
- (c) Annex B which lists equipment to be procured, delivered, commissioned and put into use by the Franchisee pursuant to this Appendix 1; and**
- (d) Annex C which lists software and/or other system upgrades to be procured, delivered, commissioned and put into use by the Franchisee pursuant to this Appendix 1;**

“STNR System” means collectively the IT systems (hardware and software) and associated services required for a smart ticketing solution as detailed in the STNR

Scope of Work, including those items referenced in Annex B and Annex C of the STNR Scope of Work;

“Target Date” means the target date for STNR Completion as specified in the STNR Programme; and

[REDACTED⁹¹]

2. Implementation and operation of STNR System⁹²

2.1 Subject to paragraphs 2.2 and 2.3 the Franchisee shall deliver and perform the STNR Obligations in accordance with the STNR Programme and the STNR Scope of Works.

2.2 In relation to each Dependency Item:

(a) the Franchisee shall use reasonable endeavours to deliver, perform and comply with that item notwithstanding the dependency on other train operators, RDG and/or TfL (as the case may be);

(b) “reasonable endeavours” shall include:

(i) complying with the corresponding requirements of the Franchisee in respect of the relevant Dependency Item; and

(ii) otherwise actively co-operating and engaging with the relevant other train operators, RDG and/or TfL as appropriate, including in establishing processes, business rules and necessary system changes in order to achieve the effective delivery of the Franchisee’s

⁹¹ 16 May 2018 (Date of Redactions Approval) – Where text has been omitted from the document this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

⁹² 17 January 2018 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

STNR Obligations and ensure the reciprocal operation of Smart Tickets,

[REDACTED⁹³]

2.3 The Franchisee [REDACTED⁹⁴] STNR Completion is achieved by no later than the Target Date.

2.4 [REDACTED⁹⁵]

2.5 The Franchisee shall, following STNR Completion, at all times be responsible for the ongoing operation, maintenance, upkeep and repair of the STNR System (fair wear and tear excepted) and continue to make available the deliverables in accordance with, and comply in all respects with, the STNR Scope of Work throughout the Franchise Period.

2.6 The Franchisee shall use reasonable endeavours to support other train operators and RDG to deliver the interoperable functionality of the STNR Project.

3. Further obligations in relation to items to be supplied⁹⁶

3.1 The Franchisee warrants and shall procure:

(a) that it has and retains full title in:

(i) any tangible asset comprised in the STNR System and any other hardware assets which are required to operate the STNR System

⁹³ 16 May 2018 (Date of Redactions Approval) – Where text has been omitted from the document this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

⁹⁴ Date of redaction 23/04/2018 - 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.

⁹⁵ 16 May 2018 (Date of Redactions Approval) – Where text has been omitted from the document this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

⁹⁶ 17 January 2018 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

from the date on which that part of the STNR System (or other assets) is delivered to the Franchisee; and

- (ii) without limiting paragraph 3.1(a), any data processed or generated by the STNR System from the STNR Completion Date,**

which shall be "Operating Assets" for the purposes of and as defined in Schedule 14.2 (Maintenance of Operating Assets); and

- (b) that it shall obtain a [REDACTED⁹⁷] licence to use the Intellectual Property Rights in:

[REDACTED⁹⁸]

for the purposes of the performance of its obligations under this Appendix 1 and the carrying out of the Franchise Services and so as to enable such licence to be a Franchise Asset provided that, subject to paragraph 3.2, this paragraph 3.1(b) shall not require the Franchisee to provide such a licence to use Intellectual Property Rights that belong to, or are licensed from, either a counterparty to an STNR Contract specifically listed in paragraphs (a) to (g) of the definition of STNR Contract ("Listed STNR Contract") or the counterparty to the [REDACTED⁹⁹]

3.2 The Franchisee shall use its reasonable endeavours, at the Secretary of State's request, to:

- (a) procure from a counterparty to a Listed STNR Contract (including for these purposes the [REDACTED¹⁰⁰]), a licence to use the Intellectual Property Rights in the [REDACTED¹⁰¹], in each case, as relevant to that Listed STNR Contract (such licence to be on the same terms and conditions as specified in the Listed STNR Contract except as to the duration which shall be as notified to the Franchisee by the Secretary of State); and
- (b) enter into an arrangement providing for the source code applicable to any software licence relating to the Intellectual Property Rights described in paragraphs 3.1(b) and/or 3.2(a) to be placed in escrow and released as

⁹⁷ 16 May 2018 (Date of Redactions Approval) – Where text has been omitted from the document this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

⁹⁸ 16 May 2018 (Date of Redactions Approval) – Where text has been omitted from the document this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

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necessary to allow the Franchisee and any Successor Operator to continue to utilise the licensed items.

[REDACTED¹⁰²]

3.3 [REDACTED¹⁰³]

3.4 Not Used

3.5 Not Used

3.6 The Franchisee shall (unless it has the express prior written agreement of the Secretary of State (such agreement not to be unreasonably withheld or delayed) [REDACTED¹⁰⁴].

3.7 Subject to the requirements of paragraph 3.6, the Franchisee shall use its reasonable endeavours to:

- (a) enter into such contracts as are required for the delivery and performance of the STNR Obligations including the supply of all components to the STNR System by no later than the relevant dates set out in the STNR Programme;**
- (b) vary or supplement any Listed STNR Contract (and for these purposes including the [REDACTED¹⁰⁵]) which does not comply with the requirements of paragraph 3.8 by no later than the date that is one (1) month prior to the specified date of termination of such Listed STNR Contract. Where the**

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Franchisee fails to vary or supplement a Listed STNR Contract as contemplated under this paragraph 3.7(b), the Franchisee shall immediately notify the Secretary of State and:

- (i) **[REDACTED¹⁰⁶]**
- (ii) **the provisions of paragraph 5.2 of Schedule 14.3 (Key Contracts) shall apply.**

3.8 Any contracts to be entered in to by the Franchisee pursuant to paragraph 3.7(a) or to be varied or supplemented by the Franchisee pursuant to paragraph 3.7(b) shall:

- (a) **[REDACTED¹⁰⁷]; and**
- (b) **[REDACTED¹⁰⁸], in each case, in the event of termination or expiry of the Franchise Agreement or designation of such contract as a Primary Franchise Asset.**

3.9 The Franchisee shall:

- (a) **ensure that when Smart Tickets for relevant Fares and with respect to specific flows become available to passengers in accordance with the STNR Programme the availability of such Smart Ticket is promoted to passengers**

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and potential passengers including through appropriate “launch events” in co-operation with, and at the expense of, the Secretary of State; and

(b) in co-ordination with its suppliers [REDACTED¹⁰⁹]

4. No Impact on the Franchisee’s other Franchise obligations¹¹⁰

The provisions of this Appendix 1 shall not in any way reduce or otherwise relieve the Franchisee from the Franchisee’s other obligations in this Franchise Agreement and without limitation the Franchisee shall continue to comply with:

(a) the Committed Obligations; and

(b) its obligations under the SEFT Deed.

5. Reporting and auditing¹¹¹

5.1 The Franchisee shall (as applicable) submit to the Secretary of State:

(a) for each Reporting Period, within five (5) Weekdays of the last day of the relevant Reporting Period, the project progress in the format set out in the STNR Reporting Requirements (the “Project Progress Report”) provided that the Franchisee shall be entitled to complete and submit the “Go Live

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¹¹⁰ 17 January 2018 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

¹¹¹ 17 January 2018 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

Take Up Monitoring” element of the Project Progress Report only where reasonably requested by the Secretary of State and for these purposes:

- (i) it shall be reasonable for the Secretary of State to make such requests at least twice per annum;**
 - (ii) the report shall provide information regarding take up over the period from the STNR Completion Date or since the provision of the last report giving take-up information (whichever is the later); and**
 - (iii) the Secretary of State shall give not less than five (5) Weekdays’ notice of the request for the completion of the Smart Card Take-Up Report element; and**
- (b) any other information that the Secretary of State reasonably requests in relation to the STNR Project from time to time.**

5.2 The Franchisee shall, as and when requested by the Secretary of State, provide such information as he may reasonably require in relation to:

- (a) ticket sales and the medium upon which they are sold (including magnetic stripe, smart cards, bank cards), including, where reasonable, data that may not be available in LENNON;**
- (b) ticket usage by passengers of the Passenger Services (including data from databases of ticket usage, data collected from smart card readers, and gate-line data). This information may include any of the data fields collected, with the exception of information that can be used to identify individual passengers, railway employees or contractors working for the railway.**

5.3 The rights of the Secretary of State pursuant to paragraph 5.1(b) of Schedule 11 (Agreement Management Provisions) shall extend to all records, data, books of account and other information relevant to the

Franchisee's STNR Obligations. The remainder of paragraph 5 of Schedule 11 shall be interpreted accordingly.

6. Payments¹¹²

6.1 In consideration of the performance by the Franchisee of the STNR Obligations and subject to the other terms of this paragraph 6, the Secretary of State shall, on the next Payment Date falling no less than 7 days before the beginning of each STNR Reporting Period, pay to the Franchisee by way of adjustment to Franchise Payments the Forecast STNR Costs specified in the STNR Costs Schedule to be payable in respect of such STNR Reporting Period.

6.2 At the end of each STNR Quarter, a reconciliation process shall apply as follows:

(a) within ten (10) Weekdays of the end of the relevant STNR Quarter [REDACTED¹¹³] in each of the STNR Reporting Periods falling within that STNR Quarter, such report to only include [REDACTED¹¹⁴]. Each STNR Costs Report shall be accompanied by a certificate signed by a statutory director of the Franchisee confirming that the information contained in the STNR

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Costs Report is true, accurate and not misleading in all material respects and that all the requirements in paragraph 6.3 are met.

(b) where the STNR Costs Report shows (or the Secretary of State reasonably determines) that the aggregate [REDACTED¹¹⁵] incurred in respect of all the STNR Reporting Periods falling within such STNR [REDACTED¹¹⁶] are:

(i) [REDACTED¹¹⁷]

(ii) [REDACTED¹¹⁸]

(c) any payments to be made pursuant to paragraph 6.2(b) shall be made [REDACTED¹¹⁹] (as the case may be) is notified to [REDACTED¹²⁰]

6.3 The [REDACTED¹²¹] under paragraph 6.2(b)(ii) is subject to the following:

(a) that the [REDACTED¹²²];

(b) subject to paragraphs 6.3(a), 6.3(c) and 6.3(d), [REDACTED¹²³]

(i) and to the extent that the aggregate of [REDACTED¹²⁴]

(ii) [REDACTED¹²⁵];

(c) the Franchisee shall use its reasonable endeavours to minimise the [REDACTED¹²⁶] incurred in any STNR Reporting Period; and

(d) notwithstanding any other provision in this Appendix 1, the Franchisee shall not be entitled to any payment or reimbursement in respect of any

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¹¹⁷ 16 May 2018 (Date of Redactions Approval) – Where text has been omitted from the document this is because the Secretary of State has decided to exclude the

cost which it has already recovered (or is able to recover) under any other provision of this Franchise Agreement, any other agreement between the

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- text in accordance with the provisions within the Freedom of Information Act 2000.
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Franchisee and the Secretary of State (including the SEFT Deed) or any other arrangement or agreement with a third party.

6.4 If the Franchisee at any time considers that it is reasonably likely that [REDACTED¹²⁷]

(a) [REDACTED¹²⁸];

(b) an explanation as to why that is the case (with supporting information); and

(c) [REDACTED¹²⁹],

together with any other information that the Secretary of State may reasonably require in order to satisfy himself that the [REDACTED¹³⁰] will be and are reasonably and properly incurred.

6.5 The Franchisee shall not, in respect of any STNR Reporting Periods falling within an STNR Quarter, [REDACTED¹³¹]

6.6 If and as soon as the Franchisee becomes aware of [REDACTED¹³²] the Franchisee shall, within five (5) Weekdays of first becoming aware

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[REDACTED¹³³]The Franchisee shall provide all details as are reasonably available to it (or can be ascertained by it) as to:

(a) [REDACTED¹³⁴]

(b) [REDACTED¹³⁵]

7. Amendments in respect of STNR¹³⁶

7.1 If the Secretary of State is considering or wishes to propose amendment(s) to the STNR Obligations, the following process shall apply (unless otherwise agreed by the parties):

- (a) the Secretary of State shall notify the Franchisee of the amendment(s) to the STNR Obligations which he does or may wish to make;**
- (b) the Secretary of State shall invite the Franchisee to comment within not less than fifteen (15) Weekdays on the proposed amendment(s) and may request the Franchisee:

 - (i) [REDACTED¹³⁷]by the Target Date; and**
 - (ii) to provide further information to assist the Secretary of State in considering amendment(s) to the STNR Obligations;****
- (c) the Franchisee shall comply with any request for information made by the Secretary of State pursuant to paragraphs 7.1(b)(i) and/or 7.1(b)(ii); and**
- (d) the Secretary of State shall have regard to the response received from the Franchisee in response to his invitation under paragraph 7.1(b) in proposing any amendment(s) to the STNR Obligations.**

7.2 Subject to the Secretary of State complying with the process in paragraph 7.1, the parties agree that the STNR Obligations may be amended by the

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Secretary of State (acting through the STNR Project Steering Committee) from time to time subject to:

- (a) the Secretary of State acting reasonably in connection with the nature and terms of any such amendment(s); and**
- (b) the Secretary of State extending the Target Date, [REDACTED¹³⁸]**

7.3 The Franchisee may propose amendment(s) to the STNR Obligations at any time (including (but not so as to relieve the Franchisee of its obligations under paragraph 7.1(c)) variations to any amendment(s) proposed by the Secretary of State in accordance with paragraph 7.1(a)) but the Secretary of State shall not be obliged to agree to any such Franchisee proposed amendment(s).

7.4 The Secretary of State shall propose an extension to the Target Date pursuant to paragraph 7.1 if, prior to the STNR Completion Date, he requires the Franchisee to develop an extension of the prepay smartcard ticketing system called "KeyGo" which works in conjunction with the ITSO Certified Smartmedia ticketing system called "The Key" (the "KeyGo Project") and such Target Date shall be extended to such date as is reasonably considered to be appropriate to hold constant the risk of the Franchisee failing to deliver STNR Completion by that extended Target Date having regard to the extent to which the programme for the KeyGo Project will require that relevant Franchise Employee(s) and and/or the relevant

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employee(s) of any counter-party to a STNR Contract are engaged on the KeyGo Project instead of the STNR Project.

8 Cost Overrun and Delay¹³⁹

8.1 If the Franchise notifies the Secretary of State that [REDACTED¹⁴⁰], then, without prejudice to any other rights and remedies he may have, the Secretary of State shall (at its sole discretion) [REDACTED¹⁴¹]

(a) [REDACTED¹⁴²];

(b) [REDACTED¹⁴³]

(c) [REDACTED¹⁴⁴]

8.2 If the Secretary of State reasonably believes that the Franchisee will be unable to achieve STNR Completion by the Target Date, then, without prejudice [REDACTED¹⁴⁵]

8.3 If the Secretary of State exercises his rights of termination in accordance with paragraph 8.1 or 8.2:

(a) the Franchisee shall take such reasonable steps as the [REDACTED¹⁴⁶]

(b) without limiting paragraph 8.2(a) at the request of the Secretary of State the Franchisee shall:

(i) deliver up and transfer to the Secretary of State (or his nominee(s)) for no payment such of the following as he may request:

(A) any tangible assets comprised in the STNR System [REDACTED¹⁴⁷] pursuant to this Appendix 1 including the items referred to in Annex B to the STNR Scope of Work, save to the extent that such tangible assets are required by the

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Franchisee for the continued provision of the Franchise Services;

- (B) any Intellectual Property Rights that relate to the STNR Project [REDACTED¹⁴⁸] pursuant to this Appendix 1 and that are owned by the Franchisee; and**
- (C) such other materials whatsoever developed [REDACTED¹⁴⁹] pursuant to this Appendix 1 or copies thereof (including software, plans and other project materials), save to the extent that such other materials are required by the Franchisee for the continued provision of the Franchise Services;**
- (ii) procure the grant to the Secretary of State (or his nominee) of a non-exclusive, royalty free licence to use the Intellectual Property Rights comprised in the items specified in paragraphs 8.2(b)(i)(A) and 8.2(b)(i)(C) (in so far as they are not comprised in paragraph 8.2(b)(i)(B) and which are in existence as at the date of termination for any purposes**

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relating to the carrying out its functions and duties or otherwise in relation to provision of passenger rail services;

(c) subject to the Franchisee:

- (i) having complied with and continuing to comply its obligations pursuant to paragraphs 6.3(c), 6.6, 8.2(a) and 8.2(b); and**
- (ii) having provided such evidence in respect of the same in equivalent detail to that required in respect of any application for payment under paragraph 6,**

[REDACTED¹⁵⁰]:

(i) [REDACTED¹⁵¹]

(ii) [REDACTED¹⁵²]

(d) from the date of termination specified by the Secretary of State in his termination notice both parties shall be relieved of all further obligations under this Appendix 1:

- (i) except for their obligations pursuant to this paragraph 8.2 and to the continuation in force of such other provisions as shall expressly**

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**or impliedly continue in force notwithstanding such termination;
and**

- (ii) provided that termination shall not relieve a party of liability for any prior breach of its obligations under this Appendix 1.**

8.4 If the Secretary of State exercises his rights of suspension in accordance with paragraph 8.1 the terms of paragraph 8.2 shall apply (mutatis mutandis) except that:

(a) the Secretary of State shall not be entitled to require the transfer or licence of items described in paragraph 8.2(b); and

(b) the Secretary of State shall be entitled by notice to the Franchisee to reverse the suspension at any time provided that [REDACTED¹⁵³]

(i) to the extent agreed with the [REDACTED¹⁵⁴]

(ii) in the absence of agreement, to the extent reasonably determined [REDACTED¹⁵⁵] and otherwise take into account of all the circumstances.

8.5 [REDACTED¹⁵⁶]

9. Escalation and disputes¹⁵⁷

Any disputes that arise with respect to the STNR Project shall first be considered between the Contract Manager and the Franchise Manager. If no such resolution can be agreed within fifteen (15) Weekdays the parties may, but shall not be

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obliged, to resolve the dispute in accordance with the Dispute Resolution Rules save for where any such dispute arises out of paragraph 6 of this Appendix, in which case, unless the parties otherwise agree, such dispute shall be resolved in accordance with the provisions of clause 8 (Governing Law) of this Franchise Agreement.

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157 17 January 2018 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

SCHEDULE 6

Committed Obligations and Other Provisions

Schedule 6.1: Committed Obligations and Related Provisions

Part 1: List of Committed Obligations

Part 2: Miscellaneous Provisions

Schedule 6.2: TSGN Franchise Specific Provisions

Appendix to Schedule 6.2

Part 1: Breach Initial Period Benchmark Table

Part 2: Ticketless Travel Benchmark

Part 3: Annual Ticketless Travel Benchmark

Part 4: Payment Table

Schedule 6.3: TLP/TRSP Related Provisions

Schedule 6.4: Integration of the Southern Services

Appendix to Schedule 6.4: HLOS Phase 2 Core Units - Cascade Dates

SCHEDULE 6.1

Committed Obligations and Related Provisions

Part 1: List of Committed Obligations

Part 2: Miscellaneous Provisions

Part 1 to Schedule 6.1**List of Committed Obligations****1. Leadership and Franchise Management****Health and Wellbeing Manager**

1.1 The Franchisee shall:

- (a) on or before 30 September 2015 establish and implement strategies to:
 - (i) create healthy, positive working environments that optimise the attractiveness of roles and increase the wellbeing of Franchise Employees; and
 - (ii) minimise absenteeism and sickness leave of Franchise Employees;
- (b) on or before 30 September 2015, appoint a Health and Wellbeing Manager (and maintain such an appointment for the remainder of the Franchise Term) who shall be responsible for:
 - (i) the management of the occupational health of all Franchise Employees; and
 - (ii) the implementation and delivery of each of the strategies required by paragraph 1.1(a); and
- (c) ensure that each of the strategies established and implemented is updated at such regular intervals to be determined by the Franchisee.

Business Excellence

1.2 The Franchisee shall:

- (a) on or before 30 September 2015 develop and introduce a comprehensive management system and business excellence model into the Franchise;
- (b) on or before 30 September 2015 appoint a Head of Business Excellence (and maintain such appointment for the remainder of the Franchise Term) who shall be responsible for facilitating the Franchisee's delivery of its obligations pursuant to paragraph 1.2(a); and
- (c) use all reasonable endeavours to achieve:
 - (i) a five star rating for the "EFQM" business excellence model across the whole of the Franchise; and
 - (ii) BS11000 accreditation across the whole of the Franchise, on or before 31 July 2016.

Employee Engagement

1.3 The Franchisee shall:

- (a) on or before 30 September 2015 deliver a programme for the purposes of monitoring, understanding and improving the levels of employee engagement across the Franchise (including the development and implementation of an annual employee engagement survey which will measure the engagement levels of Franchise Employees and highlight any areas for improvement and development);
- (b) on or before 30 September 2015 appoint an Employee Engagement Specialist (and maintain such appointment for the remainder of the Franchise Term) who shall be responsible for the delivery of the Franchisee's obligation pursuant to paragraph 1.3(a);
- (c) achieve the "Investors in People Champion" accreditation status across the whole of the Franchise on or before [REDACTED¹⁵⁸];
- (d) undertake an annual survey of the Franchise Employees in order to monitor opinions, concerns, motivation and commitment and in so doing shall incur expenditure of not less than £45,000 in each Franchisee Year; and
- (e) on or before the Start Date introduce an annual "Staff Excellence Awards" for the purposes of improving levels of engagement, reinforcing desired behaviour and recognising the achievements of Franchise Employees.

Training Programmes

1.4 Within 6 months following the Start Date, the Franchisee shall introduce a comprehensive staff training and development programme and in implementing such programme shall incur expenditure of not less than £9,800,000 over the Franchise Term (such expenditure to include operating expenditure but shall not include any costs arising from the fact that Franchise Employees are unavailable to carry out their normal duties because they are scheduled to attend training). Such staff training and development programme will be offered to Franchisee Employees and shall be comprised of at least the following:

- (a) the accreditation of 30 managers to the Institute of Leadership and Management on an annual basis as from the Combined Effective Date;
- (b) engineering and signals/control systems apprenticeships which shall provide for at least 40 trainees to have completed their apprenticeship scheme by the end of the Franchise Term;
- (c) the introduction of a graduate training scheme as from the Combined Effective Date in conjunction with the University of Birmingham (or such other institution as the Secretary of State shall approve) which shall provide

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for 12 month industrial work placements so as to ensure that the Franchisee has the ability to attract and develop highly skilled engineers;

- (d) training of 50 line managers in Lean Six Sigma methodologies to act as local improvement and innovation champions; and
- (e) the provision of training (including literacy and numeracy training) to all Franchise Employees so as to allow for the achievement of at least a National Qualifications Framework Level 2 qualification in their particular area of expertise.

Staff Incentive Scheme

1.5 The Franchisee shall from the Start Date introduce and deliver to its Franchise Employees an annual staff financial incentive scheme which shall provide for a performance related bonus to be paid to Franchise Employees and shall be structured so as to take account of some or all of the following:

- (a) the overall financial performance of the Franchisee;
- (b) the operational performance of the Franchisee as assessed by the number of Minutes Delay attributable to the Franchisee;
- (c) the achievement of customer service targets as assessed by the level of performance and the calculation of the PEM; and
- (d) the achievement of other key deliverables identified on an annual basis.

For the avoidance of doubt the annual staff financial incentive scheme shall not be collectively negotiated and shall be paid at the discretion of the Franchisee.

2. Mobilisation and Franchise Integration

Mobilisation and Integration Team

2.1 The Franchisee shall within 5 working days of the date of the Franchise Agreement appoint (and maintain such appointment until 31 August 2015) a "**Mobilisation Team**" including:

- (a) a Mobilisation and Integration Director who shall be responsible for:
 - (i) the management and delivery of the mobilisation and integration of the TGN Services, the Transfer Stations and the Southern Services into the Franchise (including the satisfaction of both the conditions set out in the Conditions Precedent Agreement and the Southern Integration Obligations (as defined in paragraph 1 of Schedule 6.4 (Integration of the Southern Franchise Services)));
 - (ii) reporting to the Chief Executive Officer of the Franchisee on a weekly basis on the progress of all mobilisation and integration activities; and
 - (iii) the management and performance of the wider mobilisation and integration team.
- (b) a Mobilisation Project Manager who shall be responsible for:

- (i) managing the mobilisation strategy including the management of information requests from and to the FCC Franchisee, LSER Franchisee and the Southern Franchisee;
 - (ii) early development of a detailed mobilisation plan for the delivery of the mobilisation and integration of the TGN Services, the Transfer Stations and the Southern Services into the Franchise (including the satisfaction of both the conditions set out in the Conditions Precedent Agreement and the Southern Integration Obligations (as defined in paragraph 1 of Schedule 6.4 (Integration of the Southern Franchise Services)) (the "**Mobilisation Plan**"); and
 - (iii) delivery of the Mobilisation Plan through measurement of progress against mobilisation milestones, the maintenance and updating of all mobilisation documentation, including the Mobilisation Plan, issues and risk logs and resource profiles;
- (c) a project leader for each of the conditions specified in paragraphs 1 to 13 of the Appendix to the Conditions Precedent Agreement (each such condition to be a "**Condition Precedent**") with each such project leader being responsible for the delivery of a Condition Precedent; and
 - (d) such additional resource as considered appropriate by the Franchisee for the purposes of facilitating delivering the Mobilisation Plan (including the satisfaction of both the conditions set out in the Conditions Precedent Agreement and the Southern Integration Obligations (as defined in paragraph 1 of Schedule 6.4 (Integration of the Southern Franchise Services))).

Cultural Integration and Change Communication Programme

- 2.2 With effect from the Start Date, the Franchisee shall introduce and deliver a cultural integration and change communications programme which shall comprise of at least the following:
- (a) the establishment of the senior management leadership structure of the Franchisee;
 - (b) the establishment of a customer focused service delivery organisation under the leadership of the Chief Operating Officer of the Franchisee and consisting of Passenger Service Directorates;
 - (c) the development of consistent communications to Franchise Employees during the mobilisation and integration process (including through the establishment of a mobilisation website, the delivery of a series of "Town Hall" briefing sessions and the launch of regular communication forum events, staff workshops and newsletters);
 - (d) change management training for senior managers so as to ensure they have the necessary skills to drive forward change and develop and maintain improved relationships with trade unions and staff representatives; and
 - (e) ongoing communication and briefing activities with Franchise Employees led by the Employee Engagement Specialist and the Head of Corporate Relations until the delivery of the Thameslink Programme,

and in so doing shall incur expenditure of not less than £793,000 (such expenditure to include operating expenditure).

3. **Managing Industry Partnerships**

Transport Partnerships

3.1 The Franchisee shall use reasonable endeavours to:

- (a) establish partnership arrangements with Gatwick Airport Limited by no later than the [REDACTED¹⁵⁹] for the development and support of strategies to increase rail modal share of journeys to and from Gatwick Airport;
- (b) establish partnership arrangements with London Luton Airport Limited by no later than [REDACTED¹⁶⁰] for the development and support of strategies to increase rail modal share of journeys to and from Luton Airport; and
- (c) establish partnership arrangements with TfL by no later than [REDACTED¹⁶¹] for the development and support of the following strategies:
 - (i) the introduction of new rolling stock vehicles;
 - (ii) the further development of work on travel demand management during the Thameslink Programme and other planned disruption or major events;
 - (iii) the strategic planning for service enhancements and future design of the Franchise;
 - (iv) the setting up of a Thameslink presence in the Surface Transport office or LU operations control as TfL and the Franchisee both deem appropriate;
 - (v) the instigation of transition interface meetings to enable changes to station operation to be validated prior to each increase to Passenger Services;
 - (vi) co-operation on timetable development including the joint review of operating and regulation protocols where the

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Passenger Services interact with the railway passenger services provided by London Overground; and

- (vii) the efficient operation of the Passenger Services through the railway route connecting London Blackfriars and London St. Pancras International Stations and maintaining customer satisfaction during the Thameslink Programme.

Stakeholder Engagement

- 3.2 The Franchisee shall on or before 30 September 2015 appoint 5 Development Managers who shall be responsible for addressing local stakeholder priorities, working with local communities and securing third party funding so as to introduce further investment in the Franchise and maintain such appointments for the remainder of the Franchise Term.
- 3.3 The Franchisee shall on or before **31 December**¹⁶² in each Franchisee Year **conduct**¹⁶³ stakeholder surveys (the "**Stakeholder Surveys**") for the purposes of seeking feedback from local stakeholders and key industry partners (including the Secretary of State, Network Rail, train manufacturers and maintainers and local authorities) on such matters as customer service and the overall performance of the Franchisee.
- 3.4 The Franchisee shall:
- (a) on or before **31 March**¹⁶⁴ in each Franchisee Year provide to the Secretary of State an annual stakeholder plan which reflects the content of the Stakeholder Surveys and highlights progress against any objectives agreed with stakeholders; and
 - (b) use all reasonable endeavours to implement the objectives agreed with relevant stakeholders and included in the annual stakeholder plan as required to be provided to the Secretary of State pursuant to paragraph 3.4(a).
 - (c)¹⁶⁵ **when instructed by the Secretary of State, conduct a further stakeholder survey prior to the Expiry Date for the purposes of seeking feedback from local stakeholders and key industry partners (including the Secretary of State, Network Rail, train manufacturers and maintainers and local authorities) on such matters as customer service and the overall performance of the Franchisee regarding the Franchise Period as a whole. The purpose of this further survey will be to assist in the reletting of the Franchise and the Secretary of State shall give the Franchisee no**

¹⁶² 12/07/2017 – Contract variation agreed by the Secretary of State and Franchisee.
¹⁶³ 12/07/2017 – Contract variation agreed by the Secretary of State and Franchisee.
¹⁶⁴ 12/07/2017 – Contract variation agreed by the Secretary of State and Franchisee.
¹⁶⁵ 12/07/2017 – Contract insertion agreed by the Secretary of State and Franchisee.

fewer than four months' notice in writing of the date by which this further survey must be commenced.

- 3.5 The Franchisee shall hold an annual conference with local stakeholders across the whole of the Franchise in September 2015 and in each Franchisee Year thereafter for the purposes of communicating and receiving feedback on developments such as the Thameslink Programme. The annual conference shall be supplemented by at least 4 smaller stakeholder forum meetings to be held in each Franchisee Year.
- 3.6 The Franchisee shall on or before 31 March 2015 introduce a stakeholder extranet for the purposes of making information available to partner stakeholders (such as local authorities), including those with a direct interest in any infrastructure and other projects undertaken by the Franchisee.

Community Rail Partnerships

- 3.7 In addition to its obligations in paragraph 14 of Schedule 13 (Information and Industry Initiatives), the Franchisee shall:
- (a) from the Combined Effective Date until the end of the Franchise Term, invest a further [REDACTED¹⁶⁶] in each Franchisee Year on projects, payment of salary for the partnership officer and other administration costs relating to the Sussex Community Rail Partnership; and
- (b) from the Combined Effective Date invest at least [REDACTED¹⁶⁷] in each Franchisee Year (such investment shall include the marketing and promotional expenses in relation to the extended Station Partn[REDACTED¹⁶⁸] in each Franchisee Year pursuant to paragraph 3.7(a)) on the extension of Station Partnerships throughout the Franchise.

Investment in Communities and Charities

- 3.8 The Franchisee shall establish partnership arrangements with the Prince's Trust by no later than the Start Date for the provision of at least the following activities:
- (a) short vocational skills training and work experience courses through the "Get Into" programme which offers potential employment to successful participants. The Franchisee shall undertake one such course in the first Franchisee Year in the Luton area and three courses in each of the following Franchisee Years across a wider geographical area;

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- (b) "TEAM" personal development programme to provide support, guidance and mentoring to unemployed young people; and
 - (c) one-to-one mentoring support for young people who have completed a Prince's Trust programme.
- 3.9 The Franchisee shall operate the "Go Learn" educational programme in at least 40 schools in each Franchisee Year for the purposes of helping school children develop skills and confidence for independent travel on public transport.
- 3.10 The Franchisee shall introduce a wide programme of community investment activities based around the strategy of maximising both social and corporate benefit and engaging Franchise Employees in the activities undertaken and in so doing shall incur expenditure of not less than £400,000 over the Franchise Term (such expenditure to include operating expenditure but, for the avoidance of doubt, shall exclude staff time). Prior to the commencement of each Franchisee Year the Franchisee shall provide to the Secretary of State for his approval a document which sets out the programme of community investment activities (including the amount of expenditure to be incurred by the Franchisee in undertaking each such activity) that the Franchisee shall introduce in that Franchisee Year.
- 3.11 The Franchisee shall in the Franchisee Years beginning on 1 April 2017 and 1 April 2020 commission an impact assessment of the community investment of the Franchisee using quantitative data and stakeholder feedback.

Thameslink Programme Research and Development

- 3.12 The Franchisee shall in September 2017 and in each Franchisee Year thereafter provide an annual report to the Technology Strategy Leadership Group of the Rail Delivery Group for the purposes of communicating operational knowledge and lessons learned from the deployment of driver advisory systems, automatic train operation and ERTMS.

Stakeholder Reference Group

- 3.13 The Franchisee shall develop and hold senior stakeholder reference group meetings in January 2015 and in each subsequent reporting quarter during the Franchise Term for the purposes of communicating and receiving feedback on forward looking plans for the Thameslink Programme and the impact of such plans upon passengers. These senior stakeholder reference group meetings shall be developed in conjunction with Network Rail and shall be open to attendance by TfL, Passenger Focus, London TravelWatch, London First, key local authorities and representatives from passenger user groups.
- 3.14 For the purposes of paragraph 3.13 "**reporting quarters**" are 1 April to 30 June, 1 July to 30 September, 1 October to 31 December and 1 January to 31 March.

4. Environment and Sustainability

Environmental Team

- 4.1 The Franchisee shall:
- (a) on or before 31 December 2014 appoint a Traction Reduction Engineer who shall be responsible for the management of traction reduction issues and who shall have an annual budget of £50,000 throughout the Franchise Term

for expenditure on innovative methods for reducing traction consumption and maintain such an appointment for the remainder of the Franchise Term;

- (b) on or before 31 December 2014 appoint a Site Energy and Utilities Reduction Manager who shall be responsible for managing energy saving initiatives at Stations and Depots and maintain such an appointment for the remainder of the Franchise Term;
- (c) on or before 30 September 2015 appoint 2 Environment Managers who shall be responsible for managing sustainability and environmental initiatives at Stations and Depots and maintain such appointments for the remainder of the Franchise Term; and
- (d) ensure that on or before 30 September 2015 it has Franchise Employees equivalent to no less than 7 dedicated full time posts (including those posts referred to in paragraphs 4.1(a) to (c)) available for deployment on environmental and sustainability activities. The Franchisee shall maintain such level of Franchise Employees for the remainder of the Franchise Term.

Sustainability Forum

- 4.2 The Franchisee shall hold an annual sustainability forum with key stakeholder representatives (including, but not limited to, the Secretary of State, Network Rail, TfL, Passenger Focus and relevant local authorities) in each Franchisee Year for the purposes of providing feedback on the current and future direction of the environmental and sustainability performance of the Franchise.

Area Champions for the Environment

- 4.3 The Franchisee shall ensure that on or before 30 September 2017 it has trained at least 100 Franchise Employees to become Area Champions for the Environment ("**ACEs**") who shall contribute to the environmental performance of the Franchise. The Franchisee shall use reasonable endeavours to maintain such level of ACEs for the remainder of the Franchise Term.

Rolling Stock Innovations

- 4.4 Subject to obtaining the approval of the lessor under the relevant Rolling Stock Lease the Franchisee shall on or before **[REDACTED¹⁶⁹]** install and operate on-board metering equipment on:
- (a) 19 of the Class 365 rolling stock units comprised in the Train Fleet;
 - (b) 15 of the Class 377/2 rolling stock units comprised in the Train Fleet; and
 - (c) 23 of the Class 377/5 rolling stock units comprised in the Train Fleet,

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and in so doing shall incur expenditure of not less than [REDACTED¹⁷⁰] (such expenditure to include capital expenditure, design and project management costs and rentalisation costs).

4.5 [REDACTED¹⁷¹]

4.6 [REDACTED¹⁷²]

Energy Saving Initiatives at Stations and Depots

4.7 Subject to the Franchisee obtaining any consents that may be required under the relevant Station and Depot Leases or relevant Access Agreements (as the case may be), the Franchisee shall on or before [REDACTED¹⁷³]:

- (a) install LED lighting and automatic lighting controls at 56 Stations; and
- (b) carry out an energy efficiency improvement programme of non-lighting systems at certain Stations and Depots and in so doing shall incur expenditure of not less than [REDACTED¹⁷⁴] (such expenditure to include capital expenditure).

4.8 In order to assist the Secretary of State in the monitoring of the Franchisee's compliance with its obligations under paragraph 4.7 the Franchisee shall on or before the end of the fifteenth Reporting Period following the Start Date provide to the Secretary of State a delivery plan which sets out as a minimum:

- (a) the Stations and Depots where the initiatives specified in each of paragraphs 4.7(a) and 4.7(b) will be undertaken;
- (b) the dates of planned completion of such initiatives at each such Station and Depot;

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- (c) the expenditure to be incurred by the Franchisee at each such Station and Depot in the delivery of the initiatives specified in paragraphs 4.7(a) and 4.7(b); and
- (d) an explanation as to the reasons why the Franchisee has opted to undertake the energy saving initiatives at such Stations and Depots.

4.9 [REDACTED]¹⁷⁵

4.10 [REDACTED]¹⁷⁶

Water and Waste Management Initiatives

4.11 The Franchisee shall on or before 30 September 2016 introduce the following measures to reduce water consumption across the Franchise:

- (a) the installation of carriage wash water recycling systems to the carriage wash at Brighton Depot;
- (b) the use of water reducing surfactants in train cleaning; and
- (c) the undertaking of feasibility studies into further water efficiency measures at Stations and Depots including further carriage wash water recycling systems, changes to carriage wash spouts and rainwater harvesting to feed tanking and carriage wash. To the extent that any such feasibility studies show that there is a Positive Business Case for undertaking further water efficiency measures at specific Stations and Depots then the Franchisee shall undertake such further water efficiency measures at such Stations and Depots. For the purposes of this paragraph 4.11(c) "**Positive Business case**" means an analysis, using a methodology reasonably determined by the Franchisee (and approved by the Secretary of State) of the financial benefits to the Franchisee to be derived from the implementation of any of the further water efficiency measures over the remainder of the Franchise Term, it being agreed that any further water efficiency measure which has a financial benefit such that the Franchisee's costs saving over the remainder of the Franchise Term is greater than the costs to be incurred by the Franchisee in implementing the further water efficiency measures shall be considered to have a Positive Business Case for the purposes of this paragraph 4.11(c).

4.12

- (a) On or before 30 September 2015 the Franchisee shall provide the Secretary of State with a written proposal identifying six zero waste to landfill projects at specified key principal Stations across the Franchise. Based on such

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proposal, the Franchisee and the Secretary of State shall agree (or in the absence of such agreement, as the Secretary of State shall reasonably determine) the six zero waste to landfill projects (including the Stations at which such projects shall be implemented) which shall be implemented by the Franchisee in accordance with paragraph 4.12(b).

- (b) The Franchisee shall on or before 30 September 2018 implement the six zero waste to landfill projects at each of the key principal Stations as agreed by the Franchisee and the Secretary of State (or in the absence of agreement as reasonably determined by the Secretary of State) pursuant to paragraph 4.12(a).

TRAIN SERVICE DELIVERY

5. Train Services

SNCF

5.1 The Franchisee shall procure technical services from Société Nationale des Chemins de fer Français ("**SNCF**") by way of secondments and otherwise pursuant to a technical services agreement between the Franchisee and SNCF. The Franchisee and SNCF shall participate in a technical support group to identify the priority areas for technical support and services from SNCF and in order to coordinate such support and services. The technical support and services shall include advice to the Franchisee on:

- (a) the validity of the Franchisee's development work on its Timetables and Train Plans for delivering the Train Service Requirements (and in particular those that are due to apply in the period between 21 December 2014 and the Passenger Change Date in December 2018) which draws on SNCF's timetable development software, other train planning and driver method applications and experience of operating RER (the rapid transit system serving Paris) services through the core routes of Paris;
- (b) the operation of Farringdon Station which draws on RER's experience of operating Chatelet les Halles;
- (c) the performance management, disruption management and monitoring of high density urban train services which draws upon RER's experience of operating such services through Paris; and
- (d) the implementation and integration of ERTMS automatic train operation which draws on Systra's experience.

Driver Manpower

5.2 The Franchisee shall deliver to the Secretary of State every Reporting Period within ten days of the last day of each Reporting Period summary information on:

- (a) the size of the Franchisee's actual qualified train driver establishment at the end of such Reporting Period. A qualified train driver for this purpose means a driver who has successfully completed driver training and has at least the minimum route and traction knowledge to drive a train in passenger service, empty coaching stock movements or light maintenance depot movements;

- (b) the size of the train driver establishment assumed in the Franchisee's driver establishment manpower plan (as amended by the Franchisee from time to time) at the end of such Reporting Period and as forecast for each of the subsequent 26 Reporting Periods;
- (c) the number of trainee drivers at the end of such Reporting Period with a summary of when they are scheduled to qualify;
- (d) the rate of rest day working by the Franchisee's train drivers in such Reporting Period and as forecast by the Franchisee for each of the subsequent 26 Reporting Periods; and
- (e) the status of the Franchisee's recruitment plans for further train drivers as at the end of such Reporting Period.

5.2A The Franchisee shall:

- (f) at each Franchise Performance Meeting, comment on and discuss at that meeting the report produced by it pursuant to paragraph 5.2 and such discussion may include (or at the request of the Secretary of State shall include):
 - (i) the Franchisee reporting on the delivery of its train driver manpower strategy and any expenditure and activities taken, and/or proposed to be taken, by the Franchisee to mitigate any risks to such delivery; and
 - (ii) the Franchisee commenting on whether the level of rest day working by the Franchisee's train drivers is appropriate; and
- (g) take into account any reasonable comments of the Secretary of State in respect thereof.

5.2B Without prejudice to any other audit rights the Secretary of State may have under this Franchise Agreement, the Secretary of State shall have the right to audit the information provided by the Franchisee pursuant to paragraph 5.2.

5.2C¹⁷⁷ Unless as otherwise agreed by the Secretary of State in accordance with paragraph 5.2E, the Franchisee shall:

- (a) manage the recruitment and training of train drivers to ensure that on the relevant date specified in the first column (Date) of the following table ("Driver Employment Reporting Date"), the number of qualified drivers employed by the Franchisee and in receipt of a salary (a "Qualified Driver") is at least the relevant number specified in the second column (Qualified Driver Number) ("Qualified Driver Number"):**

Date	Qualified Driver Number
31 March 2016	1622
25 June 2016	1640
17 September 2016	1665
10 December 2016	1687
31 March 2017	1715
24 June 2017	1730
16 September 2017	1740

; and

- (b) *in addition to the Qualified Driver Numbers, ensure that there are at least 200 trainee drivers undergoing training at any time within the period commencing from 12 February 2016 and ending 16 September 2017 ("Trainee Driver Number").*

5.2D¹⁷⁸ *In addition to and without prejudice to the reporting requirements already contained in the Franchisee Agreement including pursuant to paragraph 6 of Part 2 to this Schedule 6.1, the Franchisee shall report to the Secretary of State the number of Qualified Drivers for the relevant Driver Employment Reporting Date within 28 days following the relevant Driver Employment Reporting Date with such supporting evidence as the Secretary of State may reasonably require.*

5.2E¹⁷⁹ *Where the Franchisee considers that it wishes to change any Qualified Driver Number specified in the second column of the table at paragraph 5.2C(a) above or any Trainee Driver Number as specified in paragraph 5.2C(b) above (together to be known as the "Amended Driver Number") as a result of the identification of efficiencies in the delivery of its train driver manpower and pay strategy which can reasonably be expected from a highly experienced and competent operator of railway passenger services, the Franchisee may propose to the Secretary of State an Amended Driver Number for his approval. Subject to the Franchisee demonstrating to the reasonable satisfaction of the Secretary of State that the Amended Driver Number is sufficient to enable the Passenger Services to be robustly and effectively delivered in accordance with the obligations of the Franchisee under the Franchise Agreement, the Secretary of State shall grant his approval for the relevant Qualified Driver Number and/or Trainee Driver Number, as appropriate, to be substituted for such Amended Driver Number as proposed by the*

¹⁷⁸ Date of insertion 12/02/2016

¹⁷⁹ Date of insertion 12/02/2016

Franchisee (or such other amended driver numbers as agreed by the Secretary of State) for the purposes of paragraph 5.2C.

5.2F¹⁸⁰ For the avoidance of doubt, the Franchisee and the Secretary of State agree that, in respect of the circumstances identified in paragraph 5.2E above, there shall be no adjustments to the Franchise Payments.

5.2G¹⁸¹ On or before 31 January 2016 the Franchisee shall appoint Driver Managers and Driver Resource Managers to maintain resource levels of no less than:

- (a) 70 Driver Managers who shall be responsible for driver managing, driver training and assessing drivers back to productive duties following a period of absence due to sickness or safety incident; and**
- (b) 40 Driver Resource Managers who shall be responsible for reducing the number of vacant jobs per day and assisting with service recovery during disruption,**

during the period between 31 January 2016 and 16 September 2017.

Train Simulators

5.3 The Franchisee shall:

- (a) upgrade the software and hardware on at least 1 existing Class 377 train simulator in order to simulate the version of ERTMS to be installed on that part of the network where Passenger Services would be operated utilising the Class 377 units;
- (b) purchase 8 desk-top simulators and appropriate 3D graphics by no later than **[REDACTED¹⁸²]**; and

in so doing, the Franchisee shall incur expenditure of not less than **[REDACTED¹⁸³]** (such amount to include capital expenditure).

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181 Date of insertion 12/02/2016

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Driver Learning Framework

- 5.4 With effect from the Start Date the Franchisee shall utilise the driver learning framework developed by the Southern Franchisee prior to the Start Date (provided that such driver learning framework may be amended, adapted and varied by the Franchisee in order to ensure that it is fit for the particular circumstances of the Franchise and/or generally to meet best practice) for the training of its Franchise Employees who are, or who are to become, drivers.

Availability of Drivers for Operation of 24 Passenger Services per hour through the Core Thameslink Route

- 5.5 The Franchisee shall use reasonable endeavours to ensure that, from the Subsidiary Change Date in May 2018, the Franchisee has sufficient trained drivers to be deployed to operate 24 Passenger Services per hour in each direction through the Core Thameslink Route as a minimum throughout the hours 0700 to 0959 and 1700 to 1859 during the period starting on the Subsidiary Change Date in May 2018 and ending on the Passenger Change Date in December 2018.

5.6 **[REDACTED¹⁸⁴]**

5.7 **[REDACTED¹⁸⁵]**

Operational Interface Team

- 5.8 The Franchisee shall:
- (a) on or before the Start Date appoint an Operations Integration Manager who shall be responsible for:
 - (i) the management of all train crew resources in relation to the testing and operational standards of the Class 700 rolling stock units; and
 - (ii) the production of all related operational manuals and procedures;
 - (b) use reasonable endeavours to ensure that on or before 31 July 2015 it has Franchise Employees equivalent to no less than 18 dedicated full time posts (including the post referred to in paragraph 5.8(a)) for deployment to manage drivers through the training and transition process to the operation of 24 Passenger Services per hour in each direction through the Core Thameslink Route; and

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- (c) on or before 31 March 2016 appoint a Training Resource Planner who shall be responsible for the co-ordination of drivers to attend training courses.
- (d) ¹⁸⁶ **on or before 31 January 2016 appoint (and retain until 16 September 2017) a Business Excellence and Improvement Manager who shall be responsible for working in conjunction with Network Rail to identify and embed improved operations planning processes;**
- (e) ¹⁸⁷ **on or before 31 January 2016 appoint a Head of Operational Resourcing who shall be responsible for leading resource resilience through base roster and resource planning strategies for the period up to and including 16 September 2017; and**
- (f) ¹⁸⁸ **on or before 31 January 2016 appoint (and retain until 16 September 2017) a Resource Training and Risk Manager who shall be responsible for managing and mitigating risk to individual driver training criteria.**

Consultation on Significant Alterations to the Timetable

5.9 In addition to its obligation in paragraph 4 of Schedule 1.1 (Service Development), the Franchisee shall in respect of the proposed Timetable changes to be made on or around the Passenger Change Dates in December 2015 and December 2018 and the Subsidiary Change Date in May 2018:

- (a) deploy a full time equivalent Project Manager who shall be responsible for the overall management of the consultation in relation to such proposed changes;
- (b) publish in electronic formats (including on the Franchisee's website):
 - (i) a comprehensive summary of the proposed changes from the Timetable then in force specifying the proposed Timetable changes, the reasons for them, the likely impact on passengers and those areas where there may be scope for variation; and
 - (ii) extracts of the proposed future Timetable;
- (c) carry out the consultation in relation to such proposed changes using a range of communication channels (including the online passenger panel as introduced pursuant to paragraph 13.3), through social media channels, seminars and individual meetings) and in a manner that can be reasonably expected to encourage responses from a broad range of affected stakeholders (including any relevant MPs and Local Authorities, major

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¹⁸⁶ Date of insertion 12/02/2016

¹⁸⁷ Date of insertion 12/02/2016

¹⁸⁸ Date of insertion 12/02/2016

employers and service providers, educational institutions and passengers);
and

- (d) ensure that the Secretary of State and Network Rail are involved in such consultation process and seek their views before exercising any relevant Timetable Development Rights to implement the proposed Timetable change.

New Rostering System

- 5.10 The Franchisee shall on or before 31 January 2016 introduce and operate a rostering and time and attendance system which is capable of linking to the payroll system of the Franchisee and shall be capable of producing detailed resource availability and utilisation reporting.
- 5.11 **[REDACTED¹⁸⁹]**

Investment in Upgrading Timetabling and Rolling Stock Systems

- 5.12 The Franchisee shall ensure that timetabling and rolling stock systems are periodically upgraded so as to improve conflict detection and increase the accuracy and efficiency of timetable production and the production of rolling stock diagrams.

Approach to Handling Demand Travel in Connection with Special Events

- 5.13 The Franchisee shall develop and hold Special Event Planning Group meetings in each reporting quarter (as defined in paragraph 3.14) during the Franchise Term for the purpose of planning the management and operation (in accordance with the Franchisee's obligations under the Franchise Agreement) of railway passenger services to and from any special events held throughout the area in which the Passenger Services are provided. These Special Event Planning Group Meetings shall be attended by Station managers and train planners. The Franchisee shall also invite, as appropriate, the British Transport Police, Network Rail, events managers, safety advisers and security advisers to attend such Special Event Planning Group Meetings.

6. Rolling Stock

New Rolling Stock to Replace Class 313s

- 6.1 The Franchisee has identified a clear need to secure additional rolling stock for its network to replace its fleet of 44 units of Class 313/0 rolling stock in 3 vehicles per unit formation and used to operate Passenger Services in and out of Moorgate Station.

¹⁸⁹ 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.

- 6.2 The Franchisee shall procure 25 units in 6 vehicle formation (the "**Class 313 Replacement Units**") in line with the following output specification:
- (a) a 'metro' configuration designed for a high density commuter application with the seating, standing, total and standard class capacities determined by the Franchisee following consultation with the Secretary of State pursuant to paragraph 6.3;
 - (b) dual voltage;
 - (c) 1/3 2/3 door configuration;
 - (d) ERTMS fitted from build;
 - (e) **[REDACTED¹⁹⁰]**;
 - (f) driver advisory system;
 - (g) passenger information system that is capable of being updated remotely in real time during the operation of a Passenger Service;
 - (h) remote on train monitoring and recording downloads;
 - (i) energy metering;
 - (j) saloon and cab air conditioning;
 - (k) passenger counting equipment that counts the number of passengers that board and alight from the train at each station (as well as provides total passenger load information); and
 - (l) full regenerative braking capability in both AC and DC mode.
- 6.3 The Franchisee shall deliver to the Secretary of State for comment a draft invitation to tender together with draft evaluation criteria in relation to the procurement of the Class 313 Replacement Units and draft capacity for seating, standing, total and standard class. The Secretary of State shall have the right within 15 working days of receipt of such invitation to tender, draft evaluation criteria and draft capacity to comment on them and:
- (a) in respect of such invitation to tender and the draft evaluation criteria the Franchisee shall have due regard to such comments; and
 - (b) in respect of the draft capacity for seating, standing, total and standard class the Franchisee shall take into account any reasonable comments the Secretary of State may have in respect thereto and reflect such comments in the invitation to tender, the evaluation criteria and the output

¹⁹⁰ 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.

specification to be issued to the bidders in relation to the procurement of the Class 313 Replacement Units.

Any invitation to tender issued to bidders in relation to the procurement of the Class 313 Replacement Units shall include the output specification for the Class 313 Replacement Units as specified in paragraph 6.2.

- 6.4 At each Franchise Performance Meeting until such time as the Class 313 Replacement Units are procured the Franchisee shall provide to the Secretary of State such reports and information on the conduct of the procurement of the Class 313 Replacement Units as he may reasonably require.
- 6.5 The Franchisee shall use reasonable endeavours to introduce:
- (a) at least one Class 313 Replacement Unit into passenger revenue earning service by the Subsidiary Change Date in [REDACTED¹⁹¹]; and
 - (b) all of the Class 313 Replacement Units into passenger revenue earning service by the Passenger Change Date in [REDACTED¹⁹²].
- 6.6 [REDACTED¹⁹³]
- 6.7 [REDACTED¹⁹⁴]
- 6.8 [REDACTED¹⁹⁵]
- 6.9 [REDACTED¹⁹⁶]

New Rolling Stock to Replace Class 442s

- 6.10 The Franchisee has identified a clear need to secure additional rolling stock for its network to replace its fleet of 24 units of Class 442 rolling stock in 5 vehicles per

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¹⁹¹ 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.

¹⁹² 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.

¹⁹³ 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.

¹⁹⁴ 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.

¹⁹⁵ 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.

¹⁹⁶ 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.

unit formation and operate Passenger Services which call at Gatwick Airport Station and/or have related calling patterns on the Brighton Main Line.

6.11 [REDACTED¹⁹⁷]

6.12 [REDACTED¹⁹⁸]

6.13 [REDACTED¹⁹⁹]

6.14 [REDACTED²⁰⁰]

6.15 [REDACTED²⁰¹]

6.16 [REDACTED²⁰²]

Cascade Support to Receiving Operators

6.17 **ii** ²⁰³ **Once the relevant Train Operators to the Franchise are identified, the Franchisee shall offer to organise and chair monthly steering group meetings with each Train Operator who has entered into an agreement for lease of rolling stock that is due to be part of the cascade of rolling stock out of the Franchise during the Franchise Term consequential upon the introduction of the HLOS Phase 2 Core Units and the fleet of Class 700 units (the "Thameslink Rolling Stock Cascade").**

Key stakeholders in the Thameslink Rolling Stock Cascade shall be invited to attend the steering group meetings including senior representatives of

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¹⁹⁷ 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.

¹⁹⁸ 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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²⁰⁰ 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.

²⁰¹ 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.

²⁰² 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.

²⁰³ 20 October 2015 - (Date of Contract Change Letter) – Contract variation agreed by the Secretary of State and Franchisee.

the Secretary of State, lessors of the relevant rolling stock and, where appropriate or required, Network Rail.

The steering group meetings shall include discussion of the following topics but only in so far as they relate to the cascade to that individual Train Operator:

- (a) **the progress and status of the Thameslink Rolling Stock Cascade;**
- (b) **managing and mitigating the 'whole of railway' cost of the Thameslink Rolling Stock Cascade;**
- (c) **managing and mitigating the train service performance and asset management risks of the Thameslink Rolling Stock Cascade;**
- (d) **ensuring communication, consistency and transparency across the Thameslink Rolling Stock Cascade; and**
- (e) **problems in respect of delivery of the Thameslink Rolling Stock Cascade.**

The Franchisee shall provide the Secretary of State with a written update on the progress and actions following each steering group meeting and shall include a written update on the progress of the Thameslink Rolling Stock Cascade within the periodic franchise monthly report.

6.18 In relation to a rolling stock fleet which forms part of the Train Fleet on the Start Date but which is scheduled to be released by the Franchisee prior to the Passenger Change Date in December 2018 [REDACTED²⁰⁴], the Franchisee shall provide the following support to any Train Operator operating such rolling stock in succession to the Franchisee during the period commencing three months prior to the scheduled release of the first unit of such rolling stock fleet by the Franchisee and the date that is one year after the release by the Franchisee of the last unit of such rolling stock fleet:


- (a) the Franchisee's asset management plan for the relevant fleet of rolling stock which shall include plans for maintenance, modification and reliability improvement;
- (b) the Franchisee's operational management plan for the relevant fleet of rolling stock which shall include any traction manual, any traction conversion course, any train preparation procedures and any train fault finding and service rescue processes that are for the time being held by or on behalf of the Franchisee;
- (c) access to an internet based data room which contains information about the relevant fleet of rolling stock. Such information shall include for the relevant fleet of rolling stock the Franchisee's asset management plan

²⁰⁴ 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.

referred to at paragraph 6.19(a) and the operational management plan referred to at paragraph 6.19(b). Such information shall also include any periodic engineering reports, operating cost information, documentation of supply chain risks and lead times/turnaround times for repairable spares that are for the time being held by or on behalf of the Franchisee;

- (d) for the purpose of such secondees learning about maintenance and other engineering activities, accepting (at no cost to a Train Operator operating such rolling stock in succession to the Franchisee) into Depot(s) short term secondments of up to two employees of the Train Operator for up to 5 days per employee for each relevant fleet of rolling stock that such Train Operator is to operate in succession to the Franchisee;
 - (e) arranging each quarter an open day amongst representatives from Train Operators receiving a relevant fleet of rolling stock and the Franchisee for the purpose of discussion about engineering issues in relation to a relevant fleet of rolling stock; and
 - (f) (only during the first six months following the release by the Franchisee of the first unit of the relevant rolling stock fleet and upon request by the relevant Train Operator on reasonable notice) attendance by a suitably qualified representative of the Franchisee at up to six periodic performance and/or engineering meetings of the Train Operator that are dedicated to discussion about the relevant rolling stock fleet.
- 6.19 The Franchisee shall within 2 months of the Start Date appoint a project manager (full time equivalent) who will be based within the Thameslink Programme Office (as defined in paragraph 7.2 of Schedule 6.3 (TLP/TRSP Related Provisions)) for the purpose of facilitating and co-ordinating the initiatives set out at paragraphs 6.18 and 6.19 and to generally support the Thameslink Rolling Stock Cascade. The post of the Thameslink Rolling Stock Cascade project manager shall be retained until 12 months after the release of the last unit of rolling stock which forms part of the Train Fleet scheduled to be released by the Franchisee prior to the Passenger Change Date in December 2018.

LED Lighting

- 6.20 The Franchisee shall procure that LED lighting is fitted to the following:
- (a) 44 units of Class 313/0 rolling stock by no later than 31 December 2017;
 - (b) 19 units of Class 313/2 rolling stock by no later than 31 December 2017;
 - (c) 40 units of Class 365 rolling stock by no later than the earlier of 31 December 2017 and the date on which such units are released to another Train Operator pursuant to the Thameslink Rolling Stock Cascade;
 - (d)  46 units of Class 455 rolling stock by no later than 31 December 2017; and
 - (e) 16 units of Class 171 rolling stock by no later than the end of the Franchise Term.

In so doing, the Franchisee shall incur and/or procure expenditure of not less than [REDACTED²⁰⁵] (such amount to include capital expenditure by the Franchisee and any lessor of rolling stock).

Near Real Time Passenger Counting

- 6.21 The Franchisee shall use reasonable endeavours to procure that by 31 December 2015 infra red passenger counting technology shall be fitted to all of the Franchisee's fleet of 44 units of Class 313/0 rolling stock and in any event shall procure that such technology is fitted by 31 December 2016. Such technology shall permit 'near real time' communication of passenger loads on trains with the Franchisee's control centre whilst such trains are in Passenger Service.
- 6.22 The Franchisee shall use reasonable endeavours to procure that by 31 December 2016 infra red passenger counting technology shall be fitted to all of the Franchisee's fleet of 19 units of Class 313/2 rolling stock and in any event shall procure that such technology is fitted by 31 December 2017. Such technology shall permit 'near real time' communication of passenger loads on trains with the Franchisee's control centre whilst such trains are in Passenger Service.
- 6.23 The Franchisee shall use reasonable endeavours to procure that by 31 December 2016 infra red passenger counting technology shall be fitted to all of the Franchisee's fleet of 40 units of Class 365 rolling stock and in any event shall procure that such technology is fitted by 31 December 2017. Such technology shall permit 'near real time' communication of passenger loads on trains with the Franchisee's control centre whilst such trains are in Passenger Service.
- 6.24 The Franchisee shall use reasonable endeavours to procure that by 31 December 2019 infra red passenger counting technology shall be fitted to all of the Franchisee's fleet of 46 units of Class 455 rolling stock and in any event shall procure that such technology is fitted by 30 June 2020. Such technology shall permit 'near real time' communication of passenger loads on trains with the Franchisee's control centre whilst such trains are in Passenger Service.
- 6.25 In procuring the technology required by paragraphs 6.22 to 6.25, the Franchisee shall incur and/or procure expenditure of not less than [REDACTED²⁰⁶] (such expenditure to include capital costs by the Franchisee).

ERTMS Deployment

- 6.26 In relation to paragraph 6.1 of Schedule 6.2 (TSGN Franchise Specific Provisions), the Franchisee shall procure the installation, testing and commissioning of the relevant ERTMS equipment on 17 units of Class 377/5 rolling stock and 19 units

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²⁰⁵ 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.

²⁰⁶ 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.

of Class 365 rolling stock forming part of the Train Fleet on a basis that is consistent with the ERTMS Programme.

Innovation

- 6.27 Over the Franchise Period the Franchisee shall incur expenditure of, on average, not less than £50,000 in respect of each Franchisee Year (which may be capital, operating or research and development in character) on developing innovative schemes to resolve or mitigate rolling stock, depot or other operational or engineering issues that confront the Franchisee. By way of illustration, the following represent specimens of the type of scheme that the Franchisee may seek to pursue pursuant to this paragraph 6.28 (provided that it is acknowledged that the Franchisee is not required to pursue any scheme that is specified below and may instead propose one or more Alternative Scheme(s)) in accordance with the provisions of paragraph 8 of Part 2 of this Schedule 6.1:
- (a) a feasibility on train trial of a gyrodrive fly wheel developed by Williams Hybrid Power Limited which stores energy on an electric fly wheel that would otherwise be dissipated;
 - (b) a feasibility trial on whether the fitment of extra motored axles on Class 377 rolling stock improves the efficiency of regenerative braking; and/or
 - (c) a feasibility study with Network Rail to improve the ability of the Network to accept all of the energy that is produced as a result of regenerative braking on the DC network.

Variation of C6 Programme relating to Class 365 Brake and Door Improvements

- 6.28 The Franchisee shall not vary the elements of the C6 maintenance programme that is to be undertaken on the Class 365 rolling stock vehicles comprised in the Train Fleet which relate to brakes and door improvements.

Depot Facility Upgrades - Paint Facility

- 6.29 The Franchisee shall use reasonable endeavours to procure long term funding from Network Rail for a new facility for painting rolling stock. Subject to securing such funding by 1 January 2015, the Franchisee shall procure a new facility for painting trains by 31 December 2016.

CET and Tanking Equipment at Bedford and Jowett Carriages Sidings

- 6.30 ²⁰⁷***For the purposes of improving the operational resilience of the Thameslink service, the Franchisee shall by 31 December 2016 procure the installation of additional CET and tanking equipment at Bedford and Jowett carriage Sidings and in so doing shall incur expenditure (which shall be capital in nature) of not less than £80,000. The provisions of***

paragraph 8 of Part 2 to this Schedule 6.1 shall apply in respect of this paragraph 6.31.

PEM Team

- 6.31 The Franchisee shall from 31 December 2016 until the end of the Franchise Term deploy a team of Franchise Employees based at Stations and Depots (such team to comprise of at least 9 full time equivalent Franchise Employees in aggregate), but the members of the team shall be mobile and shall attend to rolling stock whilst in-service and/or at stabling locations for the purpose of undertaking passenger environment and train presentation work (as prescribed in a new maintenance task to be specified by the Franchisee) on any rolling stock in the Train Fleet.

Wiki

- 6.32 The Franchisee shall, in relation to rolling stock which forms part of the Train Fleet and which is maintained by the Franchisee, by no later than 31 December 2015 develop a website for the purpose of collecting and sharing rolling stock maintenance/technical content and know-how. Such web-site shall be accessible to Franchise Employees and relevant contractors of the Franchisee over the internet. Such website shall include any vehicle maintenance instructions, vehicle maintenance procedures, illustrated lists of parts, fault finding guides, training manuals, technical manuals and other know how as are held by or on behalf of the Franchisee from time to time and shall allow people to add, modify or delete content in collaboration with others.
- 6.33 [REDACTED²⁰⁸]
- 6.34 [REDACTED²⁰⁹]
- 6.35 [REDACTED²¹⁰]
- 6.36 [REDACTED²¹¹]

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- ²⁰⁸ 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.
- ²⁰⁹ 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.
- ²¹⁰ 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.
- ²¹¹ 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.

6.37 [REDACTED²¹²]

6.38 [REDACTED²¹³]

6.39 [REDACTED²¹⁴]

6.40 [REDACTED²¹⁵]

PRM

6.41 The Franchisee shall procure timely completion of any necessary modification work on its fleets of Class 455, 365 and 313/2 rolling stock forming part of the Train Fleet to secure compliance with the accessibility requirements of the Railways (Interoperability) Regulations 2011 (as such requirements were at 24 December 2013).

Centralised maintenance planning

6.42 The Franchisee shall procure that planning for maintenance of the Train Fleet undertaken by the Franchisee is centralised and coordinated and in-service support is provided to traincrew from a single point of contact with a view to:

- (a) the efficient distribution of such maintenance provision across the Depots; and
- (b) improving performance through a reduction in the Minutes Delay, Cancellation and Partial Cancellation that is attributable to the Franchisee.

Electrical sockets for passengers

6.43 The Franchisee shall procure that at least one electrical socket for every two seats is fitted to each vehicle comprised in the:

- (a) Class 313 Replacement Units; and
- (b) (as applicable) Additional HLOS Phase 2 Units or the Class 442 Replacement Units,

²¹² 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.

²¹³ 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.

²¹⁴ 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.

²¹⁵ 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.

and that such electric sockets are available for use by passengers from the date that such units are introduced into Passenger Service being:

- (i) the date specified in paragraph 6.6 for the Class 313 Replacement Units; and
- (ii) the date specified in paragraphs 6.12 (for the Additional HLOS Phase 2 Units) or 6.16 (for the Class 442 Replacement Units), as applicable.

Driver's advisory system

6.44 On or before ²¹⁶, the Franchisee shall procure the installation of a Driver Advisory System to the additional Diesel Rolling Stock that forms part of the Train Fleet. For the purposes of this paragraph 6.45:

- (a) **"Diesel Rolling Stock"** means the diesel powered units that are comprised in the Train Fleet; and
- (b) **"Driver Advisory System"** means a system to assist the train driver to select an appropriate speed in the prevailing circumstances over a train journey.

6.46²¹⁷ The Franchisee shall procure that a Driver Advisory System (as such term is defined in paragraph 6.45) is:

- (a) **fitted and available for use on the Class 313 Replacement Units; and**
- (b) **fitted on (as applicable) the Additional HLOS Phase 2 Units or the Class 442 Replacement Units.**

6.46A²¹⁸ The Franchisee will install a Hima-Sella Tracklink III PIBS (Platform Information Balise System) to the Class 387/1 fleet to support the implementation of SDO (Selective Door Operation) and CSDE (Correct Side Door Enable) on the Great Northern route before 31 December 2018.

6.47²¹⁹ The Franchisee shall undertake a programme of work in respect of the Class 319 rolling stock vehicles referred to in Table 1 of Schedule 1.7 (Train Fleet) to be completed on or before 31 March 2016 which shall aim to improve the reliability of:

²¹⁶ 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.

²¹⁷ 15/06/2017 – Contract variation agreed by the Secretary of State and Franchisee.

²¹⁸ 15/06/2017 – Contract insertion agreed by the Secretary of State and Franchisee.

²¹⁹ 12/02/2016 – Contract insertion agreed by the Secretary of State and Franchisee.

- (a) the performance of the door systems; and
- (b) the condition of the commutators and motor-alternators,

and in so doing shall incur expenditure of no less than [REDACTED²²⁰] such expenditure not to include any procurement costs (including management time and legal costs), incurred by the Franchisee as a consequence of compliance with its obligations under this paragraph 6.47.

6.48²²¹ The Franchisee shall undertake a programme of work in respect of the Class 377/2 and 377/5 rolling stock vehicles referred to in Table 1 of Schedule 1.7 (Train Fleet) to be completed on or before 17 September 2017 which shall aim to improve reliability and as a minimum shall include:

- (a) modifications to the DOO and CCTV systems;
- (b) a modification to Cab Out of Service Locks;
- (c) introducing in-line filters to cab heating, ventilation and air conditioning systems;
- (d) replacing existing cab audio communications unit handsets;
- (e) overhauling line inductors; and
- (f) implementing improved train software to resolve PIBS issues,

and in so doing shall incur expenditure of no less than [REDACTED²²²] such expenditure not to include any procurement costs (including management time and legal costs) incurred by the Franchisee as a consequence of compliance with its obligations under this paragraph 6.48.

7. Delivering Train Service Performance

Network Rail Alliance

7.1 In relation to the provisions of paragraph 11.1 of Schedule 13 (Information and Industry Initiatives), the Franchisee shall use all reasonable endeavours to develop and enter into with Network Rail an alliance framework agreement which will

²²⁰ 21/03/2016 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.

²²¹ 12/02/2016 – Contract insertion agreed by the Secretary of State and Franchisee.

²²² 21/03/2016. 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.

provide for closer working between the Franchisee and Network Rail and which shall include:

- (a) the creation of an integrated control operation with a unified culture and purpose and which would, without limitation, control the response to emergency and service disruption incidents;
- (b) the creation of a joint performance management strategy, to improve train performance (through, for example, expanding the scope of Right Time Railway Groups) whilst reducing the cost of performance management;
- (c) extracting value from Stations and Depots through a holistic and integrated asset management capability;
- (d) improving journey times between London and East Sussex and subsequently on other routes;
- (e) introducing a joint safety planning process that will drive the development of a joint safety improvement plan;
- (f) driving fleet efficiency;
- (g) exploring the feasibility and implementation of major Station enhancements where Network Rail owns or leases land adjoining Stations;
- (h) ERTMS deployment;
- (i) optimising route access by introducing a coordinated maintenance and renewal strategy;
- (j) identifying the locations and infrastructure outside the Core Thameslink Route (as defined in Schedule 6.3 (TLP/TRSP Related Provisions)) that are critical to the 'right time' presentation of Passenger Services to the Core Thameslink Route;
- (k) Brighton Mainline performance robustness package; and
- (l) junction speed and capacity improvements.

The Franchisee shall comply with the terms of any alliance framework agreement entered into with Network Rail pursuant to this paragraph 7.1.

Deployment of Mobile Devices

- 7.2 The Franchisee shall make available an internet and 4G enabled tablet device to every in service train driver Franchisee Employee by no later than 31 December 2016, and shall do so for the remainder of the Franchise Term, for the purpose of improving communications, performance reporting and investigation. In so doing,

the Franchisee shall incur expenditure of not less than ²²³ over the Franchise Term (such expenditure to include capital costs and telecommunications and/or data charges).

Automated Attribution Software and Analysis

7.3 The Franchisee shall on or before 31 December 2015 introduce bespoke software (which may, but does not need to, take the form of "Kestrel" software developed by the Universal Improvement Company) which will be capable of:

- (a) analysing delay, incident and cancellation data by location, root cause, route, individual service, time of day and day of the week;
- (b) analysing frequency of service, headways and dwell times; and
- (c) assisting in attribution of delays,

and in so doing shall incur expenditure of not less than [REDACTED²²⁴] over the Franchise Term (such expenditure to include operating expenditure, project management costs and licensing costs).

The provisions of paragraph 8 of Part 2 to this Schedule 6.1 apply in respect of this paragraph 7.3.

Better Together Performance Forum

7.4 With effect from the Start Date and for the duration of the Franchise Period, senior employees of the Franchisee shall attend and participate in the Go-Ahead Group's 'Better Together' forums with senior members of other companies of the Group for the purpose of:

- (a) sharing best practice with other train and bus operators within the Go-Ahead Group;
- (b) benchmarking performance across other train and bus operators within the Go-Ahead Group; and
- (c) developing initiatives that apply across one or more train and bus operators within the Go-Ahead Group.

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

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

Innovative Use of New Sources of Data for Analysis

- 7.5 For the purpose of understanding the root cause of train performance issues and improving the quality of operational decisions, the Franchisee shall with effect from the Start Date and for the duration of the Franchise Period analyse:
- (a) data derived from TRUST;
 - (b) (subject to agreement from Network Rail as part of any alliance initiative agreed pursuant to paragraph 7.1 or otherwise) data derived from Network Rail's systems including SCADA;
 - (c) data derived from the performance monitoring systems fitted on the fleets of Class 377, Class 455 and Class 700 rolling stock that form part of the Train Fleet; and
 - (d) data derived from Franchise Employees including via the tablet devices made available to Franchise Employees pursuant to paragraphs 7.2, 12.10 and 18.2.

Local Empowerment and Employee Engagement

- 7.6 The Franchisee shall by 30 March 2016 prepare a plan (and as soon as reasonably practicable after the preparation of such plan implement such plan) by which the Franchise Employees trained pursuant to paragraph 1.4(d) shall disseminate amongst other Franchise Employees methodologies to act as local improvement and innovation champions.

GAP Analysis for Contingency Plans

- 7.7 The Franchisee shall review and, if appropriate, update all contingency plans and procedures for the management of operational disruption to Passenger Services ("**Contingency Plan**") as follows:
- (a) (in respect of the Contingency Plan that applies in respect of the railway passenger services described at paragraph (a) of the definition of TGN Franchise Services) by the Start Date;
 - (b) (in respect of the Contingency Plan that applies in respect of the Southern Franchise Services) by the Combined Effective Date;
 - (c) (in respect of the Contingency Plan that applies in respect of the railway passenger services to be provided from the Passenger Change Date in December 2015) by the Passenger Change Date in December 2015; and
 - (d) (in respect of the Contingency Plan that applies in respect of the railway passenger services to be provided by the Franchisee in order to comply with each of the Train Service Requirement in agreed terms marked TSR5, TSR6 and TSR7) by:
 - (i) 2 January 2018, in respect of the railway passenger services required in order to comply with TSR5;
 - (ii) Subsidiary Change Date in May 2018, in respect of the railway passenger services required in order to comply with TSR6; and

- (iii) Passenger Change Date in December 2018 in respect of the railway passenger services required in order to comply with TSR7.

Expansion of Fleet Control

- 7.8 The Franchisee shall from the Combined Effective Date centralise at the Three Bridges Railway Operations Centre the management of the Franchisee's response to either a train failing during the operation of a Passenger Service or a defect on a train otherwise arising or becoming apparent during the operation of a Passenger Service.

Access to Southern Franchisee Depots

- 7.9 The Franchisee shall enter into Depot Access Agreements with the Southern Franchisee for access to Selhurst Depot and Brighton Depot during the period commencing on the Start Date and expiring on the Combined Effective Date.

8. Delivery Of The Thameslink Programme

Professional Programme Management Capability

- 8.1 In addition to its obligations in paragraph 7 of Schedule 6.3 (TLP/TRSP Related Provisions), the Franchisee shall appoint a professional programme management partner to provide:
- (a) a programme management service addressing the requirements of the Thameslink Programme Office;
 - (b) change management and programme management (including programme initiation management) in respect of the elements of the Thameslink Programme that relate to the Franchisee, the TRSP Programme and other significant Franchise projects (including the introduction of new rolling stock vehicles and the refurbishment and enhancement of Stations); and
 - (c) the benefit of prior experience of managing complex infrastructure projects and the ability to identify potential technical and operational issues,

and in so doing shall incur expenditure of not less than [REDACTED²²⁵] (such expenditure to include project management costs) between the date of the Franchise Agreement and 31 December 2018. The Franchisee shall maintain a professional programme management partner appointed pursuant to this paragraph 8.1 until at least 31 December 2018.

Cooperation and Alliancing with Siemens

- 8.2 With effect from the Start Date, the Franchisee shall use all reasonable endeavours to work with Siemens plc ("**Siemens**") to identify ways in which cooperation and

²²⁵ 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.

communication between the Franchisee and Siemens can be enhanced so that measurable financial and operating efficiencies can be realised and areas of collaboration can be developed and implemented so as to contribute to the overall delivery of the Thameslink Programme.

- 8.3 The Franchisee may consider pursuant to its obligations under paragraph 8.2 that it is appropriate to enter into an alliance agreement with Siemens (the "**Siemens Alliance Agreement**") for the purposes of the improved delivery of the Thameslink Programme.
- 8.4 The Franchisee shall provide such information, updates and reports on the progress of its negotiations with Siemens as the Secretary of State shall reasonably require and meet with the Secretary of State to discuss the progress of the negotiations when reasonably requested to do so.

TRSP Project Manager

- 8.5 The Franchisee shall on or before the Start Date appoint (and until at least 30 September 2019 maintain the appointment of) a TRSP Project Manager who shall be responsible for:
- (a) the management of the obligations of the Franchisee under the TRSP Documents; and
 - (b) reporting to and liaising with the Secretary of State to provide assurance that the Class 700 rolling stock units shall be delivered in accordance with the TRSP Programme; and
 - (c) utilising the services of the Thameslink Programme Office in the process of managing the TRSP Programme.

Participation in the Thameslink Communications Group

- 8.6 The Franchisee shall appoint a Franchise Employee to the Thameslink Communications Group between 14 October 2014 and 1 January 2019 to act as a communications manager for the purpose of participating in, developing, implementing, coordinating and delivering the plan for communicating to passengers the impact of the Thameslink Programme from time to time, particularly insofar as the Franchisee is responsible for such communications. The "**Thameslink Communications Group**" for this purpose is the cross-industry group responsible for co-ordinating passenger communications in relation to the Thameslink Programme.

9. Operational Concept

- 9.1 **[REDACTED²²⁶]**

²²⁶ 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.

Transport Co-ordination Centre

- 9.2 The Franchisee shall on or before 31 December 2015 establish and maintain throughout the Franchise Term a dedicated resource at the Southwark Transport Co-ordination Centre (or such other location as may be agreed by TfL from time to time) in order to assist in the effective and co-ordinated approach of passenger management within London.

High Capacity Infrastructure Possession Management Team

- 9.3 **iv** ²²⁷ The Franchisee shall work with Network Rail to deliver "High Capacity Infrastructure Possessions Management", which is defined as:
- (a) the management of all possessions relating to the delivery of the Thameslink Programme (including taking decisions to either curtail a possession or to allow a possession overrun to occur);
 - (b) the implementation of possession contingency plans; and
 - (c) the determination of decisions required to minimise disruption to passengers in the event of changes to the schedule of possessions.

In addition to normal possession management resources and procedures, the Franchisee shall appoint the following persons to deliver High Capacity Infrastructure Possessions Management by no later than 31 May 2015:

- (a) A nominated operations manager to attend and participate in the key possession planning and delivery meetings with Network Rail;
- (b) A nominated train planning/access planning manager to resolve access conflicts and actively facilitate possessions with Network Rail;
- (c) One test and commissioning driver and one train manager on board each Class 700 test train during Class 700 testing; and
- (d) Thameslink Programme manager and Thameslink Programme director with oversight of planning and delivery.

The Franchisee shall ensure that the above roles are filled by persons who are suitably qualified to perform such roles until the later of 31 December 2018 or six months after the completion of the Thameslink Programme.

Flight Engineering Team

- 9.4 The Franchisee shall on or before 31 December 2015 and in conjunction with Network Rail and Siemens introduce a Flight Engineering team comprised of no fewer than 5 Franchise Employees located at the Three Bridges ROC which shall

²²⁷ 10 June 2015 - (Date of Contract Change Letter) – Contract variation agreed by the Secretary of State and Franchisee.

be responsible for the monitoring and management of all on-train equipment on the Class 700 rolling stock units (including driver advisory systems, European Train Control System, traffic management systems, telecommunication systems and customer information systems). Except as may otherwise be agreed by the Secretary of State, the Flight Engineering team shall remain so located for the remainder of the Franchise Term.

Station Management Control

- 9.5 The Franchise shall on or before 31 May 2016 introduce and operate a Station Management Control located at the Three Bridges ROC so as to assist in the proactive management of Station performance and platform dwell times. Except as may otherwise be agreed by the Secretary of State, the Station Management Control shall remain so located for the remainder of the Franchise Term. For the purposes of this paragraph 9.5 "**Station Management Control**" means a centre for the proactive management of Station performance and platform dwell times.

Organisational Structure

- 9.6 The Franchisee shall:

- (a) on or before 31 March 2015 appoint a Resource Manager who shall be responsible for:
- (i) the management and implementation of alterations to service patterns and associated train crew diagrams; and
 - (ii) the co-ordination of train crew and rolling stock resources during service disruptions,
- and maintain such an appointment for the remainder of the Franchise Term;
- (b) on or before 31 December 2015 appoint a Flight Engineer who shall be responsible for:
- (i) monitoring of all technical equipment on the Core Thameslink Route (as defined in Schedule 6.3 (TLP/TRSP Related Provisions));
 - (ii) ensuring suitable actions are taken to deliver the required throughput of Passenger Services on the Core Thameslink Route;
 - (iii) the management and restoration of facilities (including escalators, gatelines and customer information systems) at the Stations on the Core Thameslink Route; and
 - (iv) the management and performance of the wider flight engineering team,
- and maintain such an appointment for the remainder of the Franchise Term;
- (c) on or before the Start Date appoint five Passenger Experience Managers who shall be responsible for:

- (i) the validation of all Train Management System (TMS) outputs to customer facing systems;
- (ii) the monitoring of customer journey websites to ensure that fastest journey options are presented at all times; and
- (iii) leading the operational co-ordination with other public transport operators such as Gatwick Airport Limited, London Luton Airport Limited, London Underground and TfL,

and maintain such an appointment for the remainder of the Franchise Term; and

- (d) on or before 31 March 2018 appoint 10 Station Performance Managers who shall be responsible for:
 - (i) managing and optimising platform dwell times at the Stations on the Core Thameslink Route through the use of customer information systems and the deployment of the wider station dispatch team;
 - (ii) minimising station overcrowding through the management of passenger entry and exit times; and
 - (iii) liaising with other public transport operators such as TfL, London Underground Limited, Crossrail Limited, the LSER Franchisee, Network Rail, London Overground Rail Operations Limited, Gatwick Airport Limited, London Luton Airport Limited and Eurostar International Limited so as to predict passenger loadings at key interchanges,

and maintain such appointments for the remainder of the Franchise Term.

Introduction of DARWIN and Open Access Customer Information System

9.7 The Franchisee shall on or before 30 June 2015 introduce and maintain throughout the Franchise Term a database system known as "DARWIN" designed to simplify passenger information system data input interfaces and ensure consistent and accurate communication with passengers through passenger information systems at Stations and on trains.

9.8 The Franchisee shall on or before 31 December 2014 introduce the Open Access Customer Information System (OACIS) which will be capable of collecting real-time data from a variety of rail network sources (including that available from the "DARWIN" database) so as to enable clear and accurate information to be distributed to passengers through customer information systems at Stations and on trains, the customer information App and online timetable enquiry websites.

Service Recovery Methodologies

9.9 The Franchisee shall on or before each Passenger Change Date in conjunction with the Secretary of State utilise a performance modelling system (such as the Railystrain modelling system) for the purposes of:

- (a) reviewing the operational characteristics of the Timetable;

- (b) determining service recovery methodologies and related targets for service recovery; and
- (c) selecting the optimum service recovery process which balances the competing interests of service recovery and passenger disruption.

Station Management Plans

- 9.10 On or before 31 January 2018 the Franchisee shall develop and maintain throughout the Franchise Term individual station management plans for each of the Stations located at St. Pancras International, Farringdon, City Thameslink, London Blackfriars and London Bridge so as to ensure the successful operation of 24 Passenger Services per hour through the Core Thameslink Route (as defined in Schedule 6.3 (TLP/TRSP Related Provisions)). Each station management plan shall include details of the following:
- (a) customer control and crowding control management;
 - (b) management of the platform train interface;
 - (c) adherence to platform dwell times; and
 - (d) dispatch arrangements.

Delivery Review Programme

- 9.11 The Franchisee shall for a period of 100 days following the commencement of both the operation of 20 Passenger Services per hour and 24 Passenger Services per hour through the Core Thameslink Route (as defined in Schedule 6.3 (TLP/TRSP Related Provisions)), in conjunction with Network Rail, Siemens and other affected Train Operators, implement an operational and tactical review programme which shall provide for:
- (a) daily conferencing meetings reviewing train performance and operational problems in delivering the Train Plan; and
 - (b) strategic weekly review meetings for the purposes of considering overall service operation and changes to be made to the Timetable.

Introduction of Platform Markings

- 9.12 vThe Franchisee shall on or before 28 February 2018 mark each of the platforms specified in Column 2 of the table below and located at each of the stations specified in Column 1 of such table for the purposes of informing passengers where to stand or not to stand on each such platform.

Column 1	Column 2
Station	Platform Numbers
City Thameslink	1 and 2
Farringdon	3 and 4
London Blackfriars	1 and 2

London Bridge	4 and 5
London St. Pancras International (Low Level)	A and B

MARKETING, FARES, TICKETING AND REVENUE PROTECTION

10. Marketing

Marketing Team

10.1 The Franchisee shall:

- (a) use reasonable endeavours to appoint by the Start Date, and in any event appoint by no later than 30 November 2014, a Head of Marketing who shall be responsible for:
- (i) the management and delivery of the Marketing Plan;
 - (ii) the Agreed Marketing Spend and the overall marketing strategy;
 - (iii) the management and performance of all creative, digital, mobile and data agencies; and
 - (iv) the selection, management and performance of the wider marketing team; and
- and maintain such an appointment for the remainder of the Franchise Term; and
- (b) ensure that on or before 30 July 2015 it has Franchise Employees equivalent to no less than 12 dedicated full time posts (including the post referred to in paragraph 10.1(a)) available for deployment on marketing activities. The Franchisee shall maintain such level of Franchise Employees for the remainder of the Franchise Term.

e-CRM Strategy

10.2 With effect from the Start Date, the Franchisee shall implement a programme for the roll out of an e-CRM digital messaging platform for email, SMS and social media marketing communication with passengers (the "e-CRM Programme"). which will be capable of undertaking at least the following:

- (a) sending email, SMS, mobile App notifications and Twitter and Facebook communications from a database source to customers for the purposes of providing such customers with service information that is specific to their journey including the provision of information when there is delay or disruption to such customers journey;
- (b) sending tailored multi-channel marketing campaigns to passengers; and
- (c) modelling data from ITSO Certified Smartmedia (in particular the smartcard currently known as "The Key" which is to be introduced by the

Franchisee and is compliant with the ITSO specification) and aggregating such data to build passenger profiles,

The roll out of the e-CRM Programme shall be completed by no later than 14 September 2016.

Branding

- 10.3 The Franchisee shall implement a programme for the transitional re-branding of the railway passenger services and station services as provided by the FCC Franchisee immediately prior to the Start Date and by no later than 31 December 2018. Such programme shall include:
- (a) the adoption of 'Thameslink' as one of the brand names to be used for the purposes of this paragraph 10.3;
 - (b) by the Start Date, the issue of the Passenger Charter, the issue to relevant Franchise Employees of interim uniforms, website launch, changes to automated voices services on phone lines, replacement of posters at stations and rebranding of ticket vending machines;
 - (c) by 31 January 2015, the rebranding of Stations at which the FCC Franchisee was the lessee and the rebranding of a train used on the 'Great Northern' route; and
 - (d) by 20 April 2015, the issue of full new uniforms to relevant Franchise Employees.

Marketing Activities

- 10.4 Subject to obtaining the approval of the Secretary of State in accordance with paragraph 4.1 of Schedule 6.2 (TSGN Franchise Specific Provisions), the Franchisee shall introduce specific marketing campaigns as part of the Marketing Plan in relation to the following:
- (a) with effect from the Start Date until completion of the Thameslink Programme, the infrastructural developments of the Thameslink Programme (including any revisions and alterations to the Timetable (whether of a temporary or permanent nature), the introduction of new Passenger Services and the introduction of any new rolling stock vehicles);
 - (b) with effect from the Combined Effective Date,, the promotion of railway passenger services to and from Gatwick Airport;
 - (c) with effect from the Start Date, the promotion of railway passenger services and onward bus connections to and from Luton Airport;
 - (d) with effect from the Start Date, the targeting of leisure passengers through campaigns which promote the general value, convenience and other benefits of travel on the Passenger Services;
 - (e) with effect from the Start Date until 31 December 2018, the transitional re-branding of the railway passenger services and station services as provided by the FCC Franchisee immediately prior to the Start Date; and
 - (f) with effect from the Start Date, the promotion of new journey opportunities across the whole of the Franchise.

11. Fares

Revenue Team

11.1 The Franchisee shall:

- (a) on or before 31 December 2014 appoint a Head of Revenue Development who shall be responsible for:
 - (i) the analysis and reporting of revenue performance and trends;
 - (ii) the development and implementation of the strategy for the Creation of Fares;
 - (iii) the identification of new revenue opportunities; and
 - (iv) the management of all revenue agreements with third parties (including TfL and other Train Operators); and
- (b) ensure that on or before 30 July 2015 it has Franchise Employees equivalent to no less than 11 dedicated full time posts (including the post referred to in paragraph 11.1(a)) available for deployment on revenue activities. The Franchisee shall maintain such level of Franchise Employees for the remainder of the Franchise Term.

Extension of Zonal Fares

- 11.2 The Franchise shall use reasonable endeavours to extend Oyster PAYG to those areas bounded by and including the Stations located at Epsom, Gatwick Airport, Luton Airport Parkway, Welwyn Garden City and Hertford North by 30 September 2015 provided that the Franchisee and the Secretary of State agree that the terms of such introduction are not detrimental to the overall commercial position of the Franchise.

Demand Management Pilot

11.3

- (a) The Franchisee shall on or before 30 September 2015 and for a duration of 12 months undertake a demand management pilot on one or more routes in relation to innovative season ticket types so as to reward those season ticket holders travelling at quieter times of the day when there is surplus capacity. The season ticket types may include flexible season tickets, season tickets which give passengers a cash rebate for not travelling on Passenger Services operating in the Peak or such other types as may be agreed between the Franchisee and the Secretary of State.
- (b) No later than 3 months following conclusion of the trial referred to in paragraph 11.3(a) the Franchisee shall provide to the Secretary of State a feasibility report detailing the costs and benefits of introducing such innovative season ticket types throughout the Franchise. Where such feasibility report shows that there is Positive Business Case for the introduction of any innovative season ticket type across the Franchise, the Franchisee shall introduce such innovative season ticket types throughout the Franchise in accordance with the terms of the proposals set out in the

feasibility report. For the purposes of this paragraph 11.3(b) "**Positive Business Case**" shall have the meaning given to it in paragraph 4.11(c).

12. **Ticketing, Smart Ticketing and Retailing**

ITSO Certified Smartmedia

12.1 Subject to paragraph 12.2, the Franchisee shall on or before 30 September 2015 introduce and operate an ITSO Certified Smartmedia ticketing system (namely the smartcard currently known as "The Key" which is to be introduced by the Franchisee and is compliant with the ITSO specification) throughout the area in which the Passenger Services are provided as part of, and utilising funds from, the wider SEFT Programme by:

- (a) operating such ITSO Certified Smartmedia product retailing equipment, cards, readers and validators at the Stations and at such other stations as the Franchisee deems appropriate in order to operate an optimal ITSO based scheme across the area in which the Passenger Services are provided;
- (b) operating ITSO Certified Smartmedia functionality on any automated gates which are fitted at any of the Stations; and
- (c) negotiating and supporting effective maintenance, communications, power and other operating arrangements for the ITSO based scheme.

12.2 If the roll out of the SEFT Programme in respect of the TGN Services, the Southern Services or otherwise is delayed for any reason, the date by which the Franchisee shall be obliged to introduce and operate the ITSO Certified Smartmedia ticketing system referred to in paragraph 12.1 shall be extended beyond 30 September 2015 by such number of days as is equal to the number of days by which the roll out of the SEFT Programme is delayed.

12.3 Subject to the successful introduction and operation of an ITSO Certified Smartmedia ticketing system in accordance with paragraph 12.1 and obtaining the approval of the Secretary of State, the Franchisee shall on or before 30 September 2015 introduce carnet-based season tickets based on ITSO Certified Smartmedia (namely the smartcard known as "The Key" which is to be introduced by the Franchisee and is compliant with the ITSO specification) throughout the Franchise.

New and Improved Point of Sale Channels

12.4 The Franchisee shall:

- (a) on or before 30 September 2015 introduce and operate:
 - (i) an e-commerce ticket sales website which will offer a comprehensive range of tickets (including both smartcard and non-smartcard products); and
 - (ii) a new ticket sales functionality within a dedicated smartphone and tablet App to improve the access and availability of ticketing products for customers; and
- (b) ensure that on or before 30 September 2016 the smartcard currently known as "The Key" (which is to be introduced by the Franchisee and is

compliant with the ITSO specification) can be topped up with credit by customers in any third party retail outlets (including convenience stores, newsagents and off-licences) with cash or card payment,

and in so doing shall incur expenditure of not less than [REDACTED²²⁸] (such expenditure to include capital expenditure, project management costs and those expenditure commitments referred to in paragraph 15.3).

Back Office Ticket Sales Engine

- 12.5 The Franchisee shall on or before 30 September 2015 introduce a single new back office ticket sales engine known as the "Core Ticketing Engine" designed to provide ticketing services to a wide range of retail channels and in so doing shall incur expenditure of not less than [REDACTED²²⁹] (such expenditure to include software development costs).

Ticket Vending Machines

- 12.6 Subject to obtaining any consents that may be required under the relevant Station Leases and/or Access Agreements, the Franchisee shall on or before 30 September 2016:
- (a) install 63 ticket vending machines (which shall, subject to paragraph 12.6(b), include five video ticket vending machines) at Stations (including those referred to in paragraph 3.5 of Schedule 6.2 (TSGN Franchise Specific Provisions)) and in so doing shall incur expenditure of not less than [REDACTED²³⁰] (such expenditure to include capital expenditure); and
 - (b) the provisions of paragraph 8 of Part 2 of this Schedule 6.1 shall apply in relation to the Franchisee's obligation to install five video ticket vending machines.
- 12.7 In order to assist the Secretary of State in the monitoring of the Franchisee's compliance with its obligations under paragraph 12.6 the Franchisee shall on or before the end of the thirteenth Reporting Period following the Start Date provide to the Secretary of State a delivery plan which sets out as a minimum:
- (a) the Stations (other than those referred to in paragraph 3.4 of Schedule 6.2 (TSGN Franchise Specific Provisions)) where the ticket vending machines

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Derogations

²²⁸ 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.

²²⁹ 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.

²³⁰ 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.

- will be installed (specifying the numbers to be installed at each such station);
- (b) the dates of planned completion of such installation at each such station; and
 - (c) an explanation as to the reasons why the Franchisee has opted to install the ticket vending machines at such stations.
- 12.8 If and to the extent the Franchisee does not install ticket vending machines at Stations pursuant to paragraph 12.6 and in accordance with the delivery plan referred to in paragraph 12.7 because any consents that may be required under the relevant Station Leases and/or Access Agreements cannot be obtained then the Franchisee shall:
- (a) as soon as reasonably practicable consult with the Secretary of State as to how and whether any amount that cannot be spent due to the failure to obtain such consents should be expended; and
 - (b) following consultation with the Secretary of State in accordance with paragraph 12.8(a) and to the extent that the Secretary of State requires (and at his absolute discretion), ensure that any amount that cannot be spent due to the failure to obtain such consents is paid by the Franchisee to the Secretary of State at the next Payment Date or such other date as the Secretary of State may specify.

Integrated Taxi Booking

- 12.9 The Franchisee shall on or before 30 September 2015 introduce a facility whereby customers who book tickets online or through the new ticket sales feature within the dedicated smartphone and tablet App are also able to book a taxi for their onward journey from certain Stations.
- 12.10 **[REDACTED²³¹]**

Luton Airport Bus Link

- 12.11 Subject to the approval of London Luton Airport Limited, the Franchisee shall:
- (a) from the Start Date and for the remainder of the Franchise Term, introduce and operate a high frequency shuttle bus service (operating at a frequency of not less than 6 buses per hour in each direction between 05:00 and 00:00 and 2 buses per hour in each direction between 00:00 and 05:00) linking Luton Airport Parkway Station with Luton Airport (the "**Luton Airport Bus Link**"); and

²³¹ 19/09/2017 - 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.

- (b) install a new customer information desk and ticket sales point at Luton Airport by 30 September 2016.

12.12 The Franchisee shall:

- (a) use reasonable endeavours to ensure that on or before 30 September 2015 smartcard or smartmedia ticketing products (in particular ITSO Smartmedia ticketing and Oyster PAYG) can be accepted on the Luton Airport Bus Link; and
- (b) operate the Luton Airport Bus Link in a way that is reasonably integrated with the arrival and departure of railway passenger services from Luton Airport Parkway Station.

IMPROVING THE CUSTOMER EXPERIENCE

13. Engaging With Customers and Prospective Customers

Customer Engagement Manager

13.1 The Franchisee shall on or before 30 September 2015 appoint a Customer Engagement Manager who shall be responsible for:

- (a) the collation of customer feedback and the presentation of a periodic report to the Customer Satisfaction Board;
- (b) reporting to customers on the actions and decisions taken by the Customer Satisfaction Board; and
- (c) the organisation of all customer engagement strategies such as Station Connection Days, roadshow events and Customer Cabinets.

Station Connection Days

13.2

- (a) The Franchisee shall in each Reporting Period commencing after 30 November 2014 hold an event at a key principal station across the Franchise during the Morning Peak or the Evening Peak whereby at least one local manager and one senior manager or a Director of the Franchisee shall meet with passengers ("**Station Connection Days**"), provided that in each Franchisee Year consisting of 13 Reporting Periods at least one Station Connection Day shall be held at each of the stations located at London Victoria, London St Pancras International (Low Level), London Bridge and London King's Cross.
- (b) The Franchisee shall at least one week in advance publish the date and location of each Station Connection Day on its website, through the dedicated customer information App, through Twitter and announce such dates and location at Stations and on trains.
- (c) The Franchisee shall procure that any feedback received from passengers during each Station Connection Day is followed up and where necessary a response is provided to the passengers in a manner to be determined by the Franchisee. The comments received during each Station Connection Day shall be published by the Franchisee on its website.

Online Passenger Panel

- 13.3 The Franchisee shall from the Combined Effective Date introduce a new web-based passenger panel which will be comprised of at least 1,000 passengers who regularly use the Passenger Services. The passenger panel shall provide a forum for consultation with and feedback from passengers.

Roadshows

- 13.4 The Franchisee shall:
- (a) between 31 October 2015 and 31 March 2016 hold 5 roadshow events; and
 - (b) in respect of each Franchisee Year thereafter hold 10 roadshow events,
- at locations such as universities, airport terminals, shopping centres and town centres for the purposes of engaging with prospective customers and receiving feedback so as to inform overall customer strategy and business planning.

Customer Cabinets

- 13.5 The Franchisee shall on or before 30 September 2015 introduce 2 Customer Cabinets (one for each of the northern and southern areas of the Franchise) for the purposes of providing advice and recommendations on customer strategy and business planning with meetings held at least every 2 months. The Customer Cabinets shall include at least 6 passenger representatives (including at least one disabled passenger representative) and shall each have an annual budget of £15,000 throughout the Franchise Term for expenditure on self-generated projects and to develop and maintain their own websites and communications profiles.

Small Station Improvement Fund

- 13.6 The Franchisee shall with effect from 1 April 2016 establish an improvement fund for Low Usage Stations and expend £1,000,000 (the "**Small Station Improvement Fund**") in each Franchisee Year thereafter to develop facilities at such stations based on passenger feedback (such expenditure to include capital expenditure, operating expenditure and project management costs).
- 13.7 For the purposes of paragraph 13.6, "**Low Usage Station**" means a station at which the Passenger Services call and where the total aggregate number of entries and exits are below 1,000,000 as reported in the document published by the ORR and entitled "Estimates of station usage 2011-12".
- 13.8 In order to assist the Secretary of State in the monitoring of the Franchisee's compliance with its obligations under paragraph 13.6 the Franchisee shall on or before the end of the first Reporting Period in each Franchisee Year commencing on or after 1 April 2017 provide to the Secretary of State an annual delivery plan which sets out as a minimum:
- (a) the Low Usage Stations where facilities will be developed for that Franchisee Year;
 - (b) the dates of completion or planned completion of such facilities at each such station; and

- (c) an explanation as to the reasons why the Franchisee opted to develop the facilities at such stations.

13.9 The Secretary of State may (at his absolute discretion) permit the Franchisee to carry expenditure for a particular year to be carried over to a later year (or vice versa), in which case the Small Station Improvement Fund for that Franchisee Year shall be reduced or increased (as applicable) by a corresponding amount.

Publication of Performance Data

13.10 The Franchisee shall publish (as a minimum) information in accordance with the table at Appendix 3.

13.11 The Franchisee shall on or before 30 April 2017 introduce as part of the integrated e-CRM Programme a facility which allows for the following personalised "My Journey" information to be provided to customers with a smartcard (namely the smartcard currently known as "The Key" which is to be introduced by the Franchisee and is compliant with the ITSO specification) who register for a personal journey account:

- (a) personalised data on the performance, crowding and satisfaction levels of the journeys the customer makes and the Stations they use;
- (b) real-time details of train loadings; and
- (c) online timetable information which includes historic details of performance record and crowding levels of individual Passenger Services.

Engagement with Customers

13.12 The Franchisee shall with effect from 31 October 2016 introduce and operate a subscription based community section on its website and within the dedicated smartphone and tablet App for customers aged 65 and over which will include the following features:

- (a) promotion of special discounted events every third Thursday in each month; and
- (b) online discussion boards which shall provide a forum for consultation with and feedback from such customers.

13.13 The Franchisee shall on or before 31 January 2016 introduce on a trial basis an online magazine targeted at 16-24 year olds which will include articles and commentary on lifestyle trends and places and upcoming events to visit throughout the area in which the Passenger Services are provided. Such trial shall be conducted by the Franchisee for at least one year.

13.14 The Franchisee shall with effect from 31 January 2016 introduce and operate a dedicated section on its website to flexible working which will include online discussion boards which shall provide a forum for consultation with and feedback from customers who are flexible workers on such matters as part-time season tickets and timetabling issues.

13.15 The Franchisee shall with effect from 31 March 2015 introduce the "Your Vote" online voting forum for the purposes of communicating and seeking feedback from customers on selected topics that have initially been identified from various other customer and stakeholder feedback channels.

14. **Measuring Service Quality**

Service Quality Team

14.1 The Franchisee shall:

- (a) on or before 31 December 2014 appoint a Service Quality Manager who shall be responsible for:
 - (i) the deployment of resources to ensure compliance with the QuEST Service Schedules;
 - (ii) driving improvement of service quality across the whole of the Franchise;
 - (iii) sponsoring key improvement projects; and
 - (iv) the management and performance of the wider service quality team,

and maintain such an appointment for the remainder of the Franchise Term; and

- (b) use reasonable endeavours to ensure that on or before 31 December 2014 it has Franchise Employees equivalent to no less than 8 dedicated full time posts (including the post referred to in paragraph 14.1(a)) available for deployment on service quality activities. The Franchisee shall maintain such level of Franchise Employees for the remainder of the Franchise Term.

Performance Monitoring

14.2 In addition to its obligations in paragraph 2.5 of Schedule 7.2 (PEM Regime), the Franchisee shall in respect of each Reporting Period after the Reporting Period which commences in September 2015:

- (a) undertake a further 6 QuEST Station Services Inspections in each such Reporting Period; and
- (b) undertake a further 268 QuEST Train Services Inspections in each such Reporting Period,

so as to enable more effective targeting of priority areas for service quality improvement.

14.3 With effect from the Combined Effective Date, the Franchisee shall ensure that at least once in each Calculation Year each station at which Passenger Services call (including the stations in respect of which the Franchisee is not the Facility Owner) is the subject of a QuEST Station Services Inspection.

14.4 In addition to its obligations in paragraph 2 of Schedule 7.2 (PEM Regime) and with effect from the Combined Effective Date, the Franchisee shall:

- (a) undertake a minimum of 12 inspections of the quality and performance of rail replacement bus services in each Calculation Year; and
- (b) undertake a minimum of 4 inspections of the quality of information provided during periods of disruption in each Calculation Year.

- 14.5 The Franchisee shall undertake independent customer surveys (based on the NPS Surveys) on at least a quarterly basis in each Calculation Year for the purposes of obtaining a more robust dataset on customer satisfaction across the whole of the Franchise and enabling pro-active mitigation of any factors that may cause the value of PEM to fall below the PEM Benchmark Level and in so doing shall incur expenditure of not less than £100,000 in each Calculation Year.

Customer Satisfaction Board

- 14.6 The Franchisee shall on or before the Start Date appoint a Customer Satisfaction Board which will be chaired by the Chief Operating Officer of the Franchise and attended by the Passenger Services Directors, Head of Customer Services, Head of Facilities, Head of Customer Engagement and Head of Performance with meetings held in each Reporting Period. The Customer Satisfaction Board shall be responsible for:
- (a) reviewing the Franchisee's performance in respect of each NPS Indicator and QuEST Service Schedule to inform ongoing business strategy; and
 - (b) driving positive improvement through improved processes, training of Franchise Employees, product delivery and product specification.
- 14.7 In relation to the provisions of paragraphs 2.4 and 2.5 of Schedule 7.2 (PEM Regime), the Franchisee shall, by no later than the date of commencement of the QuEST Inspections as specified in paragraph 2.4 of Schedule 7.2 (PEM Regime), make available to all those persons who undertake QuEST Inspections (the "**QuEST Auditors**") internet and 4G enabled tablet devices linked to an electronic web-based experience quality improvement process (EQuIP) system which will enable:
- (a) details of the QuEST Indicator against which each facility or service would be measured to be readily accessible to the QuEST Auditors;
 - (b) reporting of faults and the compilation of fault rectification lists for onward communication to relevant third party suppliers;
 - (c) capture of photographic and video evidence of each facility or service;
 - (d) automated calculation of the level of performance identified during such QuEST Inspections to be immediately visible to the QuEST Auditors; and
 - (e) reports to be produced (in different formats and at disaggregated levels of detail) so as to assist in trend analysis and more effective targeting of priority areas for service quality improvements.

Driver Announcement QuEST Measure

- 14.8 In addition to its obligations in paragraph 2 of Schedule 7.2 (PEM Regime), the Franchisee shall put in place management arrangements and processes (including the collection of data) as part of the QuEST Management System which shall be capable of measuring and reporting the quality of on-train driver announcements. The benchmark for measuring the quality of such driver announcements shall be:
- (a) a welcome message to passengers at the originating Station advising them of the service calling pattern and the arrival time at the final destination Station;

- (b) at the Stations through the Core Thameslink Route, an announcement detailing which side the train doors will open and an instruction to passengers to 'stand clear' at least three seconds before closing the doors;
- (c) if the service is running late, an explanation as to why the service is delayed, offering an apology for the inconvenience that it may have caused, thanking passengers for travelling on the Passenger Services and wishing them a safe and pleasant onward journey;
- (d) an apology to passengers if held at a red signal for more than one minute;
- (e) updates at five minute intervals when delays are likely to be significant; and
- (f) if the service is on time, a confirmation that the service has arrived on time, thanking passengers for travelling on the Passenger Services and wishing them a safe and pleasant onward journey.

The Franchisee shall review the need for changes to the benchmark of on-train driver announcements throughout the Franchise Term and shall submit any revisions to such benchmark that it wishes to propose to the Secretary of State.

GTR Trains Cleaning Standard

- 14.9 The Franchisee shall from 31 December 2014 introduce train presentation standards (the "**GTR Train Standards**") which reflect the QuEST Train Services that relate to the cleanliness and presentation of a QuEST Train for the purposes of delivering a consistently high standard of cleanliness on trains. The Franchisee shall undertake or procure the undertaking of daily checks, planned general inspections and QuEST Train Services Inspections for the purposes of measuring compliance with the GTR Train Standards.

Quick QuEST Audits

- 14.10 In addition to its obligations in paragraph 2 of Schedule 7.2 (PEM Regime), the Franchisee shall from the Combined Effective Date undertake or procure the undertaking of shortened and informal versions of the QuEST Train Services Inspections on QuEST Trains prior to the start of service and during service (by conductors and Passenger Hosts as part of their on-train activities) for the purposes of identifying any failures in a diligent and prompt manner.

Keep Trains Tidy Campaign

- 14.11 The Franchisee shall from the Combined Effective Date and in conjunction with Keep Britain Tidy introduce a series of "Keep Trains Tidy" marketing campaigns to encourage passengers to take litter with them when leaving the train

Introduction of CSMS

- 14.12 The Franchisee shall with effect from 31 August 2015 introduce a Customer Service Management System for the purposes of:
- (a) proactively managing customer complaints;
 - (b) tracking trends and specific problem areas, either by responsible manager, specific location or type of complaint received; and

- (c) identifying target areas to drive improvements in overall customer satisfaction.

15. Provision of Journey Information to Customers

Social Media

- 15.1 The Franchisee shall on or before 30 September 2015 introduce a social media resource (which for these purposes shall include the setting up of four dedicated Twitter accounts) based in the Route Operations Control Room which will allow for real time dissemination of information to customers. Any social media resource introduced by the Franchisee pursuant to this paragraph 15.1 shall be available at any time when Passenger Services are scheduled to operate.

Passenger Information Improvements

- 15.2 ²³²***In addition to its obligations in paragraph 15.6 of Part 1 to Schedule 6.1 and paragraph 12 of Schedule 6.3 the Franchisee shall on or before 7 October 2017 procure database and interface enhancements to improve passenger information system provision on Class 171, 377, (Thameslink fleet), 387, 313, 317, 319, 321 and 442 rolling stock vehicles comprised in the Train Fleet so that passengers are provided with accurate, consistent and up to date information (including real time information on train performance and alterations to timetabled stopping patterns) and in doing so the Franchisee shall incur expenditure of not less than £200,000 (such expenditure to include capital expenditure and software and other IT related costs).***

Customer Information App

- 15.3 The Franchisee shall:
- (a) on or before the Start Date introduce and operate a new customer information feature within a dedicated smartphone and tablet App which will include the following features:
- (i) recent journey planning functions; and
 - (ii) links to maps and real time service information for the London Underground;
- (b) on or before 31 December 2016 update the customer information App so as to include the following features:
- (i) information on car park availability at stations; and
 - (ii) "door to door" journey planning functions which will allow customers to plan routes using post codes and street names rather than stations; and

- (c) on or before 31 December 2018 update the customer information App so as to include the following features:
- (i) accessibility functions which will provide details of station and train accessibility and allow customers to pre-book assistance;
 - (ii) access to airport departure and arrival screens at Gatwick Airport and Luton Airport; and
 - (iii) access to Eurostar departure and arrival screens at London St. Pancras International, Ebbsfleet International and Ashford International stations,

and in so doing shall incur expenditure of not less than £660,000 (such expenditure to include capital expenditure and project management costs).

Train Loading Information

- 15.4 The Franchisee shall provide information on train loading levels (which shall include information on the available passenger carrying capacity on each Passenger Service and where there is little or no available passenger carrying capacity on a Passenger Service, information on the next available Passenger Service with available passenger carrying capacity) to passengers by making such information available on its website, through the dedicated customer information App and displaying posters at certain Stations from 30 November 2014 and through customer information systems located at Stations on the Core Thameslink Routes from 30 September 2015.

Customer Information Innovation Fund

- 15.5 ²³³**The Franchisee shall with effect from 1 April 2016 establish an innovation fund for the research, development and trialling of innovative services and solutions for the provision of or improvement of customer information (the "Customer Information Innovation Fund") and expend £1,000,000 between 1 April 2016 and 30 June 2019. The Franchisee shall, by no later than 31 October 2016, expend some of the Customer Information Innovation Fund on the trialling of a GPS tracking facility at Trial Stations to allow for the provision of journey information to passengers in respect of rail replacement bus services, such provision of journey information to include the display of the arrivals and departure times for such rail replacement bus services on customer information screens at such Stations served by such rail replacement bus services. If, following a review of the outcome of such GPS tracking facility trial, the Franchisee in its reasonable opinion determines that such trial of the GPS tracking facility has been successful the Franchisee shall implement the GPS tracking facility at Stations from 1 October 2017. For the purposes of this paragraph 15.5 "Trial Stations" means the Stations identified by the Customer Information Board (as established pursuant to paragraph 14.6) using the information derived from a review of the Franchisee's**

²³³ 18 April 2018 (Date of Contract Change Letter) – Contract variation agreed by the Secretary of State and Franchisee.

performance in respect of each NPS Indicator and QuEST Service Schedule.

15.5A ²³⁴ **On or before 30 June 2019, the Franchisee shall:**

Procure and install 2 terminals which shall be located at Three Bridges ROC which will enable GTR to provide direct communications to the driver and all passengers via Network Rails GSM-R-system. In so doing the Franchisee shall incur expenditure of not less than £70,000 (such expenditure to include capital expenditure).

Train Passenger Information Systems

15.6 In addition to its obligations in paragraph 12 of Schedule 6.3 (TLP/TRSP Related Provisions), the Franchisee shall on or before 31 March 2016 procure that the passenger information systems on all of the Class 171, Class 377 and Class 455 rolling stock vehicles comprised in the Train Fleet (which have previously been the subject of an enhancement programme procured by the Southern Franchisee) can be updated remotely with real time transfer of data broadcast from the Three Bridges ROC and in so doing shall incur expenditure of not less than **[REDACTED²³⁵]** (such expenditure to include capital expenditure and software and other IT related costs).

16. **Access To Stations and Door to Door Journey Experience**

Station Travel Plans

16.1 On or before 30 September 2017 the Franchisee shall:

- (a) develop at least 30 station travel plans; and
- (b) implement, at a minimum of 20 Stations, real time bus information schemes that are linked to the outputs from station travel plans to be developed pursuant to paragraph 16.1(a),

and in so doing shall incur expenditure of not less than **[REDACTED²³⁶]** in the implementation of the recommendations of such station travel plans and such real time bus information schemes (such expenditure to include capital expenditure, operating expenditure and project management costs) provided that not less than **[REDACTED²³⁷]** of such expenditure is incurred in improving bicycle storage

²³⁴ 18 April 2018 (Date of Contract Change Letter) – Contract insertion agreed by the Secretary of State and Franchisee.

²³⁵ 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.

²³⁶ 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.

²³⁷ 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.

facilities at Stations. Of the station travel plans to be developed in accordance with this paragraph 16.1, at least 10 shall be developed at Stations which are Greater London Stations, at least 10 shall be developed at Stations other than the Greater London Stations and a station travel plan shall be developed in respect of each Station where the Franchisee proposes to provide over 100 additional car parking spaces. Each station travel plan shall, at the time of its development, be consistent with the following requirements:

- (i) have regard to the process outlined in the ATOC/RSSB guidance on the "Implementation of Station Travel Plans"; and
- (ii) draw on the experiences and results of station travel plans which have previously been implemented at Stations in order to learn lessons from the planning and implementation process.

16.2 For the purposes of paragraph 16.1, "**Greater London Stations**" means each of the stations within the City of London, City of Westminster, Royal Borough of Kensington and Chelsea, Royal Borough of Kingston upon Thames and the following London boroughs: Barking and Dagenham, Barnet, Bexley, Brent, Bromley, Camden, Croydon, Ealing, Enfield, Greenwich, Hackney, Hammersmith and Fulham, Haringey, Harrow, Havering, Hillingdon, Hounslow, Islington, Lambeth, Lewisham, Merton, Newham, Redbridge, Richmond, Southwark, Sutton, Tower Hamlets, Waltham Forest and Wandsworth.

Station Car Parks

16.3 **The Franchisee shall on or before 30 September 2017:**²³⁸ ²³⁹

- (a) **introduce automatic number plate recognition ("ANPR") technology at 25 Station car parks to be determined by the Franchisee so as to enable simplified car parking payment methods;**
- (b) **replace life expired pay and display machines with at least 139 car park ticket machines at Station car parks to be determined by the Franchisee. Any such car park ticket machines shall be compatible with the ANPR technology introduced by the Franchisee pursuant to paragraph 16.3(a)**
- (c) **The Franchisee shall use reasonable endeavours to, [REDACTED²⁴⁰], introduce ANPR Technology (with automatic**

²³⁸ 06/09/2017 – Contract insertion agreed by the Secretary of State and Franchisee.

²³⁹ 5 February 2018 (Date of Contract Change Letter) – Contract variation agreed by the Secretary of State and Franchisee.

²⁴⁰ 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.

payment functionality) at an additional [REDACTED²⁴¹] Station car parks so as to provide ANPR technology coverage across [REDACTED²⁴²] of all paid parking bays at the Stations.

(d) The Franchisee shall use reasonable endeavours to, [REDACTED²⁴³], install a system that provides car park availability data for each of the [REDACTED²⁴⁴] car parking locations installed in part(c) to customers via the parking management company App. Details of the App shall be advertised via GTR social media, online and through the Franchise App Portals.

(i) In providing car parking availability data the Franchisee shall use all reasonable endeavours to provide real-time updates to customers via the parking management company App.

(e) The Franchisee shall use reasonable endeavours to establish car park availability data for all remaining ANPR locations [REDACTED²⁴⁵] and in so doing shall incur expenditure of not less than [REDACTED²⁴⁶] (such expenditure to include capital expenditure, operating expenditure and project management costs). Of the total expenditure, which must no be less than [REDACTED²⁴⁷]. GTR must incur expenditure of not less than [REDACTED²⁴⁸]

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Derogations

²⁴¹ 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.

²⁴² 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.

²⁴³ 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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²⁴⁶ 01/09/2017 - 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.

²⁴⁷ 01/09/2017 - 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.

²⁴⁸ 01/09/2017 - 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.

16.3A The Franchisee shall:

- (a) by no later than 31 October 2015 undertake a review of accessible car parking spaces at Station car parks for the purposes of ensuring that each such car parking spaces meet the requirements of the Code of Practice;
- (b) by no later than 31 December 2015 provide the Secretary of State with a list of 80 Stations at which it proposes to monitor at different times of the day the usage of the allocated accessible car parking. Based on such proposal, the Franchisee and the Secretary of State shall agree (or in the absence of agreement the Secretary of State shall reasonably determine) such list of 80 Stations; and
- (c) by no later than 30 June 2016 and for a duration of at least 2 months monitor at different times of the day the usage of the allocated accessible car parking spaces at the 80 Stations agreed or determined pursuant to paragraph 16.3A(b) for the purposing of establishing the actual usage of the allocated accessible car parking spaces at such Station ("**Monitoring Exercise**"). The Franchisee shall within 7 months following the completion of the Monitoring Exercise provide additional accessible car parking spaces at such of the Stations where the outcome of the Monitoring Exercise shows that additional accessible car parking spaces are required to accommodate the level of usage of such car parking spaces at each such Station:
- (d) by no later than 31 December 2018 provide the number of new accessible car park spaces specified in Column 2 of the table below at the Station specified in Column 1 of such table. Each new accessible car park spaces provided by the Franchisee pursuant to this paragraph 16.3A(d) shall comply with the requirements of the Code of Practice:

Column 1	Column 2
Stations	Number of accessible car park spaces
Ashwell & Morden	1
Bayford	2
Cuffley	5
Elstree & Borehamwood	5
Gordon Hill	3
Grange Park	2
Hendon	3
Hertford North	5
Leagrave	5
New Barnet	5
New Southgate	1

Column 1	Column 2
Stations	Number of accessible car park spaces
Palmers Green	3
Radlett	3
Watton-At-Stone	1

Further 25 EV Charging Points

- 16.4 Subject to obtaining any relevant grant funding from the Office for Low Emission Vehicles (or other similar Local Authority funding sources), the Franchisee shall on or before 31 July 2017 install at least a further 25 electric vehicle charging points at Stations in addition to those which exist on the relevant date upon which the Franchisee becomes the Facility Owner in respect of such Stations and with the location of such electric vehicle charging points to be determined by the Franchisee.

Bicycle Parking Facilities

- 16.5 The Franchisee shall in addition to its obligations in paragraph 16.1 provide improved bicycle storage facilities at Stations on or before 30 September 2017 and in so doing shall incur expenditure of not less than £40,000 (such expenditure to include capital expenditure).

17. Stations and On-Train Facilities

Transformation Investment at St. Albans Station

- 17.1 The Franchisee shall use reasonable endeavours to procure long term funding from Network Rail of not less than [REDACTED²⁴⁹] to improve the facilities at St. Albans Station (the "**St. Albans Facilities Improvements**") on or before 30 September 2016. The improvements to be made shall be determined by the Franchisee (in consultation with Network Rail and other relevant stakeholders including the Secretary of State) and may include some or all of the following:
- (a) maximising the use of the Ridgmont Road entrance so as to ease capacity pressure on the main station building;
 - (b) providing a new dedicated cycle hub with bicycle repair shop, café and passenger facilities;

²⁴⁹ 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.

- (c) increasing the gateline and ticket purchasing facilities at the Ridgmont Road entrance;
 - (d) providing a platform canopy link on platform 4 from the footbridge to the exit;
 - (e) providing a larger capacity concourse in the main station building;
 - (f) rationalising existing staff areas and providing increased ticket purchasing facilities;
 - (g) providing full toilet provisions in the main station building;
 - (h) rationalising and providing an appropriate mix of retail opportunities; and
 - (i) providing a café to serve the new waiting area and both sides of the gateline.
- 17.2 Subject to paragraph 17.3, a Qualifying Change shall occur if and to the extent the Franchisee does not procure the St. Albans Facilities Improvements pursuant to paragraph 17.1 because long term funding for such improvements is not available from Network Rail. If a Qualifying Change as contemplated under this paragraph 17.2 occurs then in agreeing or determining the Revised Inputs, the only Revised Input shall be to exclude the initiative for the St. Albans Facilities Improvements in the "A2_Scenarios" worksheet of the Financial Model.
- 17.3 There shall be no Qualifying Change pursuant to paragraph 17.2 if a Run of the Financial Model using the Revised Inputs and/or Model Changes in respect of the occurrence of the event set out in paragraph 17.2 results in an adjustment to Franchise Payments in favour of the Franchisee.

Transformation Investment at Luton Station

- 17.4 The Franchisee shall use reasonable endeavours to procure long term funding from Network Rail of not less than [REDACTED²⁵⁰] to improve the facilities at Luton Station (the "**Luton Facilities Improvements**") on or before 30 June 2017. The improvements to be made shall be determined by the Franchisee (in consultation with Network Rail and other relevant stakeholders including the Secretary of State) and may include some or all of the following:
- (a) creating a station interface that corresponds with the developments surrounding the station and the new forecourt transport hub;
 - (b) creating a station building that has a presence in the surrounding environment;
 - (c) rationalising and improving the ticket purchasing facilities;

²⁵⁰ 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.

- (d) providing a new dedicated cycle hub with bicycle repair shop, café and passenger facilities;
 - (e) providing a larger capacity concourse in the station and creating a public space in the forecourt of the station that addresses the new forecourt transport hub;
 - (f) providing additional canopy cover on platforms 1 and 2; and
 - (g) enhancing retail opportunities.
- 17.5 Subject to paragraph 17.6, a Qualifying Change shall occur if and to the extent the Franchisee does not procure the Luton Facilities Improvements pursuant to paragraph 17.4 because long term funding for such improvements is not available from Network Rail. If a Qualifying Change as contemplated under this paragraph 17.5 occurs then in agreeing or determining the Revised Inputs, the only Revised Input shall be to exclude the initiative for the Luton Facilities Improvements in the "A2_Scenarios" worksheet of the Financial Model.
- 17.6 There shall be no Qualifying Change pursuant to paragraph 17.5 if a Run of the Financial Model using the Revised Inputs and/or Model Changes in respect of the occurrence of the event set out in paragraph 17.5 results in an adjustment to Franchise Payments in favour of the Franchisee.

Transformation Investment at Stevenage Station

- 17.7 The Franchisee shall on or before **30 June 2017**²⁵¹ undertake and prepare structural surveys, detailed designs, building quality plans, detailed construction estimates, commercial letting plans and revenue forecasts so as to enhance the proposed facilities improvement scheme at Stevenage Station to GRIP Level 5 (being the standard for 'stage 5' under Network Rail's Governance for Railway Investment Projects) and in so doing shall incur expenditure of not less than **[REDACTED]**²⁵² (such expenditure to include capital expenditure, operating expenditure and project management costs)

Improved Station and On-Train Facilities

- 17.8 On or before 31 January 2017 the Franchisee shall:
- (a) **v**improve the Stations and the facilities at Stations and in so doing shall incur expenditure of not less than **[REDACTED]**²⁵³ (such expenditure to include capital expenditure and project management costs). The improvements to be made at Stations and facilities at Stations shall

²⁵¹ Date of change 22/12/2015

²⁵² 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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include the following (but there is no requirement for all of the following improvements to be made at every Station):

- (i) introduction of and/or refurbishment of waiting rooms, waiting shelters and toilets;
 - (ii) introduction of and/or improvement to customer information systems and passenger announcement systems;
 - (iii) introduction of help points at Stations; and
 - (iv) general redecoration, landscaping and vegetation clearance; and
- (b) improve the interior of the rolling stock vehicles comprised in the Train Fleet and in so doing shall incur expenditure of not less than [REDACTED²⁵⁴] (such expenditure to include capital expenditure and project management costs). Any such improvements to the interior of the rolling stock vehicles shall include:
- (i) provision of new bins for the Class 377/5 rolling stock vehicles comprised in the Train Fleet;
 - (ii) the replacement of damaged anti graffiti films on the windows and internal partitions of each of the rolling stock vehicles used by the FCC Franchisee in the operation of the passenger services to the extent that such rolling stock vehicles are comprised in the Train Fleet; and
 - (iii) treatment of body panels with an anti graffiti coating.

17.8A²⁵⁵ On or before 30 April 2017 the Franchisee shall install LED lighting and automatic lighting controls at the following stations and in so doing shall incur expenditure of not less than [REDACTED²⁵⁶] (such expenditure to include capital expenditure but, for the avoidance of doubt, shall exclude operating expenditure): Earlswood, East Worthing, Edenbridge, Ifield, Leigh, Nutfield and Worthing.

17.9 In order to assist the Secretary of State in the monitoring of the Franchisee's compliance with its obligations under paragraph 17.8 the Franchisee shall on or

²⁵⁴ 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.

²⁵⁵ Date of insertion 31/01/2017

²⁵⁶ 17/01/2017 - 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.

before the end of the thirteenth Reporting Period following the Start Date provide to the Secretary of State a delivery plan which sets out as a minimum:

- (a) the affected Stations and/or rolling stock vehicles and the improvements (together with any associated improvements to facilities) that will be made at each such station and/or on such rolling stock vehicles;
- (b) the dates of planned completion of such improvements at each such station and/or on such rolling stock vehicles; and
- (c) a brief explanation as to the reasons why the Franchisee has prioritised such improvements at such stations and/or on such rolling stock vehicles.

Station Environment

17.10 The Franchisee shall on or before 31 December 2016 undertake the repainting of all Stations and in so doing shall incur expenditure of not less than [REDACTED²⁵⁷] (such expenditure to include capital expenditure).

17.11 The Franchisee shall on or before 31 December 2018 carry out a deep clean at each of the following Stations and in so doing shall incur expenditure of not less than [REDACTED²⁵⁸] (such expenditure to include capital expenditure): Balham, Bedford, Brighton, Burgess Hill, Chichester, City Thameslink, East Croydon, Eastbourne, Epsom, Finsbury Park, Gatwick Airport, Hatfield, Haywards Heath, Hertford North, Hitchin, Horsham, Hove, Huntingdon, Leatherhead, Lewes, Norbury, Oxted, Palmers Green, Potters Bar, Purley, Redhill, Stevenage, Streatham Common, Steatham Hill, Sutton, Three Bridges, Thornton Heath, Watlington, Welwyn Garden City and Worthing. The deep clean shall be carried out in such a way as to achieve the outputs specified in a specification to be prepared by the Franchisee and approved by the Secretary of State by the Start Date (the "**Deep Clean Specification**") and the quality of the works undertaken by the Franchisee pursuant to this paragraph 17.11 shall be assessed as specified in the Deep Clean Specification. The Franchisee shall notify the Secretary of State as soon as the deep clean works have been completed at any such Station.

Wi-Fi at Stations

17.12 The Franchisee shall on or before 31 March 2016 introduce free Wi-Fi access for a period of up to 30 minutes at 104 Stations.

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²⁵⁷ 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.

²⁵⁸ 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.

Station Retail and Catering Facilities

17.13 The Franchisee shall on or before 31 July 2017 improve the retail and catering facilities at 42²⁵⁹ Stations and in so doing shall incur expenditure of not less than [REDACTED²⁶⁰] (such expenditure to include capital expenditure).

17.13(a)²⁶¹ The Franchisee shall on or before 30 June 2018 improve the retail and catering facilities at Eastbourne Station and in so doing shall incur expenditure of not less than [REDACTED²⁶²] (such expenditure to include capital expenditure).

17.13(b)²⁶³ The Franchisee shall on or before 30 April 2019 improve the retail and catering facilities at St Albans City Station and in so doing shall incur expenditure of not less than [REDACTED²⁶⁴] (such expenditure to include capital expenditure).

Graffiti Removal

17.14 The Franchisee shall remove graffiti from Stations and rolling stock vehicles within 24 hours of it being reported either by a Franchise Employee or a passenger.

Radio Microphones

17.15 The Franchisee shall on or before 31 July 2015 provide all platform based Franchise Employees with radio microphones for the purposes of making announcements to assist with the management of passengers boarding and alighting the Passenger Services.

Significantly improved on-train connectivity

17.16 The Franchisee shall work and negotiate in good faith with Network Rail with a view to the Franchisee actively participating in and implementing the national project led by Network Rail to significantly improve the on-train connectivity for passengers, both voice and data. In so doing, the Franchisee shall:

- (a) use reasonable endeavours to agree heads of terms with Network Rail in relation to the on-train connectivity project and/or shall use reasonable

²⁵⁹ 20/06/2017 – Contract variation agreed by the Secretary of State and Franchisee.

²⁶⁰ 25/08/2017 - 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.

²⁶¹ 20/06/2017 – Contract insertion agreed by the Secretary of State and Franchisee.

²⁶² 25/08/2017 - 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.

²⁶³ 20/06/2017 – Contract insertion agreed by the Secretary of State and Franchisee.

²⁶⁴ 25/08/2017 - 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.

endeavours to progress the on-train connectivity project in accordance with any signed heads of terms entered into by the Franchisee with Network Rail;

- (b) use the reasonable endeavours to procure third party funding for any capital or material expenditure required by the Franchisee in relation to the on-train connectivity project provided that:
 - (i) with the consent of the Secretary of State, the Franchisee may utilise in relation to the on-train connectivity project the Customer Information Innovation Fund referred to at paragraph 15.5 instead of third party funding (in whole or in part); and
 - (ii) (save to the extent permitted by paragraph 17.16(b)(i)) the Franchisee shall not be required to meet such capital or material expenditure in the absence of third party funding because such capital or material expenditure is not assumed in the Record of Assumptions and the Franchisee is not the beneficiary of any extra Revenue that is a consequence of successful implementation of the on-train connectivity project;
- (c) regularly update the Secretary of State on the progress of the on-train connectivity project; and
- (d) consult the Franchisee on its response to significant developments in relation to the on-train connectivity project, and the Franchisee shall take due account of any comments received in response from the Secretary of State.

17. 17 Investment at St Albans City Station²⁶⁵

- (a) **The Franchisee shall before 16th June 2017 undertake and deliver a Final Feasibility Report and/or other deliverables in accordance with the Client Remit (Dated 07/03/2017) as agreed with the Secretary of State and Network Rail, for the scheme to address passenger congestion at St Albans City Station. The report should be completed to, as a minimum, GRIP Level 2 (being the standard for 'stage 2' under Network Rail's Governance for Railway Investment Projects).**
- (b) **The Franchisee shall before 28th February 2018 undertake and prepare a GRIP3A Option Selection Report and/or other deliverables in accordance with the Client Remit, dated 25/08/2017 as agreed with the Secretary of State and Network Rail, for the scheme to address passenger congestion at St Albans City Station. The report should be completed to, as a minimum, GRIP Level 3A (being the standard for 'stage 3A' under Network Rail's Governance for Railway Investment Projects).**

²⁶⁵ 01/09/2017 – Contract insertion agreed by the Secretary of State and Franchisee.

- (c) In so delivering the requirements of part (a) and (b) the Franchisee shall incur expenditure of not less than [REDACTED²⁶⁶]. No form of indexation, including the provisions of Schedule 6.1 part 2, paragraph 3.2, will apply to the [REDACTED²⁶⁷] to be expended in relation to investment at St Albans City Station. On completion of the report the Franchisee shall spend the balance (if any) of the [REDACTED²⁶⁸] on other deliverables outlined within the Client Remit.
- (d) Any changes to the detail of the requirements for the works as set out in the Client Remits (including the outcomes, benefits, scope, costs and timescales) are to be formally agreed with the Secretary of State.
- (e) In progressing this work the Franchisee shall:
- i.) Provide, and agree with the Secretary of State, a work programme, deliverables and costs before commencement of work;
 - ii.) Engage with the Secretary of State throughout and provide fortnightly written updates showing progress including up to date assessments of costs of work to date, actual and forecast costs, and progress against the programme schedule. Dashboard reports to support the scheme should be provided to the Secretary of State by the first Friday of every railway Reporting Period until delivery of the scheme;
 - iii.) Engage with Network Rail throughout, such that due consideration is given to Network Rail's requirements, that the final Reports/other deliverables is in accordance with them and Network Rail is able to endorse the reports/other deliverables in accordance with the delivery dates specified in parts (a) and (b) above;
 - iv.) Consider the options identified in other station redevelopment work in CP5 to avoid abortive station redevelopment works being undertaken.
- (f) For the purposes of paragraph 17.17 (a) "Client Remit" means the Client Development Remit agreed between the Secretary of State and GTR on 07/03/2017 and for paragraph 17.17 (b) the Client

²⁶⁶ 31/08/2017 - 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.

²⁶⁷ 31/08/2017 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.

²⁶⁸ 31/08/2017 - 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.

Remit agreed between the Secretary of State and GTR on 25/08/2017 which may be subject to amendment in accordance with the provisions of Schedule 6.1 Paragraph 17.17 d.)

- (g) For the purpose of paragraph 17.17 (a) "Final Feasibility Report" means a report providing a range of infrastructure options to address the passenger congestion and safety issues, including non-infrastructure options and dependencies.**
- (h) For the purpose of paragraph 17.17 (b) "Option Selection Report" means the report providing designs for a range of infrastructure options to address the passenger congestion and safety issues, including non-infrastructure options and dependencies, such that a preferred option can be confirmed by February 2018 to take forward to the detailed design stage.**

18. **Helpful and Responsive Customer Service**

Customer Service

- 18.1 The Franchisee shall use all reasonable endeavours to achieve the "Institute of Customer Service ServiceMark" accreditation status across the whole of the Franchise on or before 31 December 2017.
- 18.2 With effect from the Start Date, the Franchisee shall implement a programme for the roll out to customer facing Franchise Employees of internet and 4G enabled tablet devices for the purposes of the provision of customer services and so as to enable such Franchise Employees to respond to customer requests and enquiries and in doing so shall:
 - (a) incur expenditure of not less than **[REDACTED²⁶⁹]** (such expenditure to include capital expenditure, software and licensing costs and connection charge costs); and
 - (b) ensure that the customer facing Franchisee Employees whose duties relate to the delivery of the:
 - (i) TGN Services are all issued with such internet and 4G enabled tablet devices by no later than 31 December 2014; and
 - (ii) Southern Services are all issued with such internet and 4G enabled tablet devices by no later than 31 December 2015.

Customer Service Training Programme

- 18.3 The Franchisee shall introduce a comprehensive "One Step Ahead" customer service training programme and in so doing shall incur expenditure of not less than

²⁶⁹ 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.

£1,900,000 over the Franchise Term (such expenditure to include **operating** expenditure). Such customer service training programme shall include:

- (a) ²⁷⁰ **training to all customer facing Franchise Employees so as to allow for [REDACTED²⁷¹] of such Franchise Employees to achieve at least a BTEC Level 2 Award in Customer Service (or equivalent) on or before [REDACTED²⁷²];**
- (b) equality and accessibility refresher training on a biennial basis for all customer facing Franchise Employees; and
- (c) training to all customer facing Franchise Employees (including drivers) so that they are aware of when announcements should be made and what information to relay to customers.

18.3A²⁷³ The Franchisee will offer to all new Franchise Employees carrying out a customer facing role, until the end of the Franchise term, the opportunity to complete a BTEC Level 2 Award in Customer Services as part of a Customer Service Apprenticeship.

Delay Repay Notification

18.4 ^{vii} The Franchisee shall on or before 30 April 2017 introduce a facility whereby holders of the smartcard currently known as "The Key" (which is to be introduced by the Franchisee and is compliant with the ITSO specification) will be notified of the eligibility to claim compensation under the Passenger's Charter.

Passenger's Charter

- 18.5 In addition to its obligations in paragraph 4 of Schedule 1.4 (Passenger Facing Obligations), the Franchisee shall:
- (a) review the need for changes to the Passenger's Charter on an annual basis, in consultation with the Passenger's Council, the Institute of Customer Service, customer facing Franchise Employees and passengers, 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;
 - (b) publish the Passenger's Charter which shall include:

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Derogations

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- ²⁷⁰ 29/03/2018 (Date of Notice of Variation) Contract change agreed by the Secretary of State and Franchisee.
 - ²⁷¹ 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.
 - ²⁷² 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.
 - ²⁷³ 29/03/2018 (Date of Notice of Variation) Contract insertion agreed by the Secretary of State and Franchisee.

- (i) a summary of the Franchisee's targets and service commitments for the Passenger Services (including how levels of customer service will be improved through investment and training);
 - (ii) an explanation of how passengers can contact the Franchisee to offer feedback on how the Passenger Services can be improved; and
 - (iii) contact details of relevant external organisations (such as Passenger Focus and London TravelWatch); and
- (c) publicise its Passenger's Charter using a range of communication channels (including displaying it on the Franchisee's website).

Delay Repay Compensation

18.6 In addition to its obligations in paragraph 4 of Schedule 1.4 (Passenger Facing Obligations), the Franchisee shall:

- (a) ensure that as from the Combined Effective Date the Passenger's Charter includes a commitment to make the payments referred to in the following table to passengers in circumstances where the Passenger Services on which the passenger is travelling is delayed by more than 30 minutes:

Minutes Delay	Compensation Payment	Ticket Type	All Passenger Services (excluding Gatwick Express Services)	Gatwick Express Services
30-59	50%	Single or relevant portion of Return	Yes	Yes
60-119	100%	Single or relevant portion of Return	Yes	Yes
120+	100%	Single or relevant portion of Return	Yes	Yes
120+	100%	Full Refund	Yes	No
120+	100%	Full Refund and 50% discount on next journey	No	Yes

- (b) ²⁷⁴ ²⁷⁵ 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 through on train announcement systems and at Stations when the circumstances giving rise to the 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).
- (c) ²⁷⁶ **In addition to its obligations in paragraph 4 of Schedule 1.4 (Passenger Facing Obligations) and paragraph 18.6(a) of this Part 1 of Schedule 6.1, the Franchisee shall:**
- (i) **subject to the prior written consent of the Secretary of State pursuant to paragraph 4.2 of Schedule 1.4 (Passenger Facing Obligations), ensure that by no later than 28 February 2017 the Passenger Charter includes a commitment to make the payments referred to in the following table to passengers in circumstances where the Passenger Services on which the passenger is travelling and in respect of which such passenger holds a valid ticket is delayed by 15 minutes but less than 30 minutes:**

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Derogations

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- ²⁷⁴ 09 December 2016 (Date of DOA) – Contract variation agreed by the Secretary of State and Franchisee.
- ²⁷⁵ 16/01/2017 (Date of Deed of Amendment) Contract variation agreed by the Secretary of State and Franchisee.
- ²⁷⁶ 09 December 2016 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

Minutes Delay	Compensation Payment	Ticket Type	All Services (including Gatwick Express Services)	Passenger (including Express Services)
15-29	25%	Single or relevant portion of Return	Yes	

(ii) from the DR15 Effective Date, ensure that:

- (A) it informs passengers, in accordance with paragraph 18.6(b) of this Part 1 of Schedule 6.1, of their rights to claim DR15 Compensation; and
- (B) it provides a commitment to passengers to pay (and it pays to passengers who submit a valid DR15 Compensation claim) the DR15 Compensation as specified in the table in paragraph 18.6(c)(i) of this Part 1 of Schedule 6.1,

in each case, as if the right to claim DR15 Compensation had been included within the Passenger's Charter from the DR15 Effective Date.

18.6(d) [REDACTED²⁷⁷]

18.6(e) [REDACTED²⁷⁸]

18.6(f)²⁷⁹ It is acknowledged that:

- (i) the Secretary of State is undertaking a review of the delay repay compensation payable across all franchises that he is responsible for letting and intends to introduce into all

²⁷⁷ 17 January 2018 (Date of Redactions Approval) – Where text has been omitted from the document this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

²⁷⁸ 17 January 2018 (Date of Redactions Approval) – Where text has been omitted from the document this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

²⁷⁹ 09 December 2016 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

relevant franchise agreements a delay repay compensation scheme that is similar to the DR15 Compensation described in paragraph 18.6(c) of this Part 1 of Schedule 6.1; and

- (ii) the Franchisee is yet to conduct the consultation required pursuant to its Passenger Charter for the purposes of making the amendments to the Passenger Charter necessary for the introduction and implementation of the DR15 Compensation,**

accordingly the Secretary of State may at any time after the DR15 Effective Date exercise his rights under paragraph 1.1(a) of Schedule 9.5 (Variations to the Franchise Agreement and Incentivising Beneficial Changes) to further amend the requirements of paragraphs 18.6(c) and 18.6(d) of this Part 1 of Schedule 6.1 and any of the provisions of paragraph 5.5 of Schedule 8.1 (Franchise Payments) to reflect the outcomes of any of the lessons learnt from the review referred to in paragraph 18.6(e)(i) or any of the outcomes of the consultation to be carried out by the Franchisee as referred to in paragraph 18.6(e)(ii). It is acknowledged that any such exercise by the Secretary of State of his rights shall be a Qualifying Change.

19. Promoting Equality and Meeting The Needs of Disabled People and Others with Reduced Mobility

Access Ambassadors

- 19.1 With effect from 31 December 2015, the Franchisee shall develop and introduce a network of Access Ambassadors across the whole of the Franchise who shall be responsible for delivering an improved service to assist passengers and who shall have an annual budget of £20,000 throughout the Franchise Term for expenditure on access aids for Franchise Employees and to organise events and training tools so as to raise awareness of differing passenger needs and reasons for disabilities. The Access Ambassadors shall, subject to the approval of the Customer Satisfaction Board, be able to seek further funding from the Minor Works Budget, the Small Station Improvement Fund and the Customer Information Innovation Fund.

Try A Train Day

- 19.2 The Franchisee shall from the Combined Effective Date operate throughout the area in which the Passenger Services are provided at least ten "Try a Train" days in each Franchisee Year for the purposes of helping socially disadvantaged or disabled customers develop confidence to travel on public transport.

Access Advisory Panel

- 19.3 The Franchisee shall on or before 30 September 2016 introduce an Access Advisory Panel which will be comprised of six permanent members who will represent differing needs of persons with disabilities or of reduced mobility and shall be responsible for:
- (a) independently reviewing the access provision across the area in which the Passenger Services are provided;
 - (b) promoting train travel to the wider community;

- (c) attending events to attract more persons with disabilities or of reduced mobility to travel on the Passenger Services;
- (d) assisting with the review and development of staff training courses;
- (e) reviewing the commitments of the Franchisee in the Disabled People's Protection Policy to ensure that the needs of persons with disabilities are represented;
- (f) supporting the development of a wider access action plan across the area in which the Passenger Services are provided with key stakeholders; and
- (g) ensuring that the policies and procedures that underpin the commercial operations of the Franchisee contribute to better accessibility for persons with disabilities and access needs.

Annual/Mystery Shopper Surveys

19.4 The Franchisee shall in each Franchisee Year undertake:

- (a) an annual online and paper based survey for the purposes of seeking feedback from passengers with a range of disabilities on such matters as their experiences of travelling on the Passenger Services, access at Stations, the provision of customer services and booking assistance; and
- (b) at least four "Mystery Shopper Surveys".

Priority Seat

19.5 The Franchisee shall on or before the Combined Effective Date introduce a "Priority Seat" awareness campaign which stresses the importance of considering other passengers when looking for a seat on a train, invites passengers to assist those travelling in a wheelchair and promotes the accessible space on a train as a priority area for wheelchair users.

20. Security, Crime and Antisocial Behaviour

Park Mark Accreditation

20.1 The Franchisee shall:

- (a) ensure that the "Park Mark" accreditation already achieved at Station car parks as at the Start Date, the Combined Effective and the date upon which the Franchisee becomes the Facility Owner in respect of a Transfer Station (as the case may be) is maintained for the duration of the Franchise Term; and
- (b) on or before 31 December 2017 secure the "Park Mark" accreditation for a further 26 Station car parks.

CCTV Systems

20.2 The Franchisee shall on or before 31 December 2016:

- (a) install CCTV systems at all Stations that do not currently have such facilities;

- (b) enhance existing CCTV systems at all Stations; and
- (c) install forward facing CCTV monitors within the main station concourse area at 37 Stations,

which will be linked to the central CCTV monitoring facilities located at Three Bridges Railway Operations Centre and in so doing shall incur expenditure of not less than £350,000 (such expenditure to include capital expenditure).

Security Staffing

20.3 The Franchisee shall use all reasonable endeavours to:

- (a) adopt the Railway Safety Accreditation Scheme (RSAS) across the whole of the Franchise; and
- (b) introduce 22 Railway Enforcement Officers across the whole of the Franchise to replace the existing Police Community Support Officers,

on or before 31 January 2016.

20.4 The Franchisee shall use reasonable endeavours to ensure that on or before 31 January 2016 it has no less than 20 Franchise Employees available for deployment by the British Transport Police across the whole of the Franchise to perform special constable duties. The Franchisee shall use reasonable endeavours to maintain such level of Franchise Employees for the remainder of the Franchise Term.

Security Analyst

20.5 The Franchisee shall on or before 31 March 2015 appoint a Security Analyst who shall be responsible for the collection and interpretation of data to identify security hotspots and trends and maintain such an appointment for the remainder of the Franchise Term.

21. On-Train Wi-Fi Service²⁸⁰

21.1 Definitions

For the purposes of this paragraph 21:

[REDACTED²⁸¹]

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Derogations

²⁸⁰ 9 December 2016 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

²⁸¹ 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.

“Data and Claims Budget” means the amount of [REDACTED²⁸²] available from the Secretary of State until the end of the Franchise Term for:

- (a) the purchase of Mobile Data for the OTW Services; and/or**
- (b) to reimburse the Franchisee any liability under the CRA in relation to the OTW Services in accordance with paragraph 21.10,**

provided that, if and to the extent that the Secretary of State continues the Franchise Agreement after 0159 on 19 September 2021 pursuant to paragraph 1 of Schedule 18 (Additional Reporting Periods), then:

- (i) such sum of [REDACTED²⁸³] shall be increased as agreed between the parties or as reasonably determined by the Secretary of State by an additional pro rata amount by reference to the annual costs at that time of Mobile Data and claims under the CRA in relation to the OTW Services; and**
- (ii) the table set out in Appendix 3 (Figures for OTWP) to Schedule 8.1 (Franchise Payments) shall be amended by applying the increase under paragraph (i) evenly across the applicable duration of any continuation of the Franchise Agreement and the amount shown against each Reporting Period falling after 0159 on 19 September 2021 in the table set out in Appendix 3 (Figures for OTWP) shall be increased accordingly;**

“First Unit” means one single Unit of each Rolling Stock Class Type (other than an Operation Only Rolling Stock Class Type);

“Go-Live” means the date when the OTW Services are first made available to passengers on board a Unit on a routine basis;

“Infotainment” means information and entertainment services provided to the passenger via the OTW Programme and which contain value-added chargeable services such as on-demand content, but does not include the OTW Additional Services and the OTW Ancillary Services;

“Initial Route Survey” means a survey of the Network Coverage which is available on the Routes [REDACTED²⁸⁴];

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284 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.

“Install & Operate Rolling Stock” or “IORS” means:

[REDACTED²⁸⁵]

“IORS Unit” means a unit forming part of the Install & Operate Rolling Stock but excluding any Units set out at limb (j) of the definition of Install & Operate Rolling Stock;

“IORS Vehicle” means a rolling stock vehicle forming part of an IORS Unit (but excluding, for the avoidance of doubt, any vehicle forming part of any Unit at limb (j) of the definition of Install & Operate Rolling Stock);

“Installation Schedule” means the installation schedule for the fitment of OTW Hardware on the Install & Operate Rolling Stock that is approved or determined by the Secretary of State pursuant to paragraphs 21.3.2 and/or 21.3.4A (as amended or determined from time to time pursuant to paragraphs 21.3.4 and/or 21.3.4A);

“Managed Service Provider” or “MSP” means the person engaged by the Franchisee to deliver, install and/or operate the OTW Programme;

“Measures” has the meaning set out in paragraph 21.9.6;

“Mobile Data” means the supply of wireless data connectivity services including, but not limited to, mobile internet and wireless broadband data;

“MSP Agreement” means the services agreement relating to the design, installation and provision of a passenger Wi-Fi system and associated services on rolling stock and ongoing operational services between the MSP and the Franchisee dated on or around 8 December 2016;

“MSP Insolvency” means the MSP or the parent of the MSP being subject to any event that is the same or analogous to any event mutatis mutandis set out in paragraph 2.1 of Schedule 10.3 (Events of Default and Termination Events) in relation to the Franchisee;

“Network” means an electronic communications network available for commercial use that allows the OTW IORS Hardware to connect to the internet and provide the On-Train Wi-Fi Solution;

“Network Coverage” means the extent to which the Network Signal Strength on the Routes is sufficient for the operation of the OTW Services;

“Network Provider” means a mobile network operator engaged by the Franchisee to provide use of a Network for the On-Train Wi-Fi Services;

²⁸⁵ 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.

“Network Signal Strength” means the measure of the level of data throughput and data availability between the OTW Hardware and the Network along the Routes [REDACTED²⁸⁶];

“Operation Only Rolling Stock” or “OORS” means:

(a) [REDACTED²⁸⁷] units of Class 700 rolling stock [REDACTED²⁸⁸]

(b) [REDACTED²⁸⁹] of Class 700 rolling stock [REDACTED²⁹⁰];

“OTW” means on-train Wi-Fi;

“OTW Additional Services” shall mean initiatives which use the OTW Programme for the purpose of generating additional income and/or reducing the costs of providing the OTW Services which may include offering passengers access to higher bandwidth services, video streaming capabilities, catch up television, file sharing and cloud services but shall not include Infotainment;

“OTW Ancillary Services” shall mean other forms of generating income from the OTW Programme such as advertising and sponsorship on the OTW Services host website [REDACTED²⁹¹];

“OTW Documentation” means any documentation provided by the MSP or produced by the Franchisee in relation to the installation and the operation of or right to operate the OTW Solution;

“OTW Hardware” means the OTW IORS Hardware and the OTW OORS Hardware;

“OTW IORS Hardware” means that part of the OTW Solution which is physical equipment fitted to the Install & Operate Rolling Stock

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(excluding the units at limb (j) of the definition of Install & Operate Rolling Stock), including the hardware, data communications cabling, power, equipment racks, external aerials and cabling required to provide the On-Train Wi-Fi Services;

"OTW OORS Hardware" means that part of the OTW Solution which is physical equipment fitted to the Operate Only Rolling Stock, including the hardware, data communications cabling, power, equipment racks, external aerials and cabling required to provide On-Train Wi-Fi Services;

"OTW Milestone" means an event at item 2, 3, 4, 5a, 5b, 5c or 7 in the OTW Payment Table;

"OTW Network Provider Agreement" means any agreement entered into between the Franchisee and a Network Provider in relation to the OTW Programme;

"OTW Payment Table" means the table set out in Appendix 7 (OTW Payment Table) to this Part 1 (List of Committed Obligations) of Schedule 6.1 (Committed Obligations and Related Provisions);

"OTW Programme" means the programme for the provision of the On-Train Wi-Fi Solution and the On-Train Wi-Fi Services;

"OTW Remediation Plan" has the meaning set out in paragraph 21.16.1;

"OTW Revised Remediation Plan" has the meaning set out in paragraph 21.16.2;

"OTW Security Requirements" means the security requirements set out at Appendix 6 (OTW Security Requirements) to this Part 1 (List of Committed Obligations) of Schedule 6.1 (Committed Obligations and Related Provisions);

"OTW Service Levels" means the service levels and service credits set out in Schedule 16 of the MSP Agreement;

"On-Train Wi-Fi Services" or "OTW Services" means:

- (a) the OTW services provided to passengers on the IORS through the OTW Solution and on the OORS;
- (b) those operational and support services set out in Schedule 5 of the MSP Agreement; and
- (c) to the extent the same is available to the Franchisee, the operational and support services (if any) provided by a supplier of Mobile Data in respect of the On-Train Wi-Fi Solution including any technical support in respect of system interruptions and outages;

"On-Train Wi-Fi Solution" or "OTW Solution" means the complete mobile communications solution enabling OTW and the OTW Services for the purposes of providing wireless internet access on the Install & Operate Rolling Stock including, any relevant software, the OTW Hardware (and the fitment of the OTW IORS Hardware on the Install and Operate Rolling Stock only) to be procured and provided by the Franchisee in accordance

with the terms of this Franchise Agreement, as set out in this paragraph 21;

“OTW Technical Specification” means:

- (a) (in the case of the [REDACTED²⁹²] of Class 387/2 rolling stock) the technical specification set out at Part 1 of Appendix 5 (OTW Technical Specification) to this Part 1 (List of Committed Obligations) of Schedule 6.1 (Committed Obligations and Related Provisions);**
- (b) (in the case of the [REDACTED²⁹³] of Class 377/6 rolling stock) the technical specification set out at Part 2 of Appendix 5 (OTW Technical Specification) to this Part 1 (List of Committed Obligations) of Schedule 6.1 (Committed Obligations and Related Provisions);**
- (c) (in the case of the [REDACTED²⁹⁴] of Class 377/7 rolling stock) the technical specification set out at Part 3 of Appendix 5 (OTW Technical Specification) to this Part 1 (List of Committed Obligations) of Schedule 6.1 (Committed Obligations and Related Provisions);**
- (d) (in the case of the [REDACTED²⁹⁵] of Class 387/1 rolling stock) the technical specification set out at Part 4 of Appendix 5 (OTW Technical Specification) to this Part 1 (List of Committed Obligations) of Schedule 6.1 (Committed Obligations and Related Provisions); and**
- (e) (in the case of [REDACTED²⁹⁶]) the technical specification set out at Part 5 of Appendix 5 (OTW Technical Specification) to this Part 1 (List of Committed Obligations) of Schedule 6.1 (Committed Obligations and Related Provisions);**

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“Performance Monitoring Report” has the meaning set out in paragraph 21.8.11;

“Revised Figures for OTWP” has the meaning set out in paragraph 21.3.5;

“Rolling Stock Category” means either a Type X Category or a Type Y Category;

“Rolling Stock Class Type” means certain classes of rolling stock forming part of the Train Fleet and listed at:

- (a) paragraphs (a) to (j) of Install & Operate Rolling Stock; and**
- (b) paragraphs (a) and (b) of Operation Only Rolling Stock;**

“Secretary of State OTW Requirements” means the description of the Secretary of State's requirements for the OTW Services and OTW Solution set out at Appendix 4 (Secretary of State OTW Requirements) to this Part 1 (List of Committed Obligations) of Schedule 6.1 (Committed Obligations and Related Provisions);

“Type X Category” means the classes of rolling stock forming the Install & Operate Rolling Stock but excluding:

- (a) any class of rolling stock that is a Type Y Category; and**
- (b) the [REDACTED²⁹⁷] of Class 717 rolling stock ([REDACTED] vehicle) set out at limb (j) of the definition of Install & Operate Rolling Stock;**

“Type X Category Vehicle” means a Type X Category rolling stock vehicle;

“Type Y Category” means the following classes of rolling stock:

- (a) the [REDACTED²⁹⁸] of Class 387/2 rolling stock ([REDACTED] vehicle);**
- (b) the [REDACTED²⁹⁹] of Class 377/6 rolling stock ([REDACTED] vehicle);**

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(c) the [REDACTED³⁰⁰] of Class 377/7 rolling stock ([REDACTED] vehicle);
and

(d) the [REDACTED³⁰¹] of Class 387/1 rolling stock ([REDACTED] vehicle);

“Type Y Category Vehicle” means a Type Y Category rolling stock vehicle;
and

“Unit” means the units listed in the definitions of “Operation Only Rolling Stock” and “Install & Operate Rolling Stock”, and Unit means any one of them.

21.2 General and Warranties

21.2.1 The Franchisee shall supply:

(a) the fitment of the OTW Solution (including the fitment of the OTW IORS Hardware) in respect of the Install & Operate Rolling Stock in accordance with paragraph 21.3; and

(b) the OTW Services from the date of Go-Live on a Unit in accordance with paragraph 21.

The parties acknowledge that the Franchisee will contract with an MSP in order to provide said services.

21.2.2 The Franchisee shall ensure that the following independent obligations are complied with:

(a) where the OTW Solution is fitted, the OTW Security Requirements;

(b) in respect of the OTW Services, the Secretary of State OTW Requirements (save that paragraphs 4.1.2 to 4.1.7 of Appendix 4 (Secretary of State OTW Requirements) to Part 1 (List of Committed Obligations) of Schedule 6.1 (Committed Obligations and Related Provisions) shall apply only in respect of the IORS); and

(c) where the OTW Solution is fitted on the Install & Operate Rolling Stock, the OTW Technical Specification.

21.2.3 If there is any conflict between the Secretary of State OTW Requirements, the OTW Security Requirements and the OTW Technical Specification, the conflict shall be resolved giving precedence to the obligations in the order that they are set out in paragraph 21.2.2.

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21.2.4 The Franchisee shall cooperate in good faith with all relevant parties to work toward:

- (a) the delivery of the OTW Programme in respect of the Install & Operate Rolling Stock; and**
- (b) the delivery of the OTW Services in respect of the Operate Only Rolling Stock.**

21.2.5 [REDACTED³⁰²]

21.2.6 The Franchisee shall procure the design of the On-Train Wi-Fi Solution and shall procure all items of the On-Train Wi-Fi Solution, together with (as applicable) all related documentation provided by third party manufacturers of such items.

21.2.7 The Franchisee shall carry out its obligations under this paragraph 21 with all reasonable diligence and despatch, and with all reasonable skill and expertise, to provide the OTW Services in accordance with the Secretary of State OTW Requirements.

21.2.8 The warranty given in paragraph 21.2.9 is in addition to the warranties given in other parts of this Franchise Agreement.

21.2.9 The Franchisee warrants that:

- (a) the OTW IORS Hardware in the case of a Type X Category Vehicle will be new and of satisfactory quality and will be suitable, so far as is reasonably possible, for the purpose for which it is intended in accordance with the Secretary of State OTW Requirements;**
- (b) the OTW IORS Hardware in the case of a Type Y Category Vehicle will be of satisfactory quality and will be suitable, so far as is reasonably possible, for the purpose for which it is intended in accordance with the Secretary of State OTW Requirements; and**
- (c) as far as it is able, the Franchisee will under a Transfer Scheme pass on to the Successor Operator the benefits of any third party manufacturer warranties under the MSP Agreement.**

21.2.10 The Franchisee provides no warranties and accepts no liability in relation to the performance of the Networks or the signal strength that may be available via the Networks for the OTW Services (or 'not spots' or any periods of Network unavailability or suspension for any reason).

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21.2.11 The Secretary of State and the Franchisee acknowledge that the Secretary of State has requested a proposal [REDACTED³⁰³] for the design, procurement, installation, commissioning and funding of the OTW OORS Hardware on the Operate Only Rolling Stock. Accordingly:

- (a) any delivery of the OTW Programme in respect of the Operate Only Rolling Stock and any application of paragraph 21.2 (with the exception of paragraphs 21.2.4(b) and 21.2.7) to the Operate Only Rolling Stock is subject to the Secretary of State and the Franchisee:
 - (i) entering into variations [REDACTED³⁰⁴] for the design, procurement, installation, commissioning and funding of the OTW OORS Hardware on the Operate Only Rolling Stock; and
 - (ii) agreement of adjustment to Franchise Payments and any other terms of the Variation in respect of design, procurement, installation, testing; commissioning and/or funding of the OTW OORS Hardware on the Operate Only Rolling Stock; and
- (b) nothing in this paragraph 21 shall create any obligation on the Franchisee in respect of the design and fitment of the OTW OORS Hardware in respect of the OTW OORS Rolling Stock.

21.3 Installation of the OTW Solution

21.3.1 The Franchisee shall, with the exception of the units set out at limb (j) of the definition of Install & Operate Rolling Stock:

- a) secure any applicable consents from the lessors of the Install & Operate Rolling Stock or otherwise in relation to the rolling stock modifications necessary to fit the OTW IORS Hardware;
- b) fit (or procure the fitment of) any OTW IORS Hardware on the Install & Operate Rolling Stock in accordance with paragraph 21.3;
- c) procure and fit (or procure the fitment of) such other equipment and make other modifications to the Install & Operate Rolling Stock as are required to install the OTW Solution in respect of the Install & Operate Rolling Stock;

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- d) programme the modification work on the Install & Operate Rolling Stock with the attendant time out of passenger revenue service for such Install & Operate Rolling Stock.

21.3.2 Following confirmation by the Secretary of State of the Train Fleet that will apply for the remainder of the Franchise Term, the Franchisee shall within 15 Weekdays of such confirmation send to the Secretary of State for approval (such approval not to be unreasonably withheld or delayed) a draft Installation Schedule. The Secretary of State shall as soon as reasonably practicable after receiving the draft Installation Schedule, and in any event within 15 Weekdays of such receipt, either certify his approval of the draft Installation Schedule or notify the reasons for not approving the draft Installation Schedule. The Secretary of State:

- (a) shall not withhold his approval to the draft Installation Schedule if it sets out that the OTW IORS Hardware is due to be installed on substantially all of the IORS Units on or before the expiry of the Franchise Term; and
- (b) shall, in deciding whether or not to approve a draft Installation Schedule that does not set out that the OTW IORS Hardware is due to be installed on substantially all of the IORS Units on or before the expiry of the Franchise Term, take account of the date that he confirms such Train Fleet; the composition (number and class of vehicles) of such confirmed Train Fleet and the effect of the timing of such confirmation of the Train Fleet on the Installation Schedule and /or the delivery of the OTW Programme.

21.3.3 Subject to the approval of the Installation Schedule by the Secretary of State pursuant to paragraph 21.3.2 and to paragraphs 21.3.4, 21.3.6 and 21.13.2, the Franchisee shall [REDACTED³⁰⁵] install the OTW IORS Hardware on the number of IORS Units calculated in accordance with the following formula:

$$R = S \times [\text{REDACTED}^{306}]$$

where:

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- R** is the number of IORS Units on which the Franchisee is required to install the OTW IORS Hardware [REDACTED³⁰⁷] (rounded up or down to the nearest whole number); and
- S** is the number of IORS Units on which the OTW IORS Hardware is due to be installed [REDACTED³⁰⁸] by reference to the Installation Schedule.

21.3.4 If and to the extent that from time to time the delivery of the Installation Schedule by the Franchisee is prejudiced by the diagramming on a Saturday and/or Sunday of IORS Units to deliver Passenger Services in order to compensate for any lack of availability of Operation Only Rolling Stock on such day, then the Franchisee shall send to the Secretary of State for approval (such approval not to be unreasonably withheld or delayed) a revised draft of the Installation Schedule. The Secretary of State shall as soon as reasonably practicable after receiving the revised Installation Schedule, and in any event within 15 Weekdays of such receipt, either certify his approval of the revised Installation Schedule or notify the reasons for not approving the draft Installation Schedule. The Secretary of State shall not withhold his approval to the revised Installation Schedule if it re-sets the Installation Schedule to the extent necessary to ensure that the Franchisee suffers no net loss or no net gain as a result of the prejudice to the deliverability of the Installation Schedule due to the diagramming on a Saturday and/or Sunday of IORS Units to deliver Passenger Services in order to compensate for any lack of availability of Operation Only Rolling Stock on such day.

21.3.4A If the Secretary of State and the Franchisee have not agreed the draft or revised Installation Schedule within 3 months of submission of the draft or revised Installation Schedule pursuant to paragraph 21.3.2 or 21.3.4 respectively, then the Secretary of State may reasonably determine the Installation Schedule.

21.3.5 Within 3 months of approval of the draft Installation Schedule pursuant to paragraph 21.3.2 or the revised Installation Schedule pursuant to paragraph 21.3.4, the Franchisee shall send to the Secretary of State for approval (such approval not to be unreasonably withheld) a draft version of the table set out in Appendix 3 (Figures for OTWP) to Schedule 8.1 (Franchise Payments) that is updated to reflect the aggregate of all future payments due under items 2, 3, 4, 5a, 5b, 5c, 7 and 8a of the OTW Payment Table by reference to the approved Installation Schedule (the draft "Revised Figures for OTWP"). The draft Revised Figures for OTWP shall be agreed between the Parties or reasonably determined by the Secretary of State. Following such agreement or determination, then,

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with effect from the commencement of the next Reporting Period, the table at Appendix (3) (Figures for OTWP) of Schedule 8.1 (Franchise Payments) shall be deemed to be deleted and the Revised Figures for OTWP (as agreed or determined) shall be deemed to be inserted in their place at Appendix 3 (Figures for OTWP) to Schedule 8.1.

21.3.6 There shall be no breach of this paragraph 21, if and to the extent that any failure to deliver the requisite number of IORS Units by the applicable date is due to:

- (a) an act of God, storm, explosion, flooding, fire, war damage, enemy action, terrorism, riot, civil commotion or rebellion (together the "Emergency Events") or the act of any government instrumentality (including the ORR) in so far as the act of government instrumentality directly relates to any of the Emergency Events; or
- (b) any strike or other Industrial Action by any of the employees of the Franchisee or any or all of the employees of the MSP or of the agents or sub-contractors of the MSP save that, in relation to Franchisee employees, any exclusion from liability by the Franchisee is subject to the conditions in paragraph 2.2(a) and (b) of Schedule 10.4 (Force Majeure) being met. For the purposes of this paragraph, Industrial Action shall include any concerted action taken in connection with the employment of such employees (whether or not that action involves any breach of such employees' conditions of employment, and including any action taken in furtherance of a dispute, or with a view to improving the terms of employment of the relevant employees or by way of support for any other person) subject always, in the case of any unofficial Industrial Action, to the Franchisee being able to demonstrate the occurrence of such unofficial Industrial Action to the reasonable satisfaction of the Secretary of State. or
- (c) MSP Insolvency, save to the extent that any such delay in performance or insolvency, administration or analogous event is as a result of a breach of the MSP Agreement by the Franchisee; or
- (d) a breach of the MSP Agreement by the MSP which is material where the reason for breach is not in whole or principally the fault of the Franchisee, such that it triggers a right to terminate the MSP Agreement, excluding any right to terminate at will, whether that right is exercised or not and having regard to paragraph 2.14 of Schedule 10.3 (Events of Default and Termination Events).

21.3.7 If and to the extent that the Franchisee fails to deliver the quantities set out in paragraph 21.3.3 by 31 December 2018 and such failure is not excused under paragraph 21.3.6, there shall be deemed to be a material breach of this paragraph 21 for the purposes of paragraph 21.16.

21.4 Network Coverage Provisions

21.4.1 The Franchisee shall fully cooperate with the Secretary of State and with Network Provider(s) in relation to any improvements to Network Coverage on the Routes.

21.4.2 The Franchisee shall procure an Initial Route Survey to determine Network Coverage on the Routes on which the OTW Services will operate.

21.4.3 In the event that the Secretary of State and the Franchisee agree that the Network Coverage has materially reduced since the Initial Route Survey the Franchisee:

- (a) shall consult with the Secretary of State on the steps proposed for the purposes of improving the Network Coverage; and**
- (b) may:**
 - (i) appoint one or more additional Network Provider(s) provided that such appointment does not result in an increased likelihood of (A) an adverse impact on the forecast Data and Claims Budget, or (B) the introduction of Measures, and the Secretary of State shall make (and the Franchisee hereby agrees to) such adjustments to the components of the On-Train Wi-Fi Solution Payment as the Franchisee and the Secretary of State agree will reasonably ensure that the Franchisee suffers no net financial loss and enjoys no net financial gain as a result of such appointment of one or more additional Network Provider(s)); or**
 - (ii) where the proposed Network Provider(s) do not fulfil clause 21.4.3(b)(i), seek the Secretary of State's prior written consent to the appointment of such Network Provider, and inform the Secretary of State of the financial impact of such appointment. Where the Secretary of State agrees (in its absolute discretion) to the appointment of a Network Provider under this paragraph 21.4.3(b)(ii), then the Secretary of State shall make (and the Franchisee hereby agrees to) such adjustments to the components of the On-Train Wi-Fi Solution Payment as the Franchisee and the Secretary of State agree will reasonably ensure that the Franchisee suffers no net financial loss and enjoys no net financial gain as a result of such appointment of one or more additional Network Provider(s)).**

21.5 The OTW Software and Related Intellectual Property

21.5.1 The Franchisee shall procure that the benefit and burden of any licence of Supplier Intellectual Property (as defined in the MSP Agreement) granted by the MSP to the Franchisee in clause 19 of the MSP Agreement shall be transferrable to any Successor Operator, such transfer to be effected by, at the Secretary of State's election, a Transfer Scheme or by an assignment or novation made by the Franchisee or otherwise.

21.5.2 The provisions of this paragraph 21.5 shall continue in force notwithstanding the termination or expiry of this Franchise Agreement for any reason.

21.6 OTW Documentation

21.6.1 The Franchisee shall, from time to time and where reasonably requested, provide the Secretary of State with copies of the OTW Documentation containing sufficient up-to-date information for the proper use and (as applicable) maintenance of the OTW Solution. Such OTW Documentation may be supplied in electronic form.

21.6.2 If and to the extent that there is a transfer of Supplier Intellectual Property (as defined in the MSP Agreement) in accordance with paragraph 21.5.1 to a Successor Operator, the Franchisee shall provide copies of the OTW Documentation to any Successor Operator (including its contractors, agents and sub-contractors), provided such parties agree to be bound by obligations of confidentiality substantially equivalent to those set out at paragraph 1 of Schedule 17 (Confidentiality and Freedom of Information).

21.7 Changes to the OTW Technical Specification

21.7.1 If the Franchisee wishes to amend the OTW Technical Specification, it shall provide the Secretary of State with full written details of its proposed amendment. If the Franchisee and the Secretary of State agree to amend the OTW Technical Specification, the relevant amendments shall be set out in a written variation to this Franchise Agreement signed by the parties in accordance with paragraph 1 of Schedule 9.5 (Variations to the Franchise Agreement and Incentivising Beneficial Changes) and the Secretary of State shall make (and the Franchisee hereby agrees to) such adjustments to the components of On Train Wi-Fi Solution Payment as the Franchisee and the Secretary of State agree will reasonably ensure that the Franchisee suffers no net financial loss and enjoys no net financial gain as a result of the amendment to the OTW Technical Specification. Nothing in this paragraph shall affect the ability of the Franchisee to make minor amendments to any more detailed design or specification documentation relating to the OTW Solution, provided that those amendments do not amend or otherwise affect the OTW Technical Specification.

21.8 The OTW Services

21.8.1 The Franchisee shall use all reasonable endeavours to manage the MSP and to enforce the MSP's obligations under the MSP Agreement and to resolve disputes as soon as reasonably practicable, in order to secure the delivery of the OTW Services, provided that:

- (a) any expenditure incurred in pursuance of such all reasonable endeavours (excluding costs of any OTW dedicated personnel), shall be proportionate to both the value to the Franchisee of the OTW Programme and the stage of the OTW Programme at which any problem arises; and
- (b) nothing in this paragraph 21.8.1 shall create any obligation on the Franchisee in respect of the design, fitment, testing and/or commissioning of the OORS Hardware in relation to the Operate Only Rolling Stock.

21.8.2 Without prejudice to paragraph 21.8.1, the Franchisee shall:

- (a) maintain, or shall procure the maintenance of, the OTW IORS Hardware on the Install & Operate Rolling Stock required in order to deliver the OTW Solution;
- (b) use reasonable endeavours to exercise its rights under the MSP Agreement and/or any applicable Key Contract in respect of any Operation Only Rolling Stock to remedy as soon as reasonably practicable defects in the OTW OORS Hardware (excluding endemic

and epidemic defects) that are reported by the OTW Solution/MSP, including resolving damage and vandalism; and

- (c) use reasonable endeavours to remedy as soon as reasonably practicable defects in the OTW Hardware (excluding endemic and epidemic defects) that are reported by the OTW Solution/MSP, including resolving damage and vandalism.

21.8.3 The Franchisee shall appoint a sufficient and dedicated number of personnel with the appropriate skills and experience to fulfil the roles of project manager, delivery manager, business analyst and systems engineer and whose work shall include:

- (a) managing the Network Provider(s) and the MSP Agreement to deliver the OTW Programme for the remainder of the Franchise Term;
- (b) where reasonably practicable, seeking opportunities to increase ancillary profits;
- (c) introducing a marketing campaign to advertise the availability of free OTW;
- (d) training appropriate staff and any required refresh training before the OTW Services Go-Live (including for any relevant new employees);
- (e) reporting to the Secretary of State monthly on the Data and Claims Budget, performance, fitment schedule and ancillary profit status/opportunities; and
- (f) attending ad hoc meetings with the Secretary of State where he so reasonably requests.

21.8.4 The performance of the OTW Services will be measured through the OTW Service Levels.

21.8.5 If the Franchisee believes that it is reasonably likely that the OTW Services (excluding any time when there is not train to internet coverage) might not be available in accordance with the OTW Service Levels, the Franchisee shall notify the Secretary of State as soon as reasonably practicable.

21.8.6 The Franchisee shall pay to the Secretary of State [REDACTED³⁰⁹] of the value of any Service Credits (as defined in the MSP Agreement) it receives under Schedule 16 of the MSP Agreement in respect of the OTW Services failing to achieve the OTW Service Levels or as a result of unavailability of the OTW Services following Go-Live on any Unit. Subject to paragraph

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21.8.10 and without prejudice to the Secretary of State's right to terminate the OTW Programme pursuant to paragraph 21.12, subject to paragraph 21.8.8 this will be the Secretary of State's sole remedy under the Franchise Agreement in respect of performance in relation to the OTW Service Levels and there shall be no breach of the Franchise Agreement for any said failure or unavailability.

21.8.7 The parties acknowledge that the [REDACTED³¹⁰] share of any Service Credits (as defined in the MSP Agreement) recovered through Schedule 16 of the MSP Agreement and retained by the Franchisee reflect that the Franchisee has suffered and is required to actively manage the rectification of any failure to achieve the OTW Service Levels.

21.8.8 In the event that following Go-Live in respect of more than [REDACTED³¹¹] (as set out in Table 1 of Appendix 1 to Schedule 16 of the MSP Agreement) in any Reporting Period [REDACTED³¹²] as an adjustment to the On-Train Wi-Fi Solution Payment for the Reporting Period after the relevant payment has been triggered [REDACTED³¹³].

21.8.9 [REDACTED³¹⁴]

21.8.10 If either of the events in 21.8.9(a) or (b) occur, the Franchisee shall consult with the Secretary of State in good faith to agree a plan of future action, which may include:

- (a) the Franchisee seeking to agree a replacement MSP (subject to variation of the obligations in this paragraph 21, and the adjustments to Franchise Payments in respect of the OTW Programme, to reflect such replacement MSP Agreement as agreed between the Secretary of State and the Franchisee); or
- (b) the Secretary of State terminating the OTW Programme.

21.8.11 The Franchisee shall provide the Secretary of State with a written report, provided within ten (10) Business Days following the end of the relevant

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Reporting Period, with effect from Go-Live on any Unit. This report shall set out the performance as against the OTW Service Levels and the details of any service failures or any OTW Milestones satisfied during the Reporting Period to the Secretary of State ("Performance Monitoring Report") and any other such content as the parties may agree.

21.8.12 The Secretary of State shall be permitted to share the Performance Monitoring Reports with other Government departments, regulators or agencies.

21.9 Data and Claims Budget

21.9.1 Subject to paragraph 21.9.2, the Secretary of State shall be responsible for, and shall pay to Franchisee, the cost of Mobile Data (including any costs of Mobile Data that are in excess of the Data and Claims Budget) associated with providing the OTW Services in accordance with this paragraph 21 and Schedule 8.1 (Franchise Payments).

21.9.2 The Secretary of State shall not be responsible for the cost of Mobile Data if and to the extent that the Data and Claims Budget is exceeded as a result of the Franchisee not complying with its obligations in this paragraph 21.9.

21.9.3 The Franchisee shall use reasonable endeavours to manage data usage within the Data and Claims Budget save always that providing a Mobile Data allowance of up to 15 Megabytes per user per day shall always be considered to be in compliance with this paragraph.

21.9.4 The Franchisee must not at any time provide a Mobile Data allowance in excess of 50 Megabytes per user per day (or, where reasonable, the maximum free data allowance permitted from time to time by a passenger services rail franchisee (in England and Wales) that is reasonably comparable to the Franchisee).

21.9.5 The Franchisee shall report to the Secretary of State monthly on:

- (a) actual Mobile Data usage against forecast Mobile Data usage and the action the Franchisee is using to control usage, with a future use forecast; and**
- (b) [REDACTED³¹⁵]**
- (c) [REDACTED³¹⁶].**

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21.9.6 If and to the extent that, in the reasonable opinion of the Secretary of State or the Franchisee, it appears that the Data and Claims Budget will be or is likely to be exceeded by the end of the Franchise Period (including where this is a result of [REDACTED³¹⁷]), then either Party may commence an issues escalation process whereby both parties, acting reasonably, will, within 1 month, agree a solution to reduce Mobile Data costs and/or [REDACTED³¹⁸] In the absence of agreement within such month, the Secretary of State (acting reasonably) may determine the solution. Measures that may be determined are:

- (a) increasing the Data and Claims Budget; and/or
- (b) ceasing to make the OTW Services and Mobile Data supply available for normal passenger service on any further Units; and/or
- (c) the Secretary of State funding investment in solutions that would reduce the Mobile Data cost; and/or
- (d) reducing the number of passengers who can access the OTW Service; and/or
- (e) ceasing to make both the OTW Services and Mobile Data supply to some or all of the Install and Operation Rolling Stock Units and/or Operation Only Rolling Stock Units,

(collectively "Measures").

21.9.7 In the event that the unit cost of Mobile Data increases or decreases, the Franchisee and the Secretary of State shall continue to apply the Data and Claims Budget for the purposes of OTW and either:

- (a) reduce or increase (as applicable) the Mobile Data usage allowance per user at paragraph 21.9.3 and/or paragraph 21.9.4; and/or
- (b) enable less or more (as applicable) passengers to use the OTW Services,

provided that such action does not, in the opinion of the Secretary of State, increase the risk that the Data and Claims Budget will be exceeded.

21.9.8 In the event that any Measure set out in paragraph 21.9.6(b)-(e) is agreed or determined, then the Secretary of State shall make (and the Franchisee hereby agrees to) such adjustments to the components of the On Train Wi-Fi Solution Payment (including, without limitation, the financial payments in the table set out in Appendix 3 (Figures for OTWP)

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to Schedule 8.1 (Franchise Payments)) as the Franchisee and the Secretary of State agree will reasonably ensure that the Franchisee suffers no net financial loss and enjoys no net financial gain as a direct result of the Measure set out in paragraph 21.9.6(b)-(e) that is agreed or determined. Such amendment shall take into account (without limitation and where relevant) the direct financial effect of any Measure set out in paragraph 21.9.6(b)-(e) on the PEM Payment, and in this regard due consideration shall be had to the Franchisee's performance under NPS Indicators and the value of the PEM Payment(s):

- (a) prior to Go-Live on more than 20 per cent of the Units;
- (b) following Go-Live on more than 20 per cent of the Units; and
- (c) following the implementation of any measures under paragraphs 21.9.6 (b)-(e) (as agreed or determined),

as relevant.

For the avoidance of doubt, there shall be no amendment to Schedule 7.2 (PEM Regime) as a consequence of this paragraph 21.9.8 and the claiming party shall be responsible for evidencing the direct financial impact of any Measures. Any dispute under this paragraph 21.9.8 may be referred for resolution or determination by arbitration by either party pursuant to paragraph 3.2 of Schedule 19 (Other Provisions).

21.10 [REDACTED³¹⁹]

21.11 Funding and Remuneration

21.11.1 The following principles apply to this paragraph 21.11:

- (a) the Franchisee shall not be entitled to charge any passenger for utilising the minimum specification for the OTW Services and shall only be entitled to charge for service over and above the minimum specification with the Secretary of State's prior written consent and both parties reaching agreement on the relevant profit share;
- (b) there shall be no adjustment to the forecast revenue currently embedded in the Franchisee's Financial Model as a result of the OTW Programme;
- (c) the aggregate payment due in respect of each Type X Category Vehicle pursuant to item 4 (First in Class), 5a (Fitment of Vehicles), 5b (Retention Initial Vehicles) and/or 5c (Retention Remainder

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Vehicles) of the OTW Payments Table is intended to be [REDACTED³²⁰] and in no event shall the aggregate amount paid in accordance with item 4 (First in Class), 5a (Fitment of Vehicles), 5b (Retention Initial Vehicles) and/or 5c (Retention Remainder Vehicles) of the OTW Payment Table in respect of any IORS Vehicle exceed [REDACTED³²¹]; and

- (d) the aggregate payment due in respect of each Type Y Category Vehicle pursuant to item 4 (First in Class), 5a (Fitment of Vehicles), 5b (Retention Initial Vehicles) and/or 5c (Retention Remainder Vehicles) of the OTW Payments Table is intended to be [REDACTED³²²] and in no event shall the aggregate amount paid in accordance with item 4 (First in Class), 5a (Fitment of Vehicles), 5b (Retention Initial Vehicles) and/or 5c (Retention Remainder Vehicles) of the OTW Payment Table in respect of any IORS Vehicle exceed [REDACTED³²³];**

21.11.2 The Secretary of State shall pay to the Franchisee the OTW Payments set out in the OTW Payments Table in accordance with paragraph 8 of Schedule 8.1 (Franchise Payments). For the purposes of paragraph 8 of Schedule 8.1 (Franchise Payments):

- (a) the amount payable pursuant to item 1 (Mobilisation) in the OTW Payment Table shall be:**
- (i) the amount specified against such item 1 in column 6 of the OTW Payment Table shall become due on the Payment Date that immediately follows 11 December 2016; and**
 - (ii) nil in respect of every other Reporting Period.**
- (b) the amount arising during a Half Franchisee Year pursuant to item 2 (Concept Design of IORS Units) in the OTW Payment Table shall be:**
- (i) (in respect of any Half Franchisee Year during which the concept design has been agreed with the MSP in respect of one or more class of Install & Operator Rolling Stock (with the exception of the class of rolling stock at limb (j) of the definition of Install & Operate Rolling Stock)) the aggregate**

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of the sum(s) specified against the applicable class of Install & Operate Rolling Stock (with the exception of the class of rolling stock at limb (j) of the definition of Install & Operate Rolling Stock) at column 6 of item 2 of the OTW Payment Table and such sum shall become due on the HY On-Train Wi-Fi Solution Balancing Amount Date following satisfaction of the acceptance criteria for such item 2 in column 3 of the OTW Payment Table; and

- (ii) nil in respect of every other Half Franchisee Year;
- (c) the amount arising during a Half Franchisee Year pursuant to item 3 (Detailed Design of IORS Units) in the OTW Payment Table shall be:
- (i) (in respect of any Half Franchisee Year during which the detailed design has been agreed with the MSP in respect of one or more class of Install & Operator Rolling Stock (with the exception of the class of rolling stock at limb (j) of the definition of Install & Operate Rolling Stock)) the aggregate of the sum(s) specified against the applicable class of Install & Operate Rolling Stock (with the exception of the class of rolling stock at limb (j) of the definition of Install & Operate Rolling Stock) at column 6 of item 3 of the OTW Payment Table and such sum shall become due on the HY On-Train Wi-Fi Solution Balancing Amount Date following satisfaction of the acceptance criteria for such item 3 in column 3 of the OTW Payment Table; and
 - (ii) nil in respect of every other Half Franchisee Year.
- (d) the amount arising during a Half Franchisee Year pursuant to item 4 (First in Class) in the OTW Payment Table shall be:
- (i) (in the case of any Half Franchisee Year during which one or more First Unit(s) satisfies the acceptance criteria for such item 4 set out in column 3 of the OTW Payment Table) the amount calculated in accordance with the following formula:

$$A = \Sigma(B \times C)$$

where:

- A means the amount during the applicable Half Franchisee Year pursuant to item 4 (First in Class) in the OTW Payment Table;
- B means the number of vehicles in the First Unit(s) of the same Rolling Stock Category that satisfy the acceptance criteria for such item 4 set out in column 3 of the OTW Payment Table during such Half Franchisee Year;
- C the amount specified against such item 4 for the applicable Rolling Stock Category in column 6 of the OTW Payment Table; and

Σ means the sum of (B x C) in respect of each Rolling Stock Category.

Such amount shall become due on the applicable HY On-Train Wi-Fi Solution Balancing Amount Date; and

(ii) nil in respect of every other Half Franchisee Year;

(e) the amount (if any) arising during each Half Franchisee Year pursuant to item 5a (Fitment of Vehicles) in the OTW Payment Table shall be the amount calculated in accordance with the following formula:

$$D = \Sigma(E \times F)$$

where:

D means the amount during the Half Franchisee Year pursuant to item 5a (Fitment of Vehicles) in the OTW Payment Table;

E means the number of vehicles in the IORS Unit(s) of the same Rolling Stock Category that satisfy the acceptance criteria for such item 5a set out in column 3 of the OTW Payment Table during such Half Franchisee Year;

F the amount specified against such item 5a for the applicable Rolling Stock Category in column 6 of the OTW Payment Table; and

Σ means the sum of (E x F) in respect of each Rolling Stock Category.

Such amount shall become due on the applicable HY On-Train Wi-Fi Solution Balancing Amount Date;

(f) the amount (if any) arising during each Half Franchisee Year pursuant to item 5b (Retention Initial Vehicles) in the OTW Payment Table shall be:

(i) (in respect of any Half Franchisee Year during which Go-Live is not achieved in respect of [REDACTED³²⁴] IORS Vehicles, whether or not such Half Franchisee Year is before or after the Half Franchisee Year referred to in paragraph 21.11.2(f)(ii)) nil; and

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- (ii) (in respect of the Half Franchisee Year during which Go-Live is achieved in respect of [REDACTED³²⁵] IORS Vehicles) the amount calculated in accordance with the following formula:

$$M = \Sigma(N \times O)$$

where:

- M** means the amount during the Half Franchisee Year pursuant to item [REDACTED³²⁶] (Retention Initial Vehicles) in the OTW Payment Table;
- N** means the number of vehicles in the IORS Unit(s) of the same Rolling Stock Category that are part of the [REDACTED³²⁷] IORS Vehicles in time that satisfy the acceptance criteria for such item 5b set out in column 3 of the OTW Payment Table;
- O** the amount specified against such item 5b for the applicable Rolling Stock Category in column 6 of the OTW Payment Table; and
- Σ** means the sum of (N x O) in respect of each Rolling Stock Category.

Such amount shall become due on the applicable HY On-Train Wi-Fi Solution Balancing Amount Date;

- (g) the amount (if any) arising during each Half Franchisee Year pursuant to item 5c (Retention Remainder Vehicles) in the OTW Payment Table shall be:
- (i) (in respect of any Half Franchisee Year that expires prior to the Half Franchisee Year during which Go-Live is achieved in respect of [REDACTED³²⁸] IORS Vehicles) nil; and
- (ii) (in respect of any other Half Franchisee Year) the amount specified for such item 5c in column 6 of the OTW Payment

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Table for such item and such amount shall become due on the applicable HY On-Train Wi-Fi Solution Balancing Amount Date;

- (h) the amount payable pursuant to item 6a (Implementation Project Costs) or 6b (Service Operating Costs) in the OTW Payment Table in a Reporting Period shall be:**
- (i) in respect of each Reporting Period arising during the period commencing on the date set against such item in column 4 of the OTW Payment Table and ending on the date set against such item in column 5 of the OTW Payment Table the amount specified against such item in column 6 of the OTW Payment Table and such amount shall become due on the Payment Date in respect of each such Reporting Period; and**
- (ii) nil in respect of every other Reporting Period;**
- (i) the amount (if any) arising during each Half Franchisee Year pursuant to item 7 (Train Unit Operating Cost) in the OTW Payment Table shall be calculated in accordance with the following formula:**

$$J = \Sigma(K \times L)$$

where:

J means the amount arising during the applicable Half Franchisee Year pursuant to item 7 (Train Unit Operating Cost) in the OTW Payment Table;

K means the lesser of:

(a) [REDACTED³²⁹] (this being the aggregate number of gateways planned to be fitted under the OTW Programme); and

(b) the aggregate number of gateways satisfying the acceptance criteria for such item 7 at column 3 of the OTW Payment Table at any time on or prior to the commencement of the applicable Reporting Period;

L the amount set out against such item 7 at column 6 of the OTW Payment Table; and

Σ the sum of $(K \times L)$ in respect of each Reporting Period falling in such Half Franchisee Year.

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Such amount shall become due on each applicable HY On-Train Wi-Fi Solution Balancing Amount Date;

- (j) the amount (if any) arising during a Half Franchisee Year pursuant to [REDACTED³³⁰] satisfying the applicable criteria for such items at column 3 of the OTW Payment Table during such Half Franchisee Year and such amounts shall become due on each applicable HY On-Train Wi-Fi Solution Balancing Amount Date; and
- (k) in respect of each item in the OTW Payment Table, as a condition of payment the Franchisee shall provide the applicable evidence of the acceptance criteria set out in column 3 of the OTW Payment Table as a condition of payment and the Secretary of State (acting reasonably) shall be entitled to require the Franchisee to provide further evidence of such satisfaction.

21.11.3 Within four weeks of the end of each Half Franchisee Year, the Franchisee shall deliver to the Secretary of State a statement of the calculation demonstrating the aggregate of the On Train Wi-Fi Solution Payments due in respect of the relevant Half Franchisee Year (an "On Train Wi-Fi Solution Payments Statement") that is certified by a statutory director of the Franchisee (or any other Franchisee Employee approved in writing by the Secretary of State). Such statement shall include:

- (a) a statement of the Secretary of State's [REDACTED³³¹] of any service credits, service payment reductions, or liquidated damages recovered by the Franchisee from the MSP during such Half Franchisee Year pursuant to Schedule 16 of the MSP Agreement and paragraph 21.8.7;
- (b) a calculation of the HY On-Train Wi-Fi Solution Balancing Amount in accordance with paragraph 8.1 of Schedule 8.1 (Franchise Payments) for such Half Franchisee Year;
- (c) a summary of amounts due from, and amounts owing to, the Franchisee under this paragraph 21; and
- (d) such other supporting information as the Secretary of State may reasonably require.

21.11.4 The Secretary of State will notify the Franchisee as soon as reasonably practicable after receipt of the On Train Wi-Fi Solution Payments Statement, whether the Franchisee has achieved the OTW Milestone or failed (in the Secretary of State's reasonable opinion) to achieve the OTW

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Milestone and/or whether the Secretary of State requires further information.

21.11.5 The Secretary of State:

- (a) **acknowledges that he has received an invoice for [REDACTED³³²] dated [REDACTED³³³] pursuant to paragraph 11.2 of the heads of terms in relation to the Franchisee's proposal to deliver on-train Wi-Fi between the Secretary of State and the Franchisee dated 24 May 2016; and**
- (b) **shall pay such invoice by no later than the Payment Date that immediately follows 11 December 2016.**

21.12 Termination of the OTW Programme

21.12.1 Notwithstanding paragraph 21.8.4 and without prejudice to paragraph 21.8.6, the Secretary of State shall have the right to terminate the OTW Programme as set out in this paragraph 21, in the event of the Franchisee's material breach of its obligations in this paragraph 21 subject to:

- (a) **the parties first applying the OTW remedial plan process set out in paragraph 21.16; and**
- (b) **where the OTW Programme is terminated, the Secretary of State paying to the Franchisee (on a pass through basis, subject to the production of reasonable evidence by the Franchisee) the aggregate of the remainder of any rent under any Rolling Stock Lease that is attributable to the OTW Solution to the end of the Franchise Term (if relevant), any increment to payments under any train services agreement that is attributable to the OTW Solution, the fixed costs for the Franchisee's project team in respect of the OTW Programme until the date of termination of the OTW Programme (if appropriate) and the cost of Mobile Data incurred by the Franchisee to the point of termination of the OTW Programme.**

21.12.2 Subject to paragraph 21.16 and unless the contrary is otherwise specified, nothing in this paragraph 21 shall interfere with the provisions of Schedules 10.1 (Remedial Plans and Remedial Agreements), 10.2 (Termination and Expiry) and 10.3 (Events of Default and Termination Events).

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21.13 [REDACTED³³⁴]**21.14 OTW Ancillary Services and OTW Additional Services**

21.14.1 The introduction by the Franchisee of any Infotainment initiative shall be subject to consultation with the Secretary of State and the Secretary of State's written consent.

21.14.2 Subject to the Franchisee procuring the applicable passenger consent and subject to the Franchisee acting in compliance with applicable Law, the Franchisee may during the Franchise Term sell and/or disclose on a non-exclusive basis Personal Data derived from the operation of the OTW Services including, without limitation, Personal Data derived from any OTW Additional Services and any OTW Ancillary Services and the proceeds of such sale or disclosure shall be shared in accordance with paragraph 21.14.5.

21.14.3 The Franchisee may provide:

(a) subject to the written consent of the Secretary of State, OTW Additional Services for which the Franchisee may charge passengers; and

**(b) OTW Ancillary Services,
using the OTW Programme.**

21.14.4 [REDACTED³³⁵]**21.15 Assignment of the MSP Agreement**

21.15.1 Subject to the right of the Franchisee to require the Secretary of State to make a Transfer Scheme in accordance with paragraph 3 of Schedule 15.4 (Provisions Applying on and after Termination) at the end of the Franchise Period, the Franchisee shall, if so directed by the Secretary of State, exercise its rights under the MSP Agreement to assign, transfer or novate such agreement in such a manner (consistent with such rights) as the Secretary of State shall require.

21.16 OTW Remedial Plan Process

21.16.1 In the event that the Franchisee commits a material breach in complying with its obligations under this paragraph 21, the party who is aware of such deficiency shall promptly notify the other party of such deficiency ("OTW Remedial Notice"), and within two (2) weeks of either party

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receiving a OTW Remedial Notice, the Franchisee and the Secretary of State shall agree a remediation plan which shall set out the steps required to remedy the failure ("OTW Remediation Plan"). The Franchisee and the Secretary of State shall use reasonable endeavours to agree a timetable in which the Franchisee shall remedy the failure, and the Franchisee shall take such steps as set out in the OTW Remediation Plan to remedy the failure in accordance with any agreed timetable provided always that the failure is remedied within 60 calendar days of the OTW Remedial Notice being issued (unless the Secretary of State agrees otherwise in writing).

21.16.2 If, despite the OTW Remediation Plan, the failure has not been remedied within 60 calendar days of a OTW Remedial Notice being issued, or such other period as agreed by the Secretary of State under paragraph 21.16.1, the Secretary of State may, by written notice to the Franchisee, choose at its sole discretion to (without prejudice to the Secretary of State's other rights and remedies) agree a revised OTW Remediation Plan with the Franchisee which shall include a revised timetable in which the Franchisee shall remedy the failure ("OTW Revised Remediation Plan").

21.16.3 If, despite the OTW Revised Remediation Plan, the Franchisee has still failed to remedy the failure within a period of 120 calendar days of becoming aware of the failure, then the Secretary of State may (without prejudice to the Secretary of State's other rights and remedies) terminate the OTW Programme in accordance with paragraph 21.12.1.

21.17 PFA Designation

21.17.1 The Franchisee shall not enter into any OTW Network Provider Agreement without the prior written consent of the Secretary of State (not to be unreasonably withheld). In accordance with paragraph 3 of Schedule 14.4 (Designation of Franchise Assets) the Secretary of State shall designate any OTW Network Provider Agreement entered into by the Franchisee with the prior written consent of the Secretary of State as a Primary Franchise Asset and shall agree that he shall not de-designate it as a Primary Franchise Asset without the prior written consent of the Franchisee.

22 One Off Season Ticket Refund³³⁶

22.1 The Franchisee shall make arrangements to pay and shall pay to Eligible Season Ticket Holders the One Off Season Ticket Refund as follows:

- (a) the Franchisee shall:**
 - (i) use all reasonable endeavours to contact all Eligible Season Ticket Holders identified as such from any**

³³⁶ 11 May 2017 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

- database of the Franchisee (such as its delay repay database, its "On Track Retail" web ticketing system and its SMART ticket office machine season ticket database) either by email (or by letter posted to the address of such Eligible Season Ticket Holder as held on the Franchisee's database) informing them of their rights to claim the One Off Season Ticket Refund; and
- (ii) subject to such Eligible Season Ticket Holder supplying the Franchisee with the Claim Compensation Information completed to the reasonable satisfaction of the Franchisee by no later than 30 April 2017 (or such later date as may be agreed from time to time by the Secretary of State and the Franchisee or, on failure to agree, reasonably determined by the Secretary of State):
- (A) pay to such Eligible Season Ticket Holder the One Off Season Ticket Refund to which he/she is entitled by no later than 21 days of receipt of the Claim Compensation Information from such Eligible Season Ticket Holder; and
- (B) by using the mode of payment indicated by such Eligible Season Ticket Holder in his/her Claim Compensation Information (save that where the Franchisee is unable to process any payment through the indicated mode of payment due to the inclusion of inaccurate or incomplete information in the Claim Compensation Information, the Franchisee shall be entitled to make the relevant payment by cheque); and
- (b) the Franchisee shall:
- (i) from 2 February 2017 until 30 April 2017 (or such later date as may be agreed from time to time by the Secretary of State and the Franchisee or, on failure to agree, reasonably determined by the Secretary of State) publicise on its website, on posters at Stations and on trains, the rights of Eligible Season Ticket Holders to claim the One Off Season Ticket Refund and also how (and by when) they can claim the One Off Season Ticket Refund; and
- (ii) subject to an Eligible Season Ticket Holder (being an Eligible Season Ticket Holder who has not received the One Off Season Ticket Refund pursuant to paragraph 22.1((a)(ii)) supplying the Franchisee with Qualifying

Evidence by no later than 30 April 2017 (or such later date as may be agreed from time to time by the Secretary of State and the Franchisee or, on failure to agree, reasonably determined by the Secretary of State):

- (A) pay to such Eligible Season Ticket Holder the One Off Season Ticket Refund to which he/she is entitled by no later than 21 days of receipt of the Qualifying Evidence from such Eligible Season Ticket Holder; and**
- (B) by using the mode of payment indicated by such Eligible Season Ticket Holder in his/her Claim Compensation Information (save that where the Franchisee is unable to process any payment through the indicated mode of payment due to the inclusion of inaccurate or incomplete information in the Claim Compensation Information, the Franchisee shall be entitled to make the relevant payment by cheque).**

22.2 The Franchisee shall ensure that it undertakes reasonable validation checks so as to:

- (a) prevent fraudulent claims so far as reasonably practicable;**
- (b) ensure that the One Off Season Ticket Refunds are paid only to the Eligible Season Ticket Holders, so far as reasonably practicable.**

22.3 For the purposes of this paragraph 22:

"Claim Compensation Information" means information to be sent to the Franchisee by an Eligible Season Ticket Holder in order to verify and process a claim for One Off Season Ticket Refund including:

- (a) name;**
- (b) e-mail address;**
- (c) season ticket photocard identification number;**
- (d) method of payment details; and**
- (e) for Eligible Season Ticket Holders claiming the One Off Season Ticket Refund in response to an e-mail or other correspondence sent pursuant to paragraph 22.1(a), the unique password provided by the Franchisee to such Eligible Season Ticket Holder;**

"Eligible Season Ticket Holder" means a passenger who:

- (a) provides Qualifying Evidence which shows that he/she held during the period between 1 April 2016 and 31 December 2016 a valid Season Ticket Fare (including for these purposes an Oyster weekly, monthly, quarterly or annual season ticket) of whatever type which entitled such passenger to a total of at least 12 weeks travel on the Eligible Southern Franchise Services; or**
- (b) is identified by the Franchisee from any database of the Franchisee (such as its delay repay database) as a passenger that held during the period between 1 April 2016 and 31 December 2016 a valid Season Ticket Fare (including for these purposes an Oyster weekly, monthly, quarterly or annual season ticket) of whatever type which entitled such passenger to a total of at least 12 weeks travel on the Eligible Southern Franchise Services;**

"Eligible Southern Franchise Services" means the Southern Franchise Services including the Passenger Services operated by the Franchisee from or to a Southern Managed Station and/or a reasonable portion of their journey (as reasonably determined by the Franchisee) was made using the Southern rail network;

"One Off Season Ticket Refund" means payment to be made by the Franchisee to the Eligible Season Ticket Holders as follows:

- (a) for an Eligible Season Ticket Holder who held a valid annual season ticket during the period between 1 April 2016 and 31 December 2016 an amount equal to one twelfth of the cost of the annual season ticket;**
- (b) for an Eligible Season Ticket who held during the period between 1 April 2016 and 31 December 2016 a valid quarterly season ticket or a sufficient number of valid monthly season tickets an amount equal to the value of a one month ticket; and**
- (c) for an Eligible Season Ticket Holder who held during the period between 1 April 2016 and 31 December 2016 a sufficient number of valid weekly season tickets an amount equal to the cost of 4 of such weekly season tickets;**

"Qualifying Evidence" means:

- (a) the Claim Compensation Information completed to the reasonable satisfaction of the Franchisee;**
- (b) evidence provided by an Eligible Season Ticket Holder to demonstrate 12 weeks' worth of Season Ticket Fare of**

whatever type (including Oyster weekly, monthly, quarterly or annual season ticket) such as a copy of the relevant Season Ticket Fare or evidence of purchase (such as ticket receipts or bank statements); and

- (c) such other corroborating evidence as the Franchisee may reasonably require; and

"Southern Managed Stations" means:

- (a) the stations where the Southern Franchisee was the station facility owner on the Combined Effective Date; and
- (b) London Bridge station, London Blackfriars station and London Victoria station.

23³³⁷ Additional On Board Supervision Staff

23.1 In addition to its obligations pursuant to paragraphs 6.41 and 12.10, the Franchisee shall as soon as reasonably practicable after 1 October 2016 recruit and train:

- (a) up to 100 additional on-board supervisors who shall be present on the Passenger Services and whose role shall include being accessible to passengers for the purposes of providing assistance and information to passengers on board the Passenger Services. It is acknowledged that as at 3 February 2017 the Franchisee has recruited 96 additional on-board supervisors. Accordingly, it is agreed that any additional on board supervisors that are recruited by the Franchisee after 3 February 2017 will not be recruited and/or funded pursuant to this paragraph 23;
- (b) up to 4 additional on board supervisor managers whose role shall include supervising and managing the on-board supervisors referred to in paragraph 23.1(a); and
- (c) up to 1 additional roster clerk whose role shall include drawing up staff rosters relating to the on-board supervisors referred to in paragraph 23.1(a),

(such additional staff to be known as "Additional On Board Supervision Staff").

³³⁷ 11 May 2017 (Date of Deed of Amendment) – Contract insertion agreed by the Secretary of State and Franchisee.

23.2 Each Additional On Board Supervision Staff shall be recruited by the Franchisee for a 12 month fixed term period or seconded by the Franchisee to the role for a 12 month period. The Franchisee shall have no obligation pursuant to paragraph 23 to employ or engage any Additional On Board Supervision Staff following the expiry of their 12 month contract term or secondment contract term (as the case maybe).

23.3 Following completion of any training (where relevant) each Additional On Board Supervision Staff referred to in paragraph 23.1 shall be deployed during their 12 month fixed term contract period or 12 month secondment period (as the case may be) in the provision of the Passenger Services and must be capable of being deployed during any periods of strikes or other Industrial Action (including unofficial Industrial Action) by Franchise Employees.

24³³⁸ Class 377 (2017 LSER Capacity Enhancement) Units

Cascade of Class 377 (2017 LSER Capacity Enhancement) Units

24.1 The Franchisee shall complete fitment of the OTW Hardware on each of the Class 377 (2017 Capacity Enhancement) Units in accordance with paragraph 21 of Part 1 of Schedule 6 (List of Committed Obligations and Related Provisions) by no later than [REDACTED³³⁹].

24.2 The parties acknowledge and agree that, notwithstanding the provisions of paragraph 21 of Part 1 to Schedule 6.1 (Committed Obligations and Related Provisions) of the Franchise Agreement, throughout the term of each Class 377 Sub Lease:

- (a) the Franchisee shall be entitled to [REDACTED³⁴⁰] respect of the Class 377 (2016 OHA) Units and the Class 377 (2017 LSER Capacity Enhancement) Units provided that, in the case of [REDACTED³⁴¹] by the Franchisee from the LSER Franchisee or**

338 11 May 2017 (Date of Deed of Amendment) – Contract insertion agreed by the Secretary of State and Franchisee.

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the successor operator to the LSER Franchisee pursuant to the Class 377 Sub-Lease; and

- (b) the Franchisee [REDACTED³⁴²] to the OTW provided on the Class 377 (2016 OHA) Units and the Class 377 (2017 LSER Capacity Enhancement) Units.**

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Derogations

342 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.

APPENDIX 1 ³⁴³

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Derogations

³⁴³ 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.

APPENDIX 2³⁴⁴

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³⁴⁴ 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.

APPENDIX 3**Publication of Performance Data**

Timing	Data type	Data formats	Timing of release/media/distribution
Daily (next day)	Train Performance	PPM and Right time at franchise and brand level	Website
Periodic (8 days after Reporting Period end)	Train Performance	PPM by line of route	Website, bespoke posters at key stations, stakeholder briefs (every 2 months)
		Right time for line of route/key intermediate stations/termini	Website, bespoke posters at the key intermediate stations/termini, briefs to local managers and staff
		Cancellations	
		Short formations (peak)	
	Customer Satisfaction	QuEST data	Website, stakeholder briefs
		Service group level train data	
	QuEST data	Bespoke posters at stations >5m footfall and touch screens where available.	
	Station level data		
Revenue Protection		Ticketless travel at franchise level	Website
Six monthly	Information in formats and distributed as above, plus the following:		
	Train Performance	PPM, Cancellations & Short Formations shown in bar charts versus previous year and against targets. Pie charts to show attribution between NR/GTR/other operators. List published of 'worst performing trains'	Website/social media Customer Reports Media release Presentations at stakeholder forums

Timing	Data type	Data formats	Timing of release/media/distribution
	Customer Satisfaction	NPS indicators compared against targets/benchmarks QuEST indicators compared against targets/benchmarks	Website Customer Report Presentations at stakeholder forums
	Capacity	Crowding levels on peak trains	Bespoke station posters, Website
Annually	Capacity	PIXC data	Bespoke station posters, Website
	Corporate data	Safety (inc. SPAD levels), environmental data (DP1), staff data (turnover, absence, diversity), charitable giving & community investment, number of stakeholder events	Sustainability Report

APPENDIX 4 TO PART 1 OF SCHEDULE 6.1 ³⁴⁵**Secretary of State OTW Requirements****1. Not used****2. Marketing**

2.1 [REDACTED³⁴⁶] the Franchisee shall:

- (a) market the availability of Wi-Fi to passengers but not specify the bandwidth or speed of the On-Train Wi-Fi Service via:
 - (i) the Franchisee's public webpage, together with terms and conditions, fair-use policy and "how to use the service guides"; and
 - (ii) on-board physical notices;
- (b) ensure all branding of the OTW Services is that of the Franchisee; and
- (c) set out such caveats to the items in (a) as are appropriate to reflect the level of service that may be available.

All relevant marketing must be publicly available prior to Wi-Fi service going live on a particular vehicle.

3. Minimum Policy Requirements

- 3.1 The Franchisee shall ensure that users of the OTW Services are provided with access to terms and conditions that govern its use and such terms and condition shall address the following:
- (a) that the Franchisee shall deal with a user's personal data in compliance with the current data protection legislation in England and Wales;
 - (b) that the Franchisee has a privacy policy which is incorporated into the terms and conditions of use;
 - (c) the user may opt out from giving the Franchisee a right to use a user's name, address and relevant information for marketing purposes and/or to provide that data to third parties;

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Derogations

³⁴⁵ 09/12/2016 (Date of Deed of Amendment) Contract insertion agreed by the Secretary of State and the Franchisee.

³⁴⁶ 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.

- (d) that the On-Train Wi-Fi Solution is provided on an "as is" and "as available" basis with no guarantee and that the Franchisee's liability in respect of a user's use of the On-Train Wi-Fi Solution will not exclude liability for death or personal injury; and
- (e) any other provisions that the Franchisee is required by law to include within the terms and conditions.

4. Service Requirements

4.1 The Franchisee shall ensure the On-Train Wi-Fi Services:

- 4.1.1 are provided to passengers Free of Charge to all classes of passengers on board trains (Standard and First);
- 4.1.2 will permit passengers connected to such service to, at a minimum browse popular web pages on the internet and send and receive mails electronically through any mobile, tablet or computer device they may use for this purpose;
- 4.1.3 can dynamically allocate, and restrict, the available bandwidth on an active user or select Vehicles basis, based on a fair usage policy;
- 4.1.4 can filter the type of services permitted (e.g. restricting customer access to video and audio streaming services or peer-to-peer file sharing);
- 4.1.5 can handle a minimum of 20 simultaneously active users per vehicle;
- 4.1.6 can handle a minimum bandwidth of 512kbps with less than 80 ms latency plus 80 WAP-connected and registered but non-active users per vehicle; and
- 4.1.7 subject to the availability of a Network and any usage limit applied by the Franchisee, are available for use by passengers at all times for the duration of each passengers journey.

4.2 "**Free of Charge**", for the purpose of this paragraph 4 shall mean:

- (a) the passenger does not have to pay directly or indirectly to use the On-Train Wi-Fi Services on an ad-hoc or on-going basis; and
- (b) the use of the On-Train Wi-Fi Services by the passenger is independent of any Wi-Fi minutes or Wi-Fi data allowances the individual passenger may have through an agreement with one or more telecommunication internet service providers or mobile network operators.

4.3 On request, the Franchisee shall use reasonable endeavours to make available to the Secretary of State to the extent that such information is available to the Franchisee, for use and distribution to third parties as the Secretary of State so chooses:

- (a) the train location information in real-time; and

- (b) the Network Signal Strength as measured by the OTW Hardware for any or all Routes.
- 4.4 Subject to the Franchisee producing reasonable evidence, the Secretary of State shall reimburse the Franchisee for any reasonable costs incurred by the Franchisee in complying with its obligations under paragraph 4.3 above to the extent that such costs relate solely to the processing of the train location information. The Secretary of State shall not be responsible for any costs relating to the value of the train location information.

APPENDIX 5 TO PART 1 OF SCHEDULE 6.1³⁴⁷**OTW Technical Specification****Part 1**

OTW Technical Specification for Class 387/2s

The equipment currently installed on the Class 387/2s is as follows:

- an X6 with 80Gb SSD Installed
- 4 x H&S Single Element Ultra Low Profile Antenna
- Acksys WLn-RailBox/1 Single radio 802.11n Access Point
- MiMo Wi-Fi Antenna
- 100Mbs Cat 5 Backbone

These will be used as part of the OTW Technical Specification for the Class 387/2s and would remain unchanged.

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Derogations

³⁴⁷ 09/12/2016 (Date of Deed of Amendment) Contract insertion agreed by the Secretary of State and the Franchisee.

Part 2

OTW Technical Specification for Class 377/6s

The equipment currently installed on the Class 377/6s is as follows (Note: no X6 is currently installed. No Ethernet switch is in place with the AP's being Daisy Chained):

- 4 x H&S Single Element Ultra Low Profile Antenna
- HP MSM310 Single radio 802.11g Access Point
- Directional Wi-Fi Antenna
- 100Mbs Cat 5 Backbone

This equipment would be used as part of the OTW Technical Specification for the Class 377/6s alongside the upgrades detailed below.

Class 377/6 – Master

X6i (Icomera router/Gateway) containing:

- 4 LTE-A Modems
- X6i – True Media Capability
- x 1TB SSD
- x 802.11ac Wi-Fi card for Ship to shore communications

Cisco Dual Radio (802.11ac/n) Access Point per coach (with Built in Diplexer)

1 x 4x4 MIMO Antennas

A 110vDC to 24vDC 150w DC/DC Converter (for the X6i)

Class 377/6 – Slave

Cisco Dual Radio (802.11ac/n) Access Point per coach (with Built in Diplexer)

1 x 4x4 MIMO Antennas

This would see the 100mbs backbone retained and daisy chaining of the Access Points rather than the introduction of an Ethernet Switch.

Part 3

OTW Technical Specification for Class 377/7s

The equipment currently installed on the Class 377/7s is as follows (Note: no X6 is currently installed. No Ethernet switch is in place with the AP's being Daisy Chained):

- 4 x H&S Single Element Ultra Low Profile Antenna
- HP MSM310 Single radio 802.11g Access Point
- Directional Wi-Fi Antenna
- 100Mbs Cat 5 Backbone

This equipment would be used as part of the OTW Technical Specification for the Class 377/7s alongside the upgrades detailed below.

Class 377/7 – Master

X6i (Icomera router/Gateway) containing:

- 4 LTE-A Modems
- X6i – True Media Capability
- x 1TB SSD
- x 802.11ac Wi-Fi card for Ship to shore communications

Cisco Dual Radio (802.11ac/n) Access Point per coach (with Built in Diplexer)

1 x 4x4 MIMO Antennas

A 110vDC to 24vDC 150w DC/DC Converter (for the X6i)

Class 377/7 – Slave

Cisco Dual Radio (802.11ac/n) Access Point per coach (with Built in Diplexer)

1 x 4x4 MIMO Antennas

This would see the 100mbs backbone retained and daisy chaining of the Access Points rather than the introduction of an Ethernet Switch.

Part 4

OTW Technical Specification for Class 387/1s

The equipment currently installed is as follows:

- 4 x H&S Single Element Ultra Low Profile Antenna
- Acksys WLn-RailBox/1 Single radio 802.11n Access Point
- MiMo Wi-Fi Antenna
- 100Mbps Cat 5 Backbone

(Note: no X6 is currently installed on the Class 387/1. No Ethernet switch is in place with the AP's being Daisy Chained)

This equipment will be used as part of the OTW Technical Specification for the Class 387/1s alongside the following upgrades:

- X6i (Icomera router/Gateway) containing:
 - 4 LTE-A Modems
 - X6i – True Media Capability
 - x 1TB SSD
 - x 802.11ac Wi-Fi card for Ship to shore communications
- A 110vDC to 24vDC 150w DC/DC Converter (for the X6i)

The remainder of the equipment would be retained.

Part 5

OTW Technical Specification for the rest of the IORS Units

Master Vehicle

X6i (Icomera router/Gateway) containing:

- 4 LTE-A Modems
- X6i – True Media Capability
- x 1TB SSD
- x 802.11ac Wi-Fi card for Ship to shore communications

5 x Ultra-wideband dual element Low Profile MiMo rooftop antennas, 1 with GPS per Master system

An RF Filter

Cisco Dual Radio (802.11ac/n) Access Point per coach (with Built in Diplexer)

1 x 4x4 MIMO Antennas

1 x O-Ring 12 Port Gigabit Ethernet Switch with PoE and Relay Failover.

A 110vDC to 24vDC 150w DC/DC Converter (for the X6i)

Associated RF cable Harness

Ethernet Harness

Inter-vehicle connections (Jumpers)

Slave Vehicle

Cisco Dual Radio (802.11ac/n) Access Point per coach (with Built in Diplexer)

1 x 4x4 MIMO Antennas

1 x O-Ring 12 Port Gigabit Ethernet Switch with PoE and Relay Failover

Associated RF cable Harness

Ethernet Harness

Inter-vehicle connections (Jumpers).

348 APPENDIX 6 TO PART 1 OF SCHEDULE 6.1

OTW Security Requirements

1.1 [REDACTED³⁴⁹]

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348 09/12/2016 (Date of Deed of Amendment) Contract insertion agreed by the Secretary of State and the Franchisee.

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350 APPENDIX 7 TO PART 1 OF SCHEDULE 6.1

OTW Payment Table

Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7
Item	Payment Title	Acceptance Criteria	Start Date	End Date	Value of each payment	Application of Indexation
1	Mobilisation	Execution of Deed of Amendment	n/a	n/a	[REDACTED ³⁵¹]	No
2	Concept Design of IORS Units	Submission of a certificate, signed by a statutory Director (or any other	n/a	n/a	[REDACTED ³⁵²]	No

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Derogations

³⁵⁰ 09/12/2016 (Date of Deed of Amendment) Contract insertion agreed by the Secretary of State and the Franchisee.

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		Franchisee Employee approved in writing by the Secretary of State), confirming that the concept design has been agreed with the MSP in respect of one or more class of Install & Operate Rolling Stock (with the exception of the class of rolling stock at limb (j) of the definition of Install & Operate Rolling Stock).				
3	Detailed Design of IORS Units	Submission of a certificate, signed by a statutory Director (or any other Franchisee Employee approved in writing by the Secretary of State), confirming that the detailed design has been agreed with the MSP in respect of one or more class of Install & Operate Rolling Stock (with the exception of the class of rolling stock at limb (j) of the definition of Install & Operate Rolling Stock).	n/a	n/a	[REDACTED ³⁵³]	No
4	First in Class	Submission of a certificate, signed by a statutory Director (or any other Franchisee Employee approved in writing by the Secretary of State),	n/a	n/a	[REDACTED ³⁵⁴]	No

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Derogations

³⁵³ 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.

³⁵⁴ 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.

		confirming that an Acceptance Certificate (as defined in the MSP Agreement) has been issued in respect of a First Unit.				
5a	Fitment of Vehicles	Submission of a certificate, signed by a statutory Director (or any other Franchisee Employee approved in writing by the Secretary of State), confirming that an Acceptance Certificate (as defined in the MSP Agreement) has been issued in respect of the applicable number of Type X Category Vehicles and Type Y Category Vehicles.	n/a	n/a	[REDACTED ³⁵⁵]	No
5b	Retention Initial Vehicles	Submission of a certificate, signed by a statutory Director (or any other Franchisee Employee approved in writing by the Secretary of State), confirming Go-Live in respect of 312 IORS Vehicles	n/a	n/a	[REDACTED ³⁵⁶]	No

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³⁵⁵ 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.

³⁵⁶ 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.

5c	Retention Remainder Vehicles	<p>Submission of a certificate, signed by a statutory Director (or any other Franchisee Employee approved in writing by the Secretary of State), confirming:</p> <p>(a) an Acceptance Certificate (as defined in the MSP Agreement) has been issued in respect of the applicable number of IORS Vehicle; and</p> <p>(b) Go-Live in respect of 780 or more IORS Vehicles.</p>	n/a	n/a	[REDACTED ³⁵⁷]	No
6a	Implementation Project Costs	n/a	11 December 2016	31/03/19	[REDACTED ³⁵⁸]	No
6b	Service Operating Costs	n/a	11 December 2016	End of the Franchise Period	[REDACTED ³⁵⁹]	No

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Derogations

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³⁵⁸ 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.

³⁵⁹ 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	Train Unit Operating Cost	Submission of a certificate, signed by a statutory Director (or any other Franchisee Employee approved in writing by the Secretary of State), specifying the aggregate number of gateways fitted to the Units at the start of the applicable Reporting Period	n/a	n/a	[REDACTED ³⁶⁰]	No
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Derogations

³⁶⁰ 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.

8a	Data and Claims	<p>Submission of a Certificate by a statutory Director (or any other Franchisee Employee approved in writing by the Secretary of State) confirming for the Half Franchisee Year the aggregate amount of:</p> <p>(a) invoices in respect of Mobile Data; and</p> <p>(b) evidenced costs and payments in respect to CRA claims,</p> <p>including in each case any invoices, costs or payments after the end of the Franchise Period that relate to the operation of the OTW Services during the Franchise Period.</p>	n/a	n/a	[REDACTED ³⁶¹]	No
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Derogations

³⁶¹ Where text has been omitted from the document this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

<p>8b</p>	<p>Miscellaneous Charges</p>	<p>Submission of a Certificate by a statutory Director (or any other Franchisee Employee approved in writing by the Secretary of State):</p> <p>(a) confirming for the Half Franchisee Year the aggregate reasonable amounts invoiced by third parties to the Franchisee of any damage, vandalism or theft affecting the OTW Hardware (including any:</p> <p>(i) engineering costs incurred by the Franchisee, provided the Franchisee has not recovered such engineering costs through another means; and</p> <p>(ii) any amounts invoiced after the end of the Franchise Period that relate to damage, vandalism or theft affecting the OTW Hardware that occurred during the Franchise Period); and</p> <p>(b) accompanied by evidence of the cost of repair, incident reports of the damage, and damage assessment reports</p>		<p>End of the Franchise Period</p>	<p>[REDACTED³⁶²]</p>	<p>No</p>
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		in relation to such damage, vandalism or theft.				
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362 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.

Part 2 to Schedule 6.1**Miscellaneous Provisions****1. Application**

This Part 2 of this Schedule 6.1 sets out further terms which apply to the Committed Obligations set out in Part 1 (List of Committed Obligations) to this Schedule 6.1 and the references to Committed Obligations in this Part 2 of this Schedule 6.1 are only to the Committed Obligations in Part 1 (List of Committed Obligations) of this Schedule 6.1.

2. Continuation of Availability

2.1 Unless expressly provided otherwise in respect of a particular Committed Obligation:

- (a) the Franchisee shall maintain facilities or activities or other matters established in accordance with its Committed Obligations throughout the remainder of the Franchise Term; and
- (b) the provisions of this paragraph 2.1 shall apply in relation to each Committed Obligation regardless of whether or not such Committed Obligation specifically provides for the Franchisee to maintain throughout the Franchise Term the facilities, activities or other matters established in accordance with such Committed Obligation.

2.2 The Franchisee shall be treated as maintaining the relevant facilities, activities or other matters which are the subject of the Committed Obligation(s) notwithstanding temporary non-availability due to accidental damage or vandalism or maintenance, repair or replacement activities, or temporary staff absence, subject in each case to the Franchisee taking all reasonable steps to keep any such period of temporary non-availability to a minimum.

2.3 Where Part 1 (List of Committed Obligations) to this Schedule 6.1 includes a commitment regarding staffing or particular appointments the Franchisee plans to make:

- (a) the obligation of the Franchisee applies, but shall not be regarded as being contravened by:
 - (i) temporary absences (for example for sickness or holiday); or
 - (ii) temporary non-fulfilment of a relevant post whilst the Franchisee is recruiting for that post, subject to the Franchisee using all reasonable endeavours to keep the duration between appointments as short as reasonably practicable; and
- (b) the Franchisee's rights and obligations in relation to the numbers or deployment of its other staff remain unaffected.

3. **Expenditure Commitments**

Annual Expenditure

3.1 Where Part 1 (List of Committed Obligations) to this Schedule 6.1 provides for the expenditure of an annual amount (or an amount over some other period) by the Franchisee, that amount:

- (a) is assessed net of Value Added Tax; and
- (b) is the amount required to be expended by the Franchisee itself or procured by the Franchisee to be expended.

Expenditure Commitments in real amounts

3.2 All expenditure commitments set out in Part 1 (List of Committed Obligations) to this Schedule 6.1, to the extent they have not already been incurred by the Franchisee, shall be indexed by the Retail Prices Index (in the same way as variable costs are indexed in Schedule 8.2 (Annual Franchise Payments)).

Expenditure by Network Rail

3.3 All amounts which the Franchisee has committed (whether unconditionally or otherwise) pursuant to Part 1 (List of Committed Obligations) to this Schedule 6.1 to expend in connection with improvements to track or Stations shall be in addition to any expenditure made by Network Rail as part of its infrastructure improvements or maintenance programme to the extent such expenditure is not directly funded or reimbursed by the Franchisee.

4. **Liaison and Co-Operation**

Where the Franchisee is committed to liaison and co-operation under Part 1 (List of Committed Obligations) to this Schedule 6.1, it shall participate actively in the relevant measures including through the application of management time and internal resources, correspondence and attendance at meetings, in each case as the Franchisee reasonably considers in all the circumstances to be an appropriate use of its resources and effective to help achieve the relevant objective.

5. **Nature of Commitment**

5.1 Any commitment in terms of Part 1 (List of Committed Obligations) to this Schedule 6.1 shall be in addition to any obligation of the Franchisee elsewhere in this Agreement and nothing in this Schedule 6.1 shall limit or restrict an obligation imposed on the Franchisee elsewhere in this Agreement.

5.2 Save as expressly provided in Part 1 (List of Committed Obligations) to this Schedule 6.1, 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.

5.3 Where in Part 1 (List of Committed Obligations) to this Schedule 6.1, references are made to particular manufacturers or suppliers of equipment or services, the Franchisee may fulfil its relevant commitment by using reasonable equivalents.

5.4 Each commitment under this Schedule 6.1 shall come to an end on expiry of the Franchise Term for whatever reason.

6. **Review of Compliance**

- 6.1 Progress with Committed Obligations is an agenda item for Franchise Performance Meetings and the Franchisee shall ensure that at such meetings, the Secretary of State is given such progress reports as he may reasonably request.
- 6.2 In addition to its obligation under paragraph 6.1, the Franchisee shall from time to time promptly provide such evidence of its compliance with any Committed Obligation as the Secretary of State may reasonably request.
- 6.3 Where in respect of any Committed Obligation the Franchisee is required to provide a plan to assist the Secretary of State in the monitoring of the Franchisee's compliance with such Committed Obligation the Franchisee shall provide regular updates at the Franchise Performance Meetings of:
- (a) any progress it has made in the implementation of such plan since the last Franchise Performance Meeting;
 - (b) any material change to such plan;
 - (c) the occurrence or non-occurrence (as the case may be) of any event or series of events which were anticipated or not anticipated (as the case may be) at the time such plan was being finalised; and
 - (d) its informed opinion as to any amendments to such plan that it considers would be required to enable it to comply with any such Committed Obligation.

7. **Late Completion or Non-Delivery of Committed Obligations**

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

8. **Specimen Schemes**

- 8.1 The Franchisee may propose to undertake an **Alternative Scheme** in place of a Specimen Scheme. Any such Alternative Scheme must:
- (a) be intended to deliver as a minimum the relevant Specimen Scheme Output;
 - (b) require the Franchisee to incur expenditure of no less than the expenditure which the Franchisee is committed to incur in relation to the relevant Specimen Scheme; and
 - (c) deliver at least an equivalent level of benefits (whether to passengers, the Secretary of State, the wider rail industry or otherwise) as the Specimen Scheme.
- 8.2 If the Franchisee wishes to propose an Alternative Scheme, the Franchisee will provide the Secretary of State with such details of the Alternative Scheme as the Secretary of State may reasonably require.

8.3 If the Secretary of State approves (such approval not to be unreasonably withheld or delayed) such Alternative Scheme then it shall replace the relevant Specimen Scheme and Part 1 of this Schedule 6.1 shall be amended accordingly.

8.4 For the avoidance of doubt, if the Franchisee does not propose or the Secretary of State does not approve an Alternative Scheme then the Franchisee shall remain obliged to deliver the relevant Specimen Scheme in accordance with Part 1 of this Schedule 6.1.

9. **Third Party Consents, Agreement and Conditions**

Where any Committed Obligation is expressed to be conditional upon the satisfaction of any condition (including the occurrence of any event or the obtaining of any third party consents, approvals and/or entering into any agreement or arrangement with a third party) the Franchisee shall use all reasonable endeavours to procure that such condition is satisfied within such timescales as would enable the Franchisee to deliver such Committed Obligation by the delivery date specified in respect of such Committed Obligation.

10. **Reasonable Endeavours**

Except in relation to the Committed Obligations specified in paragraphs 17.1 and 17.4 of Part 1 of this Schedule 6.1, where in respect of any Committed Obligation the Franchisee is obliged to use all reasonable endeavours or reasonable endeavours to do or procure that something is done by a specified date then, without prejudice to any other rights the Secretary of State may have (whether under the Franchise Agreement or otherwise) in respect of any contravention arising if the same is not achieved by such specified date the Franchisee shall consult with the Secretary of State and if required by the Secretary of State shall continue to use all reasonable endeavours or reasonable endeavours (as applicable) to do or procure that the relevant thing is done as soon as reasonably practicable thereafter.

SCHEDULE 6.2**TSGN Franchise Specific Provisions****1. British Transport Police Accommodation**

The Franchisee shall give due consideration to any request by the British Transport Police for the Franchisee to provide suitable accommodation (including additional or alternative accommodation) or facilities at Stations to enable the British Transport Police to effectively perform the services owed to the Franchisee under any contract or arrangement entered into between the British Transport Police and the Franchisee.

2. Ticketless Travel Regime**2.1 Ticketless Travel Surveys**

- (a) The Secretary of State (or a nominee on his behalf) shall carry out Ticketless Travel Surveys in accordance with the Ticketless Travel Survey Methodology.
- (b) The Franchisee shall co-operate with the Secretary of State as he may reasonably request from time to time to allow or facilitate the carrying out of Ticketless Travel Surveys. When so requested by the Secretary of State the Franchisee shall permit the Secretary of State (or a nominee on his behalf) to have access to passengers and other persons who use the Passenger Services (such access to be provided on relevant trains and/or at relevant Stations or as otherwise reasonably required by the Secretary of State) for the purposes of the Secretary of State (or his nominee on his behalf) carrying out Ticketless Travel Surveys.
- (c) It is acknowledged and agreed by the Franchisee that:
 - (i) a Ticketless Travel Survey can only be carried out during a Ticketless Travel Survey Period;
 - (ii) nothing in this paragraph 2.1 shall prevent the Secretary of State from carrying out any other ticketless travel surveys as he may wish to undertake from time to time (such surveys not to be subject to the provisions of this paragraph 2); and
 - (iii) the Secretary of State may (but shall not be obliged to) determine not to carry out, or suspend or delay or discontinue any Ticketless Travel Survey planned or commenced for a Ticketless Travel Survey Period if he considers that in the circumstances it is inappropriate or impractical to carry out or continue such survey.
- (d) The Secretary of State shall procure that the results of any Ticketless Travel Surveys are provided to the Franchisee as soon as reasonably practicable following the completion of such surveys.

2.2 Ticketless Travel Survey Periods Calculations

First Three Ticketless Travel Survey Periods

(a) At the end of each of the first three Ticketless Travel Survey Periods falling within the first Performance Calculation Year the Secretary of State shall use the Ticketless Travel Rate for each such Ticketless Travel Survey Period to determine the Franchisee's performance against the Breach Initial Period Benchmark as follows:

(i) for the first of such three Ticketless Travel Survey Periods, the Secretary of State shall compare the Ticketless Travel Rate against the Breach Initial Period Benchmark for that Ticketless Travel Survey Period and a contravention of the Franchise Agreement shall occur (in which case the provisions of paragraph 2.3 shall apply) if for that Ticketless Travel Survey Period the Ticketless Travel Rate is above (that is equal to or worse than) the Breach Initial Period Benchmark specified in Column 1 of the table in Part 1 of the Appendix to this Schedule 6.2;

(ii) for the second of such three Ticketless Travel Survey Periods the Secretary of State shall use the Ticketless Travel Rate for that Ticketless Travel Survey Period to calculate the Franchisee's performance against the Breach Initial Period Benchmark in accordance with the following formula:

$$Q2P = \frac{A + B}{2}$$

where:

$Q2P$ is the Franchisee's performance for that Ticketless Travel Survey Period;

A is the Ticketless Travel Rate for that Ticketless Travel Survey Period; and

B is the Ticketless Travel Rate for the preceding Ticketless Travel Survey Period.

A contravention of the Franchise Agreement shall occur (in which case the provisions of paragraph 2.3 shall apply) if the value of $Q2P$ in respect of that Ticketless Travel Survey Period is above (that is equal to or worse than) the Breach Initial Period Benchmark specified in Column 2 of the table in Part 1 of the Appendix to this Schedule 6.2; and

(iii) for the last of such three Ticketless Travel Survey Periods the Secretary of State shall use the Ticketless Travel Rate for that Ticketless Travel Survey Period to calculate the Franchisee's performance against the Breach Initial Period Benchmark in accordance with the following formula:

$$Q3P = \frac{A + B}{3}$$

where:

Q3P is the Franchisee's performance for that Ticketless Travel Survey Period;

A is the Ticketless Travel Rate for that Ticketless Travel Survey Period; and

B is the sum of the Ticketless Travel Rate in each of the two preceding Ticketless Travel Survey Periods.

A contravention of the Franchisee Agreement shall occur (in which case the provisions of paragraph 2.3 shall apply) if the value of *Q3P* in respect of that Ticketless Travel Survey Period is above (that is equal to or worse than) the Breach Initial Period Benchmark specified in Column 3 of the table in Part 1 of the Appendix to this Schedule 6.2.

Subsequent Ticketless Travel Survey Periods

- (b) At the end of each Ticketless Travel Survey Period (other than the first three Ticketless Travel Survey Periods falling within the first Performance Calculation Year for which the provisions of paragraph 2.2(a) shall apply) the Secretary of State shall use the Ticketless Travel Rate for that Ticketless Travel Survey Period to calculate the Franchisee's performance against the Ticketless Travel Benchmark in accordance with the following formula:

$$\frac{A + B}{4}$$

where:

A is the Franchisee's performance for that Ticketless Travel Survey Period; and

B is the sum of the Ticketless Travel Rate in each of the three preceding Ticketless Travel Survey Periods.

2.3 Consequences for poor performance

Without limiting paragraph 2.4, if for any Ticketless Travel Survey Period the Ticketless Rate as calculated pursuant to paragraph 2.2 is above (that is, is equal to or worse than) the relevant Breach Ticketless Travel Benchmark or the relevant Breach Initial Period Benchmark (as applicable) then a contravention shall occur and the Secretary of State may serve a Remedial Plan Notice in accordance with the provisions of paragraph 1 of Schedule 10.1 (Remedial Plans and Remedial Agreement). For the purposes of paragraph 1.4(c) of Schedule 10.1 (Remedial Plans and Remedial Agreements) the steps to be proposed by the Franchisee pursuant to that paragraph are those which ensure that the Ticketless Travel Rates will be below (that is, better than) the Target Ticketless Travel Benchmark or the Breach Initial Period Benchmarks (as applicable).

2.4 Ticketless Travel Adjustment

- (a) At the end of each Performance Calculation Year the Secretary of State shall use the Ticketless Travel Rates for that Performance Calculation Year to calculate the Franchisee's performance against the Annual Ticketless Travel Benchmark in accordance with the following formula:

$$ACTUAL = \frac{\sum A}{B}$$

where:

ACTUAL is the moving average of the Ticketless Travel Rates for each of the Ticketless Travel Survey Periods in that Performance Calculation Year; and

$\sum A$ is the sum of the values of *A* as determined in accordance with paragraph 2.2 for that Performance Calculation Year except that in respect of the first Performance Calculation Year the relevant Ticketless Travel Rate for the purposes of determining the value of *ACTUAL* shall be those applicable in respect of the Passenger Services falling within paragraph (a) of the definition of TGN Franchise Services; and

B is in respect of a Performance Calculation Year consisting of 13 Reporting Periods, 4 and in respect of a Performance Calculation Year consisting of less than 4 Ticketless Travel Survey Periods, the number of Ticketless Travel Survey Periods in such Performance Calculation Year;

- (b) if the value of *ACTUAL* for a Performance Calculation Year as calculated pursuant to paragraph 2.4(a) is:

- (i) less than (that is, better than) the Annual Target Ticketless Travel Benchmark for that Performance Calculation Year then the Ticketless Travel Payment Adjustment payable by the Secretary of State to the Franchisee shall be an amount calculated as follows:

$$(TARGET - ACTUAL) \times TTB$$

where:

TARGET is the Annual Target Ticketless Travel Benchmark for that Performance Calculation Year;

ACTUAL has the meaning given to it in paragraph 2.4(a); and

TTB is:

(A) in respect of the first Performance Calculation Year an amount that is determined as follows:

$$TTB \times 0.4$$

where:

TTB is the amount specified in the first row of the table in Part 4 of the Appendix to this Schedule 6.2; and

- (B) in respect of any subsequent Performance Calculation Year ("**Year n**") an amount calculated as follows:

$$TTB \times RPIMF$$

where

TTB has the meaning given to it in this paragraph 2.4(b)(i); and

RPIMF is the RPI multiplication factor for that Performance Calculation Year calculated as follows:

$$RPIMF = \left(RPI_{py} \times \left(\left(\frac{RPI_n}{RPI_{n-1}} \right) + 0.01 \right) \right)$$

where:

RPI_n is the Retail Prices Index for the January which falls in Year n;

RPI_{n-1} is the Retail Prices Index for the January which falls in the Performance Calculation Year immediately preceding Year n;

RPI_{py} is RPIMF as calculated for the purpose of the Performance Calculation Year preceding Year n. Where that preceding Year n is the first Performance Calculation Year, this figure will be 1;

- (ii) more than (that is, worse than) the Annual Target Ticketless Travel Benchmark for that Performance Calculation Year but less than (that is, better than) the Annual Breach Ticketless Travel Benchmark for that Performance Calculation Year then the Ticketless Travel Payment Adjustment payable by the Franchisee to the Secretary of State shall be an amount calculated as follows:

$$(TARGET - ACTUAL) \times TTP$$

where:

ACTUAL has the meaning given to it in paragraph 2.4(a);

TARGET is the Annual Target Ticketless Travel Benchmark for that Performance Calculation Year;

TTP is:

(A) in respect of the first Performance Calculation Year an amount that is determined as follows:

$$TTP \times 0.4$$

where:

TTP is the amount that is equal to the amount specified in the second row of the table in Part 4 of the Appendix to this Schedule 6.2;

(B) in respect of any subsequent Performance Calculation Year ("**Year n**") an amount calculated as follows:

$$TTB \times RPIMF$$

where:

TTP has the meaning given to it in this paragraph 2.4(b)(ii); and

RPIMF has the meaning given to it in paragraph 2.4(b)(i)(B);

(iii) more than (that is, is worse than) the Annual Breach Ticketless Travel Benchmark for that Performance Calculation Year then the Ticketless Travel Payment Adjustment payable by the Franchisee to the Secretary of State shall be an amount calculated as follows (provided that for the purposes of the formula in paragraph 1.1 of Schedule 8.1 (Franchise Payments) any such amount shall be a negative number notwithstanding that the amount calculated as below produces a positive number):

$$(BREACH - TARGET) \times TTP$$

where:

BREACH is the Annual Breach Ticketless Travel Benchmark for that Performance Calculation Year;

TARGET is the Annual Target Ticketless Travel Benchmark for that Performance Calculation Year; and

TTP has the meaning given to in paragraph 2.4(b)(ii).

- (c) Each Ticketless Travel Adjustment in respect of any Performance Calculation Year shall be paid on each Ticketless Travel Payment Adjustment Date:
 - (i) by the Secretary of State to the Franchisee in respect of any payments pursuant to paragraph 2.4(b)(i); and
 - (ii) by the Franchisee to the Secretary of State in respect of any payments pursuant to paragraph 2.4(b)(ii) or paragraph 2.4(b)(iii).

2.5 Calculations

The Secretary of State shall perform the calculations referred to in paragraphs 2.2 and 2.4 rounded to three decimal places, with the mid point rounded up (that is, 3.3771% rounded to 3.377% or 3.3775% rounded to 3.378%).

2.6 Determination of the Annual Ticketless Travel Benchmarks for Performance Calculation Years that are shorter than 13 Reporting Periods

Where a Performance Calculation Year is shorter than 13 Reporting Periods the Secretary of State will perform the following calculations for the purposes of determining the Annual Target Ticketless Travel Benchmark and the Annual Breach Ticketless Travel Benchmark relating to that Performance Calculation Year:

- (a) in respect of the Annual Target Ticketless Travel Benchmark for that Performance Calculation Year:

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

where:

$\sum A$ is the sum of the data relevant for each of the Ticketless Travel Survey Periods in that Performance Calculation Year, such data being the data which was used for the purposes of determining the Annual Ticketless Travel Benchmark in respect of a full Performance Calculation Year as more particularly set out in the document in agreed terms marked **ABD**; and

B is the number of Ticketless Travel Survey Periods in that Performance Calculation Year; and

- (b) in respect of the Annual Breach Ticketless Travel Benchmark for that Performance Calculation Year:

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

where:

ΣA is the sum of the data relevant for each of the Ticketless Travel Survey Periods in that Performance Calculation Year, such data being the data which was used for the purposes of determining the Annual Breach Ticketless Travel Benchmark in respect of a full Performance Calculation Year as more particularly set out in the document in agreed terms marked **ABD**; and

B is the number of Ticketless Travel Survey Periods in that Performance Calculation Year.

3. Revenue Protection Strategy

3.1 Revenue Protection Meetings

- (a) Within 3 months of the Start Date the Franchisee shall provide to the Secretary of State its revenue protection plan in respect of the TGN Services. Any such revenue protection plan shall be updated within 3 months of the Combined Effective Date to include the Southern Services.
- (b) The Secretary of State and the Franchisee shall hold a meeting on a quarterly basis (or such other interval as the parties may agree in writing) at a time and location to be agreed for the purposes of reviewing some or all of the following:
- (i) the revenue protection plan of the Franchisee; and
 - (ii) the current ticketless travel performance.

The Franchisee shall take into account any reasonable comments of the Secretary of State in respect of the revenue protection plan of the Franchisee and shall amend such plan and implement any related changes to such revenue protection plan where there is a Positive Business Case (as such term is defined in accordance with paragraph 4.11(c) of Part 1 of Schedule 6.1 (Committed Obligations and Related Provisions) (mutatis mutandis)).

3.2 Automatic Ticket Gates

- (a) ³⁶³***Subject to obtaining any consents that may be required under the relevant Station Leases and/or Access Agreements (the "Relevant Ticket Gates Consent"), the Franchisee shall:***
- (i) ***on or before 30 April 2016 install automatic ticket gates at each of the following Stations:***

Alexandra Palace, Barnham, Bexhill, Caterham, Cricklewood, Enfield Chase, Flitwick, Gordon Hill, Hornsey, Loughborough Junction, Mill Hill Broadway,

New Barnet, Palmers Green, Portslade, Queens Road Peckham, Radlett, Sanderstead, Sandy, and Winchmore Hill; and

- (ii) ***on or before 30 September 2016 install automatic ticket gates at the Station located at Lancing; and***
 - (iii) ***on or before 1 December 2016 install automatic ticket gates at the Station located at Tooting.***
- (b) The Franchisee shall immediately notify the Secretary of State where it has not been able to obtain a Relevant Ticket Gates Consent in respect of any Station referred to in paragraph 3.2(a) (the "**Original Ticket Gates Station**") and shall as soon as reasonably practicable thereafter provide the Secretary of State with a written proposal (the "**Ticket Gates Proposal**") identifying one or more alternative Stations at which it considers it may be appropriate to install automatic ticket gates (an "**Alternative Ticket Gates Location**").
- (c) The Ticket Gates Proposal shall provide an explanation as to why the Franchisee considers each such Alternative Ticket Gates Location to be an appropriate location for the installation of automatic ticket gates and identify the cost of installing automatic ticket gates at such Alternative Ticket Gates Location.
- (d) Based on the Ticket Gates Proposal, the Franchisee and the Secretary of State shall agree (or in the absence of agreement, the Secretary of State shall reasonably determine) the Alternative Ticket Gates Location at which the Franchisee shall be required to install automatic ticket gates in place of the Original Ticket Gates Station, provided that the cost to the Franchisee of installing such automatic ticket gates at the Alternative Ticket Gates Location shall not exceed the costs which would have been incurred by the Franchisee in installing automatic ticket gates at the Original Ticket Gates Station. Following the date upon which the parties agree or the Secretary of State reasonably determines an Alternative Ticket Gates Location the obligation of the Franchisee to install automatic ticket gates at the Original Ticket Gates Station pursuant to paragraph 3.2(a) shall be an obligation to install such automatic ticket gates at the Alternative Ticket Gates Location by the date specified in paragraph 3.2(a).
- (e) The provisions of paragraph 2 of Part 2 to Schedule 6.1 (Committed Obligations and Related Provisions) shall apply (mutatis mutandis) in relation to this paragraph 3.2.

3.3 **Staffing of Automatic Ticket Gates at Stations**

- (a) **viii ix x xi xii** The Franchisee shall ensure that with effect from 30 September 2016 until the end of the Franchise Term all day staffing is provided at each Gated Station so as to ensure that the automatic ticket gates installed at such Gated Station (the "**Gatelines**") are managed and in operational use for at least 80% of the rostered hours of the Franchise Employee who is present at such Gated Station and who is responsible for supervising the Gatelines.
- (b) For the purposes of this paragraph 3.3:

- (i) **"all day staffing"** means at least one Franchise Employee (which for the avoidance of doubt may be the same Franchise Employee as is staffing the relevant station pursuant to paragraph 3 of Schedule 2.4 (Other Franchise Operations)) being present at a station between the period commencing five minutes prior to the scheduled arrival or departure time (as the case may be) of the First Train and five minutes after the actual arrival or departure time (as the case may be) of the Last Train;
 - (ii) **"First Train"** means the first timetabled Passenger Service to arrive at or depart from such Station;
 - (iii) **"Gated Station"** means a station at which the Franchisee is the Facility Owner and the Passenger Services call and where automatic ticket gates are installed at the Start Date, the Combined Effective Date or the LSER Station Transfer Date (as the case may be) or have since been installed;
 - (iv) **"Last Train"** means the last timetabled Passenger Service to arrive at or depart from such Station; and
 - (v) **"LSER Station Transfer Date"** means the date upon which the Franchisee becomes the Facility Owner in respect of a Transfer Station.
- (c) The provisions of paragraph 2 of Part 2 to Schedule 6.1 (Committed Obligations and Related Provisions) shall apply (mutatis mutandis) in relation to this paragraph 3.3.

3.4 **[REDACTED³⁶⁴]**

3.5 **Ticket Vending Machines**

- (a) Subject to obtaining any consents that may be required under the relevant Station Leases and/or Access Agreements (the **"Relevant TVM Consent"**), the Franchisee shall on or before 30 September 2016 install a ticket vending machine at each of the following Stations: Appledore, Ashurst, Bishopstone, Crews Hill, Doleham, Newhaven Harbour, Normans Bay, Nutfield, Ore, Pevensey Bay, Southease, Three Oaks and Winchelsea.
- (b) The Franchisee shall immediately notify the Secretary of State where it has not been able to obtain a Relevant TVM Consent in respect of any Station referred to in paragraph 3.5(a) (the **"Original TVM Station"**) and shall as soon as reasonably practicable thereafter provide the Secretary of State with a written proposal (the **"TVM Proposal"**) identifying one or more

³⁶⁴ 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.

alternative Stations at which it considers it may be appropriate to install a ticket vending machine (an "**Alternative TVM Location**").

- (c) The TVM Proposal shall provide an explanation as to why the Franchisee considers each such Alternative TVM Location to be an appropriate location for the installation of a ticket vending machine and identify the cost of installing a ticket vending machine at such Alternative TVM Location.
- (d) Based on the TVM Proposal, the Franchisee and the Secretary of State shall agree (or in the absence of agreement, the Secretary of State shall reasonably determine) the Alternative TVM Location at which the Franchisee shall be required to install a ticket vending machine in place of the Original TVM Station, provided that the cost to the Franchisee of installing such ticket vending machine at the Alternative TVM Location shall not exceed the costs which would have been incurred by the Franchisee in installing a ticket vending machine at the Original TVM Station. Following the date upon which the parties agree or the Secretary of State reasonably determines an Alternative TVM Location the obligation of the Franchisee to install a ticket vending machine at the Original TVM Station pursuant to paragraph 3.5(a) shall be an obligation to install such ticket vending machine at the Alternative TVM Location by the date specified in paragraph 3.5(a).
- (e) The provisions of paragraph 2 of Part 2 to Schedule 6.1 (Committed Obligations and Related Provisions) shall apply (mutatis mutandis) in relation to this paragraph 3.5.

3.6 **Extension of Penalty Fares**

Without prejudice and in addition to its obligations in paragraph 3.13 of Schedule 1.4 (Passenger Facing Obligations) and subject to the approval of the Secretary of State under Section 130 of the Act, the Franchisee shall by 30 September 2016 update the Penalty Fares Scheme so as to introduce a Franchise wide penalty fares scheme.

3.7 **Marketing of Revenue Protection Activities**

The Franchisee shall introduce a series of marketing campaigns to publicise the risks of fare evasion and publish the results of high-profile revenue protection activities (such as station blocks) undertaken by the Franchisee at stations (including details of convicted fare evaders).

3.8 **Revenue Protection App**

The Franchisee shall on or before 30 September 2015 introduce and operate a new revenue protection feature within a dedicated smartphone and tablet App (which includes an electronic web-based penalty fares feature) so as to improve the process of issuing Penalty Fares.

4. **Marketing Plan**

- 4.1 The Marketing Plan applicable as at the Start Date is in the agreed terms marked **MP**. In each Franchisee Year during the Franchise Term the Franchisee shall spend no less than the amount specified in Column 2 of the table in paragraph 4.2(e) for that Franchisee Year ("**Agreed Marketing Spend**") on such marketing activities as agreed by the Franchisee and the Secretary of State (or on failure to agree, as

reasonably determined by the Secretary of State) and identified in the Marketing Plan provided that:

- (a) if the Franchise terminates part way through a Franchisee Year, the commitment will be regarded as fulfilled where the expenditure to the date of termination is consistent with fulfilment of the Marketing Plan over the entire Franchisee Year if there had been no such termination (and to the extent that the expenditure is less than is so consistent, then without prejudice to the Secretary of State’s other rights and remedies, the amount of the shortfall shall be regarded as an underspend and be recoverable by the Secretary of State as specified in paragraph 4.1(b));
- (b) within 10 days of the end of each Franchisee Year a statutory director of the Franchisee shall certify the amount of the marketing expenditure actually incurred by the Franchisee in respect of that Franchisee Year and if such amount is less than the aggregate of the Agreed Marketing Spend for that Franchisee Year (“**Year to Date Marketing Spend**”), then without prejudice to the Secretary of State’s other rights and remedies, the Franchisee shall pay to the Secretary of State (as a debt) the difference between such lesser amount and the Year to Date Marketing Spend within 3 days of such certificate being issued. The Franchisee shall provide such information as the Secretary of State shall reasonably require for the purposes of verifying the information contained in the certificate provided and the Secretary of State may require a further balancing payment to be made if he reasonably determines that the original payment made by the Franchisee was less than the Year to Date Marketing Spend due to have been made by that date;
- (c) as part of the review process set out in paragraph 4.3, the Secretary of State may (at his absolute discretion) permit the Franchisee to carry expenditure required for a later year to be carried over to an earlier year (or vice versa), in which case the Agreed Marketing Spend for that Franchisee Year shall be reduced or increased (as applicable) by a corresponding amount; and
- (d) the Agreed Marketing Spend in respect of each Franchisee Year (other than the first Franchisee Year) shall be subject to indexation by the Retail Prices Index in the same way as the component of VCRPI is indexed in Schedule 8.2 (Annual Franchise Payments) of the Franchise Agreement; and
- (e) the Agreed Marketing Spend in respect of each Franchisee Year is as specified in Column 2 of the table below:

Column 1	Column 2
Franchisee Year	Agreed Marketing Spend
Year 1 (part year)	£3,000,000
Year 2	£11,500,000
Year 3	£12,500,000
Year 4	£12,500,000
Year 5	£12,500,000

Column 1	Column 2
Franchisee Year	Agreed Marketing Spend
Year 6	£12,500,000
Year 7	£12,500,000
Year 8 (part year)	£6,000,000
First year of up to 26 Reporting Periods Extension	£12,500,000
Second year of up to 26 Reporting Periods Extension	£12,500,000

4.2 As part of each Business Plan to be submitted after the Start Date under paragraph 2.3 of Schedule 13 (Information and Industry Initiatives) the Franchisee shall deliver to the Secretary of State for his approval an updated version of the Marketing Plan in respect of the remainder of the Franchise Term:

- (a) in substantially the same form as the immediately preceding Marketing Plan delivered to the Secretary of State in accordance with the Franchise Agreement:
- (b) revised to:
 - (i) describe the Franchisee's planned expenditure and activities to advertise, market and promote the Passenger Services for each Franchisee Year (or part Franchisee Year) during the remainder of the Franchise Term (such description being in detail for the next Franchisee Year and in outline for subsequent Franchisee Years);
 - (ii) include details of the Franchisee's planned arrangements to measure the effectiveness of such expenditure and activities; and
 - (iii) confirm how the Franchisee will improve the Marketing Plan and increase the effectiveness of its expenditure and activities; and
- (c) containing a statement of the differences between such updated Marketing Plan and the immediately preceding Marketing Plan delivered to the Secretary of State in accordance with the Franchise Agreement, together with an explanation of such differences.

The Franchisee may also apply to the Secretary of State to make interim revisions to the Marketing Plan in the course of any Franchisee Year.

4.3 The Marketing Plan shall be reviewed by the Franchisee and the Secretary of State every 12 months as part of the Business Plan to be submitted after the Start Date under paragraph 2.3 of Schedule 13 (Information and Industry Initiatives), or more frequently upon the Secretary of State's request, at a meeting called by the Secretary of State for this purpose. The Franchisee shall:

- (a) produce evidence to the Secretary of State's satisfaction that it has incurred the expenditure and carried out the activities shown in the Marketing Plan for the period under review;
 - (b) report on the effectiveness of such expenditure and activities; and
 - (c) confirm how the effectiveness of the expenditure and activities could be further improved by explaining the successes and failures of such Marketing Plan and how the Franchisee plans to build on successes and address and rectify failures going forward.
- 4.4 At the end of each Franchisee Year and as part of the review process set out in paragraph 4.3 the Secretary of State may, at his absolute discretion reduce or increase the amount of the Agreed Marketing Spend (the "**Substitute Marketing Spend**") applicable in respect of the following Franchisee Year. If the Secretary of State exercises his discretion pursuant to this paragraph 4.4 in respect of a particular Franchisee Year then:
- (a) a Qualifying Change shall occur and for the purposes of that Change the only Revised Input shall be the substitution of the then current Agreed Marketing Spend for that Franchisee Year with the Substitute Marketing Spend; and
 - (b) the Franchisee's obligation under this paragraph 4 in respect of that Franchisee Year shall be an obligation to spend the Substitute Marketing Spend and all references to Agreed Marketing Spend under this paragraph 4 shall be to Substitute Marketing Spend in respect of that Franchisee Year.

5. **The Specified Projects**

- 5.1 The Franchisee shall from the Start Date until the completion of each Specified Project co-operate in good faith with all relevant parties responsible for the delivery of such Specified Project with the intention of assisting its timely, efficient and cost effective completion. To the extent that any Specified Project leads to the Franchisee having rights under railway industry procedures including Network Change or Station Change the Franchisee shall not act in a way designed to directly or indirectly prevent, prejudice or frustrate the delivery of such Specified Project and the Franchisee shall not unreasonably raise any objection under any railway industry procedure including Network Change or Station Change.
- 5.2 The Franchisee shall provide such information in respect of the Specified Projects as the Secretary of State may reasonably request from time to time.
- 5.3 For the purposes of this paragraph 5:
- (a) "**Specified Project**" means any of the following projects:
 - (i) the construction at Farringdon Station to be undertaken as part of the Crossrail Programme; and
 - (ii) the development of proposals for new stations at Wixams, Chesterton and Cricklewood - Brent Cross and if applicable, the implementation of these proposals,

together with such other infrastructure and station projects which impact on the routes over which the Passenger Services are operated (including those which are required to be delivered in consequence of a high level

output specification or the operation of the high level output specification change process) and as are notified to the Franchisee by the Secretary of State from time to time; and

- (b) **"Station Change"** has the meaning given to the term "Proposal for Change" under the Station Access Conditions.

6. **ERTMS Programme**

6.1

- (a) The Franchisee shall:
- (i) from the Start Date until completion of the implementation of the ERTMS Programme co-operate in good faith with the relevant third parties involved in the implementation of the ERTMS Programme (including Network Rail and the relevant rolling stock providers) with the intention of ensuring its timely, efficient and cost effective completion and, in particular assisting in the development and implementation of the programme for the design and fitment of the relevant ERTMS equipment on the first Rolling Stock Unit of each class of rolling stock comprised in the Train Fleet and used for the purposes of operating the Passenger Services on the ERTMS Enabled Network (the **"First in Class Unit"**) and the testing and commissioning of such equipment on each First in Class Unit. It is acknowledged by the Secretary of State and the Franchisee that Network Rail is responsible for the capital costs for the design and fitment of the relevant ERTMS equipment on each First in Class Unit;
 - (ii) prepare a plan (and keep such plan under review and if necessary updated) which addresses how it will deliver those activities for the implementation of the ERTMS Programme for which it is responsible including:
 - (A) the training of Franchise Employees who are drivers and other relevant Franchise Employees;
 - (B) the obtaining of such approvals and consents as may be required for the retro fitment of the relevant equipment to the other Rolling Stock Units (other than the First In Class Units) comprised in the Train Fleet as are to be used for the operation of the Passenger Services on the ERTMS Enabled Network (the **"Affected Train Fleet"**);
 - (C) the installation, testing and commissioning of the relevant ERTMS equipment on each unit comprised in the Affected Train Fleet; and
 - (D) the maintenance of any such ERTMS equipment fitted on the Affected Fleet and the First in Class Units,(the **"Franchisee ERTMS Plan"**).

Any Franchisee ERTMS Plan prepared by the Franchisee pursuant to this paragraph shall be prepared on the basis that is consistent with the Proposed ERTMS Implementation Plan;

- (iii) implement the Franchisee ERTMS Plan in accordance with its terms; and
 - (iv) following the implementation of ERTMS on any part of the routes specified in the Proposed ERTMS Implementation Plan (the "**ERTMS Enabled Network**") co-operate, in good faith, with Network Rail, the lessors of the Affected Train Fleet and the First in Class Units and other relevant third parties, with a view to ensuring the on-going efficient operation of the Passenger Services operated on the ERTMS Enabled Network including by working together with Network Rail, the lessors of the Affected Train Fleet and the other relevant third parties to resolve any compatibility issues that may arise between the train borne equipment and the trackside equipment.
- (b) If at any time the Secretary of State (acting reasonably) is satisfied that the Franchisee has not complied or is not likely to comply with its obligations in this paragraph 6.1 he may at his discretion, and entirely without prejudice to his other rights consequent upon the relevant contravention, serve a Remedial Plan Notice pursuant to paragraph 1.1 of Schedule 10.1 (Remedial Plans and Remedial Agreements).

6.2 The Franchisee shall at the request of the Secretary of State provide to him (as soon as reasonably practicable and in any event within five working days following the receipt by the Franchisee of any such request) such information (including progress reports and the latest Franchisee ERTMS Plan as at the date of such request) as the Secretary of State may reasonable require in relation to the implementation of the ERTMS Programme including for the purposes of

- (a) satisfying himself that:
 - (i) the Franchisee ERTMS Plan is robust and deliverable; and
 - (ii) the implementation of the ERTMS Programme is being undertaken in accordance with the Proposed ERTMS Implementation Plan; and
- (b) reporting on progress in relation to matters relating to the implementation of the ERTMS Programme (including progress on the implementation of the Franchisee ERTMS Plan).

The Franchisee shall, upon reasonable notice, attend any such meeting as the Secretary of State may reasonably require for the purposes of discussing and explaining the Franchisee ERTMS Plan (including progress on the implementation of such plan).

6.3 The Franchisee shall use all reasonable endeavours to ensure that any Track Access Agreement that it enters into with Network Rail as required pursuant to paragraph 1.1(a) of Schedule 6.4 (Integration of the Southern Franchise Services) reflects the following principles:

- (a) there will be no right for the Franchisee to claim compensation from Network Rail under Condition G.2 of the Network Code in relation to the direct or indirect consequences of any and all impacts on the Passenger Services due to the implementation of the ERTMS Programme except in the circumstances provided in paragraph 6.3(b) (a "**Network Change Compensation Claim**"); and
- (b) the Franchisee will have the right to claim under Condition G.2 of the Network Code for any additional costs it incurs where there is a material change to the actual implementation plans (including the relevant timescales for the delivery of such plans) adopted by Network Rail in respect of the ERTMS Programme when compared to the plans as specified in the Proposed ERTMS Implementation Plan except where such material change is wholly attributable to the actions or inactions of the Franchisee.

6.4 If and to the extent that the Track Access Agreement entered into by the Franchisee pursuant to paragraph 1.1(a) of Schedule 6.4 (Integration of the Southern Franchise Services) does not reflect any of the principles set out in paragraph 6.3 including as a result of:

- (a) the Franchisee not being able to obtain the ORR's approval to any such terms; or
- (b) the Franchisee not complying with its obligations under paragraph 6.3 and entirely without prejudice to the other rights the Secretary of State may have under the Franchise Agreement consequent upon a contravention by the Franchisee of the provisions of paragraph 6.3,

then the Franchisee shall immediately pay to the Secretary of State (as a debt), an amount equal to any amounts received by the Franchisee from Network Rail in respect of any Network Change Compensation Claim(s). Any amounts payable by the Franchisee to the Secretary of State pursuant to this paragraph 6.4 shall be paid on the next Payment Date following receipt by the Franchisee of any such amounts from Network Rail or where no such Payment Date exists shall be paid within 30 days of receipt by the Franchisee of any such amounts from Network Rail.

7. **Entitlement to compensation from Network Rail**

7.1 **Interpretation**

- (a) In this paragraph 7 except to the extent the context otherwise requires, words and expressions defined in the applicable Track Access Agreement shall have the same meanings when used herein.
- (b) The commercial intention of the parties is that:
 - (i) all sums payable by or to Network Rail pursuant to Schedule 8 of the Track Access Agreement in respect of Network Rail's performance (as represented as at the date of this Agreement in Network Rail Performance Sums and excluding compensation for Sustained Poor Performance) shall be for the benefit or account respectively of the Secretary of State;
 - (ii) sums payable by Network Rail in respect of the level of Network Rail performance characterised at the date of this

Agreement and from time to time as Sustained Poor Performance shall be:

- (A) for the benefit of the Franchisee in so far as they relate to compensation for costs incurred and loss of Ancillary Revenue; and
 - (B) for the Secretary of State in so far as they relate to loss of Revenue (except that the Franchisee shall be entitled to retain 10% of amounts received from Network Rail in respect of such Revenue losses);
- (iii) sums payable by Network Rail pursuant to Schedule 4 of the Track Access Agreement shall be:
- (A) for the benefit of the Franchisee in so far as they relate to compensation for costs incurred and loss of Ancillary Revenue; and
 - (B) for the Secretary of State in so far as they relate to loss of Revenue (except that the Franchisee shall be entitled to retain 10% of amounts received from Network Rail in respect of such Revenue losses relating to a Type 3 Liability Claim and/or an SPD Claim).
- (c) The following provisions in this paragraph 7 set out the mechanisms which the parties have agreed to give effect to this intention based on the current Track Access Agreement (based on the ORR's Track Access passenger model contract as at the date of this Agreement) and without limiting Clause 1.1(I) any relevant Change (including any Change as a consequence of a Charge Variation) shall take into account this commercial intention.

7.2 **Schedule 8 Payments/Receipts**

- (a) Immediately upon receipt of any such statement from Network Rail, the Franchisee shall provide to the Secretary of State the statements of allocated responsibility for incidents made by Network Rail for each day (including any further statements and/or adjustments) as provided by Network Rail to the Franchisee pursuant to paragraph 6 of Schedule 8 of the Track Access Agreement.
- (b) The Franchisee shall, immediately upon receipt of such statement from Network Rail, provide to the Secretary of State any statement (together with such supporting documentation) notifying the Franchisee of the Performance Sums for which Network Rail or the Franchisee is liable in respect of a Reporting Period as provided by Network Rail to the Franchisee pursuant to paragraph 11 of Schedule 8 of the Track Access Agreement.
- (c) In respect of any Reporting Period where the value of NRPS as calculated pursuant to paragraph 9 of Schedule 8 of the Track Access Agreement:
 - (i) is less than zero the Franchisee shall, by way of adjustment to Franchise Payments, pay to the Secretary of State the amount of such NRPS; and

- (ii) is more than zero the Secretary of State shall, by way of adjustment to Franchise Payments, pay to the Franchisee the amount of such NRPS.
 - (iii) Any payment under this paragraph 7.2(c) shall be paid, by way of adjustment to Franchise Payments, on the next Payment Date following the date that is 35 days after the end of that Reporting Period.
 - (iv) Any payment under this paragraph 7.2(c) which is due and payable in respect of a Reporting Period during the Franchise Period and which has not been calculated and paid during the Franchise Period shall be paid (as a debt) by the Franchisee to the Secretary of State or the Secretary of State to the Franchisee (as the case may be) within 35 days of the same being calculated (or in the case of any payment due from the Secretary of State, within 35 days of the date of receipt of the relevant statement evidencing the calculation).
- (d) The Franchisee shall exercise such rights as it may have in relation to the allocation of responsibility for Minutes Delay and the calculation of Performance Sums (including the rights to dispute such allocation or calculation of Performance Sums) in such manner as a skilled and experienced franchised Train Operator, bearing the farebox revenue risk in relation to the franchise and seeking to maximise its profit consistent with its other obligations (including under its franchise agreement), would reasonably be expected to act.
- (e) Where the Secretary of State reasonably considers that the Franchisee has not complied with its obligations under paragraph 7.2(d) he shall be entitled to:
 - (i) conduct or commission a nominee to conduct an audit of the Franchisee's compliance at the cost of the Franchisee. For the purposes of any such audit the Franchisee shall grant to the Secretary of State or his nominee access to all relevant data, records or information (in written and electronic form) and relevant Franchise Employees; and/or
 - (ii) require the Franchisee to exercise such rights as it may have under Schedule 8 of the Track Access Agreement in such manner as he considers appropriate in the circumstances including:
 - (A) notifying Network Rail of its intention to dispute (and disputing) any statement of allocated responsibility in accordance with paragraph 6.4 of Schedule 8 of the Track Access Agreement or calculation of the Performance Sums to which Network Rail is liable in accordance with paragraph 11.2 of Schedule 8 of the Track Access Agreement; and
 - (B) submitting such dispute to any relevant dispute resolution arrangements or procedures.

- (f) The Secretary of State shall, to the extent reasonably practicable, allow the Franchisee a reasonable opportunity to make representations to him concerning the exercise by the Franchisee of any of its rights referred to in this paragraph 7.2(d) prior to exercising any of his rights under paragraph 7.2(e).

7.3 **Compensation for Sustained Poor Performance**

- (a) In connection with the exercise of such rights as it may have under paragraph 18 of Schedule 8 of the Track Access Agreement to make a claim against Network Rail for the recovery of Relevant Losses under paragraph 18 of Schedule 8 of the Track Access Agreement the Franchisee shall act in such manner as a skilled and experienced Train Operator, bearing the farebox revenue risk in relation to the franchise and seeking to maximise its profit consistent with its other obligations under the Franchise Agreement, would reasonably be expected to act.
- (b) Where the Secretary of State reasonably considers that the Franchisee has not complied with its obligations under paragraphs 7.3(a) the provisions of paragraphs 7.2(e)(ii) and 7.2(f) shall apply, mutatis mutandis.
- (c) The Franchisee shall pay to the Secretary of State the amount that is equivalent to 90% (ninety per cent.) of any amounts that the Franchisee is due to receive from Network Rail pursuant to paragraph 18.2 of Schedule 18 of the Track Access Agreement to the extent that such sums relate to compensation for loss of Revenue (the "**SPP Compensation Amounts**").
- (d) Any SPP Compensation Amounts shall be paid by the Franchisee to the Secretary of State, by way of adjustment to Franchise Payments, on the next Payment Date falling no less than 7 days from the date upon which any payment from Network Rail to the Franchisee pursuant to paragraph 18.2 of Schedule 18 of the Track Access Agreement is due to be paid under the Track Access Agreement provided that where the date upon which any payment from Network Rail to the Franchisee pursuant to paragraph 18.2 of Schedule 18 of the Track Access Agreement is due to be paid under the Track Access Agreement falls on or after the Franchise Period then any such SPP Compensation Amounts shall be paid (as a debt) by the Franchisee to the Secretary of State within 35 days of such date.
- (e) The Franchisee shall:
 - (i) ensure that any claim it makes to Network Rail pursuant to this paragraph is disaggregated such that any claims relating to loss of Revenue, loss of Ancillary Revenue and increased costs are separately identified in any such claim; and
 - (ii) not act or omit to act in any way such that sums to which the Secretary of State would otherwise be entitled in respect of Sustained Poor Performance are compromised or reduced in order to benefit in any way the Franchisee.

7.4 **Schedule 4 Payments/Receipts**

- (a) Immediately upon receipt of any Day 42 Statement from Network Rail in respect of any Reporting Period, the Franchisee shall provide to the Secretary of State such Day 42 Statement.

- (b) In connection with the exercise of such rights as it may have under Schedule 4 of the Track Access Agreement to make a compensation claim against Network Rail in relation to a Type 1 Restriction of Use, Type 2 Restriction of Use or a Type 3 Restriction of Use or to initiate or make a Type 3 Liability Claim or SPD Claim, the Franchisee shall act in such manner as a skilled and experienced franchised Train Operator, bearing the farebox revenue risk in relation to the franchise and seeking to maximise its profit consistent with its other obligations (including under its franchise agreement), would reasonably be expected to act.
- (c) Where the Secretary of State reasonably considers that the Franchisee has not complied with its obligations under paragraph 7.4(b) he shall be entitled to:
 - (i) require the Franchisee to exercise such rights as it may have under Schedule 4 of the Track Access Agreement in such manner as he considers appropriate in the circumstances including:
 - (A) requiring the Franchisee to exercise any such rights it may have under Schedule 4 of the Track Access Agreement to initiate an SPD Claim or a Type 3 Liability Claim including by the issue of an ROU Claim Notice in relation to a Type 3 Liability Claim or an SPD Claim Notice in relation to an SPD Claim; or
 - (B) requiring the Franchisee to exercise its rights under any of paragraphs 10 or 13.2 of Schedule 4 of the Track Access Agreement.
- (d) In relation to a Type 1 Restriction of Use, the Franchisee shall pay to the Secretary of State an amount that is equivalent to the amount that the Franchisee is due to receive from Network Rail as compensation for loss of Revenue on the occurrence of a Type 1 Restriction of Use as calculated in accordance with paragraph 3 of Schedule 4 of the Track Access Agreement.
- (e) In relation to a Type 2 Restriction of Use, the Franchisee shall pay to the Secretary of State an amount that is equivalent to the amount that the Franchisee is due to receive from Network Rail as compensation for loss of Revenue on the occurrence of a Type 2 Restriction of Use as calculated in accordance with paragraph 3 of Schedule 4 of the Track Access Agreement.
- (f) In relation to a Type 3 Restriction of Use where no Type 3 Liability Claim has been made, the Franchisee shall pay to the Secretary of State an amount that is equivalent to the amount that the Franchisee is due to receive from Network Rail as compensation for loss of Revenue on the occurrence of a Type 3 Restriction of Use as calculated in accordance with paragraph 3 of Schedule 4 of the Track Access Agreement.
- (g) In relation to a Type 3 Restriction of Use where a Type 3 Liability Claim or an SPD Claim has been made, the Franchisee shall pay to the Secretary of State the amount that is equivalent to:
 - (i) 90% (ninety per cent.) of any amounts that the Franchisee is due to receive from Network Rail in respect of such Type 3 Liability Claim as calculated in accordance with paragraph 7 of Schedule 4 of the Track Access Agreement; and

- (ii) 90% (ninety per cent.) of any amounts that the Franchisee is due to receive from Network Rail in respect of such SPD Claim as calculated in accordance with paragraph 8 of Schedule 4 of the Track Access Agreement,

in each case, to the extent that such amounts relate to compensation for loss of Revenue.

- (h) Where in relation to a Type 3 Restriction of Use there is a Type 3 Liability Claim or an SPD Claim for loss of Revenue and it is determined or agreed for the purpose of the Track Access Agreement that there has been:

- (i) an overpayment by Network Rail to the Franchisee of compensation for loss of Revenue relating to any such Type 3 Restriction of Use or such SPD Claim (as the case may be) which the Franchisee is required under the Track Access Agreement to repay to Network Rail then the Secretary of State shall pay to the Franchisee such amount as is necessary for the purposes of ensuring that the amount of compensation for loss of Revenue retained by the Secretary of State is 90% of the amount of compensation for loss of Revenue in relation to any such Type 3 Restriction of Use or such SPD Claim (as the case may be) as determined in accordance with paragraph 7 of Schedule 4 of the Track Access Agreement in respect of such Type 3 Restriction of Use or paragraph 8 of Schedule 4 of the Track Access Agreement in respect of such SPD Claim; or

- (ii) a shortfall in respect of the compensation for loss of Revenue paid by Network Rail to the Franchisee in relation to any such Type 3 Restriction of Use or such SPD Claim (as the case may be) then the Franchisee shall pay to the Secretary of State such amount as is necessary for the purposes of ensuring that the amount of compensation for loss of Revenue paid to the Secretary of State is 90% of the amount of compensation for loss of revenue in relation to any such Type 3 Restriction of Use or such SPD Claim (as the case may be) as determined in accordance with paragraph 7 of Schedule 4 of the Track Access Agreement in respect of such Type 3 Restriction of Use or paragraph 8 of Schedule 4 of the Track Access Agreement in respect of such SPD Claim.

- (i) Any amounts payable by the Franchisee to the Secretary of State or the Secretary of State to the Franchisee pursuant to this paragraph 7.4 in any Reporting Period shall be paid, by way of adjustment to Franchise Payments, on the next Payment Date following the date that is:

- (i) for any such amounts that are not in dispute pursuant to paragraph 13 of Schedule 4 of the Track Access Agreement, 35 days after the end of that Reporting Period; and
- (ii) for any such amounts that are in dispute pursuant to paragraph 13 of Schedule 4 of the Track Access Agreement, 28 days after any such dispute is resolved or determined.

- (j) Any payment under this paragraph 7.4 which is due and payable in respect of a Reporting Period during the Franchise Period and which has not been calculated or determined and paid during the Franchise Period shall be paid (as a debt) by the Franchisee to the Secretary of State or the Secretary of State to the Franchisee (as the case may be) within 35 days of the same being calculated or determined (or in the case of any payment due from the Secretary of State, within 35 days of the date of receipt from the Franchisee of notice evidencing the calculation or determination).
- (k) The Franchisee shall
 - (i) ensure that any Type 3 Liability Claim or SPD Claim that it makes to Network Rail pursuant to Schedule 4 of the Track Access Agreement is disaggregated such that any claims relating to loss of Revenue, loss of Ancillary Revenue and increased costs are separately identified in any such claim; and
 - (ii) not act or omit to act in any way such that sums to which the Secretary of State would otherwise be entitled in respect of any Type 3 Liability Claim or SPD Claim are compromised or reduced in order to benefit in any other way the Franchisee.

7.5 Payments by Network Rail to Franchisee pursuant to Condition L of the Depot Access Conditions

- (a) The Franchisee shall promptly notify the Secretary of State if it is entitled to make an indemnity claim against Network Rail under Condition L of the Depot Access Conditions.
- (b) If and to the extent requested by the Secretary of State the Franchisee shall, following consultation with the Secretary of State:
 - (i) make any such indemnity claim under Condition L of the Depot Access Conditions as may be directed by the Secretary of State; and
 - (ii) exercise such rights as it may have under the relevant Access Agreement or Depot Access Condition (as the case may be) in such manner and take such action as the Secretary of State may require in respect of any such claim (including in relation to any agreement of the amount of any compensation payable and including submitting any relevant dispute to any relevant dispute resolution procedures).
- (c) The Franchisee shall not, without the consent of the Secretary of State, agree or propose to agree a value in relation to any indemnity under Condition L of the Depot Access Conditions.
- (d) The Franchisee shall ensure that any claim it makes to Network Rail under Condition L of the Depot Access Conditions is disaggregated such that any claims relating to loss of Revenue, loss of Ancillary Revenue and increased costs are separately identified in any such claim. The Franchisee shall not amend, agree or propose to amend, the provisions relating to the payment of compensation under Condition L of the Depot Access Conditions

(including by agreeing or proposing to agree any commercial agreements or arrangements which will have the effect of excluding the application of such conditions) without the consent of the Secretary of State.

- (e) The Franchisee shall pay to the Secretary of State any compensation sums that it is due to receive from Network Rail under Condition L of the Depot Access Conditions to the extent that such sums relate to compensation for loss of Revenue ("**Condition L Compensation Amounts**"). Any Condition L Compensation Amounts shall be paid by the Franchisee to the Secretary of State, by way of adjustment to Franchise Payments, on the next Payment Date falling no less than 7 days from the date upon which payment from Network Rail to the Franchisee relating to any such Condition L Compensation Amount is due to be paid under the Depot Access Conditions provided that where the date upon which any such payment from Network Rail to the Franchisee is due to be paid falls on or after the Franchise Period then any Condition L Compensation Amounts shall be paid (as a debt) by the Franchisee to the Secretary of State within 35 days of such date.

7.6 **Payments under Part G or Part F of the Network Code**

- (a) The Franchisee shall promptly notify the Secretary of State:
- (i) on receipt of any proposal for Vehicle Change (as such term is defined under the Network Code) and specify in any such notice whether it is entitled to claim compensation under Part F of the Network Code or otherwise from Network Rail or any other party in respect of any consequences of any such Vehicle Change on the operation of the Passenger Services (and if so the amount of any such compensation disaggregated such that amounts relating to loss of Revenue, loss of Ancillary Revenue and costs are separately identified);
 - (ii) on receipt of any proposal for Network Change (as such term is defined under the Network Code) and specify in any such notice whether it is entitled to claim compensation under Part G of the Network Code or otherwise from Network Rail or any other party in respect of any consequences of any such Network Change on the operation of the Passenger Services (and if so the amount of any such compensation disaggregated such that amounts relating to loss of Revenue, loss of Ancillary Revenue and costs are separately identified);
- (b) If and to the extent requested by the Secretary of State the Franchisee shall, following consultation with the Secretary of State:
- (i) respond to any Vehicle Change or Network Change (as the case may be) as may be directed by the Secretary of State; and
 - (ii) exercise such rights as it may have under the relevant Access Agreement or Network Code (as the case may be) in such manner and take such action as the Secretary of State may require in respect of any such Vehicle Change or Network Change (including in relation to any agreement of

the amount of any compensation payable and including submitting any relevant dispute to any relevant dispute resolution procedures).

- (c) The Franchisee shall not, without the consent of the Secretary of State, agree or propose to agree a value in relation to any compensation payable in relation to any Vehicle Change or Network Change (including in respect of any benefit to be taken into account in determining the amount of the compensation payable in relation to any such Vehicle Change or Network Change (as the case may be) pursuant to condition F 3.2 or condition G2.2 or condition G4.2 (respectively)).
- (d) The Franchisee shall ensure that any claim it makes to Network Rail or any other party in respect of any Vehicle Change or Network Change is disaggregated such that any claims relating to loss of revenue and increased costs are separately identified in any such claim. The Franchisee shall not amend, agree or propose to amend, the provisions relating to the payment of compensation under Part G and/or Part F of the Network Code (as appropriate) (including by agreeing or proposing to agree any commercial agreements or arrangements which will have the effect of excluding the application of such conditions) without the consent of the Secretary of State.
- (e) It is acknowledged that in determining the amount of compensation to be paid in respect of a Network Change or Vehicle Change account is taken of any benefit to be obtained or likely to be obtained in the future by the Franchisee as a consequence of the Vehicle Change or Network Change (as the case may be), which for this purpose shall include any benefit which the Franchisee would have obtained or been likely to have obtained but which the Secretary of State by virtue of the provisions of this Franchise Agreement will or is likely to obtain instead of the Franchisee (the "**Cost or Revenue Benefit**"). Accordingly where in determining the amount of compensation payable by Network Rail to the Franchisee in respect of a Network Change or Vehicle Change (as the case may be):
 - (i) no Cost or Revenue Benefit is considered to be derived or is taken into account as a consequence of such Network Change or Vehicle Change then the Franchisee shall, by way of adjustment to Franchise Payments, pay to the Secretary of State the amount of compensation due to be received from Network Rail in respect of any such Vehicle Change or Network Change (as the case may be) to the extent that such amounts relate to loss of Revenue; or
 - (ii) account is taken of the Cost or Revenue Benefit to be derived as a consequence of such Network Change or Vehicle Change and this results in the:
 - (A) Franchisee not receiving the compensation payments for any costs (including direct losses and expenses but only to the extent that these relate to costs) which it would otherwise have been entitled to receive as a consequence of the implementation of the Network Change or Vehicle Change (as the case may be) but for the Cost or Revenue Benefit (the "**Cost Claim**") then the Secretary of State shall, by way of adjustment to Franchise Payments, pay to the Franchisee the

amount of the Cost Claim foregone (for the avoidance of doubt, after taking into account any cost savings comprised in the Cost or Revenue Benefit); or

- (B) Franchisee not receiving on behalf of the Secretary of State the compensation payments for any loss of revenue which it would otherwise have been entitled to receive (and is required pursuant to paragraph 7.6(e)(i) to account for to the Secretary of State) as a consequence of the implementation of the Network Change or Vehicle Change (as the case may be) but for the Cost or Revenue Benefit (the "**Revenue Claim**") then the Franchisee shall, by way of adjustments to Franchise Payments, pay to the Secretary of State the amount of the Revenue Claim foregone (for the avoidance of doubt after taking into account any revenue benefit comprised in the Cost or Revenue Benefit).
- (iii) Any amounts payable pursuant to this paragraph 7.6 by the Secretary of State to the Franchisee or the Franchisee to the Secretary of State (as the case may be) shall be paid, by way of adjustment to Franchise Payments, on the next Payment Date falling no less than 7 days following the Agreed Payment Date. If the Agreed Payment Date falls on or after the Franchise Period then any such amounts shall be paid (as a debt) by the Secretary of State to the Franchisee or the Franchisee to the Secretary of State (as the case may be) within 30 days following the Agreed Payment Date. For purposes of this paragraph 7.6(e)(iii), the "**Agreed Payment Date**" means:
- (A) in the circumstances set out in paragraph 7.6(e)(i) the date upon which any such compensation amounts are due to be paid by Network Rail to the Franchisee under the Network Code; and
 - (B) in the circumstances set out in paragraph 7.6(e)(ii) the date upon which the Cost or Revenue Benefit to be derived as a consequence of the implementation of the Network Change or Vehicle Change is agreed or determined in accordance with the terms of the Network Code.

8. **LSER Related Provisions**

8.1 **LSER Thameslink Trading Agreements**

- (a) The Franchisee agrees and undertakes to:
 - (i) observe and comply with all the conditions and obligations on its part contained in each LSER Thameslink Trading Agreement;
 - (ii) agree, and take all steps which may be required to implement, any amendment to any LSER Thameslink

Trading Agreement as the Secretary of State may direct from time to time;

- (iii) take all such steps as may be required to terminate each or any LSER Thameslink Trading Agreement as the Secretary of State may direct from time to time;
 - (iv) except as otherwise directed by the Secretary of State pursuant to paragraph 8.1(a)(ii) or paragraph 8.1(a)(iii), not vary, agree to vary, waive performance of, terminate or in any other way deal with or change the terms of any LSER Thameslink Trading Agreement without the prior consent of the Secretary of State; and
 - (v) to enter into replacement LSER Thameslink Trading Agreements on materially the same commercial terms with, as the case may be, a successor operator who becomes the franchisee of all or part of the services provided by the LSER Franchisee or a successor operator to the LSER Franchisee except to the extent that the Secretary of State otherwise directs.
- (b) The Franchisee shall at the Secretary of State's request from time to time provide to the Secretary of State and (if and to the extent so requested by the Secretary of State) to the LSER Franchisee (or any successor operator to the LSER Franchisee) such information as the Secretary of State may reasonably request in connection with the planning, timetabling, diagramming and operation of the Franchise Services which may reasonably be expected for reasons in connection with the LSER Thameslink Trading Agreements to affect the planning, timetabling diagramming or operation of services by the LSER Franchisee (or any successor operator to the LSER Franchisee).

8.2 **Proposed Transfer of the LSER Thameslink Joint Passenger Services**

The Franchisee shall co-operate, in good faith, with the Secretary of State and/or the LSER Franchisee (or any successor operator to the LSER Franchisee) in connection with any proposal by the Secretary of State to transfer the operation of any Passenger Services from the Franchisee to the LSER Franchisee (or any successor operator to the LSER Franchisee) or any railway passenger services from the LSER Franchisee (or any successor operator to the LSER Franchisee) to the Franchisee (as the case may be).

8.3 **Station Transfers**

- (a) Subject to paragraph 8.3(b), the Franchisee shall by 21 December 2014 (or such other earlier or later date as the Secretary of State may otherwise direct) enter into leases (the "**Transfer Station Leases**") in respect of the following stations (such that from such date it becomes the Facility Owner at each such station):
- (i) Beckenham Hill;
 - (ii) Bellingham;
 - (iii) Catford;

- (iv) Crofton Park;
 - (v) Denmark Hill;
 - (vi) Nunhead; and
 - (vii) Ravensbourne.
- (b) It is acknowledged that the LSER Franchisee is currently the Facility Owner at the stations referred to in paragraph 8.3(a) (the "**Transfer Stations**"). Accordingly the Franchisee's obligation under paragraph 8.3(a) to enter into the Transfer Station Leases is subject to:
- (i) the LSER Franchisee (or a successor operator to the LSER Franchisee) agreeing to:
 - (A) surrender its rights in respect of each Transfer Station to which it is a party as at the date of such transfer; or
 - (B) novate or assign such station leases to the Franchisee; and
 - (ii) any counterparty to such station leases (other than the LSER Franchisee or a successor operator to the LSER Franchisee) agreeing to:
 - (A) any such surrender, assignment or novation (as the case maybe); and
 - (B) on the surrender of such station leases, enter into such Transfer Station Leases with the Franchisee.

The Franchisee shall use all reasonable endeavours to obtain the agreement of those parties required under paragraphs 8.3(b)(i) and 8.3(b)(ii).

8.4³⁶⁵ Class 377 Sub Leasing Arrangements

- (a) On the date of the 2017 LSER Capacity Enhancement Deed of Amendment, the Franchisee shall enter into the Class 377 (2017 LSER Capacity Enhancement) Sub-Lease Version 1 for the Class 377 (2017 LSER Capacity Enhancement) Units in the form set out in Schedule 3 to the 2017 LSER Capacity Enhancement Deed of Amendment.
- (b) On or before the date of expiry of the Class 377 (2017 LSER Capacity Enhancement) Sub-Lease Version 1, when directed by the Secretary of State, the Franchisee shall enter into the Class 377 (2017 LSER Capacity Enhancement) Sub-Lease Version 2 for the

³⁶⁵ 08/09/2017 (Date of Deed of Amendment) Contract variation agreed by the Secretary of State and Franchisee.

Class 377 (2017 LSER Capacity Enhancement) Units and the Class 377 (2016 OHA) Units in the form set out in Schedule 4 to the 2017 LSER Capacity Enhancement Deed of Amendment.

Each party shall bear its own costs and expenses incurred in connection with or arising out of the negotiation, preparation and execution of the Class 377 (2017 Capacity Enhancement) Sub-Lease Version 2 (including any costs relating to the negotiation, preparation and execution of any of the amendments required to be made to the Rolling Stock Lease and/or the Technical Support and Spares Supply Agreement in relation to the Class 377 units as a consequence of the entry into the Class 377 (2017 Capacity Enhancement) Sub-Lease Version 2).

- (c) [REDACTED³⁶⁶]
- (d) From the date upon which a Class 377 Sub Lease comes into full force and effect the Franchisee shall:
- (i) observe and comply with all the conditions and obligations on its part contained in such Class 377 Sub Lease;
 - (ii) (in the event that such Class 377 Sub Lease is the Class 377 (2017 LSER Capacity Enhancement) Sub-Lease Version 2) agree, and take all steps which may be required to implement, any amendment to the Class 377 (2017 LSER Capacity Enhancement) Sub-Lease Version 2 as the Secretary of State may direct from time to time;
 - (iii) (in the event that such Class 377 Sub Lease is the Class 377 (2017 LSER Capacity Enhancement) Sub-Lease Version 2) take all such steps as may be required to terminate the Class 377 (2017 LSER Capacity Enhancement) Sub-Lease Version 2 as the Secretary of State may direct from time to time;
 - (iv) except as otherwise directed by the Secretary of State pursuant to paragraph 8.4(d)(ii) and 8.4(d)(iii), not vary, agree to vary, waive performance of, terminate or in any other way deal with or change the terms of such Class 377 Sub Lease without the prior consent of the Secretary of State; and
 - (v) [REDACTED³⁶⁷]

³⁶⁶ 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.

³⁶⁷ 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.

(e) [REDACTED³⁶⁸]

8.5 ³⁶⁹Lead Operator for the LSER December 2014 Services

On or before 29 May 2015 the Franchisee shall undertake the process under the Ticketing and Settlement Agreement for changing the identity of the Lead Operator in relation to the Compulsory Inter-available Flows comprised in those railway passenger services described in paragraph (b) of the definition of TGN Franchise Services, such that the Franchisee becomes the Lead Operator, at least, in respect of those flows where the Franchisee is the principal revenue earner.

9. Southern Trading Arrangements

9.1 The Franchisee agrees and undertakes to:

- (a) observe and comply with all the conditions and obligations on its part contained in each Southern Trading Agreement;
- (b) agree, and take all steps which may be required to implement, any amendment to any Southern Trading Agreement as the Secretary of State may direct from time to time;
- (c) take all such steps as may be required to terminate each or any Southern Trading Agreement as the Secretary of State may direct from time to time;
- (d) except as otherwise directed by the Secretary of State pursuant to paragraph 9.1(b) or paragraph 9.1(c), not vary, agree to vary, waive performance of, terminate or in any other way deal with or change the terms of any Southern Trading Agreement without the prior consent of the Secretary of State; and
- (e) to enter into replacement Southern Trading Agreements on materially the same commercial terms with, as the case may be, a successor operator who becomes the franchisee of all or part of the services provided by the Southern Franchisee or a successor operator to the Southern Franchisee except to the extent that the Secretary of State otherwise directs.

³⁶⁸ 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.

³⁶⁹ 11 December 2014 - (Date of Contract Change Letter) – Contract variation agreed by the Secretary of State and Franchisee.

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11. **Customer Reports**

11.1 On or before each of the Start Date and the Combined Effective Date, the Franchisee shall publish a Customer Report. A Customer Report shall include the following information:

- (a) inform passengers of:
 - (i) the fact that a new Franchise has commenced;
 - (ii) the Start Date and the Combined Effective Date (as the case may be);
 - (iii) the term of the Franchise; and
 - (iv) the corporate identity of the Franchisee and the Franchisee's trading name;
- (b) an explanation of the immediate changes (if any) or short term changes in relation to the provision of the Franchise Services which the Franchisee intends to implement and the reasons for such changes;
- (c) an explanation of the Franchisee's opinion of the key customer priorities for the Franchise and how the Franchisee proposes to address them;
- (d) an explanation of the specific targets for performance and customer satisfaction and quality (as specified in Schedule 7 (Performance Benchmarks and PEM Regime) and ticketless travel (as specified in paragraph 2 of this Schedule 6.2) together with an explanation of the Franchisee's plan for achieving such targets;
- (e) an explanation of the Franchisee's key priorities for improving the customer experience; and
- (f) an explanation of the Franchisee's passenger engagement plans (including how passengers can provide their views on the future development of the Franchise and how those views would be acted upon by the Franchisee).

370 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.

11.2 **xiii** The Franchisee shall publish further Customer Reports in **November 2015**³⁷¹ and in each subsequent March and September during the Franchise Term, which shall include:

- (a) a summary of the commitments and targets highlighted in the immediately preceding Customer Report;
- (b) an explanation of whether and how such commitments and targets have been met (or if not met, why they have not been met);
- (c) an overview of the Franchisee's passenger engagement since the publication of the immediately preceding Customer Report and the Franchisee's key priorities from such engagement;
- (d) details of the Franchisee's targets and commitments for the subsequent periods and the Franchisee's plans for addressing passengers' priorities for improvements to the Franchise Services; and
- (e) bespoke content for each or any of the sub-brands of the Franchisee.

11.3 For the purposes of this paragraph 11 "**publish**" shall mean making available, free of charge:

- (a) booklets or other similar hard copy form:
 - (i) in respect of the Customer Reports published in accordance with paragraph 11.1, at each staffed Station;
 - (ii) in respect of the Customer Reports published in accordance with paragraph 11.2, at each station at which Passenger Services call and where the total aggregate number of entries and exits exceed 1,000,000 as reported in the document published by the ORR and entitled "Estimates of station usage 2011-12";
 - (iii) for distribution to Franchise Employees, local stakeholders and key industry partners; and
 - (iv) in electronic formats (including on the Franchisee's website, through social media channels and by sending email communications).

12. **Overnight Passenger Services to Luton Parkway Station**

12.1 To assist the Secretary of State in his decision on whether to continue to specify the Additional Luton Airport Overnight Services beyond the three year trial period currently specified in the Train Service Requirement and subject to paragraph 12.2, the Franchisee shall, on or before 30 June 2015 and every six months thereafter until 31 December 2018, provide to the Secretary of State a report

³⁷¹ 28 July 2015 - (Date of Contract Change Letter) – Contract variation agreed by the Secretary of State and Franchisee.

regarding the operation of the Luton Airport Overnight Services for the six months immediately preceding the date of any such report. Such report shall include the following information:

- (a) the best available estimate of the number of passengers using each of the Luton Airport Overnight Services (either to travel to/from Luton Airport Parkway station or other stations at which such passenger services call);
- (b) the estimated revenue arising from the provision of each of the Luton Airport Overnight Services;
- (c) the costs to the Franchisee for the operation of each of the Luton Airport Overnight Services; and
- (d) any other relevant information in respect of the operation of the Luton Airport Overnight Services that the Secretary of State may reasonably require from time to time.

12.2 The Secretary of State may require the Franchisee to provide the reports referred to in paragraph 12.1 at such other regular intervals as the Secretary of State may notify to the Franchisee provided that any such requirement shall not result in the Franchisee having to provide any more reports than those required pursuant to paragraph 12.1.

12.3 At the request of the Secretary of State the Franchisee shall, within 20 working days from the date of any such request, provide to the Secretary of State an estimate of the costs and revenues for the continued provision of the Additional Luton Airport Overnight Services (either in the form specified in the applicable Train Service Requirement or in a modified form) beyond December 2018.

12.4 For the purposes of this paragraph 12:

- (a) **“Additional Luton Airport Overnight Services”** means such of the railway passenger services arriving at, or departing from, Luton Airport parkway station between 0000 and 0700 (in both directions) as are required to be operated by the Franchisee only from the Passenger Change Date commencing in December 2015 until the Passenger Change Date commencing in December 2018;
- (b) **“Existing Luton Airport Overnight Services”** means such of the railway passenger services arriving at, or departing from, Luton Airport parkway station between 0000 and 0700 (in both directions) as are required to be operated by the Franchisee from the Start Date; and
- (c) **“Luton Airport Overnight Services”** means the Additional Luton Airport Overnight Services and the Existing Luton Airport Overnight Services.

13. **Route Efficiency Benefit Share**

13.1 The Franchisee shall obtain the prior consent of the Secretary of State prior to exercising any rights it may have under the Track Access Agreement or otherwise to opt out from the Route Efficiency Benefit Share Mechanism.

13.2 Where a Train Operator under a Previous Franchise Agreement has exercised its rights under a track access agreement to opt out from the Route Efficiency Benefit Share Mechanism the Franchisee shall take all steps necessary to ensure that it opts back into the Route Efficiency Benefit Share Mechanism including through

agreement of a new Track Access Agreement or a variation of an existing Track Access Agreement.

14. CMS Passenger Audit

14.1 The Secretary of State may at any time notify the Franchisee that he requires the CMS Passenger Model to be audited by an independent auditor appointed by the Secretary of State with the approval (not to be unreasonably withheld) of the Franchisee. The rights of the Secretary of State pursuant to this paragraph 14.1 can only be exercised once during the Franchise Term.

14.2 [REDACTED³⁷²]

14.3 [REDACTED³⁷³]

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Derogations

³⁷² 5 November 2014 (Date of Redactions Approval) – Where text has been omitted from the document this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

³⁷³ 5 November 2014 (Date of Redactions Approval) – Where text has been omitted from the document this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

APPENDIX TO SCHEDULE 6.2

PART 1 TO APPENDIX

Breach Initial Period Benchmark Table

Breach Initial Period Benchmark			
	Column 1	Column 2	Column 3
Periods	First Ticketless Travel Survey Period in the first Performance Calculation Year (2014/15 P7 – P9)	Second Ticketless Travel Survey Period in the first Performance Calculation Year (2014/15 P10– P13)	Last Ticketless Travel Survey Period in the first Performance Calculation Year (2015/16 P1– P3)
Benchmark value	3.304%	3.288%	3.272%

PART 2 TO APPENDIX**Ticketless Travel Benchmark**

Column 1		Column 2	Column 3
Performance Calculation Year	Ticketless Travel Survey Periods	Target Ticketless Travel Benchmark (%)	Breach Ticketless Travel Benchmark (%)
Year 1	2014/15 P07 to 2014/15 P09	2.804%	N/A
	2014/15 P10 to 2014/15 P13	2.788%	N/A
	2015/16 P01 to 2015/16 P03	2.772%	N/A
	2015/16 P04 to 2015/16 P06	2.757%	3.257%
Year 2	2015/16 P07 to 2015/16 P09	2.726%	3.226%
	2015/16 P10 to 2015/16 P13	2.694%	3.194%
	2016/17 P01 to 2016/17 P03	2.663%	3.163%
	2016/17 P04 to 2016/17 P06	2.632%	3.132%
Year 3	2016/17 P07 to 2016/17 P09	2.601%	3.101%
	2016/17 P10 to 2016/17 P13	2.569%	3.069%
	2017/18 P01 to 2017/18 P03	2.540%	3.040%
	2017/18 P04 to 2017/18 P06	2.519%	3.019%
Year 4	2017/18 P07 to 2017/18 P09	2.506%	3.006%
	2017/18 P10 to 2017/18 P13	2.500%	3.000%
	2018/19 P01 to 2018/19 P03	2.500%	3.000%
	2018/19 P04 to 2018/19 P06	2.500%	3.000%
Year 5	2018/19 P07 to 2018/19 P09	2.500%	3.000%
	2018/19 P10 to 2018/19 P13	2.500%	3.000%
	2019/20 P01 to 2019/20 P03	2.500%	3.000%
	2019/20 P04 to 2019/20 P06	2.500%	3.000%
Year 6	2019/20 P07 to 2019/20 P09	2.500%	3.000%
	2019/20 P10 to 2019/20 P13	2.500%	3.000%

Column 1		Column 2	Column 3
Performance Calculation Year	Ticketless Travel Survey Periods	Target Ticketless Travel Benchmark (%)	Breach Ticketless Travel Benchmark (%)
	2020/21 P01 to 2020/21 P03	2.500%	3.000%
	2020/21 P04 to 2020/21 P06	2.500%	3.000%
Year 7	2020/21 P07 to 2020/21 P09	2.500%	3.000%
	2020/21 P10 to 2020/21 P13	2.500%	3.000%
	2021/22 P01 to 2021/22 P03	2.500%	3.000%
	2021/22 P04 to 2021/22 P06	2.500%	3.000%
First Year of up to 26 Reporting Periods Extension	2021/22 P07 to 2021/22 P09	2.500%	3.000%
	2021/22 P10 to 2021/22 P13	2.500%	3.000%
	2022/23 P01 to 2022/23 P03	2.500%	3.000%
	2022/23 P04 to 2022/23 P06	2.500%	3.000%
Second year of up to 26 Reporting Periods Extension	2022/23 P07 to 2022/23 P09	2.500%	3.000%
	2022/23 P10 to 2022/23 P13	2.500%	3.000%
	2023/24 P01 to 2023/24 P03	2.500%	3.000%
	2023/24 P04 to 2023/24 P06	2.500%	3.000%

PART 3 TO APPENDIX**Annual Ticketless Travel Benchmark**

Column 1	Column 2	Column 3
Performance Calculation Year	Annual Target Ticketless Travel Benchmark (%)	Annual Breach Ticketless Travel Benchmark (%)
Year 1	2.757%	3.257%
Year 2	2.632%	3.132%
Year 3	2.519%	3.019%
Year 4	2.500%	3.000%
Year 5	2.500%	3.000%
Year 6	2.500%	3.000%
Year 7	2.500%	3.000%
First year of up to 26 Reporting Periods Extension	2.500%	3.000%
Second year of up to 26 Reporting Periods Extension	2.500%	3.000%

PART 4 TO APPENDIX**Payment Table**

Definitions	Amount (£)
TTB	3,200,000
TTP	6,300,000

SCHEDULE 6.3**TLP/TRSP Related Provisions****1. Definitions and Interpretation**

1.1 In this Schedule 6.3, except where the context otherwise requires, words and expressions defined in the MDCTA shall have the same meaning when used herein.

1.2 In this Schedule 6.3, except where the context otherwise requires, the following words and expressions shall have the following meanings:

“Automatic Train Operation” means the system to permit the automatic operation of the Units over the Core Thameslink Route;

“ATO Infrastructure” means:

- (a) all of the on-board train equipment installed on the Units to allow the use of Automatic Train Operation;
- (b) the Automatic Train Operation trackside infrastructure and train-borne signalling subsystem; and
- (c) such other equipment and infrastructure as is necessary for the operation of Automatic Train Operation;

“Backstop Date” means for each TLP Milestone Target, the date (if any) specified in Column 3 of the Table in respect of that TLP Milestone Target;

“Conventional Infrastructure” means the infrastructure required to deliver 20 trains per hour in both directions through the Core Thameslink Route including the following work packages; London Bridge Station works, London Bridge area structures strengthening programme, London Bridge area railway systems works (including track, power supply and conventional signalling renewals and upgrades) and the ‘outer areas’ works including stabling, depot connections, and Canal Tunnel commissioning

“Core Thameslink Route” means the railway route connecting London Blackfriars and London St Pancras International stations;

“ETCS” means European Train Control System;

“ETCS Infrastructure”	means:
	(a) all of on-board train equipment installed on the Units to allow the use of ETCS;
	(b) the ETCS trackside infrastructure and train-borne signalling subsystem; and
	(c) such other equipment as is necessary for the operation of ETCS;
“Final Calculation Year”	means the Calculation Year ending on 19 September 2021;
“Final Performance Calculation Year”	means the Performance Calculation Year ending on 22 August 2021;
“KO2 Infrastructure” or “High Capacity Infrastructure”	means the infrastructure required to deliver 24 trains per hour in both directions through the Core Thameslink Route and includes the installation and commissioning of ETCS and Automatic Train Operation, the station upgrades required to implement such systems (including enhanced passenger/customer information systems at core area stations) and the commissioning of the Three Bridges rail operations centre;
“Peak Period”	means TRSP Morning Peak or TRSP Evening Peak;

[REDACTED³⁷⁴]

[REDACTED³⁷⁵]

[REDACTED³⁷⁶]

³⁷⁴ 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.

³⁷⁵ 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.

³⁷⁶ 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.

[REDACTED³⁷⁷]

"Table"	means the table set out in paragraph 6.4 of this Schedule 6.3;
"Target Date"	means for each TLP Milestone Target, the date (if any) specified in Column 2 of the Table in respect of that TLP Milestone Target;
"TLP Milestone Incentive Payment"	means, for each TLP Milestone Target, the amount specified as such for that TLP Milestone Target in Column 4 of the Table;
"TLP Milestone Target"	means each of the milestone targets specified in Column 1 of the Table;

[REDACTED³⁷⁸]

[REDACTED³⁷⁹]

"TRSP Evening Peak"	means the period between 1730 and 1829 on a Weekday;
"TRSP Morning Peak"	means the period between 0800 and 0859 on a Weekday; and
"TRSP Programme"	means the project for the procurement of rolling stock and depots as documented in the TRSP Documents.

2. Franchisee Obligations under the TRSP Documents

2.1 The Franchisee agrees and undertakes:

- (a) to observe and comply with all the conditions and obligations on its part as set out in each TRSP Document (including by making all payments for which it is responsible under each TRSP Document (as and when due) and

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³⁷⁷ 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.

³⁷⁸ 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.

³⁷⁹ 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.

incurring such costs as are required for the purposes of fulfilling its obligations under each of the TRSP Documents);

- (b) to enforce its rights under each of the TRSP Documents;
- (c) to act reasonably and in good faith in and about the performance of its obligations and the exercise of its rights under each of the TRSP Documents;
- (d) where the Secretary of State is obliged under any of the TRSP Documents to procure that certain steps are taken or obligations performed by the Franchisee to take such steps or perform such obligations promptly upon request by the Secretary of State; and
- (e) to take such steps which may be required to implement any amendment or variation to any TRSP Document as the Secretary of State may direct from time to time (including an amendment following a Run of the Owner Financial Model, Run of the TMM Financial Model, Run of the Depot SPC Financial Model (as such term is defined in the DAFLs) or Run of the TSSSA Financial Model (as appropriate).

2.2 The Franchisee shall not, without the Secretary of State's prior written consent or approval:

- (a) vary or purport to vary or agree to any variation of the terms and conditions of any TRSP Document; or
- (b) take any steps to terminate any of the TRSP Documents.

2.3 The Franchisee shall indemnify and hold harmless the Secretary of State from and against any liabilities, costs, expenses, damages, claims, losses, payments suffered or incurred by the Secretary of State arising under or in connection with any failure by the Franchisee to comply with any of its obligations under the TRSP Documents including any amounts payable by the Secretary of State pursuant to paragraphs 7.6 and 8 of Schedule 2.1 of the Umbrella Agreement and paragraphs 2.2 to 2.4 of part 1 of Schedule 2.4 of the Umbrella Agreement.

3. **Information Requirements**

3.1 The Franchisee shall, without limiting any other rights the Secretary of State may have under the Franchise Agreement:

- (a) maintain accurate, comprehensive and up to date written and electronic records of its performance of the activities for which it is responsible under each TRSP Document (the "**Franchisee TRSP Activities**") and as and when requested by the Secretary of State from time to time provide a copy of all or part of such records to the Secretary of State;
- (b) maintain a risk register in relation to the Franchisee TRSP Activities and provide details of the status of each item on that risk register to the Secretary of State promptly upon request by the Secretary of State;
- (c) provide a four weekly report to the Secretary of State on progress in respect of the delivery of the TRSP Programme and in particular the delivery of each of the Units, Associated Equipment or other contract deliverable highlighting any instances where any Unit or Associated Equipment or any other contract deliverable has been or is likely to be delivered later than its

scheduled delivery date, any Permitted Delays, any Permitted Depot Delays, Force Majeure Events, Depot Force Majeure Event, non-compliances and other potential delays;

- (d) promptly notify the Secretary of State as soon as it becomes aware during the Franchise Term of any circumstances that will or are likely to cause delay to the performance of any of the Franchisee TRSP Activities, howsoever caused, and promptly provide to the Secretary of State its proposals for mitigating, to the extent reasonably possible and practicable to do so, the effect of the relevant circumstances on the delivery of the TRSP Programme;
- (e) promptly notify the Secretary of State if it becomes aware of any event that will or is likely to cause delay to the delivery of the Units, the Associated Units or the Depot Works (as such term is defined in the DAFLs) including any potential Permitted Depot Delays or potential Permitted Delays;
- (f) immediately notify the Secretary of State as soon as it becomes aware of any event which may lead to the likely occurrence or the occurrence of a:
 - (i) Lease Owner Termination Event;
 - (ii) Depot SPC Termination Event (as such term is defined in the DAFLs);
 - (iii) TSA Owner Event of Default;
 - (iv) TSA TMM Event of Default;
 - (v) MSA Owner Event of Default; or
 - (vi) MSA TMM Event of Default; and
- (g) at the same time as it receives the same from the TMM provide copies to the Secretary of State of:
 - (i) the Performance Report and minutes in respect of each Performance Review Meeting that is undertaken by the Franchisee and the TMM during the Franchise Term; and
 - (ii) each Performance Remedial Plans (including any subsequent update to such plans) that the TMM is required to implement pursuant to the TSA.

3.2 **Information Provision at the End of the Franchise Period**

In addition to the Secretary of State's rights to access and information under this Franchise Agreement and under the TRSP Documents, the Franchisee shall ensure that:

- (a) as from the date that the Secretary of State requires, the Franchisee makes available for inclusion in a data room to be maintained by the Secretary of State in connection with the process for the replacement of the Franchise (which may be a physical or electronic data room) or for such other provision to potential Successor Operator(s) as the Secretary of State may require, copies of the TRSP Documents and other documents and records

- in its possession or under its control relating to the performance of its obligations under this Schedule 6.3 and either reasonably requested by the Secretary of State to be included or otherwise considered by the Franchisee (acting reasonably) to be material or relevant to an actual or potential bidder for the replacement franchise or other potential Successor Operator;
- (b) it runs briefings and site visits in connection with the aspects of the TRSP Programme with which it is involved as reasonably required by the Secretary of State for all actual and (if relevant) potential bidders in connection with the replacement franchise or other potential Successor Operator, subject to these requirements being managed so as not to materially detract from performance of the TRSP Documents and the Franchisee TRSP Activities or unduly interfere with the continuing provision of and operation of the Franchise Services by the Franchisee;
- (c) on or prior to the end of the Franchise Period as requested by the Secretary of State, it makes available the documents, records and other materials in its possession or control relating to its performance of the TRSP Documents and fulfilment of the Franchisee TRSP Activities, having maintained those documents and records such that a Successor Operator with appropriate resources and experience is in a position immediately following the end of the Franchise Period to continue to perform its obligations under the TRSP Documents and activities similar to the Franchisee TRSP Activities from the end of the Franchise Period; and
- (d) without limitation, the Franchisee's obligations in this paragraph 3.2 shall include the preparation of such documentation, and in the case of paragraph 3.2(c), the provision of a means of access to such documentation to the Successor Operator in a manner as approved by the Secretary of State (such approval not to be unreasonably withheld or delayed).
- 3.3 Provision by the Franchisee of documents, records and materials in accordance with paragraph 3.2 shall be treated as satisfying its obligations under the Umbrella Agreement to hand over that information at the end of Franchise Period.
- 3.4 Where any information that may be confidential or commercially sensitive to a third party is to be disclosed to any other third party pursuant to this Schedule 6.3, the Franchisee shall consult with the Secretary of State to agree the terms on which such information may or may not be provided (including the possibility of redacting certain sections of documents). In the absence of such agreement, the Secretary of State shall determine the terms of disclosure in his absolute discretion provided that the Franchisee shall not thereby be required to breach any applicable legal or contractual obligation.

4. [REDACTED³⁸⁰]

5. **Secretary of State Loss of Revenue**

5.1 It is acknowledged by each of the Secretary of State and the Franchisee that:

- (a) certain provisions under each of the DAFLs (including clauses 15.3 and 31 of the DAFL in respect of Three Bridges depot and clauses 15.4 , 16.7 and 31 of the DAFL in respect of Hornsey depot) indemnify the Franchisee against Losses (which as defined in each of the DAFLs will include an indemnity for loss of revenue) incurred by the Franchisee and arising in connection with and as a consequence of the Depot SPC not performing or complying with any of its obligations or duties under any of the DAFLs (the "**Indemnity Provisions**"); and
- (b) the Secretary of State bears Revenue risk in relation to the provision of the Franchise Services and would be the party that suffers loss of Revenue that may arise in connection with and as a consequence of the Depot SPC not performing or complying with any of its obligations or duties under any of the DAFLs.

5.2 Accordingly and subject to the terms of paragraph 5.3, the Franchisee:

- (a) hereby agrees to hold the benefit of the rights in the Indemnity Provisions, in so far as they comprise the right to be indemnified in respect of loss of Revenue, on trust for the benefit of the Secretary of State; and
- (b) shall, immediately on demand, indemnify the Secretary of State for any loss of Revenue that is suffered by the Secretary of State as a direct consequence of the Depot SPC not performing or complying with any of its obligations under any of the DAFLs, provided that, and subject to the Franchisee having complied with its obligations pursuant to paragraph 5.3, the Franchisee's maximum liability under the indemnity specified in this paragraph 5.2(b) shall not exceed the amount that the Franchisee actually receives from the Depot SPC in respect of any claim under the Indemnity Provisions net of any reasonable and proper costs incurred by Franchisee in complying with any direction by the Secretary of State to enforce its rights pursuant to paragraph 5.3.

5.3 The Franchisee shall immediately notify the Secretary of State if it becomes aware of any breach of, or non-performance of duties by the Depot SPC under, the DAFLs which may give risk to loss of Revenue. At and in accordance with the direction of the Secretary of State the Franchisee shall enforce its rights under the Indemnity Provisions of the applicable DAFL to recover from the Depot SPC any loss of Revenue that is suffered by the Secretary of State in connection with and as a consequence of the Depot SPC not performing or complying with any of its obligations or duties under the relevant DAFL. The obligation of the Franchisee pursuant to this paragraph 5.3 shall include a requirement to enforce any such

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rights through the courts or by using any dispute resolution process that applies under the relevant DAFL. Any sums recovered by the Franchisee from the Depot SPC shall be applied first in the discharge of the reasonable and proper costs of recovery as incurred by the Franchisee with the rest of the amounts being reimbursed to the Secretary of State on the first Payment Date falling no less than 7 days after the date of any such recovery or if after the Franchise Period within 30 days of any such recovery.

5.4 The Secretary of State shall act reasonably in the exercise of his rights pursuant to paragraph 5.3 and shall have regard to any representations made by the Franchisee in relation to any direction by him pursuant to paragraph 5.3.

6. **[REDACTED³⁸¹]**

7. **The Thameslink Programme Office**

7.1 The Franchisee shall co-operate with the Secretary of State, Network Rail and/or any other third party relevant to the Thameslink Programme and the TRSP Programme, including, in particular being proactive in partnering with Network Rail as a member of Network Rail's Thameslink Programme project team, or otherwise in developing the best overall solution for the associated construction works, and in so doing, the Franchisee shall use all reasonable endeavours to optimise the Secretary of State's potentially competing needs to:

- (a) minimise disruption to the Passenger Services during the implementation of associated works;
- (b) secure the best service level output for passengers from that programme; and
- (c) maximise value for money for the taxpayer from that programme.

7.2

- (a) From the Start Date until the end of the Franchise Term, the Franchisee shall:
 - (i) provide and maintain a dedicated, suitably qualified and experienced Programme Office (the "**Thameslink Programme Office**") to provide change management, programme management and technical and operational integration expertise in respect of the Thameslink Programme and the TRSP Programme. The Thameslink Programme Office shall work alongside and integrate with the Secretary of State's system integration and programme office, Network Rail's Thameslink team and initially with the Southern Franchisee (or, where relevant, any successor

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operator to the Southern Franchisee) until the Combined Effective Date and the LSER Franchisee (or any successor operator to the LSER Franchisee);

- (ii) provide a suitable experienced person who shall be a director of the Franchisee and who shall work full time for the Franchisee on the delivery of the TRSP Programme including the acquisition of the Units and the enhancement and maintenance of the relevant depots to facilitate the Thameslink Programme (including to facilitate the performance by the Franchisee of its obligations under any of the TRSP Documents and to the extent relevant obligations under paragraph 7.2(b)).
- (b) The responsibilities of the Thameslink Programme Office shall include:
- (i) periodic reporting on progress of the Thameslink Programme;
 - (ii) provide reporting/updates on the rolling stock cascades;
 - (iii) support stageworks planning and risk reporting on a periodic basis with Network Rail;
 - (iv) report on any impacts of the Thameslink Programme and the TRSP Programme on any high level output statements affecting the Franchisee;
 - (v) periodic performance reporting prior, during and post the introduction of the Units (including on dwell times, platform re-occupation times and adhesion);
 - (vi) work with the TMM and Network Rail to resolve and report on technical issues around rolling stock and depots;
 - (vii) ³⁸²**chair the Operational Readiness Review Group ("ORRG");**
 - (viii) ³⁸³**attend and actively contribute to governance meetings required by the Secretary of State including those set out in the document entitled "Thameslink Programme Governance Arrangements v8" and as set out in section 7 Systems Integration of that document;**

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Derogations

³⁸² Date of change 07/06/2016

³⁸³ Date of change 07/06/2016

- (ix) **384 working with the TMM and Network Rail to resolve and report upon issues agreed with the schedule and benefits group, the systems level technical authority and/or ORRG;**
- (x) ensure necessary project management tools and techniques are deployed appropriately to ensure assurance and contingency processes are robust;
- (xi) act as the technical and operational integrator of various workstreams as set out in document entitled "Systems Level Technical Authority Paper" dated 26 November 2012 and the relevant schedules of the TRSP MSA to achieve the required changes in service over the Franchise Period;
- (xii) act as the technical authority for on-board ETCS and Automatic Train Operation and other equipment, and work with the TMM and Network Rail to resolve technical and operational issues;
- (xiii) provide regular test and training plan updates;
- (xiv) contribute to benefits realisation and reporting;
- (xv) support the managing change and the "Change Control" process;
- (xvi) manage and report on risk and opportunities, including maintaining a risk and opportunities register;
- (xvii) work collaboratively with Network Rail in preparing and updating industry plans;
- (xviii) prepare, maintain and update as required the deliverables in respect of the TRSP Documents for which the Franchisee is responsible including training plans, test plans and the rolling stock cascade plans; and
- (xix) periodic reporting of the Programme Office's effectiveness and availability of Franchisee Employees within the Thameslink Programme Office measured through key performance indicators.

7.3 The Franchisee shall with effect from the Start Date implement key performance indicators for the monitoring, availability and performance of the Thameslink Programme Office as set out in the table below:

KPI	Standard	Annual Target
385 Reporting on progress of the Thameslink Programme	The Franchisee shall measure the number of reports issued on time and structured in the appropriate manner in accordance with the governance structure set out in the document entitled "Thameslink Programme Governance Arrangements v8" against the total number of reports issued by the Thameslink Programme Office	97%
386 Resource availability in relation to the Thameslink Programme	The Franchisee shall measure the actual availability of Franchise Employees against full time occupation in the Thameslink Programme Office using a method to be agreed by parties or if not agreed as reasonably determined by the Secretary of State	90%
Completion of time-based obligations under the TRSP Documents	The Franchisee shall measure the on time completion of its time-based obligations (as Operator) under the TRSP Documents (such as the supply of trained drivers at particular key stages in the Thameslink Programme) against the total number of its time-based obligations (as Operator) under the TRSP Documents	95%
387 Effective deployment of the Thameslink	The Franchisee shall ensure that the Thameslink Programme	Level 3

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Derogations

- 385 Date of change 07/06/2016
- 386 Date of change 07/06/2016
- 387 Date of change 07/06/2016

KPI	Standard	Annual Target
Programme processes	office office workstreams comply with Maturity Level 3 of the model currently known as "Portfolio, Programme and Project Management Maturity Model (P3M3)	
Safety Compliance	The Franchisee shall measure compliance of its safety related obligations in relation to the TRSP Programme	100%

7.4 In the event that an annual target for any particular key performance indicator is not met, the Franchisee must as soon as reasonably practicable produce an implementation plan which, in the reasonable opinion of the Secretary of State, is capable of achieving such annual target. The Franchisee shall use all reasonable endeavours to implement that plan.

8. **Planning to utilise the Initial Units**

8.1 In addition to and without prejudice to its obligations in paragraph 7 of Schedule 1.1 (Service Development), with effect from the Passenger Change Date occurring in May 2018, the Franchisee shall, in preparing its Timetable and Train Plan (unless the Secretary of State otherwise agrees), plan to use the Initial Units for the provision of at least ninety nine per cent. of all Passenger Services to be operated each week between London Blackfriars station and London St Pancras International (Low Level) station (in both directions).

8.2 The Franchisee's compliance with the provisions of this paragraph 8 shall be measured by reference to the number of Passenger Services planned to be operated and not by reference to the Passenger Carrying Capacity planned to be provided.

9. **Class 313 Test Unit**

9.1 The Franchisee shall amend its Safety Management System to the extent necessary to allow for the operation of the Class 313 Test Unit for the purposes of undertaking the Test Programme. The Franchisee shall provide such assistance as may be reasonably required by Network Rail to enable Network Rail to secure the necessary safety approvals (including approvals for changes to the Network Rail safety case) required to enable the Test Programme to be implementation in accordance with its specification.

9.2 For the purposes of the Test Programme the Franchisee shall:

- (a) at its own cost and at the request of Network Rail make available to Network Rail the following:
 - (i) secure stabling facilities for the Class 313 Test Unit;
 - (ii) CET/water replenishment;
 - (iii) internal cleaning of the Class 313 Test Unit;

- (iv) external vehicle cleaning (A or B exam);
- (v) maintenance of the Class 313 Test Unit (excluding the ETCS on-board equipment) in accordance with the maintenance programme supplied to the Franchisee by Network Rail;
- (vi) provision of 1 train manager, 1 test train manager and 1 driver for each Test Shift; and
- (vii) booking of such access rights as required in the Test Programme for the purposes of operating the Class 313 Test Unit at the ENI Facility and over the Core Thameslink Route,

provided that there shall be no requirement on the Franchisee pursuant to this paragraph 9.2 to provide to Network Rail, at its costs, any additional requirements (that is, over and above the requirements specified in paragraphs 9.2(a)(i) to 9.2(a)(vii)).

9.3 For the purposes of this paragraph 9:

- (a) “**Class 313 Test Unit**” means the unit leased by Network Rail to be used for the purposes of the Test Programme;
- (b) “**ENI Facility**” means the ERTMS National Integration Facility located near Hertford;
- (c) “**Industry Plan**” means the document published by the Department for Transport and entitled Thameslink Programme System Integration Industry Plan V4.0 baseline;
- (d) “**Test Programme**” means the programme for the testing and commissioning of ERTMS at the ENI Facility and over the Core Thameslink Route as more particularly described in the Industry Plan; and
- (e) “**Test Shift**” means:
 - (i) in relation to the test to be undertaken at the ENI Facility, 10.00 to 16:00 (5 shifts per week for the duration of the Test Programme); and
 - (ii) in relation to the test to be undertaken in respect of the Core Thameslink Route, 01:00 to 0400 (3 shifts per week for the duration of the Test Programme).

10. Outer Area Sidings

10.1 The Franchisee shall use its reasonable endeavours to enter into depot leases with Network Rail as follows:

- (a) by no later than the Start Date for the new light maintenance depot at Brighton Down Yard siding depot;
- (b) by no later than 30 June 2015 for the new light maintenance depot at Cricklewood depot;
- (c) by no later than 30 April 2016 for the Peterborough depot; and

- (d) by no later than 30 September 2016 for the new light maintenance depot at Horsham up yard sidings depot.

11. **Three Bridges Control Centre**

The Franchisee shall ensure that, subject to Network Rail granting such access as may be reasonably required for these purposes, its operational and customer control functions are located at the Three Bridges rail operating centre by no later than [REDACTED³⁸⁸] and remain so located for the remainder of the Franchise Term.

12. **Train Passenger Information Systems**

12.1 At least one year prior to the planned achievement of Configuration State 6 the Franchisee shall develop, implement and operate a server that shall have the capability to effectively communicate through server COM@RL to update the on-train Passenger Information System ("**PIS**") server on the Units. The Franchisee shall for the remainder of the Franchise Term use such server to update such PIS with accurate, consistent and up to date information (including real time information on train performance and alterations to timetabled stopping patterns).

12.2 For the purposes of this paragraph 12,

- (a) "**Configuration State 6**" has the meaning given to it in the Invitation to Tender; and
- (b) "**Com@RL**" means the common server which the TMM is responsible for and which will communicate with the Class 700 trainborne systems and carry the public and WLAN communications to train applications and on-board databases such as PIS, CCTV, DAS and ATO.

³⁸⁸ Where text has been omitted from the document this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

Schedule 6.4

Integration of the Southern Franchise Services

1. **Obligations to be satisfied by the Franchisee on or before the Combined Effective Date**
- 1.1 The Franchisee shall on or before the Combined Effective Date undertake the following activities ("**Southern Integration Obligations**"):
 - (a) the Franchisee shall enter into a Track Access Agreement:
 - (i) that would enable the Franchisee throughout the Franchise Term to perform its roles and responsibilities under the Franchise Agreement and in accordance with Schedule 1.1 (Service Development) use all reasonable endeavours to ensure that it has all the Timetable Development Rights required by it for the purposes of securing a Timetable that enables it to operate the Train Service Requirement applicable from the Combined Effective Date until the end of the Franchise Term; and
 - (ii) which does not include any timetable development rights in relation to railway passenger services operating from London Bridge to London Blackfriars (in both directions) during the period from the Combined Effective Date until 1 January 2018;
 - (b) the Franchisee shall obtain such Licences (or amend its Licences) as may be necessary for the purposes of ensuring that it is authorised to operate the Southern Franchise Services on and from the Combined Effective Date. The Franchisee shall, on or before the Combined Effective Date, provide to the Secretary of State a written notice from the ORR which confirms that, the Franchisee has been granted or will be granted such Licences (or such Licences have been amended or will be amended);
 - (c) the Franchisee shall make such amendment to its Safety Certificate and Safety Authorisation as is necessary for the purposes of ensuring that it can operate the Southern Franchise Services on and from the Combined Effective Date. The Franchisee shall, on or before the Combined Effective Date, provide to the Secretary of State a written notice from the ORR which confirms that, the Safety Certificate and Safety Authorisation have been amended as necessary to allow for the operation of the Southern Franchise Services on and from the Combined Effective Date;
 - (d) the Franchisee shall, on or before the Combined Effective Date, enter into such:
 - (i) Access Agreements (and, where relevant, the associated Collateral Agreements), in the agreed terms in respect of the Stations and Franchisee Access Stations, Depots (if any) and other depots where the Train Fleet is to be maintained during the Franchise Term and Managed Stations;

- (ii) Connection Agreements in respect of Depots (if any); and
- (iii) leases with Network Rail in respect of Stations, Depots (if any), Managed Station Areas and Shared Facilities with the intent, for the purposes of Section 31 of the Act, that the properties comprised in such leases will be used for or in connection with the provision of the Southern Franchise Services,

in each case to the extent necessary for the purposes of providing the Southern Franchise Services on and from the Combined Effective Date; and

- (e) the Franchisee shall on or before the Combined Effective Date:
 - (i) enter into, in respect of the employees transferring to it on the Combined Effective Date, the deeds of establishment, participation or adherence with the trustees of the Railways Pension Scheme and if any employee of the Franchisee whose employment transfers to the Franchisee from the Train Operator under the Previous Franchise Agreement in respect of the Southern Franchise Services, is a member of either of the British Railways Superannuation Fund or the BR (1974) Pension Fund, with the trustees of those Funds; and
 - (ii) take such other steps (if any),

as are required to secure compliance with the terms of Schedule 16 (Pensions) of the Franchise Agreement (such compliance to also be from the Combined Effective Date).

2. **Review of Compliance**

- 2.1 From the period commencing on the Start Date until the Combined Effective Date, progress of the Southern Integration Obligations will be an agenda item for Franchise Performance Meetings and the Franchisee shall ensure that at such meetings, the Secretary of State is given such progress reports as he may reasonably request.
- 2.2 In addition to its obligation under paragraph 2.1, the Franchisee shall prepare and submit to the Secretary of State a monthly report containing such information as the Secretary of State may reasonably request (including where requested evidence demonstrating its compliance with any of the Southern Integration Obligations) in relation to the Franchisee's compliance with the Southern Integration Obligations.

3. **Combined Effective Date Transfer Scheme**

- 3.1 Subject to paragraph 3.2, the Secretary of State will utilise his powers under Section 12 and Schedule 2 of the Railways Act 2005 to make one or more transfer schemes (each a "**Combined Effective Date Transfer Scheme**") so as to transfer to the Franchisee the following franchise assets of a Train Operator under the Previous Franchise Agreement relating to the Southern Franchise Services, being the Train Operator's property, rights and future liabilities in respect of the following:

- (a) each of the:
- (i) Depot Works Agreements; and
 - (ii) Depot Sub Lease,
- in each case as defined in paragraph 5.9 of this Schedule 6.4; and
- (b) each of the assets specified in Column 1 of the table below. The Franchisee agrees that for the purposes of the supplemental agreement to be entered into by the Southern Franchisee (or a successor to the Southern Franchisee) and the Franchisee on or about the date upon which the Combined Effective Date Transfer Scheme comes into effect, each asset referred to in Column 1 of the table below shall be valued on the basis specified in the corresponding row in Column 2 of such table. Where in Column 2 of the table below an asset is specified as being valued at "**Asset Value**" this shall mean that the value of such asset shall be determined on the basis of a willing vendor and purchaser and ongoing usage within the railway industry:

Column 1	Column 2
Description of Asset	Transfer Value
ITSO cards already issued and in circulation (under Go-Ahead's 'the Key' brand), supplied by ESP Systex.	NIL
Flexi-Season elements of latest version of ITSO product catalogue - Release B	NIL
Pay as you go elements of latest version of ITSO product catalogue - Release C	NIL
On-station smart card validators (PVALs) – both wall and floor mounted , supplied by Cubic at those stations specified in the franchise agreement entered into between the Secretary of State and the Southern Franchisee and dated 8 June 2009.	NIL
Handheld checkers / inspection devices, supplied by GIS	NIL
Automatic ticket barriers back office – including station computers (SC) / SCU + Data Gathering Centre (DGC), supplied by Cubic to the extent that those rights & liabilities relate to the products specified in the franchise agreement entered into between the Secretary of State and the Southern Franchisee and dated 8 June 2009.	NIL
Automatic ticket barriers – upgraded for ITSO at those stations specified in the franchise agreement entered into between the Secretary of State and the Southern Franchisee and dated 8 June 2009.	NIL
TVMs – upgraded to enable retailing of ITSO products at those stations specified in the franchise agreement entered into between the Secretary of	NIL

Column 1	Column 2
Description of Asset	Transfer Value
State and the Southern Franchisee and dated 8 June 2009, supplied by Atos.	
Any and all data generated by or related to the smart ticketing scheme.	NIL
Product OIDs registered.	NIL
Shell OIDs registered.	NIL
ISAMs purchased at those stations specified in the franchise agreement entered into between the Secretary of State and the Southern Franchisee and dated 8 June 2009.	NIL
Various proofs of Concept.	Asset Value
Webtis – upgraded to enable retailing of ITSO products, supplied by Atos.	Asset Value
Intellectual property rights associated with Webtis developments.	Asset Value
The Webportal supplied by Imaginet.	Asset Value
The ITSO back office – including the HOPS, CMS and fulfilment service, supplied by ACT.	Asset Value
ITSO card procurement, encoding and issuance, supplied by ESP Systemx.	Asset Value
TVM back office - upgraded for ITSO, supplied by Atos.	Asset Value
Intellectual property rights associated with TVM developments.	Asset Value
PAYG or 'Touch and go' back office – being developed as part of delivering the committed obligation, supplied by iBlock.	Asset Value
The various testing facilities, located at Cubic.	Asset Value
Signed ITSO operating licence.	Asset Value
On-station smart card validators (PVALs) – both wall and floor mounted , supplied by Cubic at stations other than the ITSO stations defined in the franchise agreement entered into between the Secretary of State and the Southern Franchisee and dated 8 June 2009.	Asset Value
Rover and Travelcard elements of latest version of ITSO product catalogue - Release C.	Asset Value
ITSO Product catalogue release A.	Asset Value

Column 1	Column 2
Description of Asset	Transfer Value
Product catalogue B, other than those elements relating to flexi season.	Asset Value
ISAMs purchased at those stations other than those ITSO stations specified in the franchise agreement entered into between the Secretary of State and the Southern Franchisee and dated 8 June 2009.	Asset Value

- 3.2 The Secretary of State’s obligation to make any Combined Effective Date Transfer Scheme will be subject to the Secretary of State being satisfied that all the Southern Integration Obligations will be satisfied (or waived) on or before the Combined Effective Date.
- 3.3 The Secretary of State agrees to act reasonably in response to any request that is made by the Franchisee in accordance with paragraph 3.4 to transfer to it under the Combined Effective Date any further assets and/or liabilities of a Train Operator under a Previous Franchise Agreement relating to the Southern Franchise Services which are required by the Franchisee to perform its obligations under the Franchise Agreement and cannot conveniently be transferred to it by other means.
- 3.4 Any request made pursuant to paragraph 3.3 shall be made in writing, submitted to the Secretary of State on or prior to the date falling ten weekdays prior to the Combined Effective Date or such lesser time period as the parties may agree between them, and specify in reasonable detail:
 - (a) the assets and/or liabilities to be transferred; and
 - (b) the terms agreed as to the proposed transfer with any party affected by the proposed transfer.
- 3.5 Without limiting any other obligation it may have, the Franchisee agrees to enter into the Supplemental Agreement (as defined under the Previous Franchise Agreement relating to the Southern Franchise Services) with the Train Operator under the Previous Franchise Agreement relating to the Southern Franchise Services.
- 3.6 To the extent that a waiver is required from a relevant counterparty in respect of any agreement to be transferred to the Franchisee under a Combined Effective Date Transfer Scheme because such transfer would otherwise trigger an event of default, right of re-entry or other rights to terminate under that agreement, the Franchisee shall ensure that such waiver is obtained.

4. HLOS Phase 2 Arrangements

- 4.1 The Franchisee shall when directed by the Secretary of State enter into a sub lease with the Southern Franchisee in respect of the HLOS Phase 2 Core Units (the "**HLOS Phase 2 Sub Lease**"). If so required by the Secretary of State the Franchisee shall enter into a lease (instead of the HLOS Phase 2 Sub Lease) with the Southern Franchisee in respect of the HLOS Phase 2 Core Units (the "**HLOS Phase 2 Lease**"). The HLOS Phase 2 Sub Lease or the HLOS Phase 2 Lease (as the case may be) shall be on terms specified by the Secretary of State and shall be sub leased or leased on the basis that the Southern Franchisee will undertake the maintenance and stabling activities in relation to such HLOS Phase 2 Core Units.

- 4.2 If the Franchisee enters into a HLOS Phase 2 Lease it shall, if so directed by the Secretary of State subsequently surrender such HLOS Phase 2 Lease and simultaneously enter into a sub lease with the Southern Franchisee in respect of the HLOS Phase 2 Core Units from a date and on terms to be specified by the Secretary of State (the "**Subsequent HLOS Phase 2 Sub Lease**").
- 4.3 From the date that the Franchisee enters into any HLOS Phase 2 Sub Lease, HLOS Phase 2 Lease or Subsequent HLOS Phase 2 Sub Lease (as applicable) then any such HLOS Phase 2 Sub Lease, HLOS Phase 2 Lease or Subsequent HLOS Phase 2 Sub Lease (as applicable) shall be a Southern Trading Agreement for the purposes of paragraph 9 of Schedule 6.2 (TSGN Franchise Specific Provisions) and paragraph 2.6 of Schedule 9.3 (Secretary of State Risk Assumptions).
- 4.4 The Franchisee shall co-operate in good faith with the Secretary of State and the Southern Franchisee to facilitate the introduction of the HLOS Phase 2 Core Units into revenue earning passenger service and as and when requested by the Southern Franchisee take all reasonable steps to assist the Southern Franchisee in obtaining the necessary approvals for the HLOS Phase 2 Core Units.

4.5 **Transfer of the relevant documents**

(a) **Novation on or prior to the Combined Effective Date**

(i) The Franchisee shall, on or before the Combined Effective Date and at direction of the Secretary of State, enter into a deed of novation in respect of:

- (A) the HLOS Phase 2 MSA;
- (B) the HLOS Southern Operating Lease but only in circumstances where the HLOS Phase 2 Core Units have been refinanced and the Southern Franchisee has entered into an HLOS Southern Operating Lease;
- (C) the HLOS Phase 2 Spares Supply Agreement; and
- (D) each HLOS Phase 2 MSA Associated Document (as applicable),

(the "**Relevant HLOS Phase 2 Agreements**") with the Southern Franchisee or such other third party as the Secretary of State may nominate. Any such novation shall be:

- (1) on the basis that the Franchisee steps into such agreements as operator in place of the Southern Franchisee (and in the absence of financing as at such date, as Financier in place of the Southern Franchisee); and
- (2) on such terms as the Secretary of State may reasonably require, including that the Southern Franchisee shall not be released from any accrued but unperformed obligation, the consequences of any antecedent breach of a covenant or obligation under any Relevant HLOS Phase 2 Agreement or any liability in respect of any act or omission under or in

relation to any Relevant HLOS Phase 2 Agreement prior to, or as at the date of, any such novation (except to the extent that the Franchisee agrees to assume responsibility for such unperformed obligation, such liability or the consequences of such breach in connection with the relevant novation).

- (ii) From the date of any novation or transfer of the Relevant HLOS Phase 2 Agreements, the Franchisee shall observe and comply with all the conditions and obligations on its part under any such Relevant HLOS Phase 2 Agreements.

(b) **Cascade Arrangements during the Franchise Term where Franchisee is the Financier under the HLOS Phase 2 MSA**

- (i) Subject to paragraph 4.5(b)(ii), the Franchisee shall at the direction of the Secretary of State:

- (A) on the date specified in Column 2 of the table set out in the Appendix to this Schedule 6.4 in respect of each HLOS Phase 2 Core Unit specified in the corresponding row in Column 1 of such table (other than the last HLOS Phase 2 Core Unit), enter into a lease with such third party as the Secretary of State may nominate for the leasing of such HLOS Phase 2 Core Unit. Any such lease to be entered into by the Franchisee pursuant to this paragraph 4.5(b)(i)(A) shall be on substantially the same terms as the HLOS Phase 2 Lease except that:

[REDACTED³⁸⁹]

- (5) any such lease shall expire on the date that the novation contemplated in paragraph 4.5(b)(i)(B) comes into force except where the relevant third party is a party to any such novation; and

- (B) on the date specified in Column 2 of the table set out in the Appendix to this Schedule 6.4 in respect of the last HLOS Phase 2 Core Unit as specified in the last row of such table, enter into a deed of novation with such other third party as the Secretary of State may nominate in respect of:

- (1) the HLOS Phase 2 MSA;

³⁸⁹ 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) the HLOS Phase 2 Spares Supply Agreement;
- (3) each HLOS Phase 2 MSA Associated Document (as applicable); and
- (4) the lease entered into pursuant to paragraph 4.5(b)(i)(A) but only in circumstances where the relevant third party under such lease is not a party to the novation referred to in this paragraph 4.5(b)(i)(B).

Any novation required pursuant to this paragraph 4.5(b)(i)(B) shall be on such terms as the Secretary of State may reasonably require, including that the Franchisee shall not be released from any accrued but unperformed obligation, the consequences of any antecedent breach of a covenant or obligation under any of the agreements so novated or any liability in respect of any act or omission under or in relation to any such novated agreements prior to, or as at the date of, any such novation (except to the extent that any such third party agrees to assume responsibility for such unperformed obligation, such liability or the consequences of such breach in connection with the relevant novation).

- (ii) The provisions of paragraph 4.5(b)(i) shall only apply in circumstances where the Franchisee is the Financier as at the dates specified in paragraph 4.5(b)(i)(A) or 4.5(b)(i)(B) (as the case may be).

(c) **Cascade Arrangements during the Franchise Term where Franchisee is not the Financier under the HLOS Phase 2 MSA**

- (i) Subject to paragraph 4.5(c)(ii), the Franchisee shall at the direction of the Secretary of State and on the date specified in Column 2 of the table set out in the Appendix to this Schedule 6.4 cease to lease the HLOS Phase 2 Core Unit specified in the corresponding row in Column 1 of such table under any operating lease which may be applicable at the time in relation to such HLOS Phase 2 Core Unit;
- (ii) The provisions of paragraph 4.5(c)(i) shall only apply in circumstances where the HLOS Phase 2 Core Units are being leased under an operating lease which is either the HLOS Southern Operating Lease or the HLOS Franchisee Operating Lease (as the case may be).
- (iii) It is acknowledged that the termination of the leasing arrangements as contemplated in paragraphs 4.5(c)(i) and 4.5(d)(ii) (as applicable) is subject to the Franchisee first securing the consents of any applicable lessor. Accordingly the Franchisee shall use all reasonable endeavours to obtain any such consent without the terms of the consent requiring the Franchisee to incur any further costs or liability as a term of such consent. The Franchisee shall keep the Secretary of State regularly informed of its progress and

notify the Secretary of State of any issues which may either prevent any required consent being obtained. The Franchisee shall use all reasonable endeavours to minimise any such requirements and shall not be required to incur any further costs or liability as a term of consent unless directed to do so by the Secretary of State in which case such direction shall be treated as a Change under paragraph 2.6 of Schedule 9.3 (Secretary of State Risk Assumptions).

- (d) Notwithstanding the provisions of paragraphs 4.5(b) and 4.5(c) the Secretary of State may at any time by notice in writing direct the Franchisee to:
- (i) (in circumstances where the Franchisee is the Financier as at the date of any such direction):
 - (A) enter into a sub lease (such sub lease to be on the same terms as specified in paragraph 4.5(b)(i)(A)) in relation to some or all of the HLOS Phase 2 Core Units with such third party as may be nominated by the Secretary of State; or
 - (B) enter into a deed of novation (such deed of novation to be on the basis set out in paragraph 4.5(b)(i)(B)) in respect of:
 - (1) the HLOS Phase 2 MSA;
 - (2) the HLOS Phase 2 Spares Supply Agreement; and
 - (3) each HLOS Phase 2 MSA Associated Document (as applicable),
 in each case on such earlier or later date(s) than those specified in paragraph 4.5(b); or
 - (ii) (in circumstances where the Franchisee is not the Financier as at the date of any such direction) to cease to lease, on such earlier or later date(s) than those specified in paragraph 4.5(c), all or some of the HLOS Phase 2 Core Units under any operating lease which may be applicable at that time in relation to the HLOS Phase 2 Core Units.
- (e) The Secretary of State shall have the right to exercise his rights under paragraph 4.5(d) on multiple occasions and in relation to such number of HLOS Phase 2 Core Units as the Secretary of State may specify from time to time.
- (f) The Franchisee shall not act in any manner which shall interfere with, prejudice or prevent the Secretary of State from exercising any of his rights specified in this paragraph 4.5 including by amending or waiving the terms of any Relevant HLOS Phase 2 Agreement or terminating any Relevant HLOS Phase 2 Agreement.

4.6 **Franchisee becoming Financier under the HLOS Phase 2 MSA**

- (a) If on the transfer of the Relevant HLOS Phase 2 Agreements to the Franchisee pursuant to the novation specified in paragraph 4.5(a) or under the Combined Effective Date Transfer Scheme, the Franchisee steps into the HLOS Phase 2 MSA as Financier in place of the Southern Franchisee then:
- (i) the provisions of paragraph 4.7 shall apply; and
 - (ii) if any amount of the Contract Price (as such term is defined in the HLOS Phase 2 MSA is still outstanding (the "**Outstanding Contract Price**") as at the date of any such transfer and the Franchisee is obliged under the HLOS Phase 2 MSA to pay (and the Franchisee pays) any such Outstanding Contract Price then the Secretary of State shall, by way of adjustment to Franchise Payments on the first Payment Date falling no less than 7 days after the date upon which any such payment is made by Franchisee, pay to the Franchisee an amount that is equal to any such Outstanding Contract Price so paid by the Franchisee.

4.7 Procurement of the Financing for the HLOS Phase 2 Units

- (a) Where this paragraph 4.7 applies, the Secretary of State and the Franchisee agree that the Franchisee will conduct a competitive procurement process (the "**HLOS Phase 2 Financing Procurement Process**") for the financing of the HLOS Phase 2 Purchased Equipment with a view to securing a willing purchaser for the HLOS Phase 2 Core Units (the "**HLOS Phase 2 Financier**"). The terms of any such procurement will require the HLOS Phase 2 Financier to:
- (i) enter into the Financier Novation Agreement (as defined in the HLOS Phase 2 MSA) whereby the HLOS Phase 2 Financier will step into the HLOS Phase 2 MSA as Financier in place of the Franchisee accordingly acquiring all rights and obligations of the Franchisee as Financier thereunder and on the basis that the Franchisee shall be released from all obligations and liability under the HLOS Phase 2 MSA in its capacity as Financier;
 - (ii) immediately enter into an operating lease with the Franchisee (the "**HLOS Franchisee Operating Lease**") for the period until the end of the Franchise Term, the terms of such HLOS Franchisee Operating Lease to be as specified by the Franchisee (and approved by the Secretary of State) in the invitation to tender it issues to potential bidders during the HLOS Phase 2 Financing Procurement and shall include the right for the Franchisee to terminate the leasing of the HLOS Phase 2 Core Units in the manner contemplated in paragraph 4.5(c)(i) and to permit the cascade of such HLOS Phase 2 Core Units to such third party as may be nominated by the Secretary of State;
 - (iii) without prejudice to the Franchisee's obligations under paragraph 5 of Schedule 14.3 (Key Contracts) enter into a Direct Agreement with the Secretary of State in respect of the HLOS Phase 2 Core Units; and

- (iv) immediately pay to the Franchisee in full without any deduction an amount equal to any amounts of the Contract Price that has, as at that date, been paid to the Manufacturer under the HLOS Phase 2 MSA ("**HLOS Phase 2 Purchase Price**").
- (b) The Franchisee shall deliver to the Secretary of State for comment a draft invitation to tender together with draft evaluation criteria in relation to the HLOS Phase 2 Financing Procurement Process. Any such draft invitation to tender will make such provision as is required by Law to permit the role for the Secretary of State in the HLOS Phase 2 Financing Procurement Process envisaged by this paragraph 4.7. The Secretary of State shall have the right within 20 working days of receipt of such draft invitation to tender and draft evaluation criteria to comment on them and the Franchisee shall have due regard to such comments. At the request of the Secretary of State the Franchisee shall include, in the relevant invitation to tender for the refinancing of the HLOS Phase 2 Purchased Equipment, priced options (the specification of any such priced option to be agreed by the Franchisee and the Secretary of State (or in the absence of agreement as directed by the Secretary of State)) and these may include priced options where:
 - (i) a deed of undertaking issued pursuant to section 54 of the Act or some other form of guarantee or commitment in respect of the HLOS Phase 2 Purchased Equipment is entered into by the Secretary of State; and
 - (ii) such a deed of undertaking or other form of guarantee or commitment in respect of the HLOS Phase 2 Purchased Equipment is not provided by the Secretary of State.
- (c) Without limiting paragraph 4.7(a), the Franchisee shall use all reasonable endeavours to issue the invitation to tender in the form of the submitted draft incorporating any amendments arising out of the comments of the Secretary of State. The Franchisee agrees to evaluate bids in accordance with the draft evaluation criteria as they may be modified by the Franchisee having due regard to the comments of the Secretary of State.
- (d) The Franchisee shall provide the Secretary of State with such progress reports and information on the conduct of any procurement process commenced pursuant to this paragraph 4.7 as he shall reasonably require.
- (e) In the context of the duties of the Secretary of State with regard to the expenditure of public funds the Franchisee agrees to:
 - (i) provide the Secretary of State as soon as reasonably practicable with copies of all submitted bids, responses to clarifications from the Franchisee and any amended or resubmitted bids to the extent permitted by Law. The Franchisee shall not be obliged to send copies of bids and amended or resubmitted bids to the Secretary of State where the bidder has imposed a confidentiality obligation preventing this but the Franchisee agrees that the invitation to tender will explicitly state that any such condition will be non-compliant with the tender process and render the bidder liable to disqualification and the Franchisee agrees to so disqualify any such bid;

- (ii) provide the Secretary of State with its evaluation report to appropriate industry standards (as soon as reasonably practicable after it is finalised) and provide such further information pertaining to such final evaluation report as the Secretary of State may reasonably require including copies of previous drafts of the evaluation report; and
 - (iii) permit the Secretary of State to comment on the documents and information provided to it pursuant to paragraphs 4.7(a) and 4.7(b) above within 20 working days of receipt and have due regard to such comments.
- (f) Without prejudice to any of the Secretary of State's other rights under the Franchise Agreement, and without fettering any relevant discretion of the Secretary of State whether under the Franchise Agreement or otherwise, the Franchisee acknowledges that the Secretary of State shall have the right, following submission of bids and evaluation, to direct that the Franchisee does not proceed with the HLOS Phase 2 Financing Procurement Process and accordingly the Franchisee shall in such circumstances not be permitted to enter into any agreement relating to the HLOS Phase 2 Core Units with any participant in the HLOS Phase 2 Financing Procurement Process.
- (g) If the Secretary of State exercises his rights under paragraph 4.7(f) to require the Franchisee not to proceed with the HLOS Phase 2 Financing Procurement Process, the Franchisee shall on a date to be agreed by the Secretary of State and the Franchisee (or on failure to agree on a date reasonably determined by the Secretary of State) commence another procurement process:
 - (i) on the same basis (or such other basis as may be agreed by the Secretary of State and the Franchisee (or on failure to agree as reasonably determined by the Secretary of State) as that required under this paragraph 4.7;
 - (ii) the provisions of paragraphs 4.7(b) to 4.7(f) shall apply in respect of any such procurement process.
- (h) If the Secretary of State approves the bidder selected by the Franchisee pursuant to the HLOS Phase 2 Financing Procurement Process (if any) or any other procurement process commenced pursuant to this paragraph 4.7:
 - (i) the Franchisee shall:
 - (A) (subject to compliance with relevant provisions of the Franchise Agreement) use reasonable endeavours to immediately enter into the HLOS Franchisee Operating Lease and other relevant legal agreements with the HLOS Phase 2 Financier;
 - (B) on the first Payment Date falling no less than 7 days following the date upon which payment from the HLOS Phase 2 Financier is due under any sale and purchase agreement relating to the HLOS Phase 2 Core Units pay to the Secretary of State in full without any deduction an amount that is equal to the amounts due to be

received from the HLOS Phase 2 Financier under any such sale and purchase agreement, such an amount to be equal to the HLOS Phase 2 Purchase Price (the "**Reimbursed HLOS Phase 2 Amount**");

- (C) pay to the Secretary of State interest at the Interest Rate accruing on a day to day basis on the Reimbursed HLOS Phase 2 Amount if the Franchisee fails to pay to the Secretary of State the Reimbursed HLOS Phase 2 Amount by the due date as specified in paragraph 4.7(h)(i)(B) such interest to accrue from such due date to the date that payment is made to the Secretary of State; and
 - (D) set up a separate, dedicated interest bearing bank account (the "**HLOS Escrow Account**") with a clearing bank in the United Kingdom and will notify the Secretary of State of the identity of such bank and the account number of the Escrow Account. The HLOS Escrow Account will be set up so as to ensure that, so far as reasonably practicable, in the event of insolvency of the Franchisee monies standing to the credit of the HLOS Escrow Account are protected to the reasonable satisfaction of the Secretary of State prior to payment to him in accordance with the terms of the Franchise Agreement. The Franchisee shall ensure that any Reimbursed HLOS Phase 2 Amount is, immediately upon receipt of such monies, deposited in the HLOS Escrow Account.
- (i) Within 3 months of the date of execution of the HLOS Franchisee Operating Lease, a Qualifying Change shall occur. For the purposes of agreeing or determining the Revised Inputs in respect of such Qualifying Change, account shall be taken of the following matters:
- (i) the Revised Inputs shall reflect the amounts payable by the Franchisee under the HLOS Franchisee Operating Lease in respect of each HLOS Phase 2 Core Unit and, to the extent not already accounted for in the Financial Model as at that date, any amounts payable in respect of the HLOS Phase 2 Spares and Special Tools; and
 - (ii) the Revised Inputs shall reflect the reasonable and proper costs (including any related consultancy costs and legal costs) incurred by the Franchisee in carrying out the HLOS Phase 2 Financing Procurement Process to the extent that the Franchisee has obtained the prior consent of the Secretary of State prior to incurring any such costs.

4.8 **Additional Franchisee Obligations in circumstances where the HLOS Phase 2 Core Units are delayed**

- (a) The provisions of this paragraph 4.8 shall apply where any of the HLOS Phase 2 Core Units have not been Accepted as at the date of the novation of the Relevant HLOS Phase 2 Agreements to the Franchisee as contemplated in paragraph 4.5(a).

- (b) Where this paragraph 4.8 applies the Franchisee shall:
- (i) within 2 weeks from the date of the novation of the Relevant HLOS Phase 2 Agreements submit to the Secretary of State an implementation and acceptance plan (the "**HLOS Phase 2 Implementation and Acceptance Plan**") which sets out, as a minimum:
 - (A) a credible and deliverable strategy for the purposes of ensuring that further delay to the programme for Acceptance of HLOS Phase 2 Core Units is minimised to the maximum extent reasonably practicable including through engagement with the Manufacturer in the context of the rights of the Franchisee under the HLOS Phase 2 MSA and otherwise (and the plan shall propose the exercise of such rights in specified circumstances where this is reasonably commercially appropriate);
 - (B) the approach to operational arrangements proposed by the Franchisee to:
 - (1) facilitate the procurement of all Relevant Consents (as defined in the HLOS Phase 2 MSA) required for the operation of the HLOS Phase 2 Core Units;
 - (2) enable the delivery, testing and acceptance of the HLOS Phase 2 Core Units which are yet to be Accepted under Part D of the HLOS Phase 2 MSA; and
 - (3) manage the cascade of HLOS Phase 2 Core Units to such third party as may be nominated by the Secretary of State;
 - (ii) implement the HLOS Phase 2 Implementation and Acceptance Plan in accordance with its terms; and
 - (iii) (until such a time as all of the HLOS Phase 2 Core Units have been Accepted) provide to the Secretary of State on a monthly basis a report (including any regular or periodic reports provided to the Franchisee by the Manufacturer) which sets out the progress made towards achieving Acceptance;
- (c) notify the Secretary of State of any contract review meetings to be held by the Franchisee with the Manufacturer in respect of the HLOS Phase 2 Core Units and in addition shall seek to convene such meetings if reasonably requested by the Secretary of State. The Secretary of State reserves the right to attend (as an observer) any such contract review meetings and shall nominate up to two persons (such persons to be notified in advance to the Franchisee) who shall attend such meetings (as observer(s)) on his behalf; and
- (d) act in such manner as the Secretary of State may reasonably direct from time to time by notice in writing to the Franchisee in relation to the exercise

by the Franchisee of any of the rights or discretions under the HLOS Phase 2 MSA (including in respect of the rights of the Franchisee to nominate a Cascade Network (as such term is defined under the HLOS Phase 2 MSA)) or in the carrying out of its obligations under the HLOS Phase 2 MSA.

5. **South Central Depots**

Commencement

5.1 The provisions of this paragraph 5 shall take effect and be binding on the Secretary of State and the Franchisee on and from the Combined Effective Date.

5.2 **Contractual Documents**

(a) The Franchisee (other than with the Secretary of State's prior written consent or approval (not to be unreasonably withheld or delayed)) shall:

(i) in all material respects comply with its obligations and enforce its rights; and

(ii) not waive or purport to waive any material obligation of any other party,

in each case under the Depot Sub Leases to which the Franchisee may be a party from time to time.

(b) The Franchisee shall not, without the Secretary of State's prior written consent or approval (not to be unreasonably withheld or delayed):

(i) vary or purport to vary or agree to any variation of the terms and conditions of any of the Depot Sub Leases; or

(ii) take any steps to terminate any of the Depot Sub Leases.

5.3 **Assignment of the Depot Works Agreements**

(a) At any time when under either the DepCo Direct Agreement or the Section 54 Undertaking the Secretary of State is obliged or entitled to require that any of the Depot Works Agreements (including the whole of any such agreement or agreements or only insofar as any such agreements relate to any of the Depot Sub Leases) are assigned to the Secretary of State or as he may direct, the Franchisee shall, to the extent so requested by the Secretary of State:

(i) assign its interest under such of the Depot Works Agreements and the Section 54 Undertaking (or such parts thereof) as the Secretary of State may require to the Secretary of State or as he may direct; and/or

(ii) unconditionally consent to the assignment by any other person of such person's interest under such of the Depot Works Agreements and the Section 54 Undertaking (or such parts thereof) as the Secretary of State may require, to the Secretary of State or such other person as he may require.

(b) Any assignment in accordance with paragraph 5.3(a) shall be on such terms as the Secretary of State may reasonably require, including the following:

- (i) that the Franchisee shall not be released from any accrued but unperformed obligation, the consequences of any antecedent breach of a covenant or obligation in any of the Depot Works Agreements or any liability in respect of any act or omission under or in relation to any of the Depot Works Agreements prior to, or as at the date of, any such assignment (except to the extent that the Secretary of State or its nominee agreed to assume and be responsible for such unperformed obligation, such liability or the consequences of such breach in connection with the relevant assignment); and
 - (ii) that neither the Secretary of State nor his nominee shall be obliged, in connection with the assignment, to agree to assume and be responsible for any unperformed obligation, liability or consequences of any breach referred to in paragraph 5.3(b)(i) and the Franchisee shall indemnify the Secretary of State or his nominee, as the case may be, on an after tax basis against any cost, losses, liabilities or expenses suffered or incurred in relation thereto.
- (c) Notwithstanding paragraphs 5.3(a) and 5.3(b) upon any expiry of this Franchise Agreement the Secretary of State shall, if he exercises his rights under paragraphs 5.3(a) and 5.3(b), not require the Franchisee to assign its interest under the Depot Works Agreements or the Section 54 Undertaking other than to a person to whom the same can be assigned in accordance with the Section 54 Undertaking.

5.4 **Superior Lease Rent**

- (a) The Franchisee shall exercise its rights in relation to any rent review under each Superior Lease in good faith.
- (b) The Franchisee shall forward to the Secretary of State a copy of each Review Notice received by the Franchisee. As soon as reasonably practicable thereafter (and in any event by no later than 1 month after the date upon which the Review Notice was received by the Franchisee) the Franchisee shall notify the Secretary of State of how it proposes to respond to the Review Notice, including whether the Franchisee recommends that the Revised Rent proposed in the Review Notice should be accepted, together with the Franchisee's reasons for that recommendation and such supporting documentation as the Secretary of State may reasonably require.
- (c) The Franchisee shall not agree the Revised Rent payable under any Superior Lease without the Secretary of State's prior written consent. If the Secretary of State fails to notify the Franchisee that he disagrees with the Revised Rent within 2 weeks of receipt of all matters to be provided by the Franchisee to the Secretary of State under paragraph 5.4(b), the Secretary of State shall be deemed to have consented for the purpose of this paragraph 5.4(c).
- (d) If the Secretary of State disagrees with the amount of any Revised Rent which the Franchisee has notified the Secretary of State it recommends is accepted, the Secretary of State may by notice in writing require the Franchisee to require the Revised Rent to be determined by a valuer in accordance with paragraph 2.2 of Part 1 of Schedule 4 of the Superior

Lease. As part of such determination process the Franchisee shall, in submitting any oral or written representations to such valuer, have due regard to any representations made by the Secretary of State.

- (e) If the Secretary of State serves notice on the Franchisee under paragraph 5.4(d) then, provided that the level of the Revised Rent determined by the valuer in accordance with paragraph 2.2 of Part 1 of Schedule 4 of the Superior Lease is not lower than the Revised Rent which the Franchisee recommended was agreed, the Secretary of State shall reimburse the Franchisee with the reasonable costs incurred by the Franchisee in participating in the determination of the Revised Rent under paragraph 2.2 of Part 1 of Schedule 4 of the Superior Lease (which shall include the amount of any costs which the person appointed to determine the Revised Rent may award against the Franchisee).

5.5 **Alterations and Change of User**

The Franchisee shall not, without the Secretary of State's prior written consent, make any alteration or addition to any of the Enhanced Depots nor use any of the Enhanced Depots (or any part thereof) other than for the purposes of light maintenance depot to the extent that to do either of the same would result in an increase in the Improvement Rent payable under the relevant Depot Sub Lease without the Secretary of State's prior written consent.

5.6 **Cashflow Agreement**

The Franchisee shall, in circumstances when it is entitled to do so, unless otherwise agreed by the Secretary of State (such agreement not to be unreasonably withheld) require DepCo to produce a Cashflow Report in accordance with clause 4.1 or 5.1 of the Cashflow Agreement (to the extent such provisions continue to apply in the Cashflow Agreement).

5.7 **Insurance**

- (a) The Franchisee shall, in respect of each Enhanced Depot, maintain an insurance policy (and shall not do or omit to do anything which is likely to result in such insurance being or becoming void, voidable or unenforceable) in such amount as is sufficient to cover its obligation to pay any Improvement Rent in respect of such Enhanced Depot during any period whilst the Rent payable by DepCo under the relevant Superior Lease is suspended pursuant to Depot Access Condition E8. Such insurance shall be with an insurer and in a form satisfactory to the Secretary of State and shall be capable of being transferred to a Successor Operator.
- (b) In relation to any insurance policy maintained by the Franchisee from time to time pursuant to its obligations under paragraph 5.7(a) the Franchisee shall not agree to increase the Excess (as defined in the Depot Access Conditions which shall itself have the meaning specified in the Superior Lease) to £100,000 or above without the Secretary of State's prior written consent.
- (c) There shall be a Change if at any time there is an Uninsured Event (as defined in paragraph 10B of the Depot Letting Conditions (as defined in the relevant Superior Lease)) provided that in respect of such Change the only Revised Input shall be the amount of the difference between the cost to the Franchisee of obtaining alternative light maintenance facilities to replace those affected by the Uninsured Event and the amount of the rent

payable (excluding any amount which ceases (including temporarily) to be payable as a result of such Uninsured Event) by the Franchisee under the relevant Depot Sub Lease(s) (in the case of any increase up to a maximum adjustment of the amount of the Improvement Rent payable in respect of such Enhanced Depot).

5.8 Maintenance of the Enhanced Depots

- (a) The Franchisee shall ensure that each Enhanced Depot is maintained to the standard required in the relevant Depot Sub Lease.
- (b) As soon as reasonably practicable after the end of the Franchise Period but by no later than 28 days after the end of the Franchise Period the Secretary of State (or his nominee) and the Franchisee shall use all reasonable endeavours to agree:
 - (i) how far (if at all) the state of repair and/or condition of each of the Enhanced Depots falls short of the standard required in the relevant Depot Sub Lease ("**Required State**"); and
 - (ii) the proper costs (excluding VAT) (the "**Cost**") of bringing each such Enhanced Depot(s) up to the Required State.
- (c) If the Secretary of State (or his nominee) and the Franchisee are unable to agree on any matter referred to in paragraph 5.8(b), such matter shall be determined in accordance with the Dispute Resolution Rules.
- (d) If pursuant to paragraphs 5.8(b) or 5.8(c) it is agreed or determined that works are required to bring any Enhanced Depot up to the Required State (the "**Works**") the Franchisee shall procure that the Works are carried out and completed as soon as reasonably practicable but by no later than 6 months from the date of such agreement or determination. The Franchisee shall procure that the Works are carried out and completed:
 - (i) with that degree of skill, diligence, prudence and foresight which would be exercised by a skilled and experienced contractor carrying out works that are similar to the Works;
 - (ii) in compliance with all applicable Laws and requirements of any competent authority; and
 - (iii) so as to cause as little inconvenience or interference as possible with the use of such Enhanced Depot by the Successor Operator.
- (e) Any failure by the Franchisee to comply with its obligations under this paragraph 5.8 shall be deemed to be a contravention of the Franchise Agreement and the Secretary of State shall be entitled to recover the costs of carrying out the Works from the Performance Bond.

5.9 For the purposes of this paragraph 5:

"**Cashflow Agreement**" has the meaning ascribed to that term in each Depot Sub Lease (as such agreement may be amended, transferred or assigned from time to time);

"DepCo" means Lombard Corporate Finance (September 1) Limited (registered number 02392930) whose registered office is at The Quadrangle, The Promenade Cheltenham, Gloucestershire GL50 1PX;

"DepCo Direct Agreement" means the direct agreement dated 13 June 2003 between (1) The Strategic Rail Authority and (2) DepCo;

"Depot Sub Lease" means, in relation to any Enhanced Depot, the sub lease of that depot between (1) DepCo and (2) New Southern Railway Limited;

"Depot Works Agreements" means:

- (i) the Agreement for Works dated 13 June 2003 and made between New Southern Railway Limited and DepCo;
- (ii) the Cashflow Agreement;
- (iii) the Licence for Alterations (as that term is defined in each Depot Sub Lease);
- (iv) each licence to Underlet between (1) Network Rail, (2) DepCo and (3) New Southern Railway Limited;
- (v) the Side Agreement (as defined in each Depot Sub Lease); and
- (vi) the Reimbursement Letter dated 13 June 2003 from DepCo to New Southern Railway Limited under which DepCo will reimburse New Southern Railway Limited with certain sums incurred by New Southern Railway Limited;

"Enhanced Depot" means each of the light maintenance depots at Selhurst, Brighton, Eastbourne, Littlehampton and Streatham Hill and the depot at Bognor Regis;

"Improvement Rent" has the meaning specified in each Depot Sub Lease;

"Rent" means the aggregate of the Rent and Equipment Rent (each as defined in and payable under each Superior Lease) from time to time;

"Review Date" has the meaning specified in paragraph 1.1 of Part 1 of Schedule 4 of each Superior Lease;

"Review Notice" has the meaning specified in paragraph 2.1 of Part 1 of Schedule 4 of each Superior Lease;

"Revised Rent" has the meaning specified in paragraph 1.2.2 of Part 1 of Schedule 4 of each Superior Lease;

"Section 54 Undertaking" means the Section 54 Undertaking dated 13 June 2003 between (1) The Secretary of State (2) New Southern Railway Limited and (3) DepCo; and

"Superior Lease" means, in relation to any Enhancement Depot, the lease of that depot made between (1) Network Rail and (2) DepCo.

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Derogations

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5 November 2014 (Date of Redactions Approval) – Where text has been omitted from the document this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

APPENDIX TO SCHEDULE 6.4³⁹¹

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Derogations

³⁹¹ Where text has been omitted from the document this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

SCHEDULE 7

Performance Benchmarks and the PEM Regime

- Schedule 7.1:**
- Performance Benchmarks**
 - Appendix 1**
 - Part 1: Cancellations Benchmark Table**
 - Part 2: Annual Cancellations Benchmark Table**
 - Part 3: Annual Cancellations Payment Table**
 - Appendix 2**
 - Part 1: Peak Short Formation Benchmark Table**
 - Part 2: Annual Peak Short Formation Benchmark Table**
 - Part 3: Annual Peak Short Formation Payment Table**
 - Appendix 3**
 - Part 1: TOC Minute Delay Benchmark Table**
 - Part 2: Annual TOC Minute Delay Benchmark Table**
 - Part 3: Annual TOC Minute Delay Payment Table**
- Schedule 7.2:**
- PEM Regime**
 - Appendix 1: NPS Indicators, Benchmarks, Floors and Weightings**
 - Appendix 2: QuEST Indicators and weightings**
 - Appendix 3: PEM Benchmarks**
 - Appendix 4: PEM Payment**
 - Appendix 5: Basis for QuEST Inspections**

SCHEDULE 7.1**Performance Benchmarks****1. Benchmarks and Annual Benchmarks****Location of and amendment of Benchmarks and Annual Benchmarks**

- 1.1 The Cancellations Benchmarks are set out in the table in Part 1 of Appendix 1 (Cancellations Benchmark Table) to this Schedule 7.1.
- 1.2 The Annual Cancellations Benchmarks are set out in the table in Part 2 of Appendix 1 to this Schedule 7.1.
- 1.3 The Peak Short Formation Benchmarks are set out in the table in Part 1 of Appendix 2 (Peak Short Formation Benchmark Table) to this Schedule 7.1.
- 1.4 The Annual Peak Short Formation Benchmarks are set out in the table in Part 2 of Appendix 2 to this Schedule 7.1.
- 1.5 The TOC Minute Delay Benchmarks are set out in the table in Part 1 of Appendix 3 (TOC Minute Delay Benchmark Table) to this Schedule 7.1.
- 1.6 The Annual TOC Minute Delay Benchmarks are set out in the table in Part 2 of Appendix 3 (TOC Minute Delay Benchmark Table) to this Schedule 7.1.
- 1.7 The Secretary of State may at any time after a Charging Review vary, on giving not less than 3 months notice in writing, any of the Benchmarks and Annual Benchmarks to reflect the Secretary of State's reasonable view of the performance trajectory set as part of such Charging Review. Where the Secretary of State exercises his right pursuant to this paragraph 1.7, the relevant Benchmark Tables and Annual Benchmark Tables shall be deemed to have been amended accordingly.

2. Information Provisions**Cancellations Benchmarks**

- 2.1 At the end of each Reporting Period, the Franchisee shall, in accordance with the relevant requirements of Appendix 3 (Operational Information) to Schedule 13 (Information and Industry Initiatives), report to the Secretary of State:
 - (A) the total number of Cancellations and Partial Cancellations in that Reporting Period;
 - (B) the total number of Disputed Cancellations and Disputed Partial Cancellations in that Reporting Period;
 - (C) the total number of Network Rail Cancellations and Network Rail Partial Cancellations in that Reporting Period;

- (D) the total number of Disputed Cancellations and Disputed Partial Cancellations from the 12 preceding Reporting Periods for which the attribution remains in dispute; and
- (E) the total number of Disputed Cancellations and Disputed Partial Cancellations for which the disputed attribution has been resolved since the Franchisee's last report pursuant to this paragraph 2.1 (including whether each relevant Disputed Cancellation and/or Disputed Partial Cancellation was attributed to Network Rail or to the Franchisee).

For any Reporting Period falling within the first Performance Calculation Year the Franchisee shall provide the information required pursuant to this paragraph 2.1, disaggregated to separately show such information in respect of the railway passenger services specified in paragraph (a) of the definition of TGN Franchise Services.

The No Breach Reporting Periods Calculations

- (a) For each of the first five Reporting Periods falling within the first Performance Calculation Year (the "**No Breach Reporting Periods**"), the Secretary of State shall perform the following calculation for the purposes of determining the value of A for each such Reporting Period:

where A is ascertained as follows:

$$\frac{B}{C} \times 100$$

where

B is the total number of Cancellations or Partial Cancellations of Passenger Services in that No Breach Reporting Period, on the basis that:

- (i) a Cancellation shall count as 1;
- (ii) a Partial Cancellation shall count as 0.5; and
- (iii) any Cancellations or Partial Cancellations during that No Breach Reporting Period which were caused by:
 - (1) the Franchisee's implementation of a Service Recovery Plan during that No Breach Reporting Period; or
 - (2) the occurrence or continuing effect of a Force Majeure Event,

shall, if the Franchisee has complied with paragraph 4, be disregarded in determining such total number;

C is the total number of Passenger Services scheduled to be operated in the Enforcement Plan of the Day for that No Breach Reporting Period, disregarding, if the Franchisee has complied with paragraph 4, any

Cancellations or Partial Cancellations during that Reporting Period which were caused by:

- (i) the Franchisee's implementation of a Service Recovery Plan during that No Breach Reporting Period; or
- (ii) the occurrence or continuing effect of a Force Majeure Event.

Breach Reporting Periods Calculations

- (b) For each Breach Reporting Period the Secretary of State shall calculate the Franchisee's performance against the Cancellations Benchmark in accordance with the following formula:

$$\frac{A + D}{n}$$

where:

A is ascertained as follows:

$$\frac{B}{C} \times 100$$

where

B is the total number of Cancellations or Partial Cancellations of Passenger Services in that Breach Reporting Period, on the basis that:

- (i) a Cancellation shall count as 1;
- (ii) a Partial Cancellation shall count as 0.5; and
- (iii) any Cancellations or Partial Cancellations during that Breach Reporting Period which were caused by:
 - (1) the Franchisee's implementation of a Service Recovery Plan during that Breach Reporting Period; or
 - (2) the occurrence or continuing effect of a Force Majeure Event,

shall, if the Franchisee has complied with paragraph 4, be disregarded in determining such total number;

C is the total number of Passenger Services scheduled to be operated in the Enforcement Plan of the Day for that Breach Reporting Period, disregarding, if the Franchisee has complied with paragraph 4, any Cancellations or Partial Cancellations during that Reporting Period which were caused by

- (i) the Franchisee's implementation of a Service Recovery Plan during that No Breach Reporting Period; or
- (ii) the occurrence or continuing effect of a Force Majeure Event;

D is the sum of the values of *A* in each of the Reporting Periods in the first Performance Calculation Year immediately preceding that Breach Reporting Period; and

n is the number of Reporting Periods that have elapsed since the Start Date.

Subsequent Reporting Periods Calculations

- (c) For each Reporting Period (other than the No Breach Reporting Periods and the Breach Reporting Periods for which the provisions of paragraphs 2.1(a) and 2.1(b) shall apply respectively), the Secretary of State shall calculate a moving annual average of the Franchisee's performance against the Cancellations Benchmark in accordance with the following formula:

$$\frac{A + D}{13}$$

where:

A is ascertained as follows:

$$\frac{B}{C} \times 100$$

where:

B is the total number of Cancellations or Partial Cancellations of Passenger Services in that Reporting Period, on the basis that:

- (i) a Cancellation shall count as 1;
- (ii) a Partial Cancellation shall count as 0.5; and
- (iii) any Cancellations or Partial Cancellations during that Reporting Period which were caused by:
 - (1) the Franchisee's implementation of a Service Recovery Plan during that Reporting Period; or
 - (2) the occurrence or continuing effect of a Force Majeure Event,

shall, if the Franchisee has complied with paragraph 4, be disregarded in determining such total number;

C is the total number of Passenger Services scheduled to be operated in the Enforcement Plan of Day for that

Reporting Period, disregarding, if the Franchisee has complied with paragraph 4, any Cancellations or Partial Cancellations during that Reporting Period which were caused by:

- (i) the Franchisee's implementation of a Service Recovery Plan during that Reporting Period; or
- (ii) the occurrence or continuing effect of a Force Majeure Event; and

D is the sum of the values of *A* in each of the 12 preceding Reporting Periods (which for the avoidance of doubt and in respect of the 13th Reporting Period in the first Performance Calculation Year, shall be the sum of the values of *A* for the No Breach Reporting Periods (as calculated pursuant to paragraph 2.1(a)) and the Breach Reporting Periods (as calculated pursuant to paragraph 2.1(b))).

Performance Calculation Year Cancellations Calculations

2.2 At the end of each Performance Calculation Year the Secretary of State shall calculate a moving annual average of the Franchisee's performance against the Annual Cancellations Benchmark in accordance with the following formula:

$$ACTUAL = \frac{\sum A}{B}$$

where:

ACTUAL is the moving annual average of the Franchisee's performance against the Annual Cancellations Benchmark for that Performance Calculation Year; and

$\sum A$ is the sum of the values of *A* as determined in accordance with paragraph 2.1 for each Reporting Period in that Performance Calculation Year except that in respect of the first Performance Calculation Year the value of *ACTUAL* shall be calculated using the Cancellations and the Partial Cancellations in respect of the Passenger Services falling within paragraph (a) of the definition of TGN Franchise Services; and

B is in respect of a Performance Calculation Year consisting of 13 Reporting Periods, 13 and in respect of a Performance Calculation Year consisting of less than 13 Reporting Periods, the number of Reporting Periods in such Performance Calculation Year.

Peak Short Formation Benchmarks

Reporting Period Calculations

2.3 At the end of each Reporting Period the Franchisee shall, in accordance with the relevant requirements of Appendix 3 to Schedule 13 (Information and Industry Initiatives), report to the Secretary of State the total number of Peak Passenger Services in that Reporting Period operated with less than the Passenger Carrying

Capacity specified for each such Peak Passenger Services in the Train Plan. For any Reporting Period falling within the first Performance Calculation Year the Franchisee shall provide the information required pursuant to this paragraph 2.3, disaggregated to separately show the total number of Peak Passenger Services relating to the railway passenger services specified in paragraph (a) of the definition of TGN Franchise Services which are operated in each Reporting Period in that first Performance Calculation Year with less than the Passenger Carrying Capacity specified for each such Peak Passenger Service in the Train Plan.

The No Breach Reporting Periods Calculations

- (a) For each of the No Breach Reporting Periods, the Secretary of State shall perform the following calculation for the purposes of determining the values of A for each such Reporting Period:

where A is ascertained as follows:

$$\frac{B}{C} \times 100$$

where:

B is the total number of Peak Passenger Services in that No Breach Reporting Period operated with less Passenger Carrying Capacity than the Passenger Carrying Capacity specified for each such Peak Passenger Service in the Train Plan, disregarding, if the Franchisee has complied with paragraph 4, any such Peak Passenger Services which were operated in that way as a result of:

- (i) the Franchisee's implementation of a Service Recovery Plan during that No Breach Reporting Period; or
- (ii) the occurrence or continuing effect of a Force Majeure Event;

C is the total number of Peak Passenger Services scheduled to be operated in that No Breach Reporting Period, disregarding, if the Franchisee has complied with paragraph 4, any Peak Passenger Services operated with less Passenger Carrying Capacity than the Passenger Carrying Capacity specified for each such Peak Passenger Service in the Train Plan as a result of:

- (i) the Franchisee's implementation of a Service Recovery Plan during that No Breach Reporting Period; or
- (ii) the occurrence or continuing effect of a Force Majeure Event.

Breach Reporting Periods Calculations

- (b) For each Breach Reporting Period the Secretary of State shall calculate the Franchisee's performance against the Peak Short Formations Benchmark in accordance with the following formula:

$$\frac{A + D}{n}$$

where:

A is ascertained as follows:

$$\frac{B}{C} \times 100$$

where:

B is the total number of Peak Passenger Services in that Breach Reporting Period operated with less Passenger Carrying Capacity than the Passenger Carrying Capacity specified for each such Peak Passenger Service in the Train Plan, disregarding, if the Franchisee has complied with paragraph 4, any such Peak Passenger Services which were operated in that way as a result of:

- (i) the Franchisee's implementation of a Service Recovery Plan during that Breach Reporting Period; or
- (ii) the occurrence or continuing effect of a Force Majeure Event;

C is the total number of Peak Passenger Services scheduled to be operated in that Breach Reporting Period, disregarding, if the Franchisee has complied with paragraph 4, any Peak Passenger Services operated with less Passenger Carrying Capacity than the Passenger Carrying Capacity specified for each such Peak Passenger Service in the Train Plan as a result of:

- (i) the Franchisee's implementation of a Service Recovery Plan during that Reporting Period; or
- (ii) the occurrence or continuing effect of a Force Majeure Event; and

D is the sum of the values of *A* in each of the Reporting Periods in the first Performance Calculation Year immediately preceding that Breach Reporting Period; and

n is the number of Reporting Periods that have elapsed since the Start Date.

Subsequent Reporting Periods Calculations

- (c) For each Reporting Period (other than the No Breach Reporting Periods and the Breach Reporting Periods for which the provisions of paragraphs 2.3(a) and 2.3(b) shall apply respectively), the Secretary of State shall calculate a moving annual average of the Franchisee's performance against the Peak Short Formation Benchmark in accordance with the following formula:

$$\frac{A + D}{13}$$

where:

A is ascertained as follows:

$$\frac{B}{C} \times 100$$

where

B is the total number of Peak Passenger Services in that Reporting Period operated with less Passenger Carrying Capacity than the Passenger Carrying Capacity specified for each such Peak Passenger Service in the Train Plan, disregarding, if the Franchisee has complied with paragraph 4, any such Peak Passenger Services which were operated in that way as a result of:

- (i) the Franchisee's implementation of a Service Recovery Plan during that Reporting Period; or
- (ii) the occurrence or continuing effect of a Force Majeure Event;

C is the total number of Peak Passenger Services scheduled to be operated in that Reporting Period, disregarding, if the Franchisee has complied with paragraph 4, any Peak Passenger Services operated with less Passenger Carrying Capacity than the Passenger Carrying Capacity specified for each such Peak Passenger Service in the Train Plan as a result of:

- (i) the Franchisee's implementation of a Service Recovery Plan during that Reporting Period; or
- (ii) the occurrence or continuing effect of a Force Majeure Event; and

D is the sum of the values of *A* in each of the 12 preceding Reporting Periods (which for the avoidance of doubt and in respect of the 13th Reporting Period in the first Performance Calculation Year, shall be the sum of the values of *A* for the Breach Reporting Periods (as calculated pursuant to paragraph 2.3(a)) and the Breach Reporting Periods (as calculated pursuant to paragraph 2.3(b)).

Performance Calculation Year Peak Short Formation Calculations

2.4 At the end of each Performance Calculation Year the Secretary of State shall calculate a moving annual average of the Franchisee's performance against the Annual Peak Short Formation Benchmark in accordance with the following formula:

$$ACTUAL = \frac{\sum A}{B}$$

where:

ACTUAL is the moving annual average of the Franchisee's performance against the Annual Peak Short Formation Benchmark for that Performance Calculation Year;

$\sum A$ is the sum of the values of A as determined in accordance with paragraph 2.3 for that Performance Calculation Year except that in respect of the first Performance Calculation Year the value of ACTUAL shall be calculated using the Peak Passenger Services in respect of the Passenger Services falling within paragraph (a) of the definition of TGN Franchise Services which were operated with less Passenger Carrying Capacity than that specified in the Train Plan; and

B is in respect of a Performance Calculation Year consisting of 13 Reporting Periods, 13 and in respect of a Performance Calculation Year consisting of less than 13 Reporting Periods, the number of Reporting Periods in such Performance Calculation Year.

- 2.5 For the purposes of the calculations to be undertaken by the Secretary of State pursuant to paragraphs 2.3 and 2.4 the following shall apply:
- (a) if and to the extent that any Peak Passenger Service is operated with Passenger Carrying Capacity in excess of the Passenger Carrying Capacity specified for that Peak Passenger Service in the Train Plan, the excess capacity shall be disregarded; and
 - (b) any Peak Passenger Service that is the subject of a Cancellation or a Partial Cancellation shall be disregarded altogether.

TOC Minute Delay Benchmarks

Reporting Period Calculations

- 2.6 At the end of each Reporting Period the Franchisee shall, in accordance with the relevant requirements of Appendix 3 to Schedule 13 (Information and Industry Initiatives), report to the Secretary of State:
- (a) the total number of Minutes Delay:
 - (i) in that Reporting Period attributable to the Franchisee;
 - (ii) in that Reporting Period for which the attribution is in dispute between Network Rail and the Franchisee;
 - (iii) from the 12 preceding Reporting Periods for which the attribution remains in dispute; and

- (iv) from the 12 preceding Reporting Periods for which disputed attributions have been resolved or determined since the Franchisee's last report pursuant to this paragraph 2.6, and the number of such Minutes Delay attributed to each of the Franchisee and Network Rail as a result of such resolution or determination; and
- (b) the aggregate Train Mileage operated in that Reporting Period.
- (c) For any Reporting Period falling within the first Performance Calculation Year the Franchisee shall provide the information required by this paragraph 2.6 disaggregated to separately show such information in respect of the railway passenger services specified in paragraph (a) of the definition of TGN Franchise Services.

2.7

The No Breach Reporting Periods Calculations

- (a) For each of the No Breach Reporting Periods, the Secretary of State shall perform the following calculation for the purposes of determining the Franchisee's performance against the TOC Minute Delay Benchmark for each such Reporting Period:

$$\frac{A}{D}$$

where:

A is the sum of the number of Minutes Delay that are attributable to the Franchisee in such No Breach Reporting Period; and

D is ascertained as follows:

$$\frac{B}{1000}$$

where:

B is the sum of the actual Train Mileage operated by the Franchisee in that No Breach Reporting Period.

Breach Reporting Periods Calculations

- (b) For each Breach Reporting Period the Secretary of State shall calculate the Franchisee's performance against the TOC Minute Delay Benchmark in accordance with the following formula:

$$\frac{A}{D}$$

where:

A is the sum of the number of Minutes Delay that are attributable to the Franchisee:

- (i) in such Breach Reporting Period; and

- (ii) in each of the Reporting Periods in the first Performance Calculation Year immediately preceding that Breach Reporting Period; and

D is ascertained as follows:

$$\frac{B}{1000}$$

where:

B is the sum of the actual Train Mileage operated by the Franchisee:

- (i) in such Breach Reporting Period; and
- (ii) in each of the Reporting Periods in the first Performance Calculation Year immediately preceding that Breach Reporting Period.

Subsequent Reporting Periods Calculations

- (c) For each Reporting Period (other than the No Breach Reporting Periods and the Breach Reporting Periods for which the provisions of paragraphs 2.7(a) and 2.7(b) shall apply respectively), the Secretary of State shall calculate a moving annual average of the Franchisee's performance against the TOC Minute Delay Benchmark in accordance with the following formula:

$$\frac{A}{D}$$

where:

A is the sum of the number of Minutes Delay that are attributable to the Franchisee:

- (i) in such Reporting Period; and
- (ii) in each of the 12 preceding Reporting Periods (which for the avoidance of doubt and in respect of the 13th Reporting Period in the first Performance Calculation Year, shall be the sum of the values of *A* for the No Breach Reporting Periods (as calculated pursuant to paragraph 2.7(a)) and the Breach Reporting Periods (as calculated pursuant to paragraph 2.7(b));

D is ascertained as follows:

$$\frac{B}{1000}$$

where:

B is the sum of the actual Train Mileage operated by the Franchisee:

- (i) in such Reporting Period; and
- (ii) in each of the 12 preceding Reporting Periods (which for the avoidance of doubt and in respect of the 13th Reporting Period in the first Performance Calculation Year, shall be the sum of the values of D for the No Breach Reporting Periods (as calculated pursuant to paragraph 2.7(a)) and the Breach Reporting Periods (as calculated pursuant to paragraph 2.7(b)).

Performance Calculation Year TOC Minute Delay Calculations

2.8 At the end of each Performance Calculation Year the Secretary of State shall calculate a moving annual average of the Franchisee's performance against the Annual TOC Minute Delay Benchmark in accordance with the following formula:

$$ACTUAL = \frac{AA}{AD}$$

where:

ACTUAL is the Franchisee's performance against the Annual TOC Minute Delay Benchmark for that Performance Calculation Year;

AA is the sum of the number of Minutes Delay that are attributable to the Franchisee in each Reporting Period in that Performance Calculation Year except that in respect of the first Performance Calculation Year the value of *AA* shall be calculated using the Minutes Delay occurring in respect of the Passenger Services falling within paragraph (a) of the definition of TGN Franchise Services which are attributed to the Franchisee; and

AD is ascertained as follows:

$$\frac{AB}{1000}$$

where:

AB is the sum of the actual Train Mileage operated by the Franchisee in each Reporting Period in that Performance Calculation Year except that in respect of the first Performance Calculation Year the value of *AB* shall be calculated using the Train Mileage in respect of the Passenger Services falling within paragraph (a) of the definition of TGN Franchise Services.

- 2.9 ³⁹²In performing the calculations pursuant to paragraphs 2.7 and/or 2.8 the Secretary of State shall, disregard any Minutes Delay that are caused by the occurrence or continuing effect of a Force Majeure Event.

Allocation of Disputed Minutes Delay

- 2.10 Where the attribution of any Minutes Delay is in dispute between Network Rail and the Franchisee at the end of a Reporting Period and/or a Performance Calculation Year (as applicable) the Secretary of State shall, for the purpose of performing the calculations referred to in paragraphs 2.7 and/or 2.8, allocate any disputed Minutes Delay between the Franchisee and Network Rail in the proportions of:

A to B

where:

A is:

- (i) for the purposes of the calculations specified in paragraph 2.7(a) the total number of undisputed Minutes Delay in respect of a No Breach Reporting Period that are attributable to the Franchisee including any disputed attributions which were resolved or determined during such No Breach Reporting Period;
- (ii)³⁹³ **for the purposes of the calculations specified in paragraph 2.7(b) the total number of undisputed Minutes Delay from all Reporting Periods preceding that Breach Reporting Period that are attributable to the Franchisee including any disputed attributions which were resolved or determined during such Breach Reporting Period; and**
- (iii) for the purposes of the calculations specified in paragraphs 2.7(c) and 2.8, the total number of undisputed Minutes Delay, in each case, from the 12 preceding Reporting Periods that are attributable to the Franchisee including any disputed attributions which were resolved or determined during such 12 preceding Reporting Periods; and

B is:

- (i) for the purposes of the calculations specified in paragraph 2.7(a) the total number of undisputed Minutes Delay in respect of a No Breach Reporting Period that are attributable to Network Rail including any disputed attributions which

³⁹² 12 May 2015 - (Date of Contract Change Letter) – Contract variation agreed by the Secretary of State and Franchisee.

³⁹³ 12 May 2015 - (Date of Contract Change Letter) – Contract variation agreed by the Secretary of State and Franchisee.

were resolved or determined during such No Breach Reporting Period;

- (ii)³⁹⁴ **for the purposes of paragraph 2.7(b) the total number of undisputed Minutes Delay from all Reporting Periods preceding that Breach Reporting Period that are attributable to Network Rail including any disputed attributions which were resolved or determined during such Breach Reporting Period; and**
- (iii) for the purposes of paragraph 2.7(c) and 2.8, the total number of undisputed Minutes Delay from the 12 preceding Reporting Periods that are attributable to Network Rail including any disputed attributions which were resolved or determined during such 12 preceding Reporting Periods.

Allocation of Disputed Cancellations/Partial Cancellations

- 2.11 Where there are any Disputed Cancellations and/or Disputed Partial Cancellations at the end of a Reporting Period and/or a Performance Calculation Year (as applicable) the Secretary of State shall, for the purpose of performing the calculations referred to in paragraphs 2.1 and/or 2.2 allocate any Disputed Cancellations and/or Disputed Partial Cancellations between the Franchisee and Network Rail in the proportions of:

A to B

where:

A is:

- (i) for the purposes of the calculations specified in paragraph 2.1(a) the total number of undisputed Cancellations and/or Partial Cancellations (that is, which are not Disputed Cancellations or Disputed Partial Cancellations) in respect of a No Breach Reporting Period including any Disputed Cancellations or Disputed Partial Cancellations which were resolved or determined during such No Breach Reporting Period;
- (ii)³⁹⁵ **for the purposes of the calculations specified in paragraph 2.1(b) the total number of undisputed Cancellations and/or Partial Cancellations (that is, which are not Disputed Cancellations or Disputed Partial Cancellations) from all Reporting Periods preceding that Breach Reporting Period including any Disputed Cancellations or Disputed Partial**

³⁹⁴ 12 May 2015 - (Date of Contract Change Letter) – Contract variation agreed by the Secretary of State and Franchisee.

³⁹⁵ 12 May 2015 - (Date of Contract Change Letter) – Contract variation agreed by the Secretary of State and Franchisee.

Cancellations which were resolved or determined during such Breach Reporting Period; and

- (iii) for the purposes of the calculations specified in paragraphs 2.1(c) and 2.2, the total number of undisputed Cancellations and/or Partial Cancellations (that is, which are not Disputed Cancellations or Disputed Partial Cancellation) from the 12 preceding Reporting Periods including any Disputed Cancellations or Disputed Partial Cancellations which were resolved or determined during such 12 preceding Reporting Periods; and

B is:

for the purposes of the calculations specified in paragraph 2.1(a) the total number of undisputed Network Rail Cancellations and/or Network Rail Partial Cancellations (that is, which are not Disputed Cancellations or Disputed Partial Cancellations) in respect of a No Breach Reporting Period including any Disputed Cancellations or Disputed Partial Cancellations which were resolved or determined during such No Breach Reporting Period;

- (ii)³⁹⁶ **for the purposes of paragraph 2.1(b) the total number of undisputed Network Rail Cancellations and/or Network Rail Partial Cancellations (that is, which are not Disputed Cancellations or Disputed Partial Cancellations) from all Reporting Periods preceding that Breach Reporting Period including any Disputed Cancellations or Disputed Partial Cancellations which were resolved or determined during such Breach Reporting Period; and**

- (iii) for the purposes of paragraph 2.1(c) and 2.2, the total number of undisputed Network Rail Cancellations and/or Network Rail Partial Cancellations (that is, which are not Disputed Cancellations or Disputed Partial Cancellations) from the 12 preceding Reporting Periods including any Disputed Cancellations or Disputed Partial Cancellations which were resolved or determined during such 12 preceding Reporting Periods.

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

Calculations

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Derogations

³⁹⁶ 12 May 2015 - (Date of Contract Change Letter) – Contract variation agreed by the Secretary of State and Franchisee.

- 2.13 The Secretary of State shall perform the calculations referred to in paragraphs 2.1, 2.2, 2.3, 2.4, 2.7 and 2.8 rounded to two decimal places, with the midpoint (that is, 11.115) rounded upwards (that is, 11.12).

Notice of Performance Results

- 2.14 As soon as reasonably practicable after the end of each Reporting Period and each Performance Calculation Year, the Secretary of State shall notify the Franchisee of the results of the calculations performed pursuant to this paragraph 2.

Meaning of Train Plan

- 2.15 For the purposes of this Schedule 7.1 Train Plan shall, unless otherwise stated, mean the then current train plan which has been finalised pursuant to paragraph 7 of Schedule 1.1 (Service Development) and which includes any amendments thereto pursuant to paragraph 3 of Schedule 1.2 (Operating Obligations), where:

- (a) such amendments are required as a consequence of Network Rail exercising its rights pursuant to the Track Access Agreement; and
- (b) the Franchisee has complied with the provisions of such paragraph in respect thereof.

Consequences for Poor Performance in each Reporting Period

- 2.16 Without limiting the provisions of paragraph 2.17 and paragraph 3, if in any Reporting Period (other than a No Breach Reporting Period) the Franchisee's performance as calculated pursuant to paragraphs 2.1(b), 2.1(c), 2.3(b), 2.3(c), 2.7(b) or 2.7(c) exceeds (that is, is equal to or worse than):

- (a) in respect of any Breach Reporting Period, the Breach Period Performance Level relating to each Benchmark; or
- (b) in respect of any other Reporting Period (other than a No Breach Reporting Period and a Breach Reporting Period), the Breach Performance Level relating to each Benchmark,

then a contravention shall occur and the Secretary of State may serve a Remedial Plan Notice in accordance with the provisions of paragraph 1 of Schedule 10.1 (Remedial Plans and Remedial Agreement). For the purposes of paragraph 1.4(c) of Schedule 10.1 (Remedial Plan and Remedial Agreement) the steps to be proposed by the Franchisee pursuant to that paragraph are those which ensure that the Franchisee's performance against the relevant Benchmark will be equal to or better than the Target Performance Level relating to such Benchmark.

- 2.17 Certain consequences of the Franchisee's performance being equal to or worse than the Default Performance Level relating to each Benchmark are set out in paragraph 2.6 of Schedule 10.3 (Events of Default and Termination Events).

3. Performance Sum Payments

- 3.1 At the end of each Performance Calculation Year the Secretary of State shall calculate:

- (a) the Cancellations Performance Sum and TOC Minute Delay Performance Sum payable by the Secretary of State to the Franchisee or the Franchisee to the Secretary of State (as the case may be); and

- (b) the Short Formation Performance Sum payable by the Franchisee to the Secretary of State,

in each case as follows in this paragraph 3:

3.2 Cancellations Performance Sum

where for that Performance Calculation Year, the Franchisee's performance in relation to the Annual Cancellations Benchmark as calculated pursuant to paragraph 2.2 (that is, the value of ACTUAL) is:

- (a) less than (that is, better than) the Annual Target Performance Level for that Annual Cancellations Benchmark and is less than (that is, better than) or equal to the Annual Cap Performance Level for such Annual Cancellations Benchmark, in each case for that Performance Calculation Year, then the Cancellations Performance Sum in respect of that Performance Calculation Year shall be payable by the Secretary of State to the Franchisee and shall be an amount calculated as follows:

$$(TARGET - CAP) \times PBP$$

where:

TARGET is the Annual Target Performance Level relating to that Annual Cancellations Benchmark for that Performance Calculation Year;

CAP is the Annual Cap Performance Level relating to that Annual Cancellations Benchmark for that Performance Calculation Year;

PBP is:

- (A) in respect of the first Performance Calculation Year an amount determined as follows:

$$PBP \times 0.4$$

where:

PBP is the amount specified in the first row of the table in Part 3 of Appendix 1 to this Schedule 7.1;

- (B) in respect of any subsequent Performance Calculation Year ("**Year n**") an amount calculated as follows:

$$PBP \times RPIMF$$

where

RPIMF is the RPI multiplication factor for that Performance Calculation Year calculated as follows:

$$RPIMF = \left(RPI_{py} \times \left(\left(\frac{RPI_n}{RPI_{n-1}} \right) + 0.01 \right) \right)$$

where:

RPI_n is the Retail Prices Index for the January which falls in Year n;

RPI_{n-1} is the Retail Prices Index for the January which falls in the Performance Calculation Year immediately preceding Year n; and

RPI_{py} is RPIMF as calculated for the purpose of the Performance Calculation Year preceding Year n. Where that preceding Year n is the first Performance Calculation Year, this figure will be 1;

- (b) less than (that is, better than) the Annual Target Performance Level for that Annual Cancellations Benchmark but more than (that is, worse than) the Annual Cap Target Performance Level for that Annual Cancellations Benchmark, in each case for that Performance Calculation Year, then the Cancellations Performance Sum in respect of that Performance Calculation Year shall be payable by the Secretary of State to the Franchisee and shall be an amount calculated as follows:

$$(TARGET - ACTUAL) \times PBP$$

where:

TARGET has the meaning given to it in paragraph 3.2(a);

ACTUAL has the meaning given to it in paragraph 2.2; and

PBP has the meaning given to it in paragraph 3.2(a);

- (c) more than (that is, worse than) the Annual Target Performance Level for that Annual Cancellations Benchmark but less than (that is, better than) the Annual Breach Performance Level for that Annual Cancellations Benchmark, in each case for that Performance Calculation Year, then the Cancellations Performance Sum in respect of that Performance Calculation Year shall be payable by the Franchisee to the Secretary of State and shall be an amount calculated as follows, provided that for the purposes of the formula in paragraph 1.1 of Schedule 8.1 (Franchise Payments) any such amount shall be a negative number notwithstanding that the amount calculated as below produces a positive number:

$$(ACTUAL - TARGET) \times PPP$$

where:

ACTUAL has the meaning given to it in paragraph 2.2;

TARGET is the Annual Target Performance Level relating to the Annual Cancellations Benchmark for that Performance Calculation Year;

PPP is:

- (A) in respect of the first Performance Calculation Year an amount determined as follows:

$$PPP \times 0.4$$

where

PPP is the amount specified in the second row of the table in Part 3 of Appendix 1 to this Schedule 7.1;

- (B) in respect of any subsequent Performance Calculation Year ("**Year n**") an amount calculated as follows:

$$PPP \times RPIMF$$

where:

RPIMF has the meaning given to it in paragraph 3.2(a); and

- (d) more than (that is, worse than) or equal to the Annual Breach Performance Level for that Annual Cancellations Benchmark for that Performance Calculation Year then the Cancellations Performance Sum payable by the Franchisee to the Secretary of State shall be an amount calculated as follows, provided that for the purposes of the formula in paragraph 1.1 of Schedule 8.1 (Franchise Payments) any such amount shall be a negative number notwithstanding that the amount calculated as below produces a positive number:

$$(BREACH - TARGET) \times PPP$$

where:

BREACH is the Annual Breach Performance Level relating to that Annual Cancellations Benchmark for that Performance Calculation Year;

TARGET has the meaning given to it in paragraph 3.2(a); and

PPP has the meaning given to it in paragraph 3.2(c);

3.3 Short Formation Performance Sum

where, for that Performance Calculation Year, the Franchisee's performance in relation to the Annual Peak Short Formation Benchmark as calculated pursuant to paragraph 2.4 (that is, the value of ACTUAL) is:

- (a) more than (that is, worse than) the Annual Breach Performance Level in relation to the Annual Peak Short Formation Benchmark for that Performance Calculation Year, in each case for that Performance

Calculation Year, then the Short Formation Performance Sum in respect of that Performance Calculation Year shall be payable by the Franchisee to the Secretary of State and shall be an amount calculated as follows, provided that for the purposes of the formula in paragraph 1.1 of Schedule 8.1 (Franchise Payments) any such amount shall be a negative number notwithstanding that the amount calculated as below produces a positive number:

$$((AIL - TARGET) \times IPR) + ((BREACH - AIL) \times BPR)$$

where:

AIL is the Annual Intermediate Peak Short Formation Payment Level for that Performance Calculation Year;

TARGET is the Annual Target Performance Level relating to that Annual Peak Short Formation Benchmark for that Performance Calculation Year:

IPR is:

- (A) in respect of the first Performance Calculation Year an amount that is determined as follows:

$$IPR \times 0.4$$

where:

IPR is the amount specified in the first row of the table in Part 3 of Appendix 2 to this Schedule 7.1;

- (B) in respect of any subsequent Performance Calculation Year ("**Year n**") an amount calculated as follows:

$$IPR \times RPIMF$$

where:

RPIMF has the meaning given to it in paragraph 3.2(a);

BREACH is the Annual Breach Performance Level relating to that Annual Peak Short Formation Benchmark for that Performance Calculation Year

BPR is:

- (A) in respect of the first Performance Calculation Year is an amount that is determined as follows:

$$BPR \times 0.4$$

where:

BPR is the amount specified in the second row of the table in Part 3 of Appendix 2 to this Schedule 7.1;

- (B) in respect of any subsequent Performance Calculation Year (“**Year n**”) an amount calculated as follows:

$BPR \times RPIMF$

RPIMF has the meaning given to it in paragraph 3.2(a);

- (b) more than (that is, worse than) the Annual Intermediate Peak Short Formation Payment Level in relation to the Annual Peak Short Formation Benchmark for that Performance Calculation Year but less than (that is, better than) the Annual Breach Performance Level, in each case for that Performance Calculation Year, then the Short Formation Performance Sum in respect of that Performance Calculation Year shall be payable by the Franchisee to the Secretary of State and shall be an amount calculated as follows, provided that for the purposes of the formula in paragraph 1.1 of Schedule 8.1 (Franchise Payments) any such amount shall be a negative number notwithstanding that the amount calculated as below produces a positive number:

$$((AIL - TARGET) \times IPR) + ((ACTUAL - AIL) \times BPR)$$

where

AIL, *TARGET*, *IPR* and *BPR* each have the meanings given to each such term in paragraph 3.3(a); and

ACTUAL has the meaning given to it in paragraph 2.4;

- (c) is less than (that is, better than) or equal to the Annual Intermediate Peak Short Formation Payment Level in relation to the Annual Peak Short Formation Benchmark for that Performance Calculation Year, in each case for that Performance Calculation Year, then the Short Formation Performance Sum in respect of that Performance Calculation Year shall be payable by the Franchisee to the Secretary of State and shall be an amount calculated as follows, provided that for the purposes of the formula in paragraph 1.1 of Schedule 8.1 (Franchise Payments) any such amount shall be a negative number notwithstanding that the amount calculated as below produces a positive number:

$$((ACTUAL - TARGET) \times IPR)$$

where:

ACTUAL, *TARGET* and *IPR* each have the meanings given to each such term in paragraph 3.3(b);

3.4 TOC Minute Delay Performance Sum

where for that Performance Calculation Year, the Franchisee's performance in relation to the Annual TOC Minute Delay Benchmark as calculated pursuant to paragraph 2.8 (that is, the value of ACTUAL) is:

- (a) less than (that is, better than) the Annual Target Performance Level for that Annual TOC Minute Delay Benchmark and is less than (that is, better than) or equal to the Annual Cap Performance Level for such Annual TOC Minute Delay Benchmark, in each case for that Performance Calculation Year, then the TOC Minute Delay Performance Sum in respect of such Performance Calculation Year shall be payable by the Secretary of State to the Franchisee and shall be an amount calculated as follows:

$$((TARGET - CAP) \times PBP)$$

where:

TARGET is the Annual Target Performance Level relating to that Annual TOC Minute Delay Benchmark for that Performance Calculation Year;

CAP is the Annual Cap Performance Level relating to that Annual TOC Minute Delay Benchmark for that Performance Calculation Year;

PBP is:

- (A) in respect of the first Performance Calculation Year an amount that is determined as follows:

$$PBP \times 0.4$$

where:

PBP is the amount specified in the first row of the table in Part 3 of Appendix 3 to this Schedule 7.1;

- (B) in respect of any subsequent Performance Calculation Year ("Year n") an amount calculated as follows:

$$PBP \times RPIMF$$

where

PBP is the amount specified in the first row of the table in Part 3 of Appendix 3 to this Schedule 7.1; and

RPIMF has the meaning given to it in paragraph 3.2(a);

- (b) less than (that is, better than) the Annual Target Performance Level for that Annual TOC Minute Delay Benchmark but more than (that is, worse than) the Annual Cap Performance Level for that Annual TOC Minute Delay Benchmark, in each case for that Performance Calculation Year, then the TOC Minute Delay Performance Sum in respect of that Performance Calculation Year shall be payable by the Secretary of State to the Franchisee and shall be an amount calculated as follows:

$$((TARGET - ACTUAL) \times PBP)$$

where:

TARGET has the meaning given to it in paragraph 3.4(a);

ACTUAL has the meaning given to it in paragraph 2.8; and

PBP has the meaning given to it in paragraph 3.4(a);

- (c) more than (that is, worse than) the Annual Target Performance Level for that Annual TOC Minute Delay Benchmark but less than (that is, better than) the Annual Breach Performance Level for that Annual TOC Minute Delay Benchmark, in each case for that Performance Calculation Year, then the TOC Minute Delay Performance Sum in respect of that Performance Calculation Year shall be payable by the Franchisee to the Secretary of State and shall be an amount calculated as follows, provided that for the purposes of the formula in paragraph 1.1 of Schedule 8.1 (Franchise Payments) any such amount shall be a negative number notwithstanding that the amount calculated as below produces a positive number:

$$((ACTUAL - TARGET) \times PPP)$$

where:

ACTUAL has the meaning given to it in paragraph 2.8;

TARGET has the meaning given to it in paragraph 3.4(a);

PPP is:

- (A) in respect of the first Performance Calculation Year an amount that is determined as follows:

$$PPP \times 0.4$$

where:

PPP is the amount specified in the second row of the table in Part 3 of Appendix 3 to this Schedule 7.1;

- (B) in respect of any subsequent Performance Calculation Year ("**Year n**") an amount calculated as follows:

$$PPP \times RPIMF$$

where

PPP is the that is equal to the amount specified in the second row of the table in Part 3 of Appendix 3 to this Schedule 7.1; and

RPIMF has the meaning given to it in paragraph 3.2(a); and

- (d) more than (that is, worse than) or equal to the Annual Breach Performance Level for that Annual TOC Minute Delay Benchmark for that Performance

Calculation Year then the TOC Minute Delay Performance Sum in respect of that Performance Calculation Year shall be payable by the Franchisee to the Secretary of State and shall be an amount calculated as follows, provided that for the purposes of the formula in paragraph 1.1 of Schedule 8.1 (Franchise Payments) any such amount shall be a negative number notwithstanding that the amount calculated as below produces a positive number:

$$((BREACH - TARGET) \times PPP)$$

where:

BREACH is the Annual Breach Performance Level relating to that Annual TOC Minute Delay Benchmark for that Performance Calculation Year;

TARGET has the meaning given to it in paragraph 3.4(a); and

PPP has the meaning given to it in paragraph 3.4(c).

3.5 Each:

- (a) Cancellations Performance Sum and TOC Minute Delay Performance Sum calculated pursuant to paragraphs 3.2 and 3.4 (respectively) in respect of any Performance Calculation Year payable by the Secretary of State to the Franchisee or the Franchisee to the Secretary of State (as the case may be); and
- (b) Short Formation Performance Sum payable by the Franchisee to the Secretary of State calculated pursuant to paragraphs 3.3,

shall, subject to paragraph 3.6, be paid by way of adjustment to Franchise Payments on the Performance Sum Adjustment Date.

3.6 Any Cancellations Performance Sum, Short Formation Performance Sum or TOC Minute Delay Performance Sum to be paid in respect of the final Franchisee Year shall be determined in accordance with this paragraph 3 but shall be paid within 30 days of the Secretary of State giving written notice to the Franchisee of the amount of such Cancellations Performance Sum, Short Formation Performance Sum or TOC Minute Delay Performance Sum (as the case may be).

4. **Submission of Records Relating to the Implementation of a Service Recovery Plan**

The Franchisee shall, at the end of each Reporting Period for which a Service Recovery Plan has been implemented (or such other period as may be agreed by the Secretary of State), submit to the Secretary of State all the comprehensive records (as more particularly described in the relevant paragraph of the Service Recovery Plan) which relate to the implementation of such Service Recovery Plan during that Reporting Period.

5. **Determination of the Annual Benchmarks for Performance Calculation Years that are shorter than 13 Reporting Periods**

5.1 Where a Performance Calculation Year is shorter than 13 Reporting Periods the Secretary of State will perform the following calculations for the purposes of determining the Annual Cancellations Benchmark, the Annual Peak Short

Formation Benchmarks and the Annual TOC Minute Delay Benchmark relating to that Performance Calculation Year:

(a) in respect of the Annual Cancellations Benchmark for that Performance Calculation Year:

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

where:

$\sum A$ is:

- (i) for the Annual Cap Performance Level, the sum of the data relevant for each of the Reporting Periods in that Performance Calculation Year, such data being the data which was used for the purposes of determining the Annual Cap Performance Level in respect of a full Performance Calculation Year as more particularly set out in the document in agreed terms marked **ABD**; or
- (ii) for the Annual Target Performance Level, the sum of the data relevant for each of the Reporting Periods in that Performance Calculation Year, such data being the data which was used for the purposes of determining the Annual Target Performance Level in respect of a full Performance Calculation Year as more particularly set out in the document in agreed terms marked **ABD**; or
- (iii) for the Annual Breach Performance Level, the sum of the data relevant for each of the Reporting Periods in that Performance Calculation Year, such data being the data which was used for the purposes of determining the Annual Breach Performance Level in respect of a full Performance Calculation Year as more particularly set out in the document in agreed terms marked **ABD**; and

B is the number of Reporting Periods in that Performance Calculation Year; and

(b) in respect of the Annual Peak Short Formation Benchmark for that Performance Calculation Year:

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

where:

$\sum A$ is:

- (i) for the Annual Target Performance Level, the sum of the data relevant for each of the Reporting Periods in that Performance Calculation Year, such data being the data which was used for the purposes of determining the Annual Target Performance Level in

respect of a full Performance Calculation Year as more particularly set out in the document in agreed terms marked **ABD**; or

- (ii) for the Annual Intermediate Peak Short Formation Payment Level, the sum of the data relevant for each of the Reporting Periods in that Performance Calculation Year, such data being the data which was used for the purposes of determining the Annual Intermediate Peak Short Formation Payment Level in respect of a full Performance Calculation Year as more particularly set out in the document in agreed terms marked **ABD**; or
- (iii) for the Annual Breach Performance Level, the sum of the data relevant for each of the Reporting Periods in that Performance Calculation Year, such data being the data which was used for the purposes of determining the Annual Breach Performance Level in respect of a full Performance Calculation Year as more particularly set out in the document in agreed terms marked **ABD**; and

B is the number of Reporting Periods in that Performance Calculation Year; and

- (c) in respect of the Annual TOC Minute Delay Benchmark for that Performance Calculation Year:

$$\frac{\sum AA}{AB}$$

where:

$\sum AA$ is:

- (i) for the Annual Cap Performance Level, the sum of the Minutes Delay attributable to the Franchisee as comprised in the data relevant for each of the Reporting Periods in that Performance Calculation Year, such Minutes Delay data being the data which was used for the purposes of determining the Annual Cap Performance Level in respect of a full Performance Calculation Year as more particularly set out in the document in agreed terms marked **ABD**; or
- (ii) for the Annual Target Performance Level, the sum of the Minutes Delay attributable to the Franchisee as comprised in the data relevant for each of the Reporting Periods in that Performance Calculation Year, such Minutes Delay data being the data which was used for the purposes of determining the Annual Target Performance Level in respect of a full Performance Calculation Year as more particularly set out in the document in agreed terms marked **ABD**; or

- (iii) for the Annual Breach Performance Level, the sum of the Minutes Delay attributable to the Franchisee as comprised in the data relevant for each of the Reporting Periods in that Performance Calculation Year, such Minutes Delay data being the data which was used for the purposes of determining the Annual Breach Performance Level in respect of a full Performance Calculation Year as more particularly set out in the document in agreed terms marked **ABD**; and

AB is ascertained as follows:

$$\frac{B}{1000}$$

where:

B is :

- (i) for the Annual Cap Performance Level, the sum of the Train Mileage as comprised in the data relevant for each of the Reporting Periods in that Performance Calculation Year, such Train Mileage data being the data which was used for the purposes of determining the Annual Cap Performance Level in respect of a full Performance Calculation Year as more particularly set out in the document in agreed terms marked **ABD**; or
- (ii) for the Annual Target Performance Level, the sum of the Train Mileage as comprised in the data relevant for each of the Reporting Periods in that Performance Calculation Year, such Train Mileage data being the data which was used for the purposes of determining the Annual Target Performance Level in respect of a full Performance Calculation Year as more particularly set out in the document in agreed terms marked **ABD**; or
- (iii) for the Annual Breach Performance Level, the sum of the Train Mileage as comprised in the data relevant for each of the Reporting Periods in that Performance Calculation Year, such Train Mileage data being the data which was used for the purposes of determining the Annual Breach Performance Level in respect of a full Performance Calculation Year as more particularly set out in the document in agreed terms marked **ABD**.

APPENDIX 1 TO SCHEDULE 7.1

Part 1 to Appendix 1

Cancellations Benchmark Table

Column 1				Column 2	Column 3	Column 4	Column 5
Franchisee Year	Reporting Period	Performance Calculation Year	Reporting period	Target Performance Level (%)	Breach Performance Level (%)	Default Performance Level (%)	Breach Period Performance Level (%)
Year 1	Period 7	Year 1	Period 1	1.00	N/A	N/A	N/A
	Period 8		Period 2	1.19	N/A	N/A	N/A
	Period 9		Period 3	1.26	N/A	N/A	N/A
	Period 10		Period 4	1.48	N/A	N/A	N/A
	Period 11		Period 5	1.52	N/A	N/A	N/A
	Period 12		Period 6	1.47	N/A	1.92	1.69
	Period 13		Period 7	1.43	N/A	1.86	1.64
Year 2	Period 1		Period 8	1.41	N/A	1.83	1.62
	Period 2		Period 9	1.39	N/A	1.81	1.60
	Period 3		Period 10	1.39	N/A	1.80	1.60
	Period 4		Period 11	1.39	N/A	1.81	1.60
	Period 5		Period 12	1.29	N/A	1.68	1.48

Column 1				Column 2	Column 3	Column 4	Column 5		
Franchisee Year	Reporting Period	Performance Calculation Year	Reporting period	Target Performance Level (%)	Breach Performance Level (%)	Default Performance Level (%)	Breach Period Performance Level (%)		
	Period 6	Year 2	Period 13	1.22	1.41	1.59	N/A		
	Period 7		Period 1	1.18	1.36	1.54	N/A		
	Period 8		Period 2	1.17	1.34	1.52	N/A		
	Period 9		Period 3	1.16	1.33	1.51	N/A		
	Period 10		Period 4	1.19	1.37	1.55	N/A		
	Period 11		Period 5	1.17	1.35	1.52	N/A		
	Period 12		Period 6	1.14	1.32	1.49	N/A		
	Period 13		Period 7	1.13	1.30	1.46	N/A		
	Year 3		Period 1	Year 3	Period 8	1.09	1.25	1.42	N/A
			Period 2		Period 9	1.06	1.22	1.38	N/A
			Period 3		Period 10	1.04	1.20	1.35	N/A
			Period 4		Period 11	1.02	1.17	1.33	N/A
			Period 5		Period 12	1.02	1.17	1.33	N/A
Period 6		Period 13	1.02		1.17	1.33	N/A		
Period 7		Period 1	1.02		1.17	1.32	N/A		
Period 8		Period 2	1.02		1.17	1.32	N/A		
Period 9		Period 3	1.01		1.17	1.32	N/A		
Period 10		Period 4	1.01		1.16	1.32	N/A		
Period 11		Period 5	1.01		1.16	1.31	N/A		

Column 1				Column 2	Column 3	Column 4	Column 5
Franchisee Year	Reporting Period	Performance Calculation Year	Reporting period	Target Performance Level (%)	Breach Performance Level (%)	Default Performance Level (%)	Breach Period Performance Level (%)
	Period 12		Period 6	1.01	1.16	1.31	N/A
	Period 13		Period 7	1.00	1.16	1.31	N/A
Year 4	Period 1		Period 8	1.00	1.15	1.30	N/A
	Period 2		Period 9	1.00	1.15	1.30	N/A
	Period 3		Period 10	1.00	1.15	1.30	N/A
	Period 4		Period 11	0.99	1.14	1.29	N/A
	Period 5		Period 12	0.99	1.14	1.29	N/A
	Period 6		Period 13	0.99	1.14	1.28	N/A
	Period 7		Year 4	Period 1	0.99	1.13	1.28
	Period 8	Period 2		0.98	1.13	1.27	N/A
	Period 9	Period 3		0.98	1.13	1.27	N/A
	Period 10	Period 4		0.98	1.12	1.27	N/A
	Period 11	Period 5		0.97	1.12	1.27	N/A
	Period 12	Period 6		0.97	1.12	1.27	N/A
	Period 13	Period 7		0.97	1.12	1.27	N/A
	Year 5	Period 1		Period 8	0.97	1.12	1.27
Period 2			Period 9	0.97	1.12	1.26	N/A
Period 3			Period 10	0.97	1.12	1.27	N/A
Period 4			Period 11	0.97	1.12	1.27	N/A

Column 1				Column 2	Column 3	Column 4	Column 5	
Franchisee Year	Reporting Period	Performance Calculation Year	Reporting period	Target Performance Level (%)	Breach Performance Level (%)	Default Performance Level (%)	Breach Period Performance Level (%)	
	Period 5	Year 5	Period 12	0.97	1.12	1.26	N/A	
	Period 6		Period 13	0.97	1.12	1.27	N/A	
	Period 7		Period 1	0.97	1.12	1.27	N/A	
	Period 8		Period 2	0.98	1.12	1.27	N/A	
	Period 9		Period 3	0.97	1.12	1.27	N/A	
	Period 10		Period 4	0.97	1.12	1.27	N/A	
	Period 11		Period 5	0.97	1.12	1.26	N/A	
	Period 12		Period 6	0.97	1.11	1.26	N/A	
	Period 13		Period 7	0.97	1.11	1.26	N/A	
	Year 6		Period 1	Period 8	0.97	1.11	1.26	N/A
			Period 2	Period 9	0.96	1.11	1.25	N/A
			Period 3	Period 10	0.96	1.10	1.25	N/A
			Period 4	Period 11	0.95	1.10	1.24	N/A
Period 5		Period 12	0.95	1.09	1.24	N/A		
Period 6		Period 13	0.95	1.09	1.23	N/A		
Period 7		Year 6	Period 1	0.94	1.08	1.23	N/A	
Period 8			Period 2	0.94	1.08	1.22	N/A	
Period 9			Period 3	0.94	1.08	1.22	N/A	
Period 10			Period 4	0.93	1.07	1.21	N/A	

Column 1				Column 2	Column 3	Column 4	Column 5
Franchisee Year	Reporting Period	Performance Calculation Year	Reporting period	Target Performance Level (%)	Breach Performance Level (%)	Default Performance Level (%)	Breach Period Performance Level (%)
	Period 11		Period 5	0.93	1.07	1.21	N/A
	Period 12		Period 6	0.92	1.06	1.20	N/A
	Period 13		Period 7	0.92	1.06	1.20	N/A
Year 7	Period 1		Period 8	0.92	1.05	1.19	N/A
	Period 2		Period 9	0.92	1.05	1.19	N/A
	Period 3		Period 10	0.91	1.05	1.19	N/A
	Period 4		Period 11	0.91	1.05	1.19	N/A
	Period 5		Period 12	0.91	1.05	1.19	N/A
	Period 6		Period 13	0.91	1.05	1.19	N/A
	Period 7	Year 7	Period 1	0.91	1.05	1.19	N/A
	Period 8		Period 2	0.91	1.05	1.18	N/A
	Period 9		Period 3	0.91	1.05	1.18	N/A
	Period 10		Period 4	0.91	1.05	1.18	N/A
	Period 11		Period 5	0.91	1.04	1.18	N/A
	Period 12		Period 6	0.91	1.04	1.18	N/A
	Period 13		Period 7	0.91	1.04	1.18	N/A
Year 8	Period 1		Period 8	0.91	1.04	1.18	N/A
	Period 2		Period 9	0.91	1.04	1.18	N/A
	Period 3		Period 10	0.90	1.04	1.18	N/A

Column 1				Column 2	Column 3	Column 4	Column 5
Franchisee Year	Reporting Period	Performance Calculation Year	Reporting period	Target Performance Level (%)	Breach Performance Level (%)	Default Performance Level (%)	Breach Period Performance Level (%)
	Period 4		Period 11	0.90	1.04	1.18	N/A
	Period 5		Period 12	0.90	1.04	1.17	N/A
	Period 6		Period 13	0.90	1.04	1.17	N/A
26 Reporting Periods Extension	Period 7	26 Reporting Periods Extension	Period 1	0.90	1.04	1.17	N/A
	Period 8		Period 2	0.90	1.04	1.17	N/A
	Period 9		Period 3	0.90	1.04	1.17	N/A
	Period 10		Period 4	0.90	1.03	1.17	N/A
	Period 11		Period 5	0.90	1.03	1.17	N/A
	Period 12		Period 6	0.90	1.03	1.17	N/A
	Period 13		Period 7	0.90	1.03	1.17	N/A
	Period 1		Period 8	0.90	1.03	1.17	N/A
	Period 2		Period 9	0.90	1.03	1.17	N/A
	Period 3		Period 10	0.90	1.03	1.16	N/A
	Period 4		Period 11	0.90	1.03	1.16	N/A
	Period 5		Period 12	0.89	1.03	1.16	N/A
	Period 6		Period 13	0.89	1.03	1.16	N/A
	Period 7		Period 1	0.89	1.03	1.16	N/A
	Period 8		Period 2	0.89	1.03	1.16	N/A
	Period 9		Period 3	0.89	1.03	1.16	N/A

Column 1				Column 2	Column 3	Column 4	Column 5
Franchisee Year	Reporting Period	Performance Calculation Year	Reporting period	Target Performance Level (%)	Breach Performance Level (%)	Default Performance Level (%)	Breach Period Performance Level (%)
	<i>Period 10</i>		Period 4	0.89	1.02	1.16	N/A
	<i>Period 11</i>		Period 5	0.89	1.02	1.16	N/A
	<i>Period 12</i>		Period 6	0.89	1.02	1.16	N/A
	<i>Period 13</i>		Period 7	0.89	1.02	1.15	N/A
	<i>Period 1</i>		Period 8	0.89	1.02	1.15	N/A
	<i>Period 2</i>		Period 9	0.88	1.02	1.15	N/A
	<i>Period 3</i>		Period 10	0.88	1.02	1.15	N/A
	<i>Period 4</i>		Period 11	0.88	1.01	1.15	N/A
	<i>Period 5</i>		Period 12	0.88	1.01	1.14	N/A
	<i>Period 6</i>		Period 13	0.88	1.01	1.14	N/A

Part 2 to Appendix 1**Annual Cancellations Benchmark Table**

Column 1		Column 2	Column 3	Column 4
Performance Year	Calculation	Annual Cap Performance Level (%)	Annual Target Performance Level (%)	Annual Breach Performance Level (%)
Year 1		1.17	1.38	1.58
Year 2		0.87	1.02	1.17
Year 3		0.84	0.99	1.14
Year 4		0.83	0.97	1.12
Year 5		0.80	0.95	1.09
Year 6		0.78	0.91	1.05
Year 7		0.77	0.90	1.04
First year of the 26 Reporting Periods Extension		0.76	0.89	1.03
Second year of the 26 Reporting Periods Extension		0.75	0.88	1.01

Part 3 to Appendix 1**Annual Cancellations Payment Table**

Definition	Amount (£)
PBP	8,600,000
PPP	17,200,000

APPENDIX 2 TO SCHEDULE 7.1

Part 1 to Appendix 2

Peak Short Formation Benchmark Table

		Column 1		Column 2	Column 3	Column 4	Column 5
Franchisee Year	Reporting Period	Performance Calculation Year	Reporting period	Target Performance Level (%)	Breach Performance Level (%)	Default Performance Level (%)	Breach Period Performance Level (%)
Year 1	Period 7	Year 1	Period 1	0.00	N/A	N/A	N/A
	Period 8		Period 2	0.00	N/A	N/A	N/A
	Period 9		Period 3	0.00	N/A	N/A	N/A
	Period 10		Period 4	0.00	N/A	N/A	N/A
	Period 11		Period 5	0.00	N/A	N/A	N/A
	Period 12		Period 6	0.00	N/A	0.97	0.85
	Period 13		Period 7	0.00	N/A	0.94	0.83
Year 2	Period 1		Period 8	0.00	N/A	0.92	0.82
	Period 2		Period 9	0.00	N/A	0.91	0.81
	Period 3		Period 10	0.00	N/A	0.91	0.80
	Period 4		Period 11	0.00	N/A	0.91	0.80
	Period 5		Period 12	0.00	N/A	0.95	0.84
	Period 6		Period 13	0.00	0.87	0.99	N/A

		Column 1		Column 2	Column 3	Column 4	Column 5
Franchisee Year	Reporting Period	Performance Calculation Year	Reporting period	Target Performance Level (%)	Breach Performance Level (%)	Default Performance Level (%)	Breach Period Performance Level (%)
	Period 7	Year 2	Period 1	0.00	0.92	1.04	N/A
	Period 8		Period 2	0.00	0.98	1.11	N/A
	Period 9		Period 3	0.00	1.04	1.18	N/A
	Period 10		Period 4	0.00	1.13	1.28	N/A
	Period 11		Period 5	0.00	1.18	1.34	N/A
	Period 12		Period 6	0.00	1.23	1.39	N/A
	Period 13		Period 7	0.00	1.28	1.44	N/A
Year 3	Period 1		Period 8	0.00	1.30	1.47	N/A
	Period 2		Period 9	0.00	1.34	1.51	N/A
	Period 3		Period 10	0.00	1.37	1.55	N/A
	Period 4		Period 11	0.00	1.40	1.59	N/A
	Period 5		Period 12	0.00	1.40	1.58	N/A
	Period 6		Period 13	0.00	1.40	1.58	N/A
	Period 7	Year 3	Period 1	0.00	1.40	1.58	N/A
	Period 8		Period 2	0.00	1.40	1.58	N/A
	Period 9		Period 3	0.00	1.39	1.57	N/A
	Period 10		Period 4	0.00	1.39	1.57	N/A
	Period 11		Period 5	0.00	1.38	1.56	N/A
	Period 12		Period 6	0.00	1.38	1.56	N/A

		Column 1		Column 2	Column 3	Column 4	Column 5
Franchisee Year	Reporting Period	Performance Calculation Year	Reporting period	Target Performance Level (%)	Breach Performance Level (%)	Default Performance Level (%)	Breach Period Performance Level (%)
	Period 13		Period 7	0.00	1.38	1.56	N/A
Year 4	Period 1		Period 8	0.00	1.38	1.56	N/A
	Period 2		Period 9	0.00	1.37	1.55	N/A
	Period 3		Period 10	0.00	1.37	1.55	N/A
	Period 4		Period 11	0.00	1.37	1.54	N/A
	Period 5		Period 12	0.00	1.36	1.54	N/A
	Period 6		Period 13	0.00	1.36	1.53	N/A
	Period 7		Year 4	Period 1	0.00	1.35	1.53
	Period 8	Period 2		0.00	1.35	1.52	N/A
	Period 9	Period 3		0.00	1.34	1.52	N/A
	Period 10	Period 4		0.00	1.34	1.52	N/A
	Period 11	Period 5		0.00	1.34	1.51	N/A
	Period 12	Period 6		0.00	1.34	1.51	N/A
	Year 5	Period 13		Period 7	0.00	1.34	1.51
Period 1			Period 8	0.00	1.34	1.51	N/A
Period 2			Period 9	0.00	1.34	1.51	N/A
Period 3			Period 10	0.00	1.34	1.51	N/A
Period 4			Period 11	0.00	1.34	1.51	N/A
	Period 5		Period 12	0.00	1.33	1.51	N/A

		Column 1		Column 2	Column 3	Column 4	Column 5
Franchisee Year	Reporting Period	Performance Calculation Year	Reporting period	Target Performance Level (%)	Breach Performance Level (%)	Default Performance Level (%)	Breach Period Performance Level (%)
	Period 6	Year 5	Period 13	0.00	1.34	1.51	N/A
	Period 7		Period 1	0.00	1.34	1.51	N/A
	Period 8		Period 2	0.00	1.34	1.51	N/A
	Period 9		Period 3	0.00	1.34	1.51	N/A
	Period 10		Period 4	0.00	1.34	1.51	N/A
	Period 11		Period 5	0.00	1.33	1.51	N/A
	Period 12		Period 6	0.00	1.33	1.50	N/A
	Period 13		Period 7	0.00	1.33	1.50	N/A
Year 6	Period 1	Year 6	Period 8	0.00	1.33	1.50	N/A
	Period 2		Period 9	0.00	1.32	1.49	N/A
	Period 3		Period 10	0.00	1.32	1.49	N/A
	Period 4		Period 11	0.00	1.31	1.48	N/A
	Period 5		Period 12	0.00	1.31	1.48	N/A
	Period 6		Period 13	0.00	1.30	1.47	N/A
	Period 7	Year 6	Period 1	0.00	1.30	1.47	N/A
	Period 8		Period 2	0.00	1.29	1.46	N/A
	Period 9		Period 3	0.00	1.29	1.45	N/A
	Period 10		Period 4	0.00	1.28	1.45	N/A
	Period 11		Period 5	0.00	1.27	1.44	N/A

		Column 1		Column 2	Column 3	Column 4	Column 5
Franchisee Year	Reporting Period	Performance Calculation Year	Reporting period	Target Performance Level (%)	Breach Performance Level (%)	Default Performance Level (%)	Breach Period Performance Level (%)
	Period 12		Period 6	0.00	1.27	1.43	N/A
	Period 13		Period 7	0.00	1.26	1.43	N/A
Year 7	Period 1		Period 8	0.00	1.26	1.42	N/A
	Period 2		Period 9	0.00	1.26	1.42	N/A
	Period 3		Period 10	0.00	1.26	1.42	N/A
	Period 4		Period 11	0.00	1.26	1.42	N/A
	Period 5		Period 12	0.00	1.26	1.42	N/A
	Period 6		Period 13	0.00	1.25	1.42	N/A
	Period 7		Year 7	Period 1	0.00	1.25	1.42
	Period 8	Period 2		0.00	1.25	1.42	N/A
	Period 9	Period 3		0.00	1.25	1.41	N/A
	Period 10	Period 4		0.00	1.25	1.41	N/A
	Period 11	Period 5		0.00	1.25	1.41	N/A
	Period 12	Period 6		0.00	1.25	1.41	N/A
	Year 8	Period 13		Period 7	0.00	1.25	1.41
Period 1			Period 8	0.00	1.25	1.41	N/A
Period 2			Period 9	0.00	1.24	1.41	N/A
Period 3			Period 10	0.00	1.24	1.41	N/A
	Period 4		Period 11	0.00	1.24	1.40	N/A

		Column 1		Column 2	Column 3	Column 4	Column 5
Franchisee Year	Reporting Period	Performance Calculation Year	Reporting period	Target Performance Level (%)	Breach Performance Level (%)	Default Performance Level (%)	Breach Period Performance Level (%)
	Period 5		Period 12	0.00	1.24	1.40	N/A
	Period 6		Period 13	0.00	1.24	1.40	N/A
26 Reporting Periods Extension	Period 7	26 Reporting Periods Extension	Period 1	0.00	1.24	1.40	N/A
	Period 8		Period 2	0.00	1.24	1.40	N/A
	Period 9		Period 3	0.00	1.24	1.40	N/A
	Period 10		Period 4	0.00	1.24	1.40	N/A
	Period 11		Period 5	0.00	1.24	1.40	N/A
	Period 12		Period 6	0.00	1.23	1.40	N/A
	Period 13		Period 7	0.00	1.23	1.39	N/A
	Period 1		Period 8	0.00	1.23	1.39	N/A
	Period 2		Period 9	0.00	1.23	1.39	N/A
	Period 3		Period 10	0.00	1.23	1.39	N/A
	Period 4		Period 11	0.00	1.23	1.39	N/A
	Period 5		Period 12	0.00	1.23	1.39	N/A
	Period 6		Period 13	0.00	1.23	1.39	N/A
	Period 7		Period 1	0.00	1.23	1.39	N/A
	Period 8		Period 2	0.00	1.23	1.39	N/A
	Period 9		Period 3	0.00	1.23	1.39	N/A
	Period 10		Period 4	0.00	1.22	1.38	N/A

		Column 1		Column 2	Column 3	Column 4	Column 5
Franchisee Year	Reporting Period	Performance Calculation Year	Reporting period	Target Performance Level (%)	Breach Performance Level (%)	Default Performance Level (%)	Breach Period Performance Level (%)
	Period 11		Period 5	0.00	1.22	1.38	N/A
	Period 12		Period 6	0.00	1.22	1.38	N/A
	Period 13		Period 7	0.00	1.22	1.38	N/A
	Period 1		Period 8	0.00	1.22	1.38	N/A
	Period 2		Period 9	0.00	1.22	1.37	N/A
	Period 3		Period 10	0.00	1.21	1.37	N/A
	Period 4		Period 11	0.00	1.21	1.37	N/A
	Period 5		Period 12	0.00	1.21	1.37	N/A
	Period 6		Period 13	0.00	1.21	1.36	N/A

Part 2 to Appendix 2**Annual Peak Short Formation Benchmark Table**

Column 1	Column 2	Column 3	Column 4
Performance Calculation Year	Annual Intermediate Peak Short Formation Payment Level (%)	Annual Target Performance Level (%)	Annual Breach Performance Level (%)
Year 1	0.69	0.00	0.79
Year 2	1.22	0.00	1.40
Year 3	1.18	0.00	1.36
Year 4	1.16	0.00	1.34
Year 5	1.13	0.00	1.30
Year 6	1.09	0.00	1.25
Year 7	1.08	0.00	1.24
First year of the 26 Reporting Periods Extension	1.07	0.00	1.23
Second year of the 26 Reporting Periods Extension	1.05	0.00	1.21

PART 3 TO APPENDIX 2

Annual Peak Short Formations Payment Table

Definition	Amount (£)
IPR	2,600,000
BPR	5,100,000

APPENDIX 3 TO SCHEDULE 7.1

Part 1 to Appendix 3

TOC Minute Delay Benchmark Table

Column 1				Column 2	Column 3	Column 4	Column 5
Franchisee Year	Reporting Period	Performance Calculation year	Reporting period	Target Performance Level (Delay minutes per 1000 train miles)	Breach Performance Level (Delay minutes per 1000 train miles)	Default Performance Level (Delay minutes per 1000 train miles)	Breach Period Performance Level (Delay minutes per 1000 train miles)
Year 1	Period 7	Year 1	Period 1	8.16	N/A	N/A	N/A
	Period 8		Period 2	9.99	N/A	N/A	N/A
	Period 9		Period 3	10.59	N/A	N/A	N/A
	Period 10		Period 4	10.96	N/A	N/A	N/A
	Period 11		Period 5	12.47	N/A	N/A	N/A
	Period 12		Period 6	12.29	N/A	15.98	14.14
	Period 13		Period 7	12.11	N/A	15.75	13.93
Year 2	Period 1		Period 8	11.88	N/A	15.45	13.67
	Period 2		Period 9	11.81	N/A	15.35	13.58
	Period 3		Period 10	11.67	N/A	15.17	13.42
	Period 4		Period 11	11.62	N/A	15.10	13.36
	Period 5		Period 12	11.58	N/A	15.05	13.32

Column 1				Column 2	Column 3	Column 4	Column 5
Franchisee Year	Reporting Period	Performance Calculation year	Reporting period	Target Performance Level (Delay minutes per 1000 train miles)	Breach Performance Level (Delay minutes per 1000 train miles)	Default Performance Level (Delay minutes per 1000 train miles)	Breach Period Performance Level (Delay minutes per 1000 train miles)
	Period 6	Year 2	Period 13	11.51	13.23	14.96	N/A
	Period 7		Period 1	11.95	13.74	15.53	N/A
	Period 8		Period 2	12.82	14.74	16.66	N/A
	Period 9		Period 3	13.54	15.58	17.61	N/A
	Period 10		Period 4	14.19	16.32	18.45	N/A
	Period 11		Period 5	14.67	16.87	19.07	N/A
	Period 12		Period 6	14.83	17.05	19.28	N/A
	Period 13		Period 7	15.02	17.27	19.53	N/A
Year 3	Period 1	Year 3	Period 8	14.84	17.06	19.29	N/A
	Period 2		Period 9	14.76	16.97	19.19	N/A
	Period 3		Period 10	14.68	16.89	19.09	N/A
	Period 4		Period 11	14.53	16.70	18.88	N/A
	Period 5		Period 12	14.51	16.69	18.87	N/A
	Period 6		Period 13	14.50	16.68	18.85	N/A
	Period 7	Year 3	Period 1	14.49	16.66	18.84	N/A
	Period 8		Period 2	14.47	16.65	18.82	N/A
	Period 9		Period 3	14.43	16.59	18.76	N/A

Column 1				Column 2	Column 3	Column 4	Column 5
Franchisee Year	Reporting Period	Performance Calculation year	Reporting period	Target Performance Level (Delay minutes per 1000 train miles)	Breach Performance Level (Delay minutes per 1000 train miles)	Default Performance Level (Delay minutes per 1000 train miles)	Breach Period Performance Level (Delay minutes per 1000 train miles)
	Period 10		Period 4	14.41	16.57	18.73	N/A
	Period 11		Period 5	14.34	16.49	18.64	N/A
	Period 12		Period 6	14.33	16.48	18.63	N/A
	Period 13		Period 7	14.30	16.45	18.60	N/A
Year 4	Period 1		Period 8	14.29	16.44	18.58	N/A
	Period 2		Period 9	14.24	16.37	18.51	N/A
	Period 3		Period 10	14.22	16.35	18.48	N/A
	Period 4		Period 11	14.18	16.31	18.44	N/A
	Period 5		Period 12	14.14	16.26	18.39	N/A
	Period 6		Period 13	14.10	16.22	18.33	N/A
	Period 7	Year 4	Period 1	14.08	16.19	18.31	N/A
	Period 8		Period 2	14.02	16.13	18.23	N/A
	Period 9		Period 3	14.01	16.11	18.21	N/A
	Period 10		Period 4	13.98	16.07	18.17	N/A
	Period 11		Period 5	13.93	16.02	18.11	N/A
	Period 12		Period 6	13.92	16.01	18.10	N/A
	Period 13		Period 7	13.90	15.99	18.07	N/A

Column 1				Column 2	Column 3	Column 4	Column 5
Franchisee Year	Reporting Period	Performance Calculation year	Reporting period	Target Performance Level (Delay minutes per 1000 train miles)	Breach Performance Level (Delay minutes per 1000 train miles)	Default Performance Level (Delay minutes per 1000 train miles)	Breach Period Performance Level (Delay minutes per 1000 train miles)
Year 5	Period 1		Period 8	13.82	15.89	17.96	N/A
	Period 2		Period 9	13.70	15.75	17.80	N/A
	Period 3		Period 10	13.62	15.66	17.71	N/A
	Period 4		Period 11	13.53	15.56	17.59	N/A
	Period 5		Period 12	13.42	15.43	17.45	N/A
	Period 6		Period 13	13.35	15.35	17.36	N/A
	Period 7	Year 5	Period 1	13.28	15.27	17.26	N/A
	Period 8		Period 2	13.21	15.19	17.17	N/A
	Period 9		Period 3	13.10	15.06	17.02	N/A
	Period 10		Period 4	13.02	14.97	16.93	N/A
	Period 11		Period 5	12.87	14.81	16.74	N/A
	Period 12		Period 6	12.80	14.72	16.64	N/A
	Period 13		Period 7	12.70	14.61	16.51	N/A
Year 6	Period 1		Period 8	12.70	14.60	16.51	N/A
	Period 2		Period 9	12.64	14.54	16.44	N/A
	Period 3		Period 10	12.59	14.48	16.37	N/A
	Period 4		Period 11	12.54	14.42	16.30	N/A

Column 1				Column 2	Column 3	Column 4	Column 5		
Franchisee Year	Reporting Period	Performance Calculation year	Reporting period	Target Performance Level (Delay minutes per 1000 train miles)	Breach Performance Level (Delay minutes per 1000 train miles)	Default Performance Level (Delay minutes per 1000 train miles)	Breach Period Performance Level (Delay minutes per 1000 train miles)		
	Period 5		Period 12	12.48	14.35	16.23	N/A		
	Period 6		Period 13	12.43	14.29	16.16	N/A		
	Period 7		Year 6	Period 1	12.37	14.23	16.08	N/A	
	Period 8	Period 2		12.32	14.16	16.01	N/A		
	Period 9	Period 3		12.26	14.10	15.94	N/A		
	Period 10	Period 4		12.20	14.03	15.87	N/A		
	Period 11	Period 5		12.15	13.97	15.79	N/A		
	Period 12	Period 6		12.09	13.91	15.72	N/A		
	Period 13	Period 7		12.04	13.84	15.65	N/A		
	Year 7	Period 1		Year 6	Period 8	11.98	13.78	15.58	N/A
		Period 2			Period 9	11.98	13.77	15.57	N/A
		Period 3			Period 10	11.97	13.77	15.56	N/A
		Period 4	Period 11		11.97	13.76	15.56	N/A	
Period 5		Period 12	11.96		13.75	15.55	N/A		
Period 6		Period 13	11.95		13.75	15.54	N/A		
Period 7		Year 7	Period 1		11.95	13.74	15.53	N/A	
Period 8			Period 2	11.94	13.73	15.52	N/A		

Column 1				Column 2	Column 3	Column 4	Column 5	
Franchisee Year	Reporting Period	Performance Calculation year	Reporting period	Target Performance Level (Delay minutes per 1000 train miles)	Breach Performance Level (Delay minutes per 1000 train miles)	Default Performance Level (Delay minutes per 1000 train miles)	Breach Period Performance Level (Delay minutes per 1000 train miles)	
	Period 9		Period 3	11.93	13.71	15.50	N/A	
	Period 10		Period 4	11.91	13.70	15.49	N/A	
	Period 11		Period 5	11.90	13.69	15.47	N/A	
	Period 12		Period 6	11.89	13.68	15.46	N/A	
	Period 13		Period 7	11.89	13.67	15.45	N/A	
Year 8	Period 1		Period 8	11.88	13.66	15.44	N/A	
	Period 2		Period 9	11.87	13.65	15.43	N/A	
	Period 3		Period 10	11.86	13.64	15.42	N/A	
	Period 4		Period 11	11.86	13.63	15.41	N/A	
	Period 5		Period 12	11.85	13.63	15.40	N/A	
	Period 6		Period 13	11.84	13.62	15.40	N/A	
26 Reporting Periods Extension	Period 7		26 Reporting Periods Extension	Period 1	11.83	13.61	15.38	N/A
	Period 8			Period 2	11.82	13.59	15.37	N/A
	Period 9	Period 3		11.81	13.58	15.35	N/A	
	Period 10	Period 4		11.80	13.57	15.34	N/A	
	Period 11	Period 5		11.79	13.55	15.32	N/A	
	Period 12	Period 6		11.78	13.54	15.31	N/A	

Column 1				Column 2	Column 3	Column 4	Column 5
Franchisee Year	Reporting Period	Performance Calculation year	Reporting period	Target Performance Level (Delay minutes per 1000 train miles)	Breach Performance Level (Delay minutes per 1000 train miles)	Default Performance Level (Delay minutes per 1000 train miles)	Breach Period Performance Level (Delay minutes per 1000 train miles)
	Period 13		Period 7	11.77	13.53	15.30	N/A
	Period 1		Period 8	11.76	13.52	15.29	N/A
	Period 2		Period 9	11.75	13.51	15.28	N/A
	Period 3		Period 10	11.74	13.50	15.27	N/A
	Period 4		Period 11	11.74	13.50	15.26	N/A
	Period 5		Period 12	11.73	13.49	15.25	N/A
	Period 6		Period 13	11.72	13.48	15.24	N/A
	Period 7		Period 1	11.71	13.47	15.23	N/A
	Period 8		Period 2	11.70	13.46	15.21	N/A
	Period 9		Period 3	11.69	13.44	15.20	N/A
	Period 10		Period 4	11.68	13.43	15.18	N/A
	Period 11		Period 5	11.66	13.41	15.16	N/A
	Period 12		Period 6	11.65	13.40	15.15	N/A
	Period 13		Period 7	11.64	13.39	15.14	N/A
	Period 1		Period 8	11.64	13.38	15.13	N/A
	Period 2		Period 9	11.63	13.37	15.11	N/A
	Period 3		Period 10	11.62	13.36	15.10	N/A

Column 1				Column 2	Column 3	Column 4	Column 5
Franchisee Year	Reporting Period	Performance Calculation year	Reporting period	Target Performance Level (Delay minutes per 1000 train miles)	Breach Performance Level (Delay minutes per 1000 train miles)	Default Performance Level (Delay minutes per 1000 train miles)	Breach Period Performance Level (Delay minutes per 1000 train miles)
	Period 4		Period 11	11.61	13.35	15.09	N/A
	Period 5		Period 12	11.60	13.34	15.08	N/A
	Period 6		Period 13	11.59	13.33	15.07	N/A

Part 2 to Appendix 3**Annual TOC Minute Delay Benchmark Table**

Column 1	Column 2	Column 3	Column 4	
Performance Year	Calculation	Annual Cap Performance Level (Delay minutes per 1000 train miles)	Annual Target Performance Level (Delay minutes per 1000 train miles)	Annual Breach Performance Level (Delay minutes per 1000 train miles)
Year 1		9.42	11.08	12.74
Year 2		12.33	14.50	16.68
Year 3		11.99	14.10	16.22
Year 4		11.35	13.35	15.35
Year 5		10.56	12.43	14.29
Year 6		10.16	11.95	13.75
Year 7		10.07	11.84	13.62
First year of the 26 Reporting Periods Extension		9.96	11.72	13.48
Second year of the 26 Reporting Periods Extension		9.85	11.59	13.33

Part 3 to Appendix 3

Annual TOC Minute Delay Payment Table

Definition	Amount (£)
PBP	3,500,000
PPP	7,100,000

SCHEDULE 7.2

PEM Regime

1. Introduction

This Schedule 7.2 provides for:

- 1.1 the service quality management and process arrangements to be put in place by the Franchisee for the management and delivery of service quality for the Franchise Term;
- 1.2 the responsibilities including the inspection, auditing and reporting requirements of the Franchisee;
- 1.3 the rights of the Secretary of State to witness audits carried out by the Franchisee;
- 1.4 the means of the measurement and reporting of the level of performance identified during inspections required to be carried out by the Franchisee in accordance with the QuEST Service Schedules;
- 1.5 the means of calculation of any PEM Payments;
- 1.6 the remedies available to the Secretary of State in the event of underperformance by the Franchisee;
- 1.7 the application of the NPS Surveys for the purposes of determining the level of performance and the calculation of the PEM and PEM Payments;
- 1.8 the performance information the Franchisee will be required to publish; and
- 1.9 Appendix 5 to this Schedule 7.2 sets out the basis for undertaking QuEST Inspections for certain QuEST Service Schedules.

QuEST Regime

2. Obligations of the Franchisee

- 2.1 The Franchisee shall put in place management arrangements and processes (including the collection of relevant data) which shall (as a minimum):
 - (a) be capable of measuring and reporting the Franchisee's performance against each QuEST Service Specification; and
 - (b) set out procedures for:
 - (i) ensuring compliance with the requirements of this Schedule 7.2 including the obligation to conduct QuEST Inspections as required pursuant to paragraph 2; and
 - (ii) identifying and rectifying failures identified during each QuEST Inspection (including processes which ensure that corrective actions identified during any QuEST Inspection are undertaken in a diligent and prompt manner),

(the "**QuEST Management System**").

2.2 The QuEST Management System shall be implemented and fully operational by no later than:

- (a) in respect of the TGN Services, the first day of the Reporting Period commencing in January 2015; and
- (b) in respect of the Southern Services, the first day of the Reporting Period commencing in October 2015.

If at any during time the Franchise Term the Franchisee operates or provides Stations or Passenger Services which are not comprised in the TGN Services or the Southern Services (the "**New Services**") the Franchisee shall update its QuEST Management System to include such Stations and/or Passenger Services by the later of the first day of the Reporting Period after the date upon which the Franchisee begins to operate such Stations or provide such Passenger Services and the first day of the Reporting Period commencing in January 2015.

2.3 **QuEST Register**

- (a) The Franchisee shall prepare and complete the QuEST Register by no later than the first day of the Reporting Period commencing in January 2015 so as to include the facilities and services which exist at a Station or a QuEST Train comprised in both the TGN Services and the Southern Services. The form and content of the QuEST Register shall include:
 - (i) an electronic format using the web-based Experience Quality Improvement Process (EQuIP) system which will enable real-time reporting, monitoring and assessment of the Franchisee's performance against each QuEST Indicator; and
 - (ii) the following content:
 - (A) description, location and quantity of each facility or service;
 - (B) photographic evidence of each facility or service;
 - (C) individual serial number and asset tracking number (where applicable) for each facility or service; and
 - (D) details of the QuEST Indicator to which the facility or service should be measured and reported against; and
- (b) The Franchisee shall:
 - (i) maintain the QuEST Register; and
 - (ii) update such QuEST Register:
 - (A) at the same time as the Franchisee is required pursuant to paragraph 2.2 to update the QuEST Management System in respect of New Services, to include the facilities and services which exist at a

Station or a QuEST Train comprised in any such New Service; and

- (B) in any case, at such regular intervals as is reasonably necessary; and
- (iii) immediately at the request of the Secretary of State, provide an up to date copy of the QuEST Register to the Secretary of State or to any person carrying out an SoS Audit or SoS QuEST Inspection on behalf of the Secretary of State).

QuEST Inspections

2.4 In each Reporting Period commencing from:

- (a) the first day of the Reporting Period commencing in January 2015 in relation to the TGN Services; and
- (b) the first day of the Reporting Period commencing in October 2015 in relation to the Southern Services,

and, in each case, for the duration of the Franchise Term, the Franchisee shall, in accordance with the requirements of paragraph 2.5, undertake or procure the undertaking of QuEST Station Services Inspections, QuEST Train Services Inspections and the QuEST CCTV Services Inspections (the "**QuEST Inspections**").

2.5 The Franchisee shall (as a minimum):

- (a) ensure that each QuEST Inspection is carried out accurately and impartially by independent persons (who for these purposes can be Franchise Employees):
 - (i) who are not responsible for the management or operation of any of the Stations, QuEST Trains or QuEST CCTV Services; and
 - (ii) whose base salary payment or provision of any benefit (whether contractual or otherwise) is not dependent on the result of any QuEST Inspections;
- (b) where relevant, ensure that each QuEST Inspection is undertaken as specified in Appendix 5 to this Schedule 7.2;
- (c) ensure that any Franchise Employee who is involved in the operations of any Stations, QuEST Trains or QuEST CCTV Services (including any person who is responsible for the management and operation of any such Stations, QuEST Trains or QuEST CCTV Services) in respect of which a QuEST Inspection is to be undertaken is not notified or otherwise made aware of the date or time of any proposed or actual QuEST Inspection;
- (d) ensure that each Station is the subject of a QuEST Station Services Inspection as follows:
 - (i) at least 4 times in each Calculation Year (other than the last Calculation Year of the Franchise Term); and

- (ii) for the last Calculation Year of the Franchise Term, at least the number of times (rounded down to the next whole number, that is 2.7 is rounded down to 2) determined as follows:

$$SI \times \frac{NCY}{365}$$

where:

SI equals 4; and

NCY is the number of days in the last Calculation Year;

- (e) ensure that QuEST Station Services Inspections are carried out so that in total (that is, including the QuEST Station Services Inspections required pursuant to paragraph 2.5(d)):

- (i) in respect of each Reporting Period falling within the first day of the Reporting Period commencing in January 2015 until the last day of the Reporting Period which commences in September 2015, at least 50 QuEST Station Services Inspections are carried out in each such Reporting Period; and
- (ii) in respect of each Reporting Period thereafter, 150 QuEST Station Services Inspections are carried out in each such Reporting Period,

and, in each case, with the probability of any particular Station being selected for additional QuEST Station Services Inspections under this paragraph 2.5(e) in any Reporting Period being proportionate to typical passenger footfall at such Station relative to other Stations;

- (f) undertake:

- (i) in respect of each Reporting Period falling within the first day of the Reporting Period commencing in January 2015 until the last day of the Reporting Period which commences in September 2015, a minimum of 50 QuEST Train Services Inspections in respect of each vehicle comprised within a QuEST Train in each such Reporting Period; and
- (ii) in respect of each Reporting thereafter, a minimum of 120 QuEST Train Services Inspections in respect of each vehicle comprised within a QuEST Train in each such Reporting Period,

and, in each case, with such QuEST Train Services Inspections being distributed across the day and between the days of the week in proportion to the typical distribution of passenger journeys across the day and between the days of the week; and

- (g) undertake the following QuEST CCTV Services Inspections:
- (i) a minimum of one inspection in each Reporting Period of the services and specification set out in QuEST Service Schedule 19 in respect of those Stations that were the subject of a QuEST Stations Services Inspection in the Previous Reporting Period by undertaking an inspection of the CCTV monitoring facilities at Three Bridges Railway Operations Centre; and
 - (ii) a minimum number of inspections of the services and specification set out in QuEST Service Schedule 30 in each Reporting Period as is equal to the number of QuEST Train Services Inspections undertaken in that Reporting Period by undertaking an inspection of the CCTV cameras and picture recording equipment on those QuEST Trains that are the subject of a QuEST Train Services Inspection in that Reporting Period either:
 - (A) where practicable, at the same time as undertaking such QuEST Train Services Inspection; or
 - (B) at stabling points, cleaning points or train termination points across the Franchise.
- (h) For any Reporting Period which is longer than 32 days or shorter than 25 days the minimum number of:
- (i) Quest Stations Services Inspections as specified in paragraphs 2.5(d) and 2.5(e);
 - (ii) QuEST Train Services Inspections as specified in paragraph 2.5(f); and
 - (iii) QuEST CCTV Services Inspections as specified in paragraph 2.5(g),

shall be increased or reduced pro rata based on a normal Reporting Period of 28 days.

2.6 **Maintenance of Records**

Without limiting the obligations of the Franchisee pursuant to paragraphs 1.5 and 1.6 of Schedule 13 (Information and Industry Initiatives), the Franchisee shall, for the duration of the Franchise Term, maintain true, up to date and complete records of the results of each QuEST Inspection and its calculations of the Pass Rates, PEM and PEM Payments in relation to such QuEST Inspections. The Franchisee shall, immediately at the request of the Secretary of State, make any such records available to the Secretary of State.

Annual Audits

2.7

- (a) In respect of each Calculation Year the Franchisee shall (at its cost) procure the carrying out of an independent audit (which for these purposes shall include the carrying out of inspections which are conducted on a basis that

is, as far as reasonably practicable, consistent with the QuEST Inspections undertaken in that Calculation Year) to verify and confirm that the:

- (i) QuEST Management System complies with the requirements of paragraph 2.1 and has been implemented as required pursuant to paragraph 2.2;
 - (ii) QuEST Inspections undertaken in that Calculation Year comply with the requirements of paragraph 2.5;
 - (iii) Pass Rates reported by the Franchisee for Reporting Periods within that Calculation Year have been calculated in accordance with the requirements of paragraph 3.1;
 - (iv) Pass Rates, PEM and the PEM Payment reported by the Franchisee for that Calculation Year have been calculated in accordance with paragraphs 3.2 and 5 (respectively); and
- (b) such audit shall:
- (i) also confirm that, after having regards to the findings of such inspections, its assessment of the matters referred to in paragraphs 2.7(a)(i) to 2.7(a)(iv) and any other relevant information at the disposal of any person conducting the Independent PEM Audit, it can reasonably be concluded that the Pass Rates reported by the Franchisee for that Calculation Year and/or for Reporting Periods within that Calculation Year are a fair, accurate and impartial reflection of the Franchisee's performance against each QuEST Service Specification; or
 - (ii) state that such confirmation cannot be provided,

(the "**Independent PEM Audit**").

Any Independent PEM Audit shall be for the benefit of the Secretary of State. Each terms of reference for the procurement of an Independent PEM Audit and the identity of any independent person proposed to undertake such audit shall be approved by the Secretary of State prior to any procurement by the Franchisee of any such Independent PEM Audit.

2.8 The Secretary of State (and any of his employees, agents, representatives and/or advisers, each such employee, agent, representative and/or adviser to be referred to as his nominee for the purposes of this paragraph 2) shall have the right to witness any QuEST Inspection or Independent PEM Audit (as the case may be). The Franchisee shall co-operate in good faith with the Secretary of State in permitting the Secretary of State (including his nominees) to exercise his rights under this paragraph 2.8 including by promptly providing to him the details of how and when any Independent PEM Audit will be conducted a reasonable time (and in any event not less than 2 weeks) prior to the commencement of any such Independent PEM Audit.

2.9 The Franchisee shall provide the report of any Independent PEM Audit to the Secretary of State as soon as reasonably practicable after the end of the Calculation Year to which it relates and in any event by no later than the date that is 3 Reporting Periods after the end of the relevant Calculation Year. To the extent that any confirmation required pursuant to paragraph 2.7 cannot be provided in

respect of any Independent PEM Audit the Franchisee shall procure that any such audit report specifies in detail the reasons why such confirmation cannot be given (including details of any material discrepancies between any Pass Rate reported by the Franchisee in accordance with paragraphs 3.1 and/or 3.2 and a comparable Pass Rate derived from the inspections carried out as part of the Independent PEM Audit (and in particular where any such material discrepancies are in favour of the Franchisee)).

Secretary of State's right of audit

- 2.10 Without prejudice to any other audit rights the Secretary of State may have under the Franchise Agreement, the Secretary of State (and his nominees on his behalf) shall have the right to carry out audits (the "**SoS Audits**") for the purposes of verifying, as a minimum, the matters referred to in paragraph 2.7. The Secretary of State shall use his reasonable endeavours to procure that any inspections carried out as part of any SoS Audits undertaken pursuant to this paragraph 2.10 are conducted on a basis that is, as far as reasonable practicable, consistent with the QuEST Inspections undertaken in respect of the Calculation Year to which the SoS Audit relates.
- 2.11 The Franchisee shall grant such access to information, individuals and facilities including:
- (a) access to the Stations, QuEST Trains and any premises used for the monitoring of CCTVs;
 - (b) access to schedules of the locations and times of any actual or planned QuEST Inspections; and
 - (c) access to the relevant Franchise Employees, records and information (including access to relevant third parties and information, records and other materials kept by such third parties on behalf of the Franchisee),
- as is reasonably necessary to enable the Secretary of State (and his nominees) to witness any QuEST Inspections or Independent PEM Audits pursuant to paragraph 2.7 or to exercise its audit rights under paragraphs 2.10 or to undertake SoS QuEST Inspections. The Franchisee shall ensure that it has necessary arrangements in place with any relevant third parties for the purposes of ensuring that it can comply with its obligations under this paragraph 2.11.
- 2.12 The Secretary of State shall use reasonable endeavours to ensure that the persons employed in undertaking any SoS Audits carry out such audits diligently and objectively.
- 2.13 The Secretary of State shall use reasonable endeavours to notify the Franchisee of the result of any SoS Audit that is undertaken.
- 2.14 In carrying out any SoS Audit or witnessing any QuEST Inspections or Independent PEM Audits, the Secretary of State shall, subject to paragraph 2.15, be responsible for ensuring that his nominees:
- (a) are appropriately trained and briefed with respect to such reasonable location-specific safety rules and regulations; and
 - (b) obey such reasonable location-specific rules and regulations in respect of security and access,

in each case, as have been notified to the Secretary of State under paragraph 2.15.

- 2.15 The Franchisee shall provide reasonable prior notice from time to time of current location-specific access, security and safety rules and regulations to the Secretary of State for the purpose of ensuring that the Secretary of State (and his nominees) can carry out their respective inspection and auditing rights in an efficient, secure and safe manner.

Consequences of a Failed SoS Audit or Independent PEM Audit

2.16 If:

- (a) following an Independent PEM Audit or SoS Audit (as the case may be) any such audit cannot verify or confirm any of the matters referred to in paragraph 2.7 or any confirmation required by paragraph 2.7 cannot be provided; or
- (b) the Franchisee fails to:
 - (i) carry out a QuEST Inspection as required by paragraph 2.5; or
 - (ii) calculate the Pass Rates and/or report to the Secretary of State the Pass Rates as required pursuant to paragraphs 3.1 or 3.2; or
 - (iii) procure that an Independent PEM Audit is carried out or fails to provide an audit report as required pursuant to paragraph 2.9,

then the provisions of paragraphs 2.17 and 2.18 shall apply.

2.17 If any of the circumstances specified in paragraph 2.16 occur then:

- (a) the Secretary of State may in the case of an SoS Audit, require the Franchisee to reimburse to him the reasonable and proper costs incurred in undertaking any such SoS Audit; and
- (b) the Secretary of State may in all cases:
 - (i) require the Franchisee to carry out additional QuEST Inspections at the Franchisee's cost (that is, in excess of those required pursuant to paragraph 2.5);
 - (ii) require the Franchisee to procure a further Independent PEM Audit (or the Secretary of State may carry out a further SoS Audit) for the purposes of verifying whether any deficiencies in the QuEST Management System that have led or contributed to the failure of any Independent PEM Audit or SoS Audit to confirm or verify any of the matters referred to in paragraph 2.7 have been subsequently rectified by the Franchisee; or
 - (iii) elect to step in and carry out inspections of the QuEST Station Services, QuEST Train Services and QuEST CCTV Services himself (or by a nominee on his behalf) (the "**SoS**

QuEST Inspections") in place of QuEST Inspections for the duration of the Franchise Term or such other period as the Secretary of State may specify (the "**SoS QuEST Inspection Period**") and in these circumstances:

- (A) the results of each SoS QuEST Inspection shall be used for the purposes of calculating the Pass Rates, PEM and the PEM Payments in accordance with paragraphs 3.1, 3.2 and 5 (respectively);
- (B) the Franchisee's obligations to undertake QuEST Inspections and procure an Independent PEM Audit shall cease to apply for the duration of the SoS QuEST Inspection Period; and
- (C) the Secretary of State may require the Franchisee to reimburse to him the reasonable and proper costs incurred by him in undertaking any such SoS QuEST Inspection during the SoS QuEST Inspection Period.

2.18

- (a) On the first occasion that any Independent PEM Audit or SoS Audit (as the case may be) reveals that the value of PEM as reported by the Franchisee for a Calculation Year (the "**Reported PEM**") was incorrect (including where any such Independent PEM Audit or SoS Audit (as the case may be) fails to confirm or verify any of the matters specified in paragraphs 2.7(a) or 2.7(b)), the Franchisee and the Secretary of State shall agree the value of PEM (or on failure to agree, the Secretary of State shall reasonably determine the value of PEM) for that Calculation Year (the "**True PEM**"). Where the True PEM is:
 - (i) more than the Reported PEM then, for the purposes of paragraph 5, the calculation of the PEM Payment for that Calculation Year shall be determined using the value of the Reported PEM; or
 - (ii) less than the Reported PEM then, for the purposes of paragraph 5 and the calculation of the PEM Payment for that Calculation Year, the value of PEM shall be substituted by the Adjusted PEM where Adjusted PEM is determined as follows:

$$\text{Adjusted PEM} = \text{True PEM} - 2 \times (\text{Reported PEM} - \text{True PEM}).$$
- (b) If the circumstance specified in paragraph 2.18(a) occurs on more than one occasion then a contravention of the Franchise Agreement shall occur.

3. Reporting Arrangements

- 3.1 Within 14 days after the end of each Reporting Period, the Franchisee shall provide to the Secretary of State:
 - (a) a statement setting out the following:
 - (i) the number of QuEST Inspections carried out in respect of each QuEST Service Schedule in that Reporting Period;

- (ii) the number of QuEST Inspections where a "fail" was recorded in respect of a QuEST Service Specification in that Reporting Period and setting out (to the extent known) the reasons why such failures occurred; and
 - (iii) the number of QuEST Inspections where a "pass" was recorded in respect of a QuEST Service Specification in that Reporting Period; and
- (b) in respect of that Reporting Period, its calculation of:
- (i) the Pass Rate for each of the QuEST Service Schedules, such Pass Rate to be calculated as follows:

$$P_r = \frac{Q_p}{Q_t}$$

where:

P_r is the Pass Rate for a QuEST Service Schedule for that Reporting Period;

Q_p is the total number of QuEST Inspections carried out in respect of that QuEST Service Schedule in that Reporting Period which did not result in a "fail"; and

Q_t is the total number of QuEST Inspections carried out in respect of that QuEST Service Schedule in that Reporting Period.

- 3.2 Within 14 days after the end of each Calculation Year, the Franchisee shall provide to the Secretary of State its calculation of the Pass Rate for that Calculation Year in respect of each QuEST Service Schedule, such Pass Rate to be calculated as follows:

$$FP_r = \frac{Q_p F}{Q_t F}$$

where:

FP_r is the Pass Rate for a QuEST Service Schedule for that Calculation Year;

$Q_p F$ is the total number of QuEST Inspections carried out in respect of that QuEST Service Schedule in that Calculation Year which did not result in a "fail"; and

$Q_t F$ is the total number of QuEST Inspections carried out in respect of that QuEST Service Schedule in that Calculation Year.

- 3.3 The Franchisee shall publish (as a minimum):

- (a) the Pass Rate for each QuEST Service Schedule for each Reporting Period and each Calculation Year alongside the applicable QuEST Benchmark Level and QuEST Floor Level for such QuEST Service Schedule on its website; and

- (b) the Pass Rate for each Calculation Year alongside the applicable QuEST Benchmark Level and QuEST Floor Level for such QuEST Service Schedule for that Calculation Year in its Customer Report. The Customer Report shall also inform passengers on where they can obtain information in relation to the Pass Rates for each Reporting Period.

4. **NPS Regime**

Conduct of NPS Surveys

4.1 The Franchisee agrees with the Secretary of State that:

- (a) the Passengers' Council may measure the level of passenger satisfaction with the Franchise Services through NPS Surveys;
- (b) the Passengers' Council shall determine how, when (normally twice per annum) and where NPS Surveys are to be carried out;
- (c) the Franchisee shall grant access on trains or at stations to the Passengers' Council (or its representatives and agents) to carry out NPS Surveys;
- (d) the Franchisee shall co-operate with the Passengers' Council (in such manner as the Passengers' Council may reasonably request or as the Secretary of State may reasonably direct) in order to enable the Passengers' Council to carry out NPS Surveys; and
- (e) the Passengers' Council and/or the Secretary of State may, from time to time, publish the results of the NPS Surveys.

4.2 The Secretary of State shall or shall procure that:

- (a) the findings of any NPS Survey are made available by the Passengers' Council to the Franchisee within a reasonable period of time after the completion of each such survey; and
- (b) if any such survey includes a comparison between its findings and the findings of any equivalent earlier survey, such comparison forms a reasonable basis for monitoring the trends of passenger satisfaction over time.

4.3 The Franchisee shall, as soon as reasonably practicable after such information is made available to the Franchisee in accordance with paragraph 4.2, publicise its performance in relation to each NPS Indicator, at least by displaying such information on its website and including such information within its Customer Reports.

4.4 It is agreed by the Franchisee that, subject to paragraph 4.5, the methodology to be adopted by the Passengers' Council in conducting any such NPS Survey shall be as described in the document in the agreed terms marked **PSM** (the "**Passenger Survey Methodology**");

4.5 If:

- (a) at any time during the Franchise Term the methodology adopted in conducting any NPS Survey is, in the reasonable opinion of the Secretary of State, materially inconsistent with the Passenger Survey Methodology; and

- (b) the Secretary of State reasonably determines that in consequence a revision to the NPS Benchmarks is required in order to hold constant the risk of the Franchisee failing to satisfy the requirements of any NPS Benchmark,

then the Secretary of State shall make such revisions to such NPS Benchmarks as he reasonably considers appropriate to hold constant such risk.

4.6 If the Passengers' Council ceases to undertake NPS Surveys then the relevant NPS Survey for the purposes of this Schedule 7.2 shall be such other passenger survey as the Secretary of State may, after consultation with the Franchisee, reasonably determine to be appropriate in the circumstances (the "**Alternative NPS**"). The provisions of this Schedule 7.2 shall apply in respect of any Alternative NPS and for these purposes the Passengers' Council shall be replaced with such other entity that is responsible for conducting such Alternative NPS.

4.7 It is agreed by the Secretary of State and the Franchisee that the results of the NPS Survey(s) carried out by the Passengers' Council in any Calculation Year shall be used to determine:

- (a) the Franchisee's performance in respect of each NPS Indicator for that Calculation Year; and
- (b) the PEM and the PEM Payment for that Calculation Year in accordance with paragraph 5.

4.8 If in any Calculation Year the Passengers' Council has conducted:

- (a) only one NPS Survey in that Franchisee Year then the performance of the Franchisee against each NPS Indicator shall be measured against, and the PEM and PEM Payments shall be calculated using, the results of such NPS Survey; or
- (b) more than one NPS Survey in that Calculation Year then the performance of the Franchisee against each NPS Indicator shall be measured against, and the PEM and PEM Payments shall be calculated using, the average of the results of all of the NPS Surveys conducted by the Passengers' Council in that Calculation Year.

4.9 For the purposes of undertaking the determination pursuant to paragraph 4.7, the results referred to in paragraph 4.8(a) or paragraph 4.8(b) (as the case may be) shall be rounded to two decimal places with the midpoint (that is, 4.455) rounded upwards (that is, 4.46).

5. Calculation of the PEM and the PEM Payments

5.1

- (a) For each Calculation Year the Franchisee shall calculate a weighted sum of the Franchisee's performance in respect of each NPS Indicator and QuEST Service Schedule as follows:

$$PEM = \sum_{i=1}^{53} \alpha_i \times ACTUAL_i$$

where:

PEM is the weighted sum of the Franchisee's performance in respect of each NPS Indicator and QuEST Service Schedule;

α_i is the weighting factor as specified in Column 4 of the table in Appendix 1 in respect of each NPS Indicator and Column 4 of the table in Appendix 2 of this Schedule 7.2 in respect of each QuEST Indicator;

ACTUAL_i is the actual level of performance for each indicator:

(a) in the case of each NPS Indicator, as derived using the NPS Survey for that Calculation Year (in accordance with paragraph 4.8) provided that in respect of the Calculation Year commencing in January 2015 the relevant scores for each NPS Indicator to be used for the purposes of calculating the PEM Payment for that Calculation Year shall be those applicable in relation to the TGN Services only; and

(b) in the case of each QuEST Service Schedule, being the Pass Rate for each QuEST Service Schedule as calculated in accordance with paragraph 3.2 provided that in respect of the Calculation Year commencing in January 2015 and for the purposes of calculating the PEM Payment for that Calculation Year, such Pass Rate shall be those applicable in relation to the TGN Services only.

(b) For each Calculation Year, the Franchisee shall by the later of:

(i) the date that is 28 days following the receipt of the findings of the last NPS Survey carried out during that Calculation Year in accordance with paragraph 4.2; and

(ii) the date that is 28 days after the end of that Calculation Year,

calculate and notify to the Secretary of State the value of PEM and the PEM Payment (calculated in accordance with this paragraph 5) for that Calculation Year.

(c) On the later of receipt of the:

(i) notification referred to in paragraph 5.1(b) by the Secretary of State in respect of any Calculation Year; and

(ii) any audit report relating to any Independent PEM Audit or SoS Audit (as the case may be) undertaken in respect of that Calculation Year,

the Secretary of State shall:

(A) confirm to the Franchisee that he agrees with the calculation of PEM and the PEM Payment for that

Calculation Year, in which case, the PEM Payment for that Calculation Year shall be paid in accordance with paragraph 5.1(d); or

- (B) where any Independent PEM Audit or SoS Audit (as the case may be) reveals that the calculation of PEM (and so the PEM Payment) for that Calculation Year was incorrect (including where any such Independent PEM Audit or SoS Audit (as the case may be) fails to confirm or verify any of the matters specified in paragraphs 2.7(a) or 2.7(b)), notify the Franchisee of that fact and the provisions of paragraph 2.18(a) shall apply.
- (d) Any PEM Payment to be made in respect of any Calculation Year shall be made by way of adjustment to Franchise Payments on the next Payment Date which falls more than 7 days following:
- (i) the receipt of the confirmation from the Secretary of State pursuant to paragraph 5.1(c)(ii)(A); or
 - (ii) in the circumstances specified in paragraph 5.1(c)(ii)(B), following the determination of the value of PEM and the calculation of the applicable PEM Payment in accordance with paragraph 2.18(a),

provided that any PEM Payment to be made in respect of the final Calculation Year shall be calculated in accordance with paragraph 5 but shall be paid by the Franchisee to the Secretary of State or the Secretary of State to the Franchisee (as the case may be) within 30 days of the receipt of the confirmation from the Secretary of State pursuant to paragraph 5.1(c)(ii)(A) or in the circumstances specified in paragraph 5.1(c)(ii)(B), following the determination of the value of Adjusted PEM and the calculation of the applicable PEM Payment in accordance with paragraph 2.18(a).

PEM Payments

5.2 The PEM Payment for each Calculation Year shall be calculated as follows:

- (a) where the value of PEM as calculated in accordance with paragraph 5.1 or paragraph 2.18(a) (as the case may be) is:
 - (i) greater than or equal to the PEM Ceiling Level then the payment from the Secretary of State to the Franchisee shall be an amount that is equal to the value of CPAYT,

where CPAYT is:

- (A) in respect of the first Calculation Year (commencing on the first day of the Reporting Period commencing in January 2015) an amount determined as follows:

$$TYP \times AF$$

where:

TYP is the amount specified in the second row of the table in Appendix 4 of this Schedule 7.2; and

AF is 0.4; and

(B) in respect of any subsequent Calculation Year, the amount specified in the second row of the table in Appendix 4 of this Schedule 7.2 x RPI, where RPI is the quotient of the Retail Prices Index for the January in which that subsequent Calculation Year commences divided by the Retail Prices Index for January 2015 save that where the last Calculation Year is shorter or longer than 13 Reporting Periods, CPAYT shall be reduced pro rata;

(ii) less than the PEM Ceiling Level but greater than the PEM Benchmark Level then the Secretary of State shall pay to the Franchisee an amount determined as follows:

$$\frac{(PEM - PEMBenchmark)}{(PEMCeiling - PEMBenchmark)} \times CPAYT$$

where:

PEM is as determined pursuant to paragraph 5.1 or paragraph 2.18(a) (as the case may be);

PEMBenchmark is the PEM Benchmark Level for that Calculation Year; and

PEMCeiling is the PEM Ceiling Level for that Calculation Year; and

CPAYT has the meaning given to it in paragraph 5.2(a)(i);

(iii) less than or equal to the PEM Floor Level then the payment from the Franchisee to the Secretary of State (such payment to be a negative amount for the purposes of the formula in paragraph 1.1 of Schedule 8.1 (Franchise Payments) notwithstanding that the amount calculated as below produces a positive number) shall be an amount that is equal to FPAYT where FPAYT is:

(A) in respect of the first Calculation Year (commencing on the first day of the Reporting Period commencing in January 2015) an amount determined as follows:

$$TYP \times AF$$

where:

TYP is the amount specified in the first row of the table in Appendix 4 of this Schedule 7.2; and

AF is 0.4; and

(B) in respect of any subsequent Calculation Year, the amount specified in the first row of the table in Appendix 4 of this Schedule 7.2 x RPI, where RPI is the quotient of the Retail Prices Index for the January in which that subsequent Calculation Year commences divided by the Retail Prices Index for January 2015 save that where the last Calculation Year is shorter or longer than 13 Reporting Periods, FPAYT shall be reduced pro rata; and

(iv) less than the PEM Benchmark Level but greater than the PEM Floor Level the payment (such payment to be a negative amount for the purposes of the formula in paragraph 1.1 of Schedule 8.1 (Franchise Payments) notwithstanding that the amount calculated as below produces a positive number) from the Franchisee to the Secretary of State shall be determined as follows:

$$\frac{(PEMBenchmark - PEM)}{(PEMBenchmark - PEMFloor)} \times FPAYT$$

where:

PEM is as determined pursuant to paragraph 5.1 or paragraph 2.18(a) (as the case may be);

PEMBenchmark is the PEM Benchmark Level for that Calculation Year;

PEMFloor is the PEM Floor Level for that Calculation Year; and

FPAYT has the meaning given to it in paragraph 5.2(a)(iii).

(b) For the avoidance of doubt:

(i) no PEM Payment shall be made:

(A) if PEM in any Calculation Year is equal to the PEM Benchmark Level for that Calculation Year; and

(B) in respect of any Calculation Year commencing prior to January 2015; and

(ii) for the purposes of calculating the PEM Payment for the first Calculation Year commencing on the first day of the Reporting Period in January 2015, only the scores relating to each NPS Indicator as derived from the NPS Survey in

respect of the TGN Services and the Pass Rates for the TGN Services shall apply.

6. **Variations to the QuEST Regime**

6.1 Without prejudice to paragraph 6.2, the Secretary of State and the Franchisee may from time to time agree to vary the contents of the QuEST Schedules, the NPS Benchmarks, the QuEST Benchmarks or the PEM Benchmarks (including the weightings ascribed to each QuEST Benchmark and each NPS Benchmark and/or the values of the CPAYT and FPAYT (as each such term is defined in paragraph 5.2)) including by reducing the QuEST Benchmarks as specified in respect of certain QuEST Service Schedules or certain NPS Benchmarks (as the case may be) and at the same time increasing others. Any variation agreed by the Secretary of State and the Franchisee pursuant to this paragraph 6 shall be effective from the date agreed by the parties for this purpose. Any such variation as agreed by the Secretary of State and the Franchisee shall not constitute a Change.

6.2 The parties agree that the Secretary of State shall have the right at any time during the Franchise Period to vary the provisions of this Schedule 7.2 (including in respect of any of the matters referred to in paragraph 6.1). The exercise by the Secretary of State of his rights under this paragraph 6.2 shall be a Change.

7. **Consequences of performance falling below the NPS Floor Level, QuEST Floor Level or PEM Floor level**

7.1 If:

- (a) the Pass Rate calculated in accordance with paragraph 3.1 for any QuEST Service Schedule is below the QuEST Floor Level for:
 - (i) any three consecutive Reporting Periods; or
 - (ii) any four Reporting Periods within any period of thirteen consecutive Reporting Periods; or
- (b) in respect of any Calculation Year the Pass Rate calculated in accordance with paragraph 3.2 for any QuEST Service Schedule is below the QuEST Floor Level; or
- (c) in respect of any Calculation Year the average of the results of each NPS Survey carried out in that Calculation Year (as determined in accordance with paragraph 4.8) show that the level of customer satisfaction in respect of any NPS Indicator is below the NPS Floor Level for that Calculation Year; or
- (d) in respect of any Calculation Year the PEM is below the PEM Floor Level for that Calculation Year,

then the Franchisee shall immediately notify the Secretary of State of such fact and within 28 days (or such longer period as the Secretary of State may specify) of the date of any such notification submit to the Secretary of State (for his approval) its proposals (including proposed timescales for the implementation of any such proposals) for ensuring that the affected NPS Indicator, QuEST Service Schedule or the value of PEM (as the case may be) will, as soon as reasonable practicable, be provided at a level that is equal to or above the QuEST Benchmark Level, the NPS Benchmark Level or the PEM Benchmark Level (as applicable).

- 7.2 If the Secretary of State is not reasonably satisfied that any proposal submitted to him by the Franchisee pursuant to paragraph 7.1 will ensure that the relevant QuEST Service or that the Franchisee's performance in relation to any NPS Indicator will, as soon as reasonably practicable, be provided at a level that is equal to or above the QuEST Benchmark Level, the NPS Benchmark Level or the PEM Benchmark Level (as applicable) for each such NPS Indicator or QuEST Indicator (as the case may be) then the Secretary of State will notify the Franchisee of such fact (including his reasons for not being so reasonably satisfied) and the Franchisee shall within two weeks (or such longer period as the Secretary of State may specify) from receipt of any such notice from the Secretary of State submit a revised proposal which seeks to address any of the Secretary of State's concerns as notified to the Franchisee (the "**Revised Proposal**").
- 7.3 Following receipt of any proposal pursuant to paragraph 7.1 or receipt of a Revised Proposal the Secretary of State may require the Franchisee to implement any such proposal within such timescales as the Secretary of State may reasonably determine having regard to any timescales proposed by the Franchisee in any such proposal.
- 7.4 If following receipt of any Revised Proposal the Secretary of State is still not satisfied that such Revised Proposal will ensure that the Franchisee's performance in relation to any NPS Indicator or QuEST Indicator (as the case may be) will, as soon as reasonably practicable, be provided at a level that is equal to or above the QuEST Benchmark Level, the NPS Benchmark Level or the PEM Benchmark Level (as applicable) then the Secretary of State may require the Franchisee to implement such alternative proposals or measures as the Secretary of State may reasonably determine, within such timescales as he may reasonably determine having regard to any timescales proposed by the Franchisee in such Revised Proposal.
- 7.5 If:
- (a) the Franchisee fails to implement any proposal as required pursuant to this paragraph 7 within the required timescales; or
 - (b) the Franchisee's performance in relation to any QuEST Indicator or NPS Indicator is not at a level that is equal to or above the QuEST Benchmark Level, the NPS Benchmark Level or the PEM Benchmark Level (as the case may be) within the period specified in such proposal (or the period reasonably determined by the Secretary of State in exercise of his rights under paragraph 7.3 or 7.4 (as the case may be),

then a contravention of the Franchise Agreement shall occur and the Secretary of State will (except as he may otherwise agree including by agreeing a variation pursuant to paragraph 6), and without prejudice to his other rights consequent upon the relevant contravention, serve a Remedial Plan Notice pursuant to paragraph 1.1 of Schedule 10.1 (Remedial Plans and Remedial Agreements).

APPENDIX 1 TO SCHEDULE 7.2

NPS Indicators, Benchmarks, Floors and Weightings

Column 1		Column 2								Column 3								Column 4
NPS Indicator		NPS Benchmark Level								NPS Floor Level								Weighting
		2014	2015	2016	2017	2018	2019	2020	2021	2014	2015	2016	2017	2018	2019	2020	2021	
(1)	How well train company deals with delays	31.2 2%	34.7 2%	40.1 3%	45.9 3%	47.7 9%	48.5 5%	48.7 3%	48.8 7%	26.2 2%	29.7 2%	35.1 3%	40.9 3%	42.7 9%	43.5 5%	43.7 3%	43.87 %	6.5%
(2)	How request to station staff was handled	83.9 7%	83.2 7%	83.5 7%	85.8 1%	86.4 8%	86.7 9%	86.8 5%	86.9 1%	78.9 7%	78.2 7%	78.5 7%	80.8 1%	81.4 8%	81.7 9%	81.8 5%	81.91 %	2.5%
(3)	The attitudes and helpfulness of the staff (Station)	69.0 2%	70.4 5%	73.2 8%	77.0 2%	78.2 0%	78.7 0%	78.8 1%	78.9 0%	64.0 2%	65.4 5%	68.2 8%	72.0 2%	73.2 0%	73.7 0%	73.8 1%	73.90 %	1.0%
(4)	Usefulness of Information Provided during Delay	44.6 1%	43.8 5%	44.8 0%	47.1 2%	47.8 2%	48.1 4%	48.2 0%	48.2 6%	39.6 1%	38.8 5%	39.8 0%	42.1 2%	42.8 2%	43.1 4%	43.2 0%	43.26 %	1.0%
(5)	The availability of staff (Station)	57.0 3%	58.6 4%	61.1 8%	63.7 9%	64.6 4%	64.9 8%	65.0 6%	65.1 3%	52.0 3%	53.6 4%	56.1 8%	58.7 9%	59.6 4%	59.9 8%	60.0 6%	60.13 %	1.0%
(6)	Provision of information about train times/platforms	78.1 4%	79.0 8%	80.6 2%	82.3 2%	82.8 7%	83.0 9%	83.1 4%	83.1 8%	73.1 4%	74.0 8%	75.6 2%	77.3 2%	77.8 7%	78.0 9%	78.1 4%	78.18 %	2.5%
(7)	Cleanliness (Station)	73.1 0%	73.6 8%	75.5 7%	79.4 5%	80.6 5%	81.1 7%	81.2 8%	81.3 8%	68.1 0%	68.6 8%	70.5 7%	74.4 5%	75.6 5%	76.1 7%	76.2 8%	76.38 %	1.0%
(8)	Ticket buying facilities	69.6 0%	71.2 7%	74.2 8%	78.1 2%	79.3 4%	79.8 5%	79.9 7%	80.0 6%	64.6 0%	66.2 7%	69.2 8%	73.1 2%	74.3 4%	74.8 5%	74.9 7%	75.06 %	1.0%
(9)	Facilities for car parking	44.7 8%	44.5 4%	44.5 0%	46.0 4%	47.5 9%	49.1 3%	50.6 8%	51.7 9%	39.7 8%	39.5 4%	39.5 0%	41.0 4%	42.5 9%	44.1 3%	45.6 8%	46.79 %	1.0%
(10)	The upkeep/repair of the station buildings/platforms	66.1 1%	66.7 1%	67.9 8%	70.1 2%	71.3 8%	72.5 0%	73.2 0%	73.4 5%	61.1 1%	61.7 1%	62.9 8%	65.1 2%	66.3 8%	67.5 0%	68.2 0%	68.45 %	1.0%

Column 1		Column 2								Column 3								Column 4
NPS Indicator		NPS Benchmark Level								NPS Floor Level								Weighting
		2014	2015	2016	2017	2018	2019	2020	2021	2014	2015	2016	2017	2018	2019	2020	2021	
(11)	The facilities and services (Station)	50.7 5%	52.0 9%	54.1 2%	56.6 7%	58.2 1%	59.5 6%	60.3 9%	60.6 7%	45.7 5%	47.0 9%	49.1 2%	51.6 7%	53.2 1%	54.5 6%	55.3 9%	55.67 %	1.0%
(12)	Your personal security whilst using that station	67.8 8%	68.3 0%	69.9 2%	72.4 9%	73.3 0%	73.6 4%	73.7 2%	73.7 8%	62.8 8%	63.3 0%	64.9 2%	67.4 9%	68.3 0%	68.6 4%	68.7 2%	68.78 %	1.0%
(13)	The provision of shelter facilities	61.3 9%	63.2 1%	65.4 8%	66.6 9%	67.1 1%	67.2 6%	67.3 1%	67.3 4%	56.3 9%	58.2 1%	60.4 8%	61.6 9%	62.1 1%	62.2 6%	62.3 1%	62.34 %	1.0%
(14)	Overall environment (Station)	66.7 6%	67.1 3%	68.2 9%	70.7 7%	72.2 0%	73.4 9%	74.3 0%	74.5 9%	61.7 6%	62.1 3%	63.2 9%	65.7 7%	67.2 0%	68.4 9%	69.3 0%	69.59 %	2.5%
(15)	Availability of seating (Station)	42.5 8%	42.2 6%	42.5 8%	45.3 0%	46.8 1%	48.2 0%	49.0 9%	49.4 2%	37.5 8%	37.2 6%	37.5 8%	40.3 0%	41.8 1%	43.2 0%	44.0 9%	44.42 %	1.0%
(16)	The cleanliness of the inside (Train)	63.1 4%	68.1 2%	74.7 3%	81.0 3%	83.7 2%	85.1 7%	85.6 6%	85.7 9%	58.1 4%	63.1 2%	69.7 3%	76.0 3%	78.7 2%	80.1 7%	80.6 6%	80.79 %	4.0%
(17)	Sufficient room for all passengers to sit/stand	60.2 9%	61.1 1%	64.0 4%	65.7 2%	68.2 0%	69.8 7%	70.5 4%	69.9 7%	55.2 9%	56.1 1%	59.0 4%	60.7 2%	63.2 0%	64.8 7%	65.5 4%	64.97 %	4.0%
(18)	The provision of information during the journey	49.0 6%	60.6 8%	74.7 2%	80.7 8%	82.7 6%	82.8 7%	83.0 1%	83.0 1%	44.0 6%	55.6 8%	69.7 2%	75.7 8%	77.7 6%	77.8 7%	78.0 1%	78.01 %	2.0%
(19)	Upkeep and repair of the train	59.7 9%	66.4 7%	75.2 3%	82.1 7%	84.3 7%	84.9 5%	85.1 3%	85.2 4%	54.7 9%	61.4 7%	70.2 3%	77.1 7%	79.3 7%	79.9 5%	80.1 3%	80.24 %	1.5%
(20)	Your personal security on board	70.5 1%	72.5 4%	76.3 6%	79.6 5%	80.9 7%	81.5 4%	81.8 6%	81.9 5%	65.5 1%	67.5 4%	71.3 6%	74.6 5%	75.9 7%	76.5 4%	76.8 6%	76.95 %	2.5%
(21)	The cleanliness of the outside (Train)	56.6 4%	63.2 8%	70.6 3%	74.7 8%	77.5 6%	79.8 8%	81.2 1%	81.5 8%	51.6 4%	58.2 8%	65.6 3%	69.7 8%	72.5 6%	74.8 8%	76.2 1%	76.58 %	1.0%
(22)	The space for luggage (Train)	44.1 0%	45.5 5%	46.6 2%	47.4 8%	48.3 5%	49.2 1%	50.0 7%	50.5 3%	39.1 0%	40.5 5%	41.6 2%	42.4 8%	43.3 5%	44.2 1%	45.0 7%	45.53 %	1.0%
(23)	Punctuality/reliability (i.e. the train arriving/departing on time)	76.1 6%	76.4 0%	76.6 8%	77.5 6%	78.6 3%	79.1 7%	79.3 1%	79.4 5%	71.1 6%	71.4 0%	71.6 8%	72.5 6%	73.6 3%	74.1 7%	74.3 1%	74.45 %	9.0%

APPENDIX 2 TO SCHEDULE 7.2

QuEST Indicators and Weightings

Column 1		Column 2								Column 3								Column 4
QuEST Indicator		QuEST Benchmark Level								QuEST Floor Level								Weighting
		2014	2015	2016	2017	2018	2019	2020	2021	2014	2015	2016	2017	2018	2019	2020	2021	
(1)	Ticket Offices	94.0 3%	94.9 2%	97.2 1%	98.4 8%	98.8 0%	98.8 8%	98.9 3%	98.9 8%	89.0 3%	89.9 2%	92.2 1%	93.4 8%	93.8 0%	93.8 8%	93.9 3%	93.98 %	1.20%
(2)	Ticket Vending Machines	92.5 8%	93.3 7%	95.4 2%	96.5 5%	96.8 4%	96.9 1%	96.9 6%	97.0 0%	87.5 8%	88.3 7%	90.4 2%	91.5 5%	91.8 4%	91.9 1%	91.9 6%	92.00 %	1.20%
(3)	Station Shelters and Waiting Areas	85.0 3%	85.3 4%	86.4 4%	87.9 3%	88.8 0%	89.6 7%	89.9 7%	90.2 3%	80.0 3%	80.3 4%	81.4 4%	82.9 3%	83.8 0%	84.6 7%	84.9 7%	85.23 %	1.05%
(4)	Station Seats	88.0 9%	88.9 6%	91.2 1%	92.4 6%	92.7 8%	92.8 6%	92.9 1%	92.9 6%	83.0 9%	83.9 6%	86.2 1%	87.4 6%	87.7 8%	87.8 6%	87.9 1%	87.96 %	1.05%
(5)	Station Lights	90.0 9%	90.9 7%	93.2 4%	94.5 0%	94.8 3%	94.9 0%	94.9 5%	95.0 0%	85.0 9%	85.9 7%	88.2 4%	89.5 0%	89.8 3%	89.9 0%	89.9 5%	90.00 %	1.80%
(6)	Station Graffiti	85.2 0%	87.1 3%	92.1 3%	94.9 0%	95.6 2%	95.7 8%	95.8 9%	96.0 0%	80.2 0%	82.1 3%	87.1 3%	89.9 0%	90.6 2%	90.7 8%	90.8 9%	91.00 %	1.60%
(7)	Litter and Contamination	90.1 3%	91.3 6%	94.5 4%	96.3 0%	96.7 6%	96.8 6%	96.9 3%	97.0 0%	85.1 3%	86.3 6%	89.5 4%	91.3 0%	91.7 6%	91.8 6%	91.9 3%	92.00 %	1.90%
(8)	Station Timetables and Information	95.0 2%	95.2 4%	95.8 0%	96.1 1%	96.1 9%	96.2 0%	96.2 2%	96.2 3%	90.0 2%	90.2 4%	90.8 0%	91.1 1%	91.1 9%	91.2 0%	91.2 2%	91.23 %	2.50%
(9)	Station Clocks	97.1 6%	97.3 1%	97.7 0%	97.9 1%	97.9 7%	97.9 8%	97.9 9%	98.0 0%	92.1 6%	92.3 1%	92.7 0%	92.9 1%	92.9 7%	92.9 8%	92.9 9%	93.00 %	1.05%
(10)	Station Posters	90.0 7%	90.7 5%	92.5 0%	93.4 7%	93.7 2%	93.7 8%	93.8 2%	93.8 5%	85.0 7%	85.7 5%	87.5 0%	88.4 7%	88.7 2%	88.7 8%	88.8 2%	88.85 %	2.50%
(11)	Public Announcement and Customer Information Systems	90.1 1%	91.1 6%	93.8 8%	95.3 8%	95.7 7%	95.8 6%	95.9 2%	95.9 8%	85.1 1%	86.1 6%	88.8 8%	90.3 8%	90.7 7%	90.8 6%	90.9 2%	90.98 %	2.45%
(12)	Station Toilets	85.0 5%	85.5 8%	87.4 8%	90.0 4%	91.5 4%	93.0 4%	93.5 5%	94.0 0%	80.0 5%	80.5 8%	82.4 8%	85.0 4%	86.5 4%	88.0 4%	88.5 5%	89.00 %	1.05%
(13)	Parking and Taxi Ranks	95.0 5%	95.5 8%	96.9 4%	97.7 0%	97.9 0%	97.9 4%	97.9 7%	98.0 0%	90.0 5%	90.5 8%	91.9 4%	92.7 0%	92.9 0%	92.9 4%	92.9 7%	93.00 %	1.05%

Column 1		Column 2								Column 3								Column 4
QuEST Indicator		QuEST Benchmark Level								QuEST Floor Level								Weighting
		2014	2015	2016	2017	2018	2019	2020	2021	2014	2015	2016	2017	2018	2019	2020	2021	
(14)	Station Lifts and Escalators	94.0 5%	94.5 8%	95.9 4%	96.7 0%	96.9 0%	96.9 4%	96.9 7%	97.0 0%	89.0 5%	89.5 8%	90.9 4%	91.7 0%	91.9 0%	91.9 4%	91.9 7%	92.00 %	1.05%
(15)	Landscaping and Vegetation	92.0 8%	93.3 5%	96.6 3%	98.4 5%	98.9 1%	99.0 2%	99.0 9%	99.1 7%	87.0 8%	88.3 5%	91.6 3%	93.4 5%	93.9 1%	94.0 2%	94.0 9%	94.17 %	2.60%
(16)	Help Points	74.1 0%	75.3 3%	79.7 8%	85.7 5%	89.2 5%	92.7 6%	93.9 5%	95.0 0%	69.1 0%	70.3 3%	74.7 8%	80.7 5%	84.2 5%	87.7 6%	88.9 5%	90.00 %	1.05%
(17)	Telephones	84.8 4%	85.4 4%	87.6 0%	90.5 0%	92.2 1%	93.9 1%	94.4 9%	95.0 0%	79.8 4%	80.4 4%	82.6 0%	85.5 0%	87.2 1%	88.9 1%	89.4 9%	90.00 %	1.05%
(18)	Station Staff	95.0 5%	95.5 8%	96.9 4%	97.7 0%	97.9 0%	97.9 4%	97.9 7%	98.0 0%	90.0 5%	90.5 8%	91.9 4%	92.7 0%	92.9 0%	92.9 4%	92.9 7%	93.00 %	1.05%
(19)	Station CCTV and Security	86.1 3%	87.4 4%	90.8 1%	92.6 8%	93.1 6%	93.2 7%	93.3 4%	93.4 2%	81.1 3%	82.4 4%	85.8 1%	87.6 8%	88.1 6%	88.2 7%	88.3 4%	88.42 %	1.05%
(20)	Train Seats, Racks and other Passenger Facilities	80.0 9%	81.1 6%	85.1 9%	90.5 9%	93.4 0%	95.9 0%	96.7 5%	97.5 0%	75.0 9%	76.1 6%	80.1 9%	85.5 9%	88.4 0%	90.9 0%	91.7 5%	92.50 %	1.55%
(21)	Train Lighting	85.0 5%	85.5 8%	87.5 0%	90.0 6%	91.5 7%	93.0 8%	93.5 9%	94.0 4%	80.0 5%	80.5 8%	82.5 0%	85.0 6%	86.5 7%	88.0 8%	88.5 9%	89.04 %	1.55%
(22)	Train Toilets	78.0 7%	79.1 1%	83.2 4%	88.7 6%	91.3 0%	93.2 0%	93.8 5%	94.4 2%	73.0 7%	74.1 1%	78.2 4%	83.7 6%	86.3 0%	88.2 0%	88.8 5%	89.42 %	1.55%
(23)	Train Graffiti	88.9 4%	90.1 6%	93.3 1%	95.0 5%	95.5 0%	95.6 1%	95.6 8%	95.7 5%	83.9 4%	85.1 6%	88.3 1%	90.0 5%	90.5 0%	90.6 1%	90.6 8%	90.75 %	2.70%
(24)	Train Cleanliness	88.1 6%	89.8 9%	94.6 6%	97.8 3%	98.6 6%	98.8 0%	98.8 9%	98.9 8%	83.1 6%	84.8 9%	89.6 6%	92.8 3%	93.6 6%	93.8 0%	93.8 9%	93.98 %	2.70%
(25)	Destination Boards and Passenger Information Displays	85.2 0%	87.1 3%	92.1 3%	94.9 0%	95.6 2%	95.7 8%	95.8 9%	96.0 0%	80.2 0%	82.1 3%	87.1 3%	89.9 0%	90.6 2%	90.7 8%	90.8 9%	91.00 %	2.50%
(26)	Train Heating/Ventilation	85.0 8%	85.9 8%	89.3 7%	93.9 1%	96.3 0%	98.4 3%	99.1 6%	99.8 0%	80.0 8%	80.9 8%	84.3 7%	88.9 1%	91.3 0%	93.4 3%	94.1 6%	94.80 %	1.55%
(27)	Train Posters/On Train information	90.1 3%	91.4 5%	94.8 4%	96.7 2%	97.2 1%	97.3 2%	97.3 9%	97.4 7%	85.1 3%	86.4 5%	89.8 4%	91.7 2%	92.2 1%	92.3 2%	92.3 9%	92.47 %	1.80%
(28)	Public Address	88.0 4%	88.5 7%	90.7 0%	93.5 5%	94.1 0%	94.4 0%	94.4 4%	94.5 0%	83.0 4%	83.5 7%	85.7 0%	88.5 5%	89.1 0%	89.4 0%	89.4 4%	89.50 %	1.80%
(29)	Train Doors	90.1 3%	91.3 6%	94.5 4%	96.3 0%	96.7 6%	96.8 6%	96.9 3%	97.0 0%	85.1 3%	86.3 6%	89.5 4%	91.3 0%	91.7 6%	91.8 6%	91.9 3%	92.00 %	1.55%

Column 1		Column 2								Column 3							Column 4	
QuEST Indicator		QuEST Benchmark Level								QuEST Floor Level							Weighting	
		2014	2015	2016	2017	2018	2019	2020	2021	2014	2015	2016	2017	2018	2019	2020		2021
(30)	On-Train CCTV	88.1 4%	89.5 5%	93.3 3%	95.7 0%	96.3 2%	96.4 3%	96.5 1%	96.5 8%	83.1 4%	84.5 5%	88.3 3%	90.7 0%	91.3 2%	91.4 3%	91.5 1%	91.58 %	2.50%

APPENDIX 3 TO SCHEDULE 7.2

PEM Benchmarks

PEM Benchmarks	2014	2015	2016	2017	2018	2019	2020	2021*
PEM Benchmark Level	74.92%	76.47%	79.53%	82.20%	83.35%	84.00%	84.27%	84.41%
PEM Floor Level	72.92%	74.47%	77.53%	80.20%	81.35%	82.00%	82.27%	82.41%
PEM Ceiling Level	77.92%	79.47%	82.53%	85.20%	86.35%	87.00%	87.27%	87.41%

* And subsequent Calculation Years in the event that the Franchise Agreement is extended into 2022 or 2023.

APPENDIX 4 TO SCHEDULE 7.2

PEM Payment

Definition	Amount (£)
FPAYT	12,800,000
CPAYT	4,200,000

APPENDIX 5 TO SCHEDULE 7.2**Basis for QuEST Inspections**

1. The basis for undertaking QuEST Inspections in respect of certain QuEST Service Schedules are as specified below:
 - 1.1 Schedules 1, 2, 5 to 11 and 13 to 18: the relevant facilities/services will be inspected per station, with a single pass or fail being recorded for each station inspected;
 - 1.2 Schedule 3: station shelters will be inspected per shelter, with a pass or fail being recorded for each shelter inspected;
 - 1.3 Schedule 4: station seats will be inspected per platform, with a pass or fail being recorded for each platform inspected;
 - 1.4 Schedule 12: station toilets will be inspected per toilet facility, with a pass or fail being recorded for each toilet facility inspected. For the purposes of this paragraph 1.4 **"toilet facility"** shall mean a room containing water closets and/or urinals (as appropriate), wash stations and hand drying facilities;
 - 1.5 Schedules 19 and 30: station and on-train CCTV will be inspected as follows:
 - (a) Schedule 19: CCTV cameras and picture recording systems will be inspected per station, with a single pass or fail being recorded for each station inspected; and
 - (b) Schedule 30: CCTV cameras and recording equipment will be inspected per Rolling Stock Unit, with a single pass or fail being recorded for each Rolling Stock Unit inspected; and
 - 1.6 Schedules 20 to 29: the relevant facilities /services will be inspected per vehicle comprised within a QuEST Train, with a pass or fail being recorded for each vehicle inspected. For the purposes of this paragraph 1.6 **"vehicle"** shall mean an individual car or a vehicle comprised in a Rolling Stock Unit.

SCHEDULE 8

Payments

Schedule 8.1: Franchise Payments

Appendix 1: Profit Share Thresholds

Appendix 2: Components of AFA and DFR

Schedule 8.2: Annual Franchise Payments

Appendix: Figures for the Calculation of Annual Franchise payments

Schedule 8.3: Miscellaneous Payment Provisions

Schedule 8.4: Track Access Adjustments and Station Charge Adjustments

SCHEDULE 8.1

Franchise Payments

1. Franchise Payments

1.1 The Franchise Payment for any Reporting Period shall be an amount equal to:

$$\begin{aligned} \text{£FP} = & \text{ PFP} - \text{ PAR} + \text{ RPBAR} + \text{ FYRBAR} + \text{ TAA} + \text{ SCA} + \text{ TTPA} + \text{ CPS} + \text{ TMDPS} - \\ & \text{ SFPS} - \text{ SDCCA} + \text{ NRPS} - \text{ SPP} - \text{ Type1} - \text{ Type2} - \text{ Type3} - \text{ SPD} + \text{ OP} - \text{ SP} \\ & - \text{ CLCA} + \text{ NRCA} + (\text{ TLPMP} \times \text{ RPI}) + \text{ TUA} + \text{ PEM} + \text{ OCP} + \text{ }^{397}\text{OTWSP} \\ & + \text{ }^{398}\text{DR15F} + \text{ }^{398}\text{DR15Pr} + \text{ }^{399}\text{OFSTR}_E + \text{ }^{399}\text{OFSTR}_{PR} + \text{ AOBSS}_E + \text{ AOBSS}_{PR} \end{aligned}$$

where:

£FP means the Franchise Payment for that Reporting Period;

PFP means $\left(\frac{\text{RPD}}{\text{FYD}} \times \text{AFP} \right)$

where:

RPD means the number of days in that Reporting Period;

FYD means the number of days in the Franchisee Year in which that Reporting Period occurs provided that in respect of any Reporting Period:

- (a) occurring during any Franchisee Year in which the Franchise Agreement terminates early pursuant to Schedule 10 (Remedies, Termination and Expiry), FYD shall mean the number of days there would have been in such Franchisee Year had such early termination not occurred;
- (b) which commences between 1 April 2021 and 18 September 2021 (inclusive), FYD shall be deemed to be the number of days during the period from 1 April 2021 to 18 September 2021(inclusive);

³⁹⁷ 09/12/2016 (Date of Deed of Amendment) Contract insertion agreed by the Secretary of State and the Franchisee.

³⁹⁸ 09/12/2016 (Date of Deed of Amendment) Contract insertion agreed by the Secretary of State and the Franchisee.

³⁹⁹ 11/05/2017 (Date of Deed of Amendment) Contract insertion agreed by the Secretary of State and the Franchisee.

- (c) which commences between 19 September 2021 and 31 March 2022 (inclusive), FYD shall be deemed to be the number of days during the period from 19 September 2021 to 31 March 2022 (inclusive);
 - (d) which commences between 1 April 2022 and 31 March 2023 (inclusive), FYD shall be deemed to be the number of days during the period from 1 April 2022 to 31 March 2023 (inclusive); and
 - (e) which commences on or after 1 April 2023, FYD shall be deemed to be the number of days during the period from 1 April 2023 to 16 September 2023 (inclusive);
- AFP means the Annual Franchise Payment for the Franchisee Year in which that Reporting Period occurs, as determined in accordance with Schedule 8.2 (Annual Franchise Payments);
- PAR means the Assumed Revenue as calculated pursuant to paragraph 3 of this Schedule 8.1 to be made on that Reporting Period's Payment Date;
- RPBAR means the RP Revenue Balancing Amount (if any) to be made on that Reporting Period's Payment Date;
- FYRBAR means the FY Revenue Balancing Amount (if any) to be made on that Reporting Period's Payment Date;
- TAA means any Track Access Adjustment to be made on that Reporting Period's Payment Date;
- SCA means any Station Charge Adjustment to be made on that Reporting Period's Payment Date;
- TTPA means any Ticketless Travel Payment Adjustment payable by the Secretary of State to the Franchisee or the Franchisee to the Secretary of State (as the case may be) on that Reporting Period's Payment Date;
- CPS means any Cancellations Performance Sum payable by the Secretary of State to the Franchisee or the Franchisee to the Secretary of State (as the case may be) on that Reporting Period's Payment Date;
- SFPS means any Short Formation Performance Sum payable by the Franchisee to the Secretary of State on that Reporting Period's Payment Date;
- TMDPS means any TOC Minute Delay Performance Sum payable by the Secretary of State to the Franchisee or the Franchisee to the Secretary of State (as the case may be) on that Reporting Period's Payment Date
- SDCCA means any Station/Depot Change Compensation Amounts payable by the Franchisee to the Secretary of State on that Reporting Period's Payment Date;
- NRPS means any of the amounts referred to under paragraph 7.2(c) of Schedule 6.2 (TSGN Franchise Specific Provisions) and payable by the Franchisee to the Secretary of State or the Secretary of State to the

	Franchisee (as the case may be) to be made on that Reporting Period's Payment Date;
SPP	means any SPP Compensation Amounts payable by the Franchisee to the Secretary of State on that Reporting Period's Payment Date;
Type1	means any of the amounts referred to in paragraph 7.4(d) of Schedule 6.2 (TSGN Franchise Specific Provisions) and payable by the Franchisee to the Secretary of State on that Reporting Period's Payment Date;
Type2	means any of the amounts referred to in paragraph 7.4(e) of Schedule 6.2 (TSGN Franchise Specific Provisions) and payable by the Franchisee to the Secretary of State on that Reporting Period's Payment Date;
Type3	means any of the amounts referred to in paragraph 7.4(f) of Schedule 6.2 (TSGN Franchise Specific Provisions) and payable by the Franchisee to the Secretary of State on that Reporting Period's Payment Date;
SPD	means any of the amounts referred to in paragraph 7.4(g) of Schedule 6.2 (TSGN Franchise Specific Provisions) and payable by the Franchisee to the Secretary of State on that Reporting Period's Payment Date;
OP	means the amount referred to in paragraph 7.4(h)(i) of Schedule 6.2 (TSGN Franchise Specific Provisions) and payable by the Secretary of State to the Franchisee to be made on that Reporting Period's Payment Date;
SP	means the amount referred to in paragraph 7.4(h)(ii) of Schedule 6.2 (TSGN Franchise Specific Provisions) and payable by the Franchisee to the Secretary of State to be made on that Reporting Period's Payment Date;
CLCA	means any Condition L Compensation Amounts payable by the Franchisee to the Secretary of State on that Reporting Period's Payment Date;
NRCA	means any of the amounts referred to under paragraph 7.6 of Schedule 6.2 (TSGN Franchise Specific Provisions) payable by the Franchisee to the Secretary of State or the Secretary of State to the Franchisee (as the case may be) to be made on that Reporting Period's Payment Date;
TLMP	means any TLP Milestone Incentive Payment payable on that Reporting Period's Payment Date;
RPI	has the meaning given to that term in Schedule 8.2 (Annual Franchise Payments);
TUA	means any Top Up Amount (as such term is defined in Schedule 6.3 (TLP/TRSP Related Provisions) payable by the Secretary of State to the Franchisee on that Reporting Period's Payment Date;
PEM	means any PEM Payment payable by the Secretary of State to the Franchisee or the Franchisee to the Secretary of State (as the case may be) on that Reporting Period's Payment Date; and
OCP	means any Outstanding Contract Price payable by the Secretary of State to the Franchisee on that Reporting Period's Payment Date;

⁴⁰⁰OTWSP means any On-Train Wi-Fi Solution Payment payable by the Secretary of State to the Franchisee or the Franchisee to the Secretary of State (as the case may be) on that Reporting Period's Payment Date;

⁴⁰¹DR15F means the forecast DR15 Operational Costs as calculated pursuant to paragraph 5.5(a) of this Schedule 8.1 to be made on that Reporting Period's Payment Date;

DR15Pr means the DR15 Operational Costs Balancing Payment (if any) to be made on that Reporting Period's Payment Date;

⁴⁰²OFSTR_E means the forecast OFST Operational Costs as calculated pursuant to paragraph 5.6(a) of this Schedule 8.1 to be made on that Reporting Period's Payment Date;

OFSTR_{PR} means the OBS Set Up Costs and Payroll Amounts Balancing Payment (if any) as calculated pursuant to paragraph 5.7(b) to be made on the Payment Date for the applicable Reporting Periods;

AOBSS_E means the forecast OBS Set Up Costs and Payroll Amounts as calculated pursuant to paragraph 5.7(a) of this Schedule 8.1 to be made on that Reporting Period's Payment Date;

AOBSS_{PR} means the OBS Set Up Costs and Payroll Amount Balancing Payment (if any) as calculated pursuant to paragraph 5.7(b) to be made on the Payment Date for the applicable Reporting Periods;

1.2 Where a Franchisee Year starts or ends during a Reporting Period, £FP and PFP shall be determined as if references in paragraph 1.1 to a Reporting Period were to each of the separate sections of two such Reporting Periods which fall either side of such Franchisee Year start or end, and the Franchise Payment for such

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- 400** 09/12/2016 (Date of Deed of Amendment) Contract insertion agreed by the Secretary of State and the Franchisee.
- 401** 09/12/2016 (Date of Deed of Amendment) Contract insertion agreed by the Secretary of State and the Franchisee.
- 402** 11/05/2017 (Date of Deed of Amendment) Contract insertion agreed by the Secretary of State and the Franchisee.

Reporting Period shall be the sum of £FP as determined for each such section of such Reporting Period.

1.3 The parties agree that:

- (a) ⁴⁰³ ⁴⁰⁴ each of £FP, RPBAR, FYRBAR, TAA, SCA, TTPA, CPS, TMDPS, NRPS, NRCA, PEM, OTWSP, HYOTWSPBAR (as that expression is defined in paragraph 8.1) or DR15Pr, OFSTR_E or AOBSS_{PR} may be a positive number (where it is an adjustment to Franchise Payments in favour of the Franchisee) or a negative number (where it is an adjustment to Franchise Payments in favour of the Secretary of State);
- (b) where £FP is a positive number, the Secretary of State shall pay that amount to the Franchisee on the Payment Date for that Reporting Period; and
- (c) where £FP is a negative number, the Franchisee shall pay the corresponding positive amount to the Secretary of State on the Payment Date for that Reporting Period.

2. Payment of Franchise Payments

- 2.1 The Secretary of State shall notify the Franchisee, no less than seven days prior to the end of each Reporting Period, of the amount of the Franchise Payment payable in respect of that Reporting Period.
- 2.2 Each such notification shall set out in reasonable detail how the Franchise Payment has been calculated.
- 2.3 The Payment Date for a Reporting Period shall be the last business day of that Reporting Period.
- 2.4 Each Franchise Payment shall be payable by the Franchisee or, as the case may be, the Secretary of State in the amount notified by the Secretary of State in accordance with paragraph 2.1 on the Payment Date of the Reporting Period to which it relates.
- 2.5 Each Franchise Payment shall be made:
 - (a) by automatic electronic funds transfer in pounds sterling to such bank account in the United Kingdom as the payee of such payment may have previously specified to the payer in writing; and
 - (b) so that cleared funds are received in that account on or before the due date for payment.

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Derogations

⁴⁰³ 09/12/2016 (Date of Deed of Amendment) Contract change agreed by the Secretary of State and the Franchisee.

⁴⁰⁴ 11/05/2017 (Date of Deed of Amendment) Contract insertion agreed by the Secretary of State and the Franchisee.

- 2.6 If either party disputes the amount of a Franchise Payment, the dispute shall, unless the parties otherwise agree, be resolved in accordance with the provisions of clause 8 (Governing Law) of this Franchise Agreement. Any such dispute shall not affect the obligation of either party to pay a Franchise Payment notified in accordance with this paragraph 2.
- 2.7 If either party fails to pay any amount to the other party on its due date, it shall in addition pay interest on such amount at the Interest Rate, calculated on a daily basis, from the due date for payment to the date on which payment is made.
- 2.8 If the amount of any Franchise Payment is agreed or determined to be incorrect and:
- (a) either party has made a payment to the other party which is greater than it would have made if the amount of the Franchise Payment had been correct, then the recipient shall repay the excess within three business days of the agreement or determination; or
 - (b) either party has made a payment to the other party which is less than it would have made if the amount of the Franchise Payment had been correct, then the payer shall pay the amount of any shortfall to the payee within three business days of the agreement or determination,
- together, in each case, with interest on the amount payable at the Interest Rate, calculated on a daily basis from the date on which the Franchise Payment was paid until the date on which such excess amount or shortfall is paid.

2.9 **Value Added Tax**

- (a) All Franchise Payments to be made by the Secretary of State to the Franchisee under this Agreement are exclusive of Value Added Tax.
- (b) If Value Added Tax is properly chargeable on the supply for which any such Franchise Payment is in consideration the Secretary of State shall, subject to the receipt of a valid Value Added Tax invoice, pay to the Franchisee, by way of adjustment to Franchise Payments, such additional payments (at the rate and in the manner prescribed by law) as is required to ensure that the Franchisee can meet the Value Added Tax liability arising in respect of such Franchise Payments.
- (c) On or before the Start Date, the Secretary of State and the Franchisee shall agree the process for the submission of the Value Added Tax invoice including the timing of such submissions and the content of such invoices.
- (d) If it is subsequently determined by HM Revenue & Customs that Value Added Tax was not properly chargeable on the supply for which any such Franchise Payment is the consideration then the Franchisee shall, by way of adjustment to Franchise Payments, following notification of any such determination repay to the Secretary of State any such Value Added Tax.

3. Assumed Revenue

3.1 The Assumed Revenue ("**PAR**") for each Reporting Period shall be determined as follows:

- (a) in respect of each Reporting Period in the first Franchisee Year, the amounts specified for each such Reporting Period in Column 3 of the table in paragraph 3.2; and
- (b) in respect of each subsequent Franchisee Year an amount in respect of each Reporting Period determined as follows:

$$PAR = AR \times SF$$

where:

AR is the amount agreed by the Secretary of State and the Franchisee (following receipt by the Secretary of State of the Franchisee's Revenue forecast as required pursuant to paragraph 2.1(b) and 2.2(c) of Schedule 13 (Information and Industry Initiatives)) or on failure to agree within 10 days of receipt by the Secretary of State of any such Revenue forecasts, as reasonably determined by the Secretary of State as being the bona fide estimate of the amount of Revenue to be derived by the Franchisee from the operation of the Franchise Services in that Franchisee Year; and

SF is in respect of each Reporting Period in such subsequent Franchisee Year the "Season Factor" percentages for each such Reporting Period as agreed by the Secretary of State and the Franchisee (following receipt by the Secretary of State of the Franchisee's view of such "Season Factor" percentages as required pursuant to paragraph 2.1(b) and 2.1(c) of Schedule 13 (Information and Industry Initiatives)) or on failure to agree within 10 days of receipt of such Franchisee's view of the "Season Factor" percentages, as reasonably determined by the Secretary of State as being the bona fide reflection of the extent of the variation in Revenue between Reporting Periods in that Franchisee Year.

3.2 The value of PAR for each Reporting Period in the first Franchisee Year is the amount specified for that Reporting Period in Column 3 of the table below

Column 1	Column 2	[REDACTED⁴⁰⁵]:
Franchisee Year	Reporting Period	
Year 1	Period 7	

⁴⁰⁵ 5 November 2014 (Date of Redactions Approval) – Where text has been omitted from the document this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

	Period 8	
	Period 9	
	Period 10	
	Period 11	
	Period 12	
	Period 13	

The Reporting Period entitled "Period 7" in Column 2 of the above table shall be the first Reporting Period of the Franchise Term.

4. Reporting Period Revenue Adjustments

- 4.1 For each Reporting Period the Secretary of State shall, following receipt by him of the Management Accounts in respect of that Reporting Period, calculate the RP Revenue Balancing Amount in respect of that Reporting Period in accordance with the following formula:

$$RPBAR = PAR - RPR$$

where:

RPBAR is the RP Revenue Balancing Amount payable for that Reporting Period;

PAR is the Assumed Revenue for that Reporting Period calculated in accordance with paragraph 3; and

RPR⁴⁰⁶ is the Revenue (less, subject to the Franchisee complying with its obligations in paragraph 5.3, any Delay Repay Compensation and One Off Season Ticket Refund paid by the Franchisee to passengers in accordance with the terms of the Passenger Charter and the provisions of paragraph 22 of Part 1 of Schedule 6.1 (Committed Obligations and Related Provisions) (as applicable) in that Reporting Period) derived by the Franchisee from the operation of the Franchise Services in that Reporting Period as specified in that Reporting Period's Management Accounts.

⁴⁰⁶ 11/05/2017 (Date of Deed of Amendment) Contract insertion agreed by the Secretary of State and the Franchisee.

4.2 The RP Revenue Balancing Amount (if any) in respect of any Reporting Period shall be payable:

- (a) by the Secretary of State if the RP Revenue Balancing Amount is a positive number; or
- (b) by the Franchisee if the RP Revenue Balancing Amount is a negative number,

and shall, subject to paragraph 6, be applied to the Franchise Payment payable on the RP Revenue Balancing Date.

4.3 If the Franchisee fails to provide the relevant Reporting Period's Management Accounts within the period specified in paragraph 3.2 of Schedule 13 (Information and Industry Initiatives) the Secretary of State shall be entitled to (but not obliged) to determine the RP Revenue Balancing Amount in accordance with this paragraph 4 by reference to any relevant information available to the Secretary of State at the time of such determination.

5. Franchisee Year Revenue Adjustments

5.1 For each Franchisee Year the Secretary of State shall, following receipt by him of the Annual Audited Accounts in respect of that Franchisee Year, calculate the FY Revenue Balancing Amount in respect of that Franchisee Year in accordance with the following formula:

$$\text{FYRBA} = \text{FYPAR} - \text{FYPrBA} - (\text{ARR1} + \text{AOA})$$

where:

FYRBA is the FY Revenue Balancing Amount payable for that Franchisee Year;

FYPAR is the aggregate amount of the Assumed Revenue determined pursuant to paragraph 3 of this Schedule 8.1 in respect of any Reporting Period (or part thereof) in that Franchisee Year;

FYPrBA is the net aggregate of each RP Revenue Balancing Amount (if any) determined pursuant to paragraph 4 of this Schedule 8.1 in respect of any Reporting Period (or part thereof) in that Franchisee Year (and, for the avoidance of doubt, for this purpose, positive and negative amounts of such RP Revenue Balancing Amounts shall be netted off against each other);

⁴⁰⁷ARR1 is the aggregate amount of Revenue (less, subject to the Franchisee complying with its obligations in paragraph 5.3, the aggregate amount of any Delay Repay Compensation and One Off Season Ticket Refund paid by the Franchisee to passengers in accordance with the terms of the Passenger Charter and the provisions of paragraph 22 of Part 1 of Schedule 6.1 (Committed

⁴⁰⁷ 11/05/2017 (Date of Deed of Amendment) Contract insertion agreed by the Secretary of State and the Franchisee.

Obligations and Related Provisions) (as applicable) in that Franchisee Year) for that Franchisee Year as reported in the Annual Audited Accounts for that Franchisee Year; and

AOA is any other adjustment (subsequent, current or future) as is required to ensure that Revenue (or any other adjustment relating to Revenue) in respect of any Franchisee Year is correctly allocated to the Franchisee Year to which it relates (the "**Revenue Adjustment(s)**"). For the avoidance of doubt, a Revenue Adjustment may be applied retrospectively in respect of any Franchisee Year. The Franchisee shall notify the Secretary of State immediately upon becoming aware that any such Revenue Adjustment is or may be required. Without limiting paragraph 5.4, the Secretary of State may notify the Franchisee if the Secretary of State identifies that such a Revenue Adjustment is or may be required. The Revenue Adjustments shall be such sum as is agreed by the parties or, if there is any dispute about whether a Revenue Adjustment is required, the amount of it and/or the affected Franchisee Year(s), the applicable Revenue Adjustment(s), shall be as reasonably determined by the Secretary of State.

Any Revenue Adjustments that arise after the end of the Franchise Period shall be paid by the Secretary of State to the Franchisee or the Franchisee to the Secretary of State (as the case may be) within 30 days after the date of agreement or determination by the Secretary of State (as the case may be).

5.2 The FY Revenue Balancing Amount (if any) in respect of any Franchisee Year shall be payable:

- (a) by the Franchisee if the FY Revenue Balancing Amount is a negative number; or
- (b) by the Secretary of State if the FY Revenue Balancing Amount is a positive number,

and, subject to paragraph 6, shall be applied to the Franchise Payment payable on the FY Revenue Balancing Date.

5.3 **Further Information**

- (a) For the purposes of determining the Delay Repay Compensation ⁴⁰⁸and **One Off Season Ticket Refund** deductions from Revenue and for the purposes of determining the RP Revenue Balancing Amount or the FY Revenue Balancing Amount in accordance with paragraphs 4 and 5 (respectively), the Franchisee shall together with the Management Accounts and the Annual Audited Accounts provide to the Secretary of State such supporting information as the Secretary of State may reasonably require for the purposes of evidencing the amount of Delay Repay

⁴⁰⁸ 11/05/2017 (Date of Deed of Amendment) Contract insertion agreed by the Secretary of State and the Franchisee.

Compensation ⁴⁰⁹and **One Off Season Ticket Refund** paid by the Franchisee in a Reporting Period and a Franchisee Year (as the case may be).

- (b) At the end of each Franchisee Year the Franchisee shall provide to the Secretary of State (together with the information required to be provided pursuant 5.3(a)) a certificate from a statutory director of the Franchisee confirming that any Delay Repay Compensation ⁴¹⁰and **One Off Season Ticket Refund** paid to passengers in that Franchisee Year has been paid in accordance with the terms of the Passenger Charter ⁴¹¹and **the requirements of paragraph 22 of Part 1 of Schedule 6.1 Committed Obligations and Related Provisions) (as applicable) .**
- (c) If the Franchisee fails to provide any of the information required pursuant to paragraphs 5.3(a) or 5.3(b) then no deductions in respect of Delay Repay compensation ⁴¹²and/or **One Off Season Ticket Refund** paid shall be made to Revenue in respect of any Reporting Period or Franchisee Year (as the case may be) in respect of which any such information has not been provided as so required.

5.4 **Secretary of State's right to determine Revenue Adjustments**

Without limiting any other adjustment which may be made for the purpose of the definition of AOA in paragraph 5.1, where the Secretary of State reasonably considers that for the purposes of determining any RP Revenue Balancing Amount pursuant to paragraph 4 or any FY Revenue Balancing Amount (including for the avoidance of doubt, any Revenue Adjustments) pursuant to paragraph 5, any particular item or transaction to the extent relating to Revenue has not been accounted for on a reasonable basis (including where the accounting treatment looks to the form rather than the substance, of the item or transaction) he shall be entitled to require it to be accounted for on such other basis as he may reasonably determine and notify to the Franchisee provided that the Secretary of State shall not be entitled pursuant to this paragraph to alter the accounting policies of the Franchisee from those set out in the Record of Assumptions and applied through the Financial Model.

5.5 ⁴¹³ **DR15 Operational Costs**

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Derogations

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- ⁴⁰⁹ 11/05/2017 (Date of Deed of Amendment) Contract insertion agreed by the Secretary of State and the Franchisee.
- ⁴¹⁰ 11/05/2017 (Date of Deed of Amendment) Contract insertion agreed by the Secretary of State and the Franchisee.
- ⁴¹¹ 11/05/2017 (Date of Deed of Amendment) Contract insertion agreed by the Secretary of State and the Franchisee.
- ⁴¹² 11/05/2017 (Date of Deed of Amendment) Contract insertion agreed by the Secretary of State and the Franchisee.
- ⁴¹³ 09 December 2016 (Date of Deed of Amendment) – Contract insertion agreed by the Secretary of State and Franchisee.

(a) **The DR15 Operational Costs (“DR15F”) for each Reporting Period shall be determined as follows:**

(i) **in respect of each Reporting Period falling within the Franchisee Year commencing from the DR15 Effective Date and ending on 31 March 2017 (the “First DR15 Franchisee Year”) the amount specified in the Column 3 of the table below being the total DR15 Operational Costs forecast to be incurred by the Franchisee in each of the Reporting Periods specified in Column 1 of such table:**

Column 1	Column 2		Column 3
Reporting Period	Description of DR15 Operational Costs in the relevant Reporting Period (All costs exclude VAT)		Forecast of Total DR15F for the relevant Reporting Period (All costs exclude VAT)
Period 10	[REDACTED ⁴¹⁴]	[REDACTED]	[REDACTED]
Period 11	[REDACTED]	[REDACTED]	[REDACTED]
	[REDACTED]	[REDACTED]	
	[REDACTED]	[REDACTED]	
	[REDACTED]	[REDACTED]	
	[REDACTED]	[REDACTED]	
	[REDACTED]	[REDACTED]	
Period 12	[REDACTED]	[REDACTED]	[REDACTED]
	[REDACTED]	[REDACTED]	
	[REDACTED]	[REDACTED]	
	[REDACTED]	[REDACTED]	
	[REDACTED]	[REDACTED]	
	[REDACTED]	[REDACTED]	
Period 13	[REDACTED]	[REDACTED]	[REDACTED]
	[REDACTED]	[REDACTED]	
	[REDACTED]	[REDACTED]	
	[REDACTED]	[REDACTED]	

⁴¹⁴ 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.

	[REDACTED]	[REDACTED]	
	[REDACTED]	[REDACTED]	

(ii) in respect of each Franchisee Year occurring after the First DR15 Franchisee Year the amount of the DR15 Operational Costs as agreed by the Secretary of State and the Franchisee (following receipt by the Secretary of State of the Franchisee’s forecast DR15 Operational Costs to be incurred for each Reporting Period in that Franchisee Year as required pursuant to paragraph 5.5(a)(iii)) or on failure to agree within 10 days of receipt of such forecast DR15 Operational Costs, as reasonably determined by the Secretary of State as being the bona fide estimate of the amount of DR15 Operational Costs to be incurred by the Franchisee in each Reporting Period in that Franchisee Year;

(iii) to facilitate agreement or determination of the DR15 Operational Costs for each Franchisee Year specified in paragraph 5.5(a)(ii) the Franchisee shall, within 10 days of the beginning of each such Franchisee Year and in respect of each Reporting Period in that Franchisee Year, provide to the Secretary of State the DR15 Operational Costs it expects to incur in each Reporting Period in that Franchisee Year for each of the categories of costs set out in column 2 of the table above. Except as otherwise agreed by the Secretary of State (including pursuant to paragraph 5.5(c)(ii)(C)) such DR15 Operational Costs shall only include the categories of cost set out in column 2 of the table in paragraph 5.5(a).

(a) DR15 Operational Costs Balancing Payment

(i) For each Reporting Period from the DR15 Effective Date the Secretary of State shall, following receipt by him of the Management Accounts in respect of that Reporting Period, calculate the DR15 Operational Costs Balancing Payment in respect of that Reporting Period in accordance with the following formula:

$$DR15Pr = DR15PA - DR15PF$$

where:

DR15Pr is the DR15 Operational Costs Balancing Payment payable for that Reporting Period;

DR15PF is the DR15 Operational Costs for that Reporting Period calculated in accordance with paragraph 5.5(a); and

DR15PA is the actual DR15 Operational Costs incurred by the Franchisee in that Reporting Period as specified in the Management Accounts and as reviewed and approved (such

approval will not be unreasonably delayed or withheld) by the Secretary of State in accordance with paragraph 5.5(c), it being agreed that any costs incurred by the Franchisee in any Reporting Period which are not approved by the Secretary of State in accordance with paragraph 5.5(c) shall be disregarded for the purposes of determining the DR15 Operational Costs Balancing Payment payable in that Reporting Period.

(ii) The DR15 Operational Costs Balancing Payments (if any) in any Reporting Period shall be payable:

(A) by the Secretary of State if the DR15 Operational Costs Balancing Payment is a positive number; or

(B) by the Franchisee if the DR15 Operational Costs Balancing Payment is a negative number, and

shall be applied to the Franchise Payment payable on the DR15 Operational Costs Balancing Payment Date.

(b) Monitoring of DR15 Operational Costs

(i) The Franchisee shall regularly monitor the actual DR15 Operational Costs it incurs or is to incur in respect of a Reporting Period.

(ii) The Franchisee and the Secretary of State shall every two weeks from the DR15 Effective Date until three Reporting Periods after the DR15 Effective Date and thereafter, every Reporting Period, meet to discuss and review DR15 Operational Costs and progress made by the Franchisee in relation to the introduction and implementation of the DR15 Compensation (including operational data in relation thereto) (the "DR15 Review"). For these purposes within two weeks of the end of each Reporting Period the Franchisee shall provide to the Secretary of State:

(A) a statement, prepared on an open book basis detailing all DR15 Operational Costs that the Franchisee has incurred since the last DR15 Review and those DR15 Operational Costs that it reasonably anticipates that it will incur before the following DR15 Review and such statement shall be signed by a statutory director of the Franchisee confirming that the statement is a true and accurate record of

the DR15 Operational Costs incurred or to be incurred; and

(B) a comparison of the actual DR15 Operational Costs (that is, DR15PA) (the "Actual DR15 Operational Costs") incurred in the relevant Reporting Period that is the subject of the DR15 Review against the forecast DR15 Operational Costs (that is, DR15PF) (the "Estimated DR15 Operational Costs") as agreed or reasonably determined for that Reporting Period pursuant to paragraph 5.5(a) of Schedule 8.1. If the Franchisee considers that it is reasonably likely that prior to the following DR15 Review the Actual DR15 Operational Costs are likely to exceed the Estimated DR15 Operational Costs it shall also provide to the Secretary of State:

- (i) the amount by which the Actual DR15 Operational Costs are likely to exceed the Estimated DR15 Operational Costs;**
- (ii) an explanation as to why that is the case (with supporting information); and**
- (iii) the reasonable measures that the Franchisee is taking to reduce any increase in the Actual DR15 Operational Costs to be incurred in that Reporting Period,**

together with any other information that the Secretary of State may reasonably require in order to satisfy himself that the Actual DR15 Operational Costs are reasonably and properly incurred; and

(C) to the extent applicable, any additional categories of costs that are not specified in column 2 of the table in paragraph 5.5(a) (including the forecast DR15 Operational Costs in relation thereto) in respect of which the Franchisee wishes to seek the approval of the Secretary of State to include as a category of cost for the purposes of paragraph 5.5(a)(ii). Where such additional category of cost (and the forecast DR15 Operational Costs associated with any such additional category of cost) is approved by the Secretary of State then the Franchisee shall be entitled, if applicable in any

relevant Franchisee Year, to reflect such category of cost in any of the forecast DR15 Operational Costs to be provided to the Secretary of State pursuant to paragraph 5.5(a)(ii).

(iii) **The Franchisee shall not at any time incur Actual DR15 Operational Costs which exceed the Estimated DR15 Operational Costs unless the Franchisee has notified the Secretary of State of the amount of the excess:**

(A) **at a DR15 Review in accordance with paragraph 5.5(c)(ii); or**

(B) **if such excess costs were not reasonably foreseeable by the Franchisee prior to the relevant DR15 Review, through prior written notification to the Secretary of State with an explanation as to why the Actual DR15 Operational Costs will exceed the Estimated DR15 Operational Costs (with supporting information) and the reasonable measures that the Franchisee is taking to reduce any such excess amount together with any other information that the Secretary of State may reasonably require in order to satisfy himself that the Actual DR15 Operational Costs are reasonably and properly incurred.**

5.6 OFST Operational Costs ⁴¹⁵

(a) **The forecast OFST Operational Costs ("OFSTRE") for each Reporting Period falling within the period from 8 January 2017 and ending on 14 October 2017 shall be the amount specified in Column 3 of the table below being the total OFST Operational Costs forecast to be incurred by the Franchisee in each of the Reporting Periods specified in Column 1 of such table:**

⁴¹⁵ 11/05/2017 (Date of Deed of Amendment) Agreed by the Secretary of State and the Franchisee.

Column 1	Column 2	Column 3
Reporting Period	Description of OFST Operational Costs in the relevant Reporting Period (All costs exclude VAT)	Forecast of Total OFSTRE for the relevant Reporting Period (All costs exclude VAT)
Reporting Period 11 of 2016/2017 (from 8 January 2017 to 4 February 2017)	Set up costs: Operating Costs:	[REDACTED ⁴¹⁶] [REDACTED]
Reporting Period 12 of 2016/2017 (from 5 February 2017 to 4 March 2017)	Set up costs: Operating Costs:	[REDACTED] [REDACTED]
Reporting Period 13 of 2016/2017 (from 5 March 2017 to 31 March 2017)	Set up costs: Operating Costs:	[REDACTED] [REDACTED]
Reporting Period 1 of 2017/2018 (from 1 April 2017 to 29 April 2017)	Set up costs: Operating Costs:	[REDACTED] [REDACTED]
Any Reporting Period from and including Reporting Period 2 of 2017/2018 to the end of Reporting Period	Set up costs: Operating Costs:	[REDACTED] [REDACTED]

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Derogations

⁴¹⁶ 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.

Column 1	Column 2	Column 3
Reporting Period	Description of OFST Operational Costs in the relevant Reporting Period (All costs exclude VAT)	Forecast of Total OFSTRE for the relevant Reporting Period (All costs exclude VAT)
7 of 2017/2018 (being from 30 April 2017 to 14 October 2017)		

(b) OFST Operational Costs Balancing Payment

- (i) For each Reporting Period falling within the period commencing on 8 January 2017 and ending on 14 October 2017 (the "OFST Payment Period") the Secretary of State shall, following receipt by him of the Management Accounts (and such other supporting information as he may reasonable require) in respect of that Reporting Period, calculate the OFST Operational Costs Balancing Payment in respect of that Reporting Period in accordance with the following formula:**

$$OFST_{Pr} = OFST_A - OFST_E$$

where:

OFST_{Pr} is the OFST Operational Costs Balancing Payment payable for that Reporting Period;

OFST_A is the actual OFST Operational Costs incurred by the Franchisee in that Reporting Period as specified in the Management Accounts and as reviewed and approved (such approval not be unreasonably delayed or withheld) by the Secretary of State in accordance with paragraph 5.6(c), it being agreed that any costs incurred by the Franchisee in any Reporting Period which are not approved by the Secretary of State in accordance with paragraph 5.6(c) shall be disregarded for the purposes of determining the OFST Operational Costs Balancing Payment payable in that Reporting Period; and

OFST_E is the forecast of OFST Operational Costs for that Reporting Period calculated in accordance with paragraph 5.6(a).

(ii) The OFST Operational Costs Balancing Payments (if any) in any Reporting Period falling within the OFST Payment Period shall be payable:

(A) by the Secretary of State if the OFST Operational Costs Balancing Payment is a positive number; or

(B) by the Franchisee if the OFST Operational Costs Balancing Payment is a negative number, and

shall be applied to the Franchise Payment payable on the applicable OFST Operational Costs Balancing Payment Date.

(c) Monitoring of OFST Operational Costs

(i) The Franchisee shall regularly monitor the actual OFST Operational Costs it incurs or is to incur in respect of a Reporting Period.

(ii) The Franchisee and the Secretary of State shall at each DR15 Review undertaken during the OFST Payment Period discuss and review the OFST Operational Costs and progress made by the Franchisee in relation to the payment of the One Off Season Ticket Refunds (including operational data in relation thereto). For these purposes within two weeks of the end of each Reporting Period during the OFST Payment Period the Franchisee shall provide to the Secretary of State:

(A) a statement, prepared on an open book basis detailing all OFST Operational Costs that the Franchisee has incurred since the last DR15 Review (as defined in paragraph 5.5 of this Schedule 8.1) and those OFST Operational Costs that it reasonably anticipates that it will incur before the following DR15 Review and such statement shall be signed by a statutory director of the Franchisee confirming that the statement is a true and accurate record of the OFST Operational Costs incurred or to be incurred; and

(B) a comparison of the actual OFST Operational Costs (that is, OFSTR_A) (the "Actual OFST Operational Costs") incurred in the relevant Reporting Period that is the subject of the DR15 Review against the forecast OFST Operational Costs (that is, OFST_E) (the "Estimated OFST Operational Costs") as agreed or reasonably determined for that Reporting Period pursuant to

paragraph 5.6(a) of Schedule 8.1. If the Franchisee considers that it is reasonably likely that prior to the following DR15 Review the Actual OFST Operational Costs are likely to exceed the Estimated OFST Operational Costs it shall also provide to the Secretary of State:

- (1) the amount by which the Actual OFST Operational Costs are likely to exceed the Estimated OFST Operational Costs;**
- (2) an explanation as to why that is the case (with supporting information); and**
- (3) the reasonable measures that the Franchisee is taking to reduce any increase in the Actual OFST Operational Costs to be incurred in that Reporting Period,**

together with any other information that the Secretary of State may reasonably require in order to satisfy himself that the Actual OFST Operational Costs are reasonably and properly incurred.

(iii) The Franchisee shall not at any time incur Actual OFST Operational Costs which exceed the Estimated OFST Operational Costs unless the Franchisee has notified the Secretary of State of the amount of the excess:

- (A) at a DR15 Review in accordance with paragraph 5.6(c)(ii); or**
- (B) if such excess costs were not reasonably foreseeable by the Franchisee prior to the relevant DR15 Review, through prior written notification to the Secretary of State with an explanation as to why the Actual OFST Operational Costs will exceed the Estimated OFST Operational Costs (with supporting information) and the reasonable measures that the Franchisee is taking to reduce any such excess amount together with any other information that the Secretary of State may reasonably require in order to satisfy himself that the Actual OFST Operational Costs are reasonably and properly incurred.**

5.7 OBS Set Up Costs and Payroll Amounts⁴¹⁷

- (a) The forecast OBS Set Up Costs and Payroll Amounts ("AOBSS_E") for each Reporting Period falling within the period commencing on the first day of Reporting Period 8 of 2016/2017 and ending on the last day of Reporting Period 11 of 2017/2018 shall be the amount specified in Column 2 of the table below being the total OBS Set Up Costs and Payroll Amounts forecast to be incurred by the Franchisee in each of the Reporting Periods specified in Column 1 of such table (save that the figure in Column 2 of the table below in respect of Reporting Period 13 of 2016/2017 is the total OBS Set Up Costs and Payroll Amounts forecast to be incurred by the Franchisee in Reporting Periods 8, 9, 10, 11, 12 and 13 of 2016/2017):

Column 1	Column 2
Reporting Period	Forecast of Total AOBSS _E for the relevant Reporting Period (All costs exclude VAT)
Reporting Period 13 of 2016/2017 (from 5 March 2017 to 31 March 2017)	[REDACTED ⁴¹⁸]
Reporting Period 1 of 2017/2018 (from 1 April 2017 to 29 April 2017)	[REDACTED]
Reporting Period 2 of 2017/2018 (from 30 April 2017 to 27 May 2017)	[REDACTED]
Reporting Period 3 of 2017/2018 (from 28 May 2017 to 24 June 2017)	[REDACTED]

⁴¹⁷ 11 May 2017 (Date of Deed of Amendment) – Contract insertion agreed by the Secretary of State and Franchisee.

⁴¹⁸ 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.

Column 1	Column 2
Reporting Period	Forecast of Total AOBSS_E for the relevant Reporting Period (All costs exclude VAT)
Reporting Period 4 of 2017/2018 (from 25 June 2017 to 22 July 2017)	[REDACTED]
Reporting Period 5 of 2017/2018 (from 23 July 2017 to 19 August 2017)	[REDACTED]
Reporting Period 6 of 2017/2018 (from 20 August 2017 to 16 September 2017)	[REDACTED]
Reporting Period 7 of 2017/2018 (from 17 September 2017 to 14 October 2017)	[REDACTED]
Reporting Period 8 of 2017/2018 (from 15 October 2017 to 11 November 2017)	[REDACTED]
Reporting Period 9 of 2017/2018 (from 12 November 2017 to 9 December 2017)	[REDACTED]
Reporting Period 10 of 2017/2018 (from 10 December 2017 to 6 January 2018)	[REDACTED]
Reporting Period 11 of 2017/2018 (from 7 January 2018 to 3 February 2018)	[REDACTED]

(b) OBS Set Up Costs and Payroll Amounts Balancing Payment

- (i) Following the end of Reporting Period 11 of 2017/2018 (that is 3 February 2018), the Secretary of State shall, following receipt by him of the Management Accounts (and such other supporting information as he may reasonably require) in respect of the applicable Reporting Periods, calculate the OBS Set Up Costs and Payroll Amounts Balancing Payment in respect of the period commencing on the first day of Reporting Period 8 of 2016/2017 and ending on the last day of Reporting**

Period 11 of 2017/2018 in accordance with the following formula:

$$\text{AOBSS}_{Pr} = \text{AOBSS}_A - \text{AOBSS}_E$$

where:

AOBSS_{Pr} is the OBS Set Up Costs and Payroll Amounts Balancing Payment payable in respect of the period commencing on the first day of Reporting Period 8 of 2016/2017 and ending on the last day of Reporting Period 11 of 2017/2018;

AOBSS_A is the lesser of:

- (a) **actual OBS Set Up Costs and Payroll Amounts incurred by the Franchisee in the period commencing on the first day of Reporting Period 8 of 2016/2017 and ending on the last day of Reporting Period 11 of 2017/2018 as specified in the Management Accounts and as reviewed and approved (such approval not be unreasonably delayed or withheld) by the Secretary of State in accordance with paragraph 5.7(c), it being agreed that any costs incurred by the Franchisee in any Reporting Period which are not approved by the Secretary of State in accordance with paragraph 5.7(c) shall be disregarded for the purposes of determining the OBS Set Up Costs and Payroll Amounts Balancing Payment save that the Franchisee may dispute such denial of approval in accordance with the provisions of paragraph 2.6 of Schedule 8.1 (Franchise Payments); and**
- (b) **[REDACTED⁴¹⁹];**

AOBSS_E is the forecast of OBS Set Up Costs and Payroll Amounts for that Reporting Period calculated in accordance with paragraph 5.7(a).

419 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) The OBS Set Up Costs and Payroll Amounts Balancing Payment (if any) shall be payable:

(A) by the Secretary of State if the OBS Set up Costs and Payroll Amounts Balancing Payment is a positive number; or

(B) by the Franchisee if the OBS Set Up Costs and Payroll Amounts Balancing Payment is a negative number, and

shall be applied to the Franchise Payment payable on the OBS Set Up Costs and Payroll Amounts Balancing Payment Date.

(c) Monitoring of OBS Set Up Costs and Payroll Amounts

(i) For the purposes of determining the OBS Set Up Costs and the Payroll Amounts in a Reporting Period falling during the period commencing on the first day of Reporting Period 8 of 2016/2017 and ending on the last day of Reporting Period 11 of 2017/2018 the Franchisee shall:

(A) include details of the OBS Set Up Costs and the Payroll Amounts in the Management Accounts for a Reporting Period; and

(B) together with such Management Accounts provide to the Secretary of State:

(1) a spreadsheet showing the description of each of the items falling within the OBS Set Up Costs and Payroll Amounts in that Reporting Period and, where applicable, the relevant invoice numbers and invoice values;

(2) staff list of payroll identification numbers (including employment or secondment start and end dates whilst such staff are employed or seconded as Additional On Board Supervision Staff); and

(3) such other supporting information as the Secretary of State may reasonably require for the purpose of the Franchisee demonstrating to the reasonable satisfaction of the Secretary of State that such OBS Set Up Costs and Payroll

Amounts have been reasonably and properly incurred by the Franchisee for the purposes of complying with its obligations in paragraphs 23.1 and 23.2 of Part 1 to Schedule 6.1 (Committed Obligations and Related Provisions).

6. Final Franchisee Year

6.1 Any RP Revenue Balancing Amount and/or FY Revenue Balancing Amount which:

- (a) is to be made during or in respect of the final Franchisee Year; and
- (b) has not been made during the Franchise Period,

shall be determined in accordance with paragraphs 4 and 5 respectively, but shall be paid within 30 days of the Secretary of State giving written notice to the Franchisee of the amount of such RP Revenue Balancing Amount and/or FY Revenue Balancing Amount.

6.2 Annual Financial Statements

If the Franchisee fails to provide the Annual Audited Accounts for the final Franchisee Year within four Reporting Periods of the expiry of the final Franchisee Year pursuant to paragraph 3.9 of Schedule 13 (Information and Industry Initiatives), the Secretary of State shall be entitled to (but not obliged) to determine the FY Revenue Balancing Amount in accordance with paragraph 5, but by reference to any relevant information available to the Secretary of State at the time of such determination, including any information contained in the latest cumulative, year-to-date Management Accounts or in the Annual Management Accounts.

7. Profit Share

7.1 For the purposes of this paragraph 7:

"First Profit Share Threshold" means an amount in respect of any Franchisee Accounting Year determined as follows:

$FPST \times RPI \times (NRP/ENRP)$,

where:

FPST is the amount prescribed for these purposes in paragraph 1 of Appendix 1 (Profit Share Thresholds) to this Schedule 8.1 in respect of the applicable Franchisee Accounting Year except that if the Secretary of State exercises his rights pursuant to paragraph 1.2 of Schedule 18 (Additional Reporting Periods) to extend the Franchise Period then for the Franchisee Accounting Year 8 (that is, the Franchisee Accounting Year commencing on 1 July 2021 and ending on 30 June 2022) the amounts specified in the rows in the table set out in paragraph 1 of Appendix 1 to Schedule 8.1 (Franchise Payments) in respect of periods referred to as "Year 8 (Part Year - Core)" and "Year 8 (Part Year-

Extension)" (respectively) shall be aggregated to constitute a single amount for that Franchisee Accounting Year;

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

NRP means the number of days in that Franchisee Accounting Year; and

ENRP means the expected number of days in that Franchisee Accounting Year, being 365 days (or if February 29 falls during that Franchisee Accounting Year, 366 days) for every Franchisee Accounting Year except for:

(a) the Franchisee Accounting Year referred to as "Year 1 (Part Year)" in the table set out in paragraph 1 of Appendix 1 to Schedule 8.1 (Franchise Payments), which is 290 days;

(b) the Franchisee Accounting Year referred to as "Year 8 (Part Year - Core)" in the table set out in paragraph 1 of Appendix 1 to Schedule 8.1 (Franchise Payments), which is 80 days except that where the Secretary of State exercises his rights pursuant to paragraph 1.2 of Schedule 18 (Additional Reporting Periods) to extend the Franchise Period then the expected number of days for the Franchisee Accounting Year 8 (that is, the Franchisee Accounting Year commencing on 1 July 2021 and ending on 30 June 2022) shall be 365 days (being the aggregate of the expected number of days comprised in each of the periods referred to as "Year 8 (Part Year - Core)" and "Year 8 (Part Year - Extension)" (respectively) in that table); and

(c) the Franchisee Accounting Year referred to as "Year 10 (Part Year - Extension)" in the table set out in paragraph 1 of Appendix 1 to Schedule 8.1 (Franchise Payments), which is 78 days;

"Second Profit Share Threshold" means an amount in respect of any Franchisee Accounting Year determined as follows:

$SPST \times RPI \times (NRP/ENRP)$,

where:

SPST is the amount prescribed for these purposes in paragraph 2 of Appendix 1 (Profit Share Thresholds) to this Schedule 8.1 in respect of the applicable Franchisee Accounting Year except that if the Secretary of State exercises his rights pursuant to paragraph 1.2 of Schedule 18 (Additional Reporting Periods) to extend the Franchise Period then for the Franchisee Accounting

Year 8 (that is, the Franchisee Accounting Year commencing on 1 July 2021 and ending on 30 June 2022) the amounts specified in the rows in the table set out in paragraph 2 of Appendix 1 to Schedule 8.1 (Franchise Payments) in respect of periods referred to as "Year 8 (Part Year - Core)" and "Year 8 (Part Year-Extension)" (respectively) shall be aggregated to constitute a single amount for that Franchisee Accounting Year;

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

NRP means the number of days in that Franchisee Accounting Year.

ENRP means the expected number of days in that Franchisee Accounting Year, being 365 days (or if February 29 falls during that Franchisee Accounting Year, 366 days) for every Franchisee Accounting Year except for:

- (a) the Franchisee Accounting Year referred to as "Year 1 (Part Year)" in the table set out in paragraph 2 of Appendix 1 to Schedule 8.1 (Franchise Payments), which is 290 days;
- (b) the Franchisee Accounting Year referred to as "Year 8 (Part Year - Core)" in the table set out in paragraph 2 of Appendix 1 to Schedule 8.1 (Franchise Payments), which is 80 days except that where the Secretary of State exercises his rights pursuant to paragraph 1.2 of Schedule 18 (Additional Reporting Periods) to extend the Franchise Period then the expected number of days for the Franchisee Accounting Year 8 (that is, the Franchisee Accounting Year commencing on 1 July 2021 and ending on 30 June 2022) shall be 365 (being the aggregate of the expected number of days comprised in each of the periods referred to as "Year 8 (Part Year - Core)" and "Year 8 (Part Year - Extension)" (respectively) in that table); and
- (c) the Franchisee Accounting Year referred to as "Year 10 (Part Year - Extension)" in the table set out in paragraph 2 of Appendix 1 to Schedule 8.1 (Franchise Payments), which is 78 days;

"Relevant Profit" means, subject to paragraph 7.4, in respect of any Franchisee Accounting Year, the total profit of the Franchisee for that Franchisee Accounting Year calculated by applying the accounting policies and standards set out in the Record of Assumptions and applied through the Financial Model:

- (a) after taking into account in respect of that Franchisee Accounting Year:
 - (i) interest, finance income and finance charges (other than finance items recognised in respect of retirement benefits);

- (ii) Franchise Payments (excluding TLP Milestone Incentive Payment payable in that Franchise Accounting Year);
- (iii) all extraordinary and exceptional items, as defined under the accounting policies and standards set out in the Record of Assumptions and applied through the Financial Model;
- (iv) the Franchisee's normal pension contributions in relation to the Franchise Sections and any other pension schemes to the extent connected with the Franchise; and
- (v) any payments to Affiliates of the Franchisee (including management fees and royalty fees) except to the extent that such payments exceed an amount to be determined as follows:

AFA x RPI

where:

AFA is the amount specified in respect of each Franchisee Accounting Year in Column 4 of the table set out in paragraph 1 of Appendix 2 to this Schedule 8.1 (Franchise Payments) provided that if the Secretary of State exercises his right to extend the Franchise Agreement pursuant to paragraph 1.2 of Schedule 18 (Additional Reporting Periods):

- (aa) for 26 Reporting Periods, AFA shall be determined as follows:
 - (1) for the Franchisee Accounting Year 8 (that is the Franchisee Accounting Year commencing on 1 July 2021 and ending on 30 June 2022), AFA shall be the aggregate of the amounts specified in Column 4 of the table set out in paragraph 1 of Appendix 2 to this Schedule 8.1 for the periods referred to as "Year 8 (Part Year - Core)" and "Year 8 (Part Year - Extension)";
 - (2) for the Franchisee Accounting Year 9 (that is the Franchisee Accounting Year commencing on 1 July 2022 and ending on 30 June 2023), AFA shall be the amount specified in Column 4 of the table set out in paragraph 1 of Appendix 2 to this Schedule 8.1 for the period referred to as "Year 9 (Extension)"; and
 - (3) for the Franchisee Accounting Year 10 (that is the Franchisee Accounting Year commencing on 1 July 2023 and ending on 16 September 2023), AFA shall be the amount specified in Column 4 of the table set out in paragraph 1 of Appendix 2 to this Schedule 8.1 for the period referred to as "Year 10 (Part Year - Extension)";

- (bb) for less than 26 Reporting Periods, AFA shall be determined as follows:
- (1) if the Franchise Agreement is extended such that it ends on 01:59 on 1 April 2022 then AFA for the Franchisee Accounting Year 8 (that is the Franchisee Accounting Year commencing on 1 July 2021 and ending on 30 June 2022) shall be equal to $A \times (B/365)$ where:
 - A is the aggregate of the amounts specified in Column 4 of the table set out in paragraph 1 of Appendix 2 to this Schedule 8.1 for the periods referred to as "Year 8 (Part Year – Core)" and "Year 8 (Part Year – Extension)"; and
 - B means the number of days in the Franchisee Accounting Year which ends on the Expiry Date (as extended pursuant to Schedule to Schedule 18 (Additional Reporting Periods));
 - (2) if the Franchise Agreement is extended such that it ends at any time after 19 September 2021 but before 01:59 on 1 April 2022 then AFA for the Franchisee Accounting Year 8 (that is the Franchisee Accounting Year commencing on 1 July 2021 and ending on 30 June 2022) shall be as determined pursuant to paragraph 7.1(a)(v)(bb)(1);
 - (3) if the Franchise Agreement is extended such that it ends at any time after 01:59 on 1 April 2022 but before 01:59 on 1 April 2023 then AFA shall be determined as follows:
 - (x) for the Franchisee Accounting Year 8 (that is the Franchisee Accounting Year commencing on 1 July 2021 and ending on 30 June 2022) AFA shall be as specified in paragraph 7.1(a)(v)(aa)(1) above; and
 - (y) for the Franchisee Accounting Year 9 that is the Franchisee Accounting Year commencing on 1 July 2022 and ending on the Expiry Date) AFA shall be equal to $A \times (B/365)$ where:
 - A is the amount specified in Column 4 of the table set out in paragraph 1 of Appendix 2 to this Schedule 8.1 for the periods referred to as "Year 9 (Extension)"; and

- B means the number of days in the Franchisee Accounting Year which ends on the Expiry Date (as extended pursuant to Schedule to Schedule 18 (Additional Reporting Periods));
- (4) if the Franchise Agreement is extended such that it ends on 01:59 on 1 April 2023 then:
- (x) AFA for the Franchisee Accounting Year 8 (that is the Franchisee Accounting Year commencing on 1 July 2021 and ending on 30 June 2022) AFA shall be as specified in paragraph 7.1(a)(v)(aa)(1) above; and
 - (y) AFA for the Franchisee Accounting Year 9 (that is the Franchisee Accounting Year commencing on 1 July 2022 and ending on 30 June 2023) AFA shall be as determined pursuant to paragraph 7.1(a)(v)(bb)(3)(y);
- (5) if the Franchise Agreement is extended such that it ends at any time after 01:59 on 1 April 2023 but before 16 September 2023 then AFA shall be determined as follows:
- (x) for the Franchisee Accounting Year 8 (that is the Franchisee Accounting Year commencing on 1 July 2021 and ending on 30 June 2022) AFA shall be as specified in paragraph 7.1(a)(v)(aa)(1) above;
 - (y) for the Franchisee Accounting Year 9 (that is the Franchisee Accounting Year commencing on 1 July 2022 and ending on 30 June 2023) AFA shall be as specified in paragraph 7.1(a)(v)(aa)(2) above; and
 - (z) for the Franchisee Accounting Year 10 (that is the Franchisee Accounting Year commencing on 1 July 2023 and ending on the Expiry Date) AFA shall be equal to $A \times (B/78)$ where:

A is the amount specified in Column 4 of the table set out in paragraph 1 of Appendix 2 to this Schedule 8.1 for the periods referred to as "Year 10 (Part Year - Extension)"; and

B means the number of days in the Franchisee Accounting Year which ends on the Expiry Date (as extended pursuant to Schedule to Schedule 18 (Additional Reporting Periods)); and

RPI has the meaning given to it in the definition of Threshold Amount;

- (vi) any sums payable by or to the Franchisee pursuant to the terms of the Supplemental Agreement; and
 - (vii) any capital expenditure to the extent that it is recognised as an operating cost in the Annual Audited Accounts and any depreciation on capital expenditure that is recognised as an expense in the Annual Audited Accounts, unless the depreciation policy and assumptions used in the Annual Audited Accounts are different to those set out in the Record of Assumptions and applied through the Financial Model, in which case, an adjustment should be made to take account of the depreciation which would have been charged had the policy and assumptions set out in the Record of Assumptions been applied for the relevant Franchisee Accounting Year; and
- (b) before taking into account in respect of that Franchisee Accounting Year:
- (i) any taxation on profits including corporation tax;
 - (ii) shares of the profit of any Affiliate of the Franchisee, except dividends received in cash;
 - (iii) non cash entries in respect of the Franchise Sections and any other pension schemes to the extent connected with the Franchise, excluding accruals or prepayments of any normal pension contributions due;
 - (iv) any payment made by the Franchisee consequent upon any breach or contravention of the Franchise Agreement and/or its Licences (including as a consequence of any penalty payment paid or payable pursuant to Section 57A of the Act);
 - (v) any profit share payments payable to the Secretary of State in relation to any Franchisee Accounting Year; and
 - (vi) fees, remuneration and pension contributions in respect of any director and officers of the Franchisee in excess of an amount to be determined as follows:

DFR x RPI

where:

DFR is the amount specified in respect of each Franchisee Accounting Year in Column 4 of the table set out in paragraph 2 of Appendix 2 to this Schedule 8.1 (Franchise Payments) provided that if the Secretary of State exercises his right to extend the Franchise Agreement pursuant to paragraph 1.2 of Schedule 18 (Additional Reporting Periods):

(aa) for 26 Reporting Periods, DFR shall be determined as follows:

- (1) for the Franchisee Accounting Year 8 (that is the Franchisee Accounting Year commencing on 1 July 2021 and ending on 30 June 2022), DFR shall be the aggregate of the amounts specified in Column 4 of the table set out in paragraph 2 of Appendix 2 to this Schedule 8.1 for the periods referred to as "Year 8 (Part Year - Core)" and "Year 8 (Part Year - Extension)";
- (2) for the Franchisee Accounting Year 9 (that is the Franchisee Accounting Year commencing on 1 July 2022 and ending on 30 June 2023), DFR shall be the amount specified in Column 4 of the table set out in paragraph 2 of Appendix 2 to this Schedule 8.1 for the period referred to as "Year 9 (Extension)"; and
- (3) for the Franchisee Accounting Year 10 (that is the Franchisee Accounting Year commencing on 1 July 2023 and ending on 16 September 2023), DFR shall be the amount specified in Column 4 of the table set out in paragraph 2 of Appendix 2 to this Schedule 8.1 for the period referred to as "Year 10 (Part Year - Extension)";

(bb) for less than 26 Reporting Periods, DFR shall be determined as follows:

- (1) if the Franchise Agreement is extended such that it ends on 01:59 on 1 April 2022 then DFR for the Franchisee Accounting Year 8 (that is the Franchisee Accounting Year commencing on 1 July 2021 and ending on 30 June 2022) shall be equal to $A \times (B/365)$ where:

A is the aggregate of the amounts specified in Column 4 of the table set out in paragraph 2 of Appendix 2 to this Schedule 8.1 for the periods referred to as "Year 8 (Part Year - Core)" and "Year 8 (Part Year - Extension)"; and

B means the number of days in the Franchisee Accounting Year which ends

on the Expiry Date (as extended pursuant to Schedule to Schedule 18 (Additional Reporting Periods));

- (2) if the Franchise Agreement is extended such that it ends at any time after 19 September 2021 but before 01:59 on 1 April 2022 then DFR for the Franchisee Accounting Year 8 (that is the Franchisee Accounting Year commencing on 1 July 2021 and ending on 30 June 2022) shall be as determined pursuant to paragraph 7.1(b)(vi)(bb)(1);
- (3) if the Franchise Agreement is extended such that it ends at any time after 01:59 on 1 April 2022 but before 01:59 on 1 April 2023 then DFR shall be determined as follows:
- (x) for the Franchisee Accounting Year 8 (that is the Franchisee Accounting Year commencing on 1 July 2021 and ending on 30 June 2022) DFR shall be as specified in paragraph 7.1(b)(vi)(aa)(1) above; and
 - (y) for the Franchisee Accounting Year 9 that is the Franchisee Accounting Year commencing on 1 July 2022 and ending on the Expiry Date) DFR shall be equal to $A \times (B/365)$ where:
 - A is the amount specified in Column 4 of the table set out in paragraph 2 of Appendix 2 to this Schedule 8.1 for the periods referred to as "Year 9 (Extension)"; and
 - B means the number of days in the Franchisee Accounting Year which ends on the Expiry Date (as extended pursuant to Schedule to Schedule 18 (Additional Reporting Periods));
- (4) if the Franchise Agreement is extended such that it ends on 01:59 on 1 April 2023 then:
- (x) DFR for the Franchisee Accounting Year 8 (that is the Franchisee Accounting Year commencing on 1 July 2021 and ending on 30 June 2022) DFR shall be as specified in paragraph 7.1(b)(vi)(aa)(1) above; and
 - (y) DFR for the Franchisee Accounting Year 9 (that is the Franchisee Accounting Year

commencing on 1 July 2022 and ending on 30 June 2023) DFR shall be as determined pursuant to paragraph 7.1(b)(vi)(bb)(3)(y) above;

(5) if the Franchise Agreement is extended such that it ends at any time after 01:59 on 1 April 2023 but before 16 September 2023 then DFR shall be determined as follows:

(x) for the Franchisee Accounting Year 8 (that is the Franchisee Accounting Year commencing on 1 July 2021 and ending on 30 June 2022) DFR shall be as specified in paragraph 7.1(b)(vi)(aa)(1) above;

(y) for the Franchisee Accounting Year 9 (that is the Franchisee Accounting Year commencing on 1 July 2022 and ending on 30 June 2023) DFR shall be as specified in paragraph 7.1(b)(vi)(aa)(2) above; and

(z) for the Franchisee Accounting Year 10 (that is the Franchisee Accounting Year commencing on 1 July 2023 and ending on the Expiry Date) DFR shall be equal to $A \times (B/78)$ where:

A is the amount specified in Column 4 of the table set out in paragraph 2 of Appendix 2 to this Schedule 8.1 for the periods referred to as "Year 10 (Part Year - Extension)"; and

B means the number of days in the Franchisee Accounting Year which ends on the Expiry Date (as extended pursuant to Schedule to Schedule 18 (Additional Reporting Periods)); and

RPI has the meaning given to it in the definition of Threshold Amount.

Where the calculation of Relevant Profit requires account to be taken of amounts prescribed in the Financial Model or the Record of Assumptions by reference to Franchisee Years rather than Franchisee Accounting Years the Secretary of State shall reasonably determine any calculation required to apply such amounts on a pro rata basis by reference to Franchisee Accounting Years.

7.2 If the Annual Audited Accounts in respect of any Franchisee Accounting Year show that the Relevant Profit for that Franchisee Accounting Year exceeds the First Profit

Share Threshold then, subject to paragraph 7.4, the Franchisee shall pay to the Secretary of State:

- (a) 50% of Relevant Profit in excess of the First Profit Share Threshold but less than or equal to the Second Profit Threshold; and
- (b) 100% of Relevant Profit in excess of the Second Profit Share Threshold.

7.3 Subject to paragraphs 7.5 and 7.6 below, payments due under paragraph 7.2 shall be paid as part of the Franchise Payment for the first Reporting Period falling 30 or more days after delivery of the Annual Audited Accounts by the Franchisee to the Secretary of State under paragraph 3.9 of Schedule 13 (Information and Industry Initiatives) or if there is no such Reporting Period, within 30 days of the date of such delivery.

7.4

- (a) If in any Franchisee Accounting Year (or any period of 12 consecutive months after the end of the Franchise Period) (the "**Current Franchisee Accounting Year**") the Franchisee receives a compensation or other settlement payment of at least £200,000 x RPI arising from a single claim or series of related claims which relate wholly or partly to costs, losses or expenses (including loss of revenue) arising in any other Franchisee Accounting Year or Franchisee Accounting Years, then the Franchisee shall notify the Secretary of State of such payment as soon as reasonably practicable and for the purposes of this paragraph 7 and notwithstanding its other terms:
 - (i) the payment which relates to such other Franchisee Accounting Year shall be attributed to that other Franchisee Accounting Year and not treated as received in the Current Franchisee Accounting Year;
 - (ii) where and to the extent any payments under this paragraph 7 in respect of any other Franchisee Accounting Year would have been made or would have been higher had that amount actually been received in that other Franchisee Accounting Year, the Franchisee shall pay a reconciliation amount to the Secretary of State within 30 days after delivery of the Annual Audited Accounts that relate to the Current Franchisee Accounting Year by the Franchisee to the Secretary of State under paragraph 3.9 of Schedule 13 (Information and Industry Initiatives) or, if there is no further requirement on the Franchisee to deliver Annual Audited Accounts following the end of the Franchise Period, within 30 days of the Franchisee receiving the relevant payment; and
 - (iii) RPI has the meaning given to it in Schedule 8.2 (Annual Franchise Payments).
- (b) Where the Secretary of State reasonably considers that in calculating Relevant Profit any particular item or transaction has not been accounted for on a reasonable basis (including where the accounting treatment looks to the form rather than the substance of the item or transaction) he shall be entitled to require it to be accounted for on such other basis as he may reasonably determine and notify to the Franchisee provided that the

Secretary of State shall not be entitled pursuant to this paragraph to alter the accounting policies of the Franchisee from those set out in the Record of Assumptions and applied through the Financial Model.

- (c) Without prejudice to paragraph 7.4(a) where the Annual Audited Accounts in relation to any previous Franchisee Accounting Year are subject to adjustment or restatement the Secretary of State shall have a discretion to require the recalculation of Relevant Profit for the relevant Franchisee Accounting Year and to require that the Franchisee shall pay to the Secretary of State the amount which is the difference between the profit share actually paid to the Secretary of State pursuant to paragraph 7.2 and the amount that would have been paid had the Relevant Profit been originally calculated on the basis that such adjustment or revision was included in the Annual Audited Accounts. Any payment due to the Secretary of State shall be paid by the Franchisee within 30 days of the Secretary of State notifying the Franchisee that he requires a payment to be made pursuant to this paragraph.

7.5 The Franchisee shall, within 10 days after delivery of any Annual Audited Accounts under paragraph 3.9 of Schedule 13 (Information and Industry Initiatives), deliver to the Secretary of State a report identifying:

- (a) the amount of total profit and the adjustments made in the calculation of Relevant Profit pursuant to paragraph 7.1;
- (b) any items falling under paragraph 7.4(a), including details of the allocation across Franchisee Accounting Years of such items; and
- (c) any adjustments or restatements made in relation to the Annual Audited Accounts in respect of any previous Franchisee Accounting Year,

and shall provide such additional information, records or documents as the Secretary of State may reasonably require in relation to such matters (including an unqualified written report from the Franchisee's auditors which confirm that any such report gives a true and fair view of the matters contained within it including the amount of total profit and the adjustments made in the calculation of Relevant Profit).

7.6 Any profit share payment pursuant to paragraph 7.2 to be made in respect of the final Franchisee Accounting Year shall be determined in accordance with this paragraph 7 but shall be paid within 30 days of the Secretary of State giving written notice to the Franchisee of the amount of such profit share payment .

7.7 If the Franchisee fails to provide the Annual Audited Accounts for the final Franchisee Accounting Year within four Reporting Periods of the expiry of the final Franchisee Accounting Year pursuant to paragraph 3.9 of Schedule 13 (Information and Industry Initiatives), the Secretary of State shall be entitled (but not obliged) to determine any Profit Share Adjustment in accordance with this paragraph 7 but by reference to any relevant information available to the Secretary of State at the time of such determination, including any information contained in the latest cumulative, year-to-date Management Accounts or in the Annual Management Accounts.

8. On Train Wi-Fi Solution Payment Provisions⁴²⁰**8.1 The On Train Wi-Fi Solution Payment payable in respect of any Reporting Period shall be determined in accordance with the following formula:**

$$\text{OTWSP} = (\text{FOTWP} - \text{SOTWP}) + \text{OTWP} + \text{HYOTWSPBar}$$

where:

FOTWP means the aggregate of any amount(s) payable in that Reporting Period by the Secretary of State to the Franchisee pursuant to paragraph 21.11.2 of Part 1 (List of Committed Obligations) of Schedule 6.1 (Committed Obligations and Related Provisions) in respect of:

- (a) item 1 (Mobilisation);
- (b) item 6a (Implementation Project Costs);
- (c) item 6b (Service Operating Costs); and/or
- (d) item 8b (Miscellaneous Charges),

of the OTW Payment Table;

SOTWP means the aggregate of the amount (if any) payable in that Reporting Period by the Franchisee to the Secretary of State pursuant to:

- (a) paragraph 21.8.6 of Part 1 (List of Committed Obligations) of Schedule 6.1 (Committed Obligations and Related Provisions);
- (b) paragraph 21.8.8 of Part 1 (List of Committed Obligations) of Schedule 6.1 (Committed Obligations and Related Provisions);
- (c) paragraph 21.10.4A of Part 1 (List of Committed Obligations) of Schedule 6.1 (Committed Obligations and Related Provisions);
- (d) paragraph 21.10.10 of Part 1 (List of Committed Obligations) of Schedule 6.1 (Committed Obligations and Related Provisions); and/or
- (e) paragraph 21.14.7 of Part 1 (List of Committed Obligations) of Schedule 6.1 (Committed Obligations and Related Provisions);

⁴²⁰ 9 December 2016 (Date of DOA) Contract insertion agreed by the Secretary of State and Franchisee

OTWP the figure shown in respect of the relevant Reporting Period in Column 3 of the table set out in Appendix 3 (Figures for OTWP) to this Schedule 8.1 (as amended under paragraph (ii) of the definition of Data and Claims Budget) and payable by the Secretary of State to the Franchisee on that Reporting Period's Payment Date.

HYOTWSPBA_r means the HY On-Train Wi-Fi Solution Balancing Amount (if any) payable for the applicable Half Franchisee Year in respect of a Reporting Period during which the HY On-Train Wi-Fi Solution Balancing Amount Date falls, and shall be determined in accordance with the following formula:

$$\text{HYOTWSPBA}_r = \text{HYA} - \text{HYOTWP}$$

where:

HYA is the aggregate of the OTW Payments arising during that Half Franchisee Year pursuant to paragraph 21.11.2 of Part 1 (List of Committed Obligations) of Schedule 6.1 (Committed Obligations and Related Provisions) in respect of:

- (i) item 2 (Concept Design of IORS Units);
- (ii) item 3 (Detailed Design of IORS Units);
- (iii) item 4 (First in Class);
- (iv) item 5a (Fitment of Vehicles);
- (v) item 5b (Retention Initial Vehicles);
- (vi) item 5c (Retention Remainder Vehicles);
- (vii) item 7 (Train Unit Operating Cost); and/or
- (viii) item 8a (Data and Claims),

of the OTW Payment Table; and

HYOTWP shall be calculated as follows:

$$\text{HYOTWP} = \sum A$$

where:

HYOTWP is the value of HYOTWP for the applicable Half Franchisee Year;

A is the amount set out in Column 2 of the table set out in Appendix 3 (Figures for OTWP) to this Schedule 8.1 against a Reporting Period falling in the applicable Half Franchisee Year; and

Σ is the sum of A in respect of each Reporting Period falling in the applicable Half Franchisee Year.

- 8.2 For each Half Franchisee Year the Secretary of State shall, following receipt by him of information required by paragraph 21.11.2 of Part 1 (List of Committed Obligations) of Schedule 6.1 (Committed Obligations and Related Provisions) in respect of that Half Franchisee Year, calculate the HY On-Train Wi-Fi Solution Balancing Amount in respect of that Half Franchisee Year.**
- 8.3 The HY On-Train Wi-Fi Solution Balancing Amount (if any) in respect of any Half Franchisee Year shall, subject to paragraph 8.4, shall be applied to the Franchise Payment payable on the HY On-Train Wi-Fi Solution Balancing Amount Date.**
- 8.4 Any HY On-Train Wi-Fi Solution Balancing Amount which:**
- (a) is to be made during or in respect of the final Half Franchisee Year; and**
 - (b) has not been made during the Franchise Period,**
- shall be determined in accordance with this paragraph 8, but shall be paid within 30 days of the Secretary of State giving written notice to the Franchisee of the amount of such HY On-Train Wi-Fi Solution Balancing Amount.**
- 8.5 All fees and amounts payable by the Secretary of State in respect of the OTW Programme are set out in this Franchise Agreement.**

APPENDIX 1 TO SCHEDULE 8.1⁴²¹**Profit Share Thresholds**

1. The prescribed amounts for the component of FPST for the relevant Franchisee Accounting Year and for the purposes of the definition of First Profit Share Threshold are as set out in the table below:

Column 1	Column 2	Column 3	[REDACTED⁴²²]:
From	To	Franchisee Accounting Year	
14 September 2014	30 June 2015	Year 1 (Part Year)	
01 July 2015	30 June 2016	Year 2	
01 July 2016	30 June 2017	Year 3	
01 July 2017	30 June 2018	Year 4	
01 July 2018	30 June 2019	Year 5	
01 July 2019	30 June 2020	Year 6	
01 July 2020	30 June 2021	Year 7	
01 July 2021	18 September 2021	Year 8 (Part Year - Core)	
19 September 2021	30 June 2022	Year 8 (Part Year - Extension)	
01 July 2022	30 June 2023	Year 9 (Extension)	
01 July 2023	16 September 2023	Year 10 (Part Year - Extension)	

⁴²¹ 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.

⁴²² 5 November 2014 (Date of Redactions Approval) – Where text has been omitted from the document this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

2. The prescribed amounts for the component of SPST for the relevant Franchisee Accounting Year and for the purposes of the definition of Second Profit Share Threshold are as set out in the table below:

Column 1	Column 2	Column 3	[REDACTED⁴²³]:
From	To	Franchisee Accounting Year	
14 September 2014	30 June 2015	Year 1 (Part Year)	
01 July 2015	30 June 2016	Year 2	
01 July 2016	30 June 2017	Year 3	
01 July 2017	30 June 2018	Year 4	
01 July 2018	30 June 2019	Year 5	
01 July 2019	30 June 2020	Year 6	
01 July 2020	30 June 2021	Year 7	
01 July 2021	18 September 2021	Year 8 (Part Year - Core)	
19 September 2021	30 June 2022	Year 8 (Part Year - Extension)	
01 July 2022	30 June 2023	Year 9 (Extension)	
01 July 2023	16 September 2023	Year 10 (Part Year - Extension)	

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5 November 2014 (Date of Redactions Approval) – Where text has been omitted from the document this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

APPENDIX 2 TO SCHEDULE 8.1⁴²⁴**Components of AFA and DFR**

1. The amounts for the purposes of the component of AFA in paragraph 7.1(a)(v) of Schedule 8.1 (Franchise Payments) are set out in the table below:

Column 1	Column 2	Column 3	
From	To	Franchisee Accounting Year	
14 September 2014	30 June 2015	Year 1 (Part Year)	
01 July 2015	30 June 2016	Year 2	
01 July 2016	30 June 2017	Year 3	
01 July 2017	30 June 2018	Year 4	
01 July 2018	30 June 2019	Year 5	
01 July 2019	30 June 2020	Year 6	
01 July 2020	30 June 2021	Year 7	
01 July 2021	18 September 2021	Year 8 (Part Year - Core)	
19 September 2021	30 June 2022	Year 8 (Part Year - Extension)	
01 July 2022	30 June 2023	Year 9 (Extension)	
01 July 2023	16 September 2023	Year 10 (Part Year - Extension)	

2. The amounts for the purposes of the component of DFR in paragraph 7.1(b)(vi) of Schedule 8.1 (Franchise Payments) are set out in the table below:

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Derogations

⁴²⁴ 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.

Column 1	Column 2	Column 3	
From	To	Franchisee Accounting Year	
14 September 2014	30 June 2015	Year 1 (Part Year)	
01 July 2015	30 June 2016	Year 2	
01 July 2016	30 June 2017	Year 3	
01 July 2017	30 June 2018	Year 4	
01 July 2018	30 June 2019	Year 5	
01 July 2019	30 June 2020	Year 6	
01 July 2020	30 June 2021	Year 7	
01 July 2021	18 September 2021	Year 8 (Part Year - Core)	
19 September 2021	30 June 2022	Year 8 (Part Year - Extension)	
01 July 2022	30 June 2023	Year 9 (Extension)	
01 July 2023	16 September 2023	Year 10 (Part Year - Extension)	

"APPENDIX 3 TO SCHEDULE 8.1

Figures for OTWP

Column 1	Column 2	Column 3
Reporting Period	Reporting Period End Date	OTWP
Period 10	07-Jan-2017	[REDACTED ⁴²⁵]
Period 11	04-Feb-2017	[REDACTED]
Period 12	04-Mar-2017	[REDACTED]
Period 13	31-Mar-2017	[REDACTED]
Period 1	29-Apr-2017	[REDACTED]
Period 2	27-May-2017	[REDACTED]
Period 3	24-Jun-2017	[REDACTED]
Period 4	22-Jul-2017	[REDACTED]
Period 5	19-Aug-2017	[REDACTED]
Period 6	16-Sep-2017	[REDACTED]
Period 7	14-Oct-2017	[REDACTED]
Period 8	11-Nov-2017	[REDACTED]
Period 9	09-Dec-2017	[REDACTED]
Period 10	06-Jan-2018	[REDACTED]
Period 11	03-Feb-2018	[REDACTED]
Period 12	03-Mar-2018	[REDACTED]

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⁴²⁵ 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.

Period 13	31-Mar-2018	[REDACTED]
Period 1	28-Apr-2018	[REDACTED]
Period 2	26-May-2018	[REDACTED]
Period 3	23-Jun-2018	[REDACTED]
Period 4	21-Jul-2018	[REDACTED]
Period 5	18-Aug-2018	[REDACTED]
Period 6	15-Sep-2018	[REDACTED]
Period 7	13-Oct-2018	[REDACTED]
Period 8	10-Nov-2018	[REDACTED]
Period 9	08-Dec-2018	[REDACTED]
Period 10	05-Jan-2019	[REDACTED]
Period 11	02-Feb-2019	[REDACTED]
Period 12	02-Mar-2019	[REDACTED]
Period 13	31-Mar-2019	[REDACTED]
Period 1	27-Apr-2019	[REDACTED]
Period 2	25-May-2019	[REDACTED]
Period 3	22-Jun-2019	[REDACTED]
Period 4	20-Jul-2019	[REDACTED]
Period 5	17-Aug-2019	[REDACTED]
Period 6	14-Sep-2019	[REDACTED]
Period 7	12-Oct-2019	[REDACTED]
Period 8	09-Nov-2019	[REDACTED]
Period 9	07-Dec-2019	[REDACTED]
Period 10	04-Jan-2020	[REDACTED]
Period 11	01-Feb-2020	[REDACTED]
Period 12	29-Feb-2020	[REDACTED]
Period 13	31-Mar-2020	[REDACTED]
Period 1	02-May-2020	[REDACTED]

Period 2	30-May-2020	[REDACTED]
Period 3	27-Jun-2020	[REDACTED]
Period 4	25-Jul-2020	[REDACTED]
Period 5	22-Aug-2020	[REDACTED]
Period 6	19-Sep-2020	[REDACTED]
Period 7	17-Oct-2020	[REDACTED]
Period 8	14-Nov-2020	[REDACTED]
Period 9	12-Dec-2020	[REDACTED]
Period 10	09-Jan-2021	[REDACTED]
Period 11	06-Feb-2021	[REDACTED]
Period 12	06-Mar-2021	[REDACTED]
Period 13	31-Mar-2021	[REDACTED]
Period 1	01-May-2021	[REDACTED]
Period 2	29-May-2021	[REDACTED]
Period 3	26-Jun-2021	[REDACTED]
Period 4	24-Jul-2021	[REDACTED]
Period 5	21-Aug-2021	[REDACTED]
Period 6	18-Sep-2021	[REDACTED]
Period 7	16-Oct-2021	[REDACTED]
Period 8	13-Nov-2021	[REDACTED]
Period 9	11-Dec-2021	[REDACTED]
Period 10	08-Jan-2022	[REDACTED]
Period 11	05-Feb-2022	[REDACTED]
Period 12	05-Mar-2022	[REDACTED]
Period 13	31-Mar-2022	[REDACTED]
Period 1	30-Apr-2022	[REDACTED]
Period 2	28-May-2022	[REDACTED]
Period 3	25-Jun-2022	[REDACTED]

Period 4	23-Jul-2022	[REDACTED]
Period 5	20-Aug-2022	[REDACTED]
Period 6	17-Sep-2022	[REDACTED]
Period 7	15-Oct-2022	[REDACTED]
Period 8	12-Nov-2022	[REDACTED]
Period 9	10-Dec-2022	[REDACTED]
Period 10	07-Jan-2023	[REDACTED]
Period 11	04-Feb-2023	[REDACTED]
Period 12	04-Mar-2023	[REDACTED]
Period 13	31-Mar-2023	[REDACTED]
Period 1	29-Apr-2023	[REDACTED]
Period 2	27-May-2023	[REDACTED]
Period 3	24-Jun-2023	[REDACTED]
Period 4	22-Jul-2023	[REDACTED]
Period 5	19-Aug-2023	[REDACTED]
Period 6	16-Sep-2023	[REDACTED]

Notes:

1. The figures after [REDACTED⁴²⁶] for Item 8a (Data and Claims) shall be increased in accordance with paragraph 21.3.5 and/or paragraph (ii) of the definition of Data and Claims Budget.
2. The figures in this table have been calculated by forecasting the aggregate of all sums due in respect of each Reporting Period under items 2, 3, 4, 5a, 5b, 5c.7 and 8a of the OTW Payment Table (as defined at paragraph 21.1 of Part 1 (List of Committed Obligations) of Schedule 6.1 (Committed Obligations and Related Provisions)).

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SCHEDULE 8.2**Annual Franchise Payments****1. Annual Franchise Payments**

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

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

where:

AFP equals the Annual Franchise Payment in the relevant Franchisee Year;

FXD means the figure shown in respect of the relevant Franchisee Year in Column 2 of the table set out in the Appendix (Figures for Calculation of Annual Franchise Payments) to this Schedule 8.2;

VCRPI means the figure shown in respect of the relevant Franchisee Year in Column 3 of the table set out in the Appendix (Figures for Calculation of Annual Franchise Payments) to this Schedule 8.2;

RPI is the quotient of the Retail Prices Index for the January which immediately precedes the commencement of the relevant Franchisee Year divided by the Retail Prices Index for January 2014 provided that, for the first Franchisee Year, RPI shall be one;

VCAWE means the figure shown in respect of the relevant Franchisee Year in Column 4 of the table set out in the Appendix (Figures for Calculation of Annual Franchise Payments) to this Schedule 8.2;

AWE is the quotient of the Average Weekly Earnings for the January which immediately precedes the commencement of the relevant Franchisee Year divided by the Average Weekly Earnings for January 2014, provided that, for the first Franchisee Year, AWE shall be one;

PRPI means the figure shown in respect of the relevant Franchisee Year in Column 5 of the table set out in the Appendix (Figures for Calculation of Annual Franchise Payments) to this Schedule 8.2; and

ARRPI means the figure shown in respect of the relevant Franchisee Year in Column 6 of the table set out in the Appendix (Figures for Calculation of Annual Franchise Payments) to this Schedule 8.2 (and which shall always be expressed as a negative number).

For the avoidance of doubt, for the purposes of calculating the Annual Franchise Payment, the "relevant Franchisee Year" shall in respect of any Reporting Period which commences:

- (a) between 1 April 2021 and 18 September 2021 (inclusive), be that period referred to as "Year 8 (Part Year – Core)" in the table set out in the Appendix to this Schedule 8.2;
- (b) between 19 September 2021 and 31 March 2022 (inclusive), be that period referred to as "Year 8 (Part Year – Extension)" in the table set out in the Appendix to this Schedule 8.2;
- (d) between 1 April 2022 and 31 March 2023 (inclusive), be that period referred to as "Year 9 (Extension)" in the table set out in the Appendix to this Schedule 8.2; and
- (e) on or after 1 April 2023, be that period referred to as "Year 10 (Part Year – Extension)" in the table set out in the Appendix to this Schedule 8.2;

APPENDIX TO SCHEDULE 8.2

Figures for Calculation of Annual Franchise Payment[REDACTED⁴²⁷]

Column 1					
Franchisee Year					
Year 1 (Part Year)					
Year 2					
Year 3					
Year 4					
Year 5					
Year 6					
Year 7					
Year 8 (Part Year - Core)					
Year 8 (Part Year - Extension)					
Year 9 (Extension)					
Year 10 (Part Year - Extension)					

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5 November 2014 (Date of Redactions Approval) – Where text has been omitted from the document this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

SCHEDULE 8.3

Miscellaneous Payment Provisions

Not Used

SCHEDULE 8.4**Track Access Adjustments and Station Charge Adjustments****1. Track Access Adjustments**

- 1.1 The Track Access Adjustment to be made in respect of any Reporting Period shall be determined in accordance with the following formula:

$$TAA = (GCA - W) \times \frac{RPD}{FYD}$$

where:

TAA means the Track Access Adjustment to be made in that Reporting Period;

GCA is the value of "GC" for the Franchisee Year in which the Reporting Period falls under Part 3A of Schedule 7 of the Track Access Agreement;

W is the value of "Wt" for the Franchisee Year in which the Reporting Period falls under Part 2 of Schedule 7 of the Track Access Agreement;

RPD means the number of days in that Reporting Period; and

FYD means the number of days in the Franchisee Year in which that Reporting Period falls,

except that, where a Reporting Period falls during two Franchisee Years, TAA shall be determined as if the references to Reporting Period were to each of the two periods within such Reporting Period which fall wholly within one of such Franchisee Years and the Track Access Adjustment to be made in that Reporting Period shall reflect the sum of TAA as determined for each such period.

- 1.2 The Franchisee shall notify the Secretary of State upon becoming aware that any Track Access Adjustment is to be made and shall supply such information as the Secretary of State may require in relation thereto. The Franchisee shall exercise its rights under the Track Access Agreement in such manner and take such other action as the Secretary of State may reasonably require in connection with any related payment thereunder (including in relation to any agreement of the amount of any such payment and including submitting any relevant dispute to any relevant dispute resolution procedures). The Franchisee shall not, without the consent of the Secretary of State, agree or propose to agree a value for "Wt" or "GC" under Parts 2 or 3A of Schedule 7 of the Track Access Agreement.
- 1.3 The Franchisee shall provide such evidence of payment as the Secretary of State may require (including any certificates) for the purpose of determining the value of "W" and "GCA" under paragraph 1.1.
- 1.4 If no value is ascertained for "W" or "GCA" prior to the date on which the Franchise Payment for the relevant Reporting Period is determined, then a Track Access Adjustment shall only be determined to the extent such values can be ascertained at such time and, when such values are subsequently ascertained, adjustment shall be made to reflect the full Track Access Adjustment for such Reporting Period.

1.5 The values of "W" and "GCA" when used in the computation in paragraph 1.1 shall be taken to exclude any input Value Added Tax which is recoverable in respect of the payments they represent by the Franchisee under Sections 24 to 26 of the Value Added Tax Act 1994.

1.6 References in this paragraph 1 to "Wt" and "GC" and Parts 2 and 3A of Schedule 7 of the Track Access Agreement shall be deemed also to be references to such other provisions, and such other algebra under any such other provisions, of any Track Access Agreement as the Secretary of State may reasonably consider have an equivalent effect, or are intended to fulfil the same function, as "Wt" or "GC" and Parts 2 or 3A of Schedule 7 of the Track Access Agreement to which the Franchisee is a party on the Start Date.

2. **Station Charge Adjustment**

2.1 The Station Charge Adjustment to be made in respect of any Reporting Period shall be the aggregate of the Individual Station Charge Adjustments as determined in accordance with the following formula for each Station and each other Franchisee Access Station:

$$ISCA = (L - P) \times \frac{RPD}{FYD}$$

where:

ISCA means the Individual Station Charge Adjustment for the relevant station for that Reporting Period;

L is the value of "Lt" for the Franchisee Year in which the Reporting Period falls under:

- (a) if the relevant station is not an Independent Station, Condition F11.2 of the Station Access Conditions entitled "National Station Access Conditions 1996 (England and Wales)" relating to such station; or
- (b) if the relevant station is an Independent Station, Condition 42.3 of the Independent Station Access Conditions relating to that Independent Station,

in each case, to the extent that value represents an amount payable to or by Network Rail or any other relevant Facility Owner by or to the Franchisee on its own behalf under the relevant Access Agreement (excluding any amount payable to Network Rail by the Franchisee in its capacity as Facility Owner of a station on behalf of a beneficiary which is party to an Access Agreement in respect of a Station);

P is the value of "Pt" for the Franchisee Year in which the Reporting Period falls under:

- (a) if the relevant station is not an Independent Station, Condition F11.2 of the Station Access Conditions entitled "National Station Access Conditions 1996 (England and Wales)" relating to such station; or

- (b) if the relevant station is an Independent Station, Condition 42.3 of the Independent Station Access Conditions relating to that Independent Station,

in each case, to the extent that value represents an amount payable to or by Network Rail or any other relevant Facility Owner by or to the Franchisee on its own behalf under the relevant Access Agreement (excluding any amount payable to Network Rail by the Franchisee in its capacity as Facility Owner of a station on behalf of a beneficiary which is party to an Access Agreement in respect of a Station);

RPD means the number of days in that Reporting Period; and

FYD means the number of days in the Franchisee Year in which that Reporting Period falls except that, where a Reporting Period falls during two Franchisee Years, the Station Charge Adjustment shall be determined as if the references to Reporting Period were to each of the two periods within such Reporting Period which fall wholly within one of such Franchisee Years and the Station Charge Adjustment for such Reporting Period shall be the sum of the Station Charge Adjustment as determined for each such period.

- 2.2 The Franchisee shall notify the Secretary of State upon becoming aware that any Station Charge Adjustment is to be made and shall supply such information as the Secretary of State may require in relation thereto. The Franchisee shall exercise such rights as it may have under any Access Agreement in such manner and take such other action as the Secretary of State may reasonably require in connection with any related payment thereunder (including in relation to any agreement of the amount of any such payment and including submitting any relevant dispute to any relevant dispute resolution procedures). The Franchisee shall not, without the consent of the Secretary of State, agree or propose to agree a value for "L" or "P" under any relevant Access Agreement.
- 2.3 The Franchisee shall provide such evidence of payment as the Secretary of State may require (including any certificates) for the purpose of determining the value of L and P under paragraph 2.2.
- 2.4 If no value is ascertained for any of "L" or "P" prior to the date on which the Franchise Payment for the relevant Reporting Period is determined, then a Station Charge Adjustment shall only be determined to the extent such values can be ascertained at such time and, when such values are subsequently ascertained, an adjustment shall be made to reflect the full Station Charge Adjustment for such Reporting Period.
- 2.5 The values of L and P when used in the computation in paragraph 2.2 shall be taken to exclude any input Value Added Tax which is recoverable in respect of the payments they represent by the Franchisee under Sections 24 to 26 of the Value Added Tax Act 1994.
- 2.6 For the purposes of this paragraph 2, **Independent Station** shall mean, at any time, any station of which Network Rail is the Facility Owner at that time. As at the date of the Franchise Agreement, the Independent Stations are Birmingham New Street, Edinburgh Waverley, London Fenchurch Street, Glasgow Central High Level, London Bridge, London Cannon Street, London Charing Cross, London Euston, London King's Cross, London Liverpool Street, London Paddington, London Victoria, London Waterloo (excluding Waterloo International), Leeds, Liverpool Lime Street and Manchester Piccadilly.

- 2.7 References in this paragraph 2 to "Lt", "Pt", Condition F11.2 of the Station Access Conditions entitled "National Station Access Conditions 1996 (England and Wales)" and Condition 42.3 of the Independent Station Access Conditions shall be deemed also to be references to such other provisions, and such other algebra under any such other provisions, of any relevant station access conditions as the Secretary of State may reasonably consider have an equivalent effect, or are intended to fulfil the same function as, "Lt", Pt" and Condition F11.2 of the Station Access Conditions entitled "National Station Access Conditions 1996 (England and Wales)" and Condition 42.3 of the Independent Station Access Conditions which are in effect on the Start Date.

SCHEDULE 9

Changes and Variations

- Schedule 9.1: Financial and Other Consequences of Change**
Appendix 1: Summary Flow Chart
Appendix 2: Agreement or Determination of Revised Inputs
Annex to Appendix 2: Incentivising Long Term Investment
- Schedule 9.2: Identity of the Financial Model etc.**
- Schedule 9.3: Secretary of State Risk Assumptions**
Appendix 1: Assumed HLOS Sub Lease Amounts
- Schedule 9.4: Component of FAT: Definition of Threshold Amount**
- Schedule 9.5: Variations to the Franchise Agreement and Incentivising Beneficial Changes**

SCHEDULE 9.1**Financial and Other Consequences of Change****1. Purpose and Application of Schedule**

1.1 This Schedule 9.1 sets out:

- (a) the circumstances in which the occurrence of a Change will result in an adjustment to the Franchise Payments, the Benchmarks and Annual Benchmarks; and
- (b) the process by which that adjustment to the Franchise Payments, the Benchmarks and Annual Benchmarks will be determined and effected; and
- (c) provisions dealing with the responsibility for costs incurred by the Franchisee in connection with any audit of the Run of the Financial Model and its results.

1.2 Schedule 9.2 (Identity of the Financial Model etc.) contains provisions dealing with the Financial Model which are relevant to the operation of this Schedule 9.1.

1.3 This Schedule 9.1 shall apply in relation to a Change where:

- (a) there are good reasons for considering that that Change will be a Qualifying Change or, with other Changes, part of an Aggregated Qualifying Change; and
- (b) the required notice(s) has/have been given in accordance with paragraph 1.4 (or the parties have agreed that this Schedule 9.1 will apply and there should be a Run of the Financial Model, and/or a review of the Benchmarks and Annual Benchmarks even though the required notices have not been given).

1.4 The notice requirements are:

- (a) subject to paragraph 1.4(b), a party must have notified the other that it considers that the Change will be a Qualifying Change and that it requires a Run of the Financial Model and/or a review of the Benchmarks and Annual Benchmarks in respect of that Change:
 - (i) within 6 months of the notification or agreement of that Change if it is a Variation pursuant to paragraph 1.1 of Schedule 9.5 (Variations to the Franchise Agreement and Incentivising Beneficial Changes); or
 - (ii) within 6 months of becoming aware of it, if it is any other type of Change; and
- (b) in the case of an Aggregated Qualifying Change, a party must have notified the other:
 - (i) after an individual Change occurs, within the time limits stated in 1.4(a)(i) or 1.4(a)(ii), that it reserves the right to

count that Change towards an Aggregated Qualifying Change; and

- (ii) within 6 months of the occurrence of the last Change which that party considers will trigger an Aggregated Qualifying Change, that the party requires a Run of the Financial Model and/or a review of the Benchmarks and Annual Benchmarks in respect of the Changes comprised in that Aggregated Qualifying Change. The notice must identify each of the Changes included in the Aggregated Qualifying Change.

1.5 References in the remainder of this Schedule 9.1 and in Schedule 9.2 (Identity of the Financial Model etc.) to a "Change" are to a Change in respect of which the requirements in paragraph 1.3 have been satisfied.

1.6 Appendix 1 (Summary Flow Chart) to this Schedule 9.1 contains a flow chart summary of the process described in this Schedule 9.1. This is for guidance only and if there are any inconsistencies between this flow chart and any other of the contents of Schedule 9 (Changes), the latter shall apply.

1.7 For the avoidance of doubt PR2013 shall not be prevented from being a Charging Review and/or the effect of PR2013 on any Relevant Agreement shall not be prevented from being a Charge Variation in each case for the purpose of this Agreement as a result of the fact that:

- (a) PR2013 is or may be concluded prior to the date of the Franchise Agreement; and/or
- (b) any Relevant Agreement entered into by the Franchisee, or to which the Franchisee otherwise becomes a party by Transfer Scheme or otherwise, reflects the outcome of PR2013 (as opposed to any such Relevant Agreement being varied to reflect the outcome of PR2013 after the Franchisee becomes a party to it),

provided that the Invitation to Tender (where relevant, as amended) did not require the Franchisee to submit its bid for the Franchise on the basis of the outcome of PR2013.

2. **Timescales**

2.1 Where this Schedule 9.1 applies, any resulting restatement of the Annual Franchise Payment Components and/or the Benchmarks and Annual Benchmarks (as applicable) shall be made in accordance with this Schedule:

- (a) where it is reasonably practicable to do so, at least three Reporting Periods prior to the Change; or
- (b) where the timescale in 2.1(a) is not reasonably practicable, as soon as reasonably practicable after that.

2.2 If paragraph 2.1(b) applies and it is not reasonably practicable for the restatement of the Annual Franchise Payment Components to be made before the Change occurs, then paragraph 9 (Estimated Revisions) shall apply.

3. **How any adjustments to Franchise Payments will be established**

The adjustments, if any, to the Franchise Payments to be made in respect of any Change shall be established by:

- (a) establishing those Model Changes and/or Revised Inputs required to take account of the Change; then
- (b) applying those Model Changes and/or Revised Inputs to the Financial Model before performing a Run of the Financial Model to generate the New Results; then
- (c) restating the Annual Franchise Payment Components, by substituting the New Results for the Old Results (so that, to the extent that the New Results and the Old Results are different, this will result in an adjustment to the Franchise Payments),

in each case, subject to and in accordance with the terms more particularly described in this Schedule 9.1.

4. **How Model Changes and/or Revised Inputs will be established**

4.1 The parties shall agree or the Secretary of State shall reasonably determine the Revised Inputs and (if any) the Model Changes.

4.2 **Revised Inputs** means:

- (a) the data that the Financial Model utilised in order to produce the Old Results, as such data is recorded in the Financial Model released by the Secretary of State pursuant to either of paragraphs 2.1(d) or 2.2 of Schedule 9.2 (Identity of the Financial Model etc.) for the purposes of the Run of the Financial Model; but
- (b) amended, whether by way of increase, reduction or other alterations to such data, (if at all) only as the parties may agree or the Secretary of State may reasonably determine is required by the provisions of Appendix 2 to this Schedule 9.1 in respect of a Change.

4.3 **Model Changes** means: any changes that the parties may agree or the Secretary of State may reasonably determine are required to the Financial Model and/or the Operational Model, as released by the Secretary of State pursuant to either of paragraphs 2.1(d) or 2.2 of Schedule 9.2 (Identity of the Financial Model etc.), for the purposes of the Run of the Financial Model, as a consequence of and in order to give effect to the Revised Inputs.

4.4 The Secretary of State shall provide a written statement of the Revised Inputs and any Model Changes to the Franchisee for the purposes of paragraph 6 promptly after they have been agreed or determined.

5. **Changes to Benchmarks and Annual Benchmarks**

5.1 This paragraph 5 shall apply if either party has given notice to the other that it considers that a Change has or will have, in that party's reasonable opinion, a material effect on the risk of the Franchisee failing to satisfy the requirements of any Benchmark and Annual Benchmark (whether in terms of increasing or reducing that risk).

- 5.2 Any notice pursuant to paragraph 5.1 shall be given as soon as reasonably practicable and in any event before the parties have agreed or the Secretary of State has reasonably determined the Revised Inputs in respect of the Change.
- 5.3 Where this paragraph 5 applies, the relevant Benchmarks and Annual Benchmarks shall be revised to the extent that such revision is reasonably considered to be appropriate to hold constant the risk of the Franchisee failing to satisfy the requirements of that Benchmark and Annual Benchmark. The parties shall agree or the Secretary of State shall reasonably determine any such revision(s).
- 5.4 For the purposes of any revision to the Benchmarks and Annual Benchmarks under this paragraph 5, regard may be had to:
- (a) any relevant assumptions in the Record of Assumptions; and/or
 - (b) the contents of an Operational Model; and/or
 - (c) any other information,
- to the extent they are relevant to the consideration of whether a revision is reasonably considered to be appropriate to take account of the Change.
6. **Run of the Financial Model following agreement or determination of the Revised Inputs and Model Changes**
- 6.1 When the Revised Inputs and Model Changes (if any) are agreed or determined there shall be a Run of the Financial Model.
- 6.2 The Run of the Financial Model shall be performed after making any Model Changes and utilising the Revised Inputs and shall be performed by:
- (a) the Franchisee promptly on receiving notification of the Revised Inputs and any Model Changes from the Secretary of State pursuant to paragraph 4.4 or within such period of time as the Secretary of State shall reasonably determine; or
 - (b) the Secretary of State if the Franchisee fails to do so. In these circumstances, the Franchisee shall reimburse to the Secretary of State the Secretary of State's costs of performing the Run of the Financial Model.
- 6.3 The party that performs the Run of the Financial Model pursuant to paragraph 6.2 shall provide the non-performing party with a reasonable opportunity to be in attendance and shall promptly notify such other party of the New Results.
- 6.4 Where there is more than one Change, Runs of the Financial Model in respect of such Changes shall (unless otherwise agreed or the Secretary of State reasonably determines) be undertaken in the order in which such Changes occur. For this purpose, the order of occurrence will be determined by reference to the earliest date from which the Franchise Payments are reasonably expected to require adjustment as a result of the restatement of the Annual Franchise Payment Components triggered by a Change. This will be as agreed between the parties or in the absence of agreement be reasonably determined by the Secretary of State.

7. Certification or Audit of the New Results

7.1 The Secretary of State, as soon as reasonably practicable after receiving or generating the New Results pursuant to paragraph 6.2, shall either:

- (a) certify to the Franchisee his approval of the New Results; or
- (b) notify the Franchisee that he requires the Run of the Financial Model and its results to be audited by an independent auditor appointed by the Secretary of State with the approval (not to be unreasonably withheld) of the Franchisee.

7.2 For purposes of paragraph 7.1, the requirement for an audit is one that requires the auditor either to certify:

- (a) that the New Results have been produced by applying the Revised Inputs (as provided to the Franchisee by the Secretary of State pursuant to paragraph 4.4) to the Financial Model after making the Model Changes (as provided to the Franchisee by the Secretary of State pursuant to paragraph 4.4); or
- (b) the New Results themselves, by itself applying the Revised Inputs (as provided to the Franchisee by the Secretary of State pursuant to paragraph 4.4) to the Financial Model after making the Model Changes (as provided to the Franchisee by the Secretary of State pursuant to paragraph 4.4).

7.3 The parties shall procure that any auditor is, as soon as reasonably practicable after his appointment, able to discharge the audit requirements.

7.4 The results as certified by the Secretary of State pursuant to paragraph 7.1 or by the auditor pursuant to paragraph 7.2 shall be final and binding on the parties, except in the case of manifest error.

7.5 The Secretary of State may stipulate (on or before the date on which the Secretary of State approves or the auditor certifies the results of the Run of the Financial Model) in respect of a Change that the restated Annual Franchise Payment Components are to apply for a limited period of time only (the "**Initial Period**"), with provision thereafter, if appropriate, for a further Run of the Financial Model with new Revised Inputs and/or Model Changes based on information available at that time.

8. Restatement of Annual Franchise Payment Components and/or Benchmarks and/or Annual Benchmarks

8.1 When the New Results have been certified by the Secretary of State or the auditor in accordance with paragraph 7 then:

- (a) if:
 - (i) there is any difference between the Old Results and the New Results; and
 - (ii) the New Results are such that the Change:
 - (A) meets the criteria for a Qualifying Change; or

- (B) with other Changes meets the criteria for an Aggregated Qualifying Change,

the Annual Franchise Payment Components shall be restated in the amounts of the New Results; and

- (b) if any changes to the Benchmarks and Annual Benchmarks have been agreed or determined in accordance with paragraph 5, the Benchmarks and Annual Benchmarks shall be restated to give effect to those changes.

8.2 Subject to paragraph 8.3, the restatement of the Annual Franchise Payment Component shall have effect on and from the date on which the Secretary of State or the auditor certifies the results of the Run of the Financial Model.

8.3 If and to the extent that:

- (a) the application of the New Results in respect of the then current or any earlier Franchisee Year would, result in any change to the amount of any payments already made between the Secretary of State and the Franchisee; and
- (b) that change in payments is not already taken into account in any Reconciliation Amount payable pursuant to paragraph 9.9,

then a reconciliation payment shall be paid by the Franchisee or the Secretary of State (as the case may be). The payment shall be made on the first Payment Date which falls more than 7 days after agreement or determination of the amount of the reconciliation payment required (or if there is no such Payment Date, within 14 days after such agreement or determination).

9. **Estimated Revisions**

9.1 This paragraph 9 applies where there is or is to be a Change before there is a Run of the Financial Model in respect of it. It provides a mechanism for interim adjustments in Franchise Payments pending the final agreement or determination of those adjustments under this Schedule.

9.2 Where this paragraph 9 applies, the Secretary of State shall make the Estimated Revisions described in paragraph 9.3:

- (a) if the Franchisee requests the Secretary of State to do so at the same time as requesting a Run of the Financial Model in respect of the Change under paragraph 1.4; or
- (b) if the Secretary of State otherwise agrees or chooses (in his discretion) to do so.

9.3 The Estimated Revisions are the Secretary of State's estimates of the New Results which will apply once the process in paragraphs 4 to 8 of this Schedule 9.1 has been completed in respect of the Change. For the avoidance of doubt, Revised Inputs are not made in order to generate or take account of the Estimated Revisions.

9.4 The estimates referred to in paragraph 9.3 will be such estimates as the Secretary of State, acting reasonably, makes having regard to the time and the information

available to him at the time the estimates fall to be made provided always that it is acknowledged that:

- (a) the purpose of the estimates is to enable some provision to be made in respect of adjustments to the Annual Franchise Payment Components before full information about the Change is available and/or full consideration of the nature and extent of Revised Inputs and/or Model Changes has been undertaken;
 - (b) it may not be reasonably practicable in all circumstances for the Secretary of State to take into account in such an estimate all actual or potential impacts of a Change. Where the Secretary of State is aware that there are any such actual or potential impacts which he has not taken into account, he shall notify the Franchisee of them when notifying the Estimated Revisions pursuant to paragraph 9.2; and
 - (c) the Secretary of State shall be entitled to adjust any Estimated Revision notified pursuant to paragraph 9.2 to the extent he reasonably considers appropriate if at any time:
 - (i) the Secretary of State becomes aware of any new or revised information which would, if it had been available to him at the time he made his original estimate, have resulted in him making a different Estimated Revision; and
 - (ii) it is reasonable to revise the Estimated Revision having regard to the likely period of delay prior to the Run of the Financial Model in respect of the relevant Change.
- 9.5 In the circumstances described in paragraph 9.2 and paragraph 9.4(c) the Annual Franchise Payment Components shall be restated in the amounts and values of the Estimated Revisions, and Franchise Payments shall be paid accordingly until the Run of the Financial Model has taken place and its results have been put into effect.
- 9.6 The Secretary of State shall use all reasonable endeavours to notify the Franchisee of the Estimated Revisions required by paragraph 9.2 at least two Reporting Periods before he considers the Change is likely to occur. If, having exercised all reasonable endeavours, the Secretary of State cannot provide two Reporting Periods' notice, he shall provide such notification as soon as reasonably practicable afterwards.
- 9.7 The restatement of the Annual Franchise Payment Components referred to in paragraph 9.5 shall have effect on and from:
- (a) the date on which the Secretary of State notifies the Franchisee of the Estimated Revisions; or
 - (b) such other date as the Secretary of State, acting reasonably, may notify the Franchisee as the date on which the Secretary of State considers the Estimated Revisions should reasonably take effect, consistent with the matters taken into account by the Secretary of State in estimating the Estimated Revisions.
- 9.8 No estimate made by the Secretary of State pursuant to this paragraph 9 shall prejudice the Secretary of State's subsequent determination of any Revised Input or Model Change pursuant to paragraph 4.

9.9 Subject to paragraph 9.10, where adjustments to Franchise Payments have resulted from the operation of paragraph 9.5. then, as soon as reasonably practicable after the certification of the New Results following the related Run of the Financial Model, the parties shall agree or the Secretary of State shall reasonably determine the difference (the "**Reconciliation Amount**") between:

- (a) the total amount of Franchise Payments paid or to be paid to which adjustments have been made pursuant to the operation of paragraph 9.5; and
- (b) the total amount of the Franchise Payments, as determined by that Run of the Financial Model, in respect of the same period as the period over which the adjusted Franchise Payments referred to in paragraph 9.9(a) have been paid/or are to be paid.

9.10 If a Change is agreed or determined not to be a Qualifying Change or not to be part of an Aggregated Qualifying Change with or without any Run of the Financial Model having been performed, the Reconciliation Amount shall be the total amount of the adjustments to Franchise Payments which have resulted from the operation of paragraph 9.5.

9.11 The Reconciliation Amount shall be paid:

- (a) by the Franchisee to the Secretary of State where the Estimated Revisions resulted in an overpayment of Franchise Payments by the Secretary of State to the Franchisee or an underpayment of Franchise Payments by the Franchisee to the Secretary of State compared with:
 - (i) the amount of the Franchise Payments described in paragraph 9.9(b); or
 - (ii) where paragraph 9.10 applies, the amount of the unrestated Franchise Payments over the same period; and
- (b) by the Secretary of State to the Franchisee where the Estimated Revisions resulted in an underpayment of Franchise Payments by the Secretary of State to the Franchisee or an overpayment of Franchise Payments by the Franchisee to the Secretary of State compared with:
 - (i) the amount of the Franchise Payments described in paragraph 9.9(b); or
 - (ii) where paragraph 9.10 applies, the amount of the unrestated Franchise Payments over the same period,

in either case, such payment shall be made on the first Payment Date after agreement or determination (or if none, within 14 days after such agreement or determination).

10. **Information**

The Franchisee shall promptly, having regard to the other timescales anticipated in this Schedule 9.1, provide to the Secretary of State such information as the Secretary of State may request for the purpose of enabling the Secretary of State to exercise his rights and comply with his obligations pursuant to this Schedule 9.1.

11. Costs

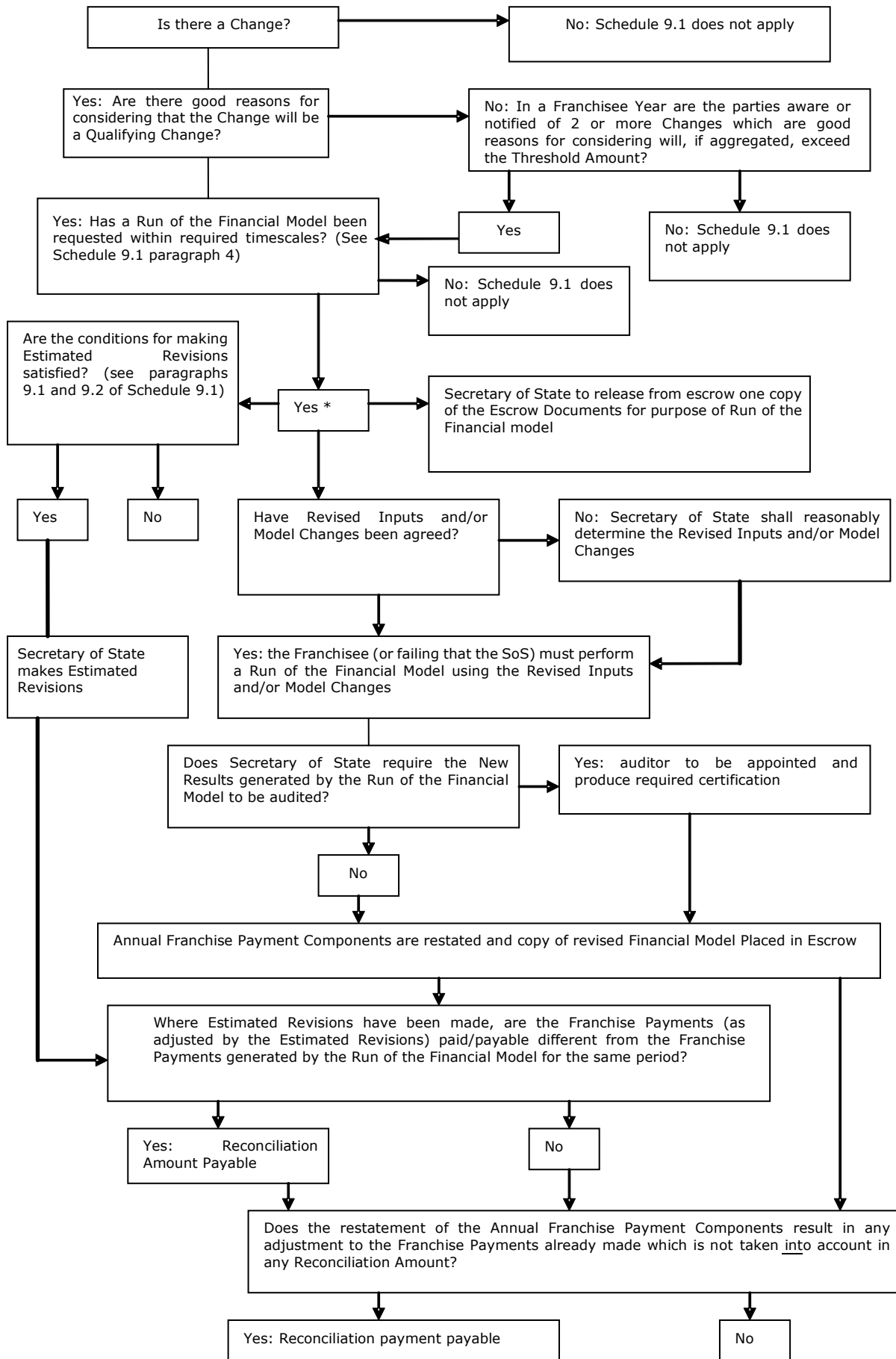
- 11.1 This paragraph deals with the costs incurred by the Franchisee in connection with any audit required by the Secretary of State pursuant to paragraph 7.
- 11.2 The costs of any audit required under paragraph 7.1(b) shall be met by the Secretary of State subject to the following:
- (a) the costs of the audit shall be met entirely by the Franchisee in the case of a Change falling within any of the following sub-paragraphs within the definition of Change:
 - (i) an event set out in any Secretary of State Risk Assumption; and
 - (ii) a Charge Variation; and
 - (b) where paragraph 11.2(a) does not apply, the Secretary of State shall only be responsible for the reasonable costs of the Franchisee in connection with the audit, and the Franchisee shall comply with the Secretary of State's reasonable directions in connection with the audit which may include a requirement for a competitive tender for the appointment of the auditor.

APPENDIX 1 TO SCHEDULE 9.1

Summary Flow Chart

See next page

This summary is for guidance only. If there are any inconsistencies with the other contents of Schedule 9.1 or 9.2 (including any Appendix), those other contents shall apply.



* Note: that in these circumstances, either party may serve notice (before Revised Inputs in respect of the Change are agreed or determined) that it considers a Change has or will have a material effect on the risk of the Franchisee failing to satisfy the requirements of a Benchmark - See Schedule 9.1 paragraph 5.

APPENDIX 2 TO SCHEDULE 9.1

Agreement or Determination of Revised Inputs

1. The parties shall agree or the Secretary of State shall reasonably determine the Revised Inputs that are required in respect of a Change:
 - (a) on the basis of the general adjustments and/or assumptions referred to in paragraph 2;
 - (b) on the basis of the assumptions in the Record of Assumptions as added to and/or amended (if at all) in accordance with paragraph 3;
 - (c) so as to provide for Traction Electricity Charges in accordance with paragraph 4;
 - (d) so as to provide for profit in accordance with paragraph 5; and
 - (e) so as to give effect to the provisions of paragraph 6 in relation to indexation,

provided that if there is any inconsistency between the assumptions in the Record of Assumptions described in paragraph (b) above and any other of the requirements of this paragraph 1, those other requirements shall prevail, unless the Secretary of State (acting reasonably) otherwise elects.
2. **General Adjustments/Assumptions**
 - 2.1 Revised Inputs are to be agreed between the parties or reasonably determined by the Secretary of State on the basis that:
 - (a) any increase in costs relating to a Change; and/or
 - (b) any reduction in revenues relating to a Change,

that is attributable to any activities, actions or omissions of the Franchisee which are not permitted under, or would otherwise constitute a contravention of, the terms of the Franchise Agreement, is to be disregarded.
 - 2.2 Revised Inputs are to be agreed between the parties or reasonably determined by the Secretary of State on the basis that:
 - (a) any reduction in costs relating to a Change; and/or
 - (b) any increase in revenues relating to a Change,

that is attributable to any activities, actions or omissions of the Franchisee which are not permitted under, or would otherwise constitute a contravention of, the terms of the Franchise Agreement, is to be taken into account.
 - 2.3 Revised Inputs are also to be agreed between the parties or reasonably determined by the Secretary of State on the basis that:
 - (a) the Franchisee will use all reasonable endeavours to:

- (i) reduce any costs that may arise or income that may be foregone; and
- (ii) increase any revenue that may arise and avoid any cost that may be avoided,

as a consequence of a Change; and

- (b) any requirement for borrowing in respect of Capital Expenditure by the Franchisee is dealt with in accordance with paragraph 2 of Schedule 9.5 (Variations to the Franchise Agreement and Incentivising Beneficial Changes).

2.4 Where and as directed to do so by the Secretary of State (acting reasonably) the Franchisee shall undertake one or more competitive tendering exercises for the purposes of ascertaining the likely level of any costs relating to a Change which are relevant to a Revised Input.

3. **Assumptions in the Record of Assumptions**

3.1 The parties shall (unless to do so would be contrary to paragraph 2) agree or the Secretary of State shall reasonably determine Revised Inputs that are in accordance with the assumptions that are contained in the Record of Assumptions, as added to or modified pursuant to paragraph 3.2 or paragraph 3.3.

3.2 Where the Secretary of State reasonably considers that the assumptions contained in the Record of Assumptions are ambiguous or that additional assumptions are required in relation to circumstances not dealt with by the assumptions in the Record of Assumptions, the parties shall agree or the Secretary of State shall reasonably determine the assumptions or additional assumptions to be utilised for this purpose.

3.3 Where the Secretary of State reasonably considers that:

- (a) a Change is likely to result in an increase in either or both of the costs of the Franchisee and the revenues of the Franchisee; and
- (b) an assumption relevant to the Change contained in the Record of Assumptions does not accord with what would be achievable by, or experienced by, an economic and efficient franchisee,

then the parties shall agree or the Secretary of State shall reasonably determine a modification to the assumption so that, as modified, it does accord with what would be achievable by, or experienced by, an economic and efficient franchisee.

4. **Traction Electricity Charges**

4.1 This paragraph 4 applies only in relation to Charge Variations.

4.2 In agreeing or determining Revised Inputs, no adjustment shall be made in respect of a Charge Variation to the extent that Charge Variation relates, directly or indirectly and however it may be effected, to the Traction Electricity Charge payable by the Franchisee pursuant to any Track Access Agreement. For this purpose (and subject to clause 1.1(l) of this Agreement), the Traction Electricity Charge is the component of the Track Charges (as defined in the Track Access Agreement) identified as such in any Track Access Agreement or any similar

arrangement under which the Franchisee pays for traction current consumed by rolling stock vehicles operated by or on behalf of the Franchisee.

5. Revised Input for Profit

5.1

- (a) Where a Change is forecast to result in an increase to the Franchisee's costs in a Franchisee Year, the parties shall agree or the Secretary of State shall reasonably determine Revised Inputs in relation to profit that provide for an increase in the amount of profit in any Franchisee Year equal to the percentage of the forecast increase in cost for that Franchisee Year as determined by reference to the following table^[REDACTED⁴²⁸]:

Franchisee Year	[REDACTED⁴²⁹]
Year 1 (Part Year)	
Year 2	
Year 3	
Year 4	
Year 5	
Year 6	
Year 7	
Year 8 (Part Year - Core)	
Year 8 (Part Year - Extension)	
Year 9 (Extension)	
Year 10 (Part Year- Extension)	

; and/or

- (b) Where a Change is forecast to result in a reduction in the Franchisee's costs in a Franchisee Year, the parties shall agree or the Secretary of State shall reasonably determine Revised Inputs in relation to profit that provide for a

⁴²⁸ 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.

⁴²⁹ 5 November 2014 (Date of Redactions Approval) – Where text has been omitted from the document this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

decrease in the amount of profit in any Franchisee Year equal to the lower of:

- (i) the percentage specified in paragraph 5.1(a); or
- (ii) the average profit margin in the current Business Plan for the remaining Franchise Term,

of the forecast reduction in cost for that Franchisee Year.

- (c) For the purposes of paragraphs 5.1(a) and 5.1(b) there shall be no Revised Input in relation to profit where any such Change is a Charge Variation except for the insertion of a line in the Financial Model required to neutralise the effect on the absolute amount of profit in £ for £ terms which the other adjustments to the other inputs would otherwise have, such that there is no change in the absolute amount of profit as a result of the Charge Variation.

5.2 In agreeing or determining Revised Inputs in relation to profit in respect of any Change, the parties or the Secretary of State shall effect such change (if any) in the amount attributable to profit in paragraph 5.1 as they agree or the Secretary of State reasonably determines to reflect:

- (a) the risk for the Franchisee in continuing to operate the Franchise on the terms of the Franchise Agreement after and as a result of the Change; and
- (b) the likelihood of:
 - (i) material benefit from such Change arising after expiry of the Franchise Term; and
 - (ii) material detriment from such Change arising prior to the expiry of the Franchise Term.

5.3 In agreeing or determining Revised Inputs for the purposes of any Protected Proposal, the parties or the Secretary of State shall effect such change (if any) to the amount attributable to profit as they agree or the Secretary of State reasonably determines:

- (a) fairly rewards the Franchisee for proposing the Protected Proposal; and
- (b) reasonably incentivises the Franchisee to propose further Protected Proposals,

by sharing with the Franchisee a reasonable amount of the additional profit that is expected to arise from implementing the Protected Proposal.

5.4 The Annex (Incentivising Long Term Investment) to this Appendix 2 sets out the Secretary of State's guidance on how he approaches incentivising long term investment. Nothing in this Annex is intended to limit or be limited by, the provisions of paragraph 2.2 of Schedule 14.4 (Designation of Franchise Assets).

6. **Indexation**

In agreeing or determining Revised Inputs, the parties shall apply the following principles in connection with indexation. For each relevant item of data in the

Financial Model in respect of which a Revised Input is agreed or determined to be required:

- (a) the parties shall agree or the Secretary of State shall reasonably determine, having regard to the particular facts of the Change, the base date at which that item is priced; and
- (b) that item shall be deflated by reference to the original base date and index (if any) relevant to that item in the Financial Model.

7. **Efficiency Benefit Share/REBS**

No Revised Inputs will be made to reflect:

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

For this purpose (and subject to clause 1.1(l) of this Agreement), **Efficiency Benefit Share** is the component of Track Charges (as defined in the Track Access Agreement) identified as such in any Track Access Agreement or similar arrangement under which benefits of any outperformance of efficiency targets (or risk of failure to achieve efficiency targets) are to be shared between Network Rail and train operators.

8. **Cancellations Performance Sum, Short Formation Performance Sum and TOC Minute Delay Performance Sum**

In agreeing or determining Revised Inputs, no adjustment shall be made to the Financial Model to reflect any change in the amount of the Cancellations Performance Sum, the Short Formation Performance Sum or the TOC Minute Delay Performance payable either by the Secretary of State or the Franchisee and arising from the exercise by the Secretary of State of his rights pursuant to paragraph 1.7 of Schedule 7.1 (Performance Benchmarks). So for example if prior to such exercise the Franchisee would have been entitled to receive a Cancellations Performance Sum of £100 for a particular level of performance against the Annual Cancellations Benchmark and after such exercise the Franchisee would only be entitled to receive a Cancellations Performance Sum of £50 for achieving the same level of performance, no adjustment shall be made to the Financial Model to reflect this.

ANNEX TO APPENDIX 2 TO SCHEDULE 9.1**Incentivising Long Term Investment**

This Appendix sets out the Secretary of State's guidance on how he approaches incentivising long term investment.

1. The Secretary of State wishes to encourage the Franchisee to:
 - (a) improve the efficiency;
 - (b) reduce the cost; and
 - (c) enhance the revenue earning potential of the delivery of services to passengers,

from the commencement of the Franchise, through the Franchise Term and into the successor franchises.
2. It is recognised however, that the Franchise Term may be perceived to be a barrier to undertaking investment or change programmes where:
 - (a) the time scale for implementation limits the benefit to the Franchisee; or
 - (b) the business case for such investment or change has a payback period longer than the Franchise Term.
3. In this context investment or change may be considered to encompass:
 - (a) capital investments undertaken solely by the Franchisee;
 - (b) capital investments undertaken by the Franchisee in association with others;
 - (c) total or partial substitution of certain train services by bus services where an enhanced service level could be provided for reduced cost or where the provision of bus services improves the overall capacity of the network or delivers other benefits;
 - (d) changes in working practices of the Franchisee's employees;
 - (e) changes in the contracted roles and responsibilities between the Franchisee and its major suppliers; and
 - (f) operational changes.
4. Accordingly, the Franchisee is encouraged to propose schemes that seek to achieve the objectives set out in paragraph 1 for consideration by the Secretary of State during the Franchise Term.
5. In considering the Franchisee's proposals for any investment or change proposed to be undertaken, the Secretary of State will recognise:
 - (a) the capital cost and proposed payment profile;

- (b) legitimate costs of the Franchisee in developing, procuring, delivering and project managing the project;
 - (c) the life of any capital assets and the duration of the benefits stream arising;
 - (d) the remaining Franchise Term and the projected payback period;
 - (e) the benefits associated with undertaking the investment early rather than waiting until the Franchise is re-let;
 - (f) the risks of cost overrun or under performance of the projected benefits;
 - (g) a profit element for undertaking the project commensurate with the risks of the proposed project; and
 - (h) alternative benefit sharing arrangements which could be based on:
 - (i) a capital lump sum when the expenditure is incurred;
 - (ii) an enhanced Franchise Payment over the Franchise Term;
 - (iii) a balloon payment on expiry of the Franchise which allocates a proportion of future benefits to the Franchisee;
 - (iv) an ongoing payment if the benefits materialise after the Franchise Term; and/or
 - (v) any combination of any of paragraphs 5(h)(i) to (h)(iv) inclusive.
6. In evaluating the Franchisee's proposals for any investment or change proposed to be undertaken and to enable best value for money to be obtained from third party financiers, the Secretary of State shall also give consideration to the appropriateness of the provision, by the Secretary of State, of an undertaking (or other form of comfort) pursuant to Section 54 of the Act.

SCHEDULE 9.2**Identity of the Financial Model etc.****1. Franchisee's Obligations**

- 1.1 The Franchisee shall deliver two copies of each of the Financial Model, the Operational Model and the Record of Assumptions (each such copy in electronic format on CD-ROM) together with hard format copies of the output template of the Financial Model in the format set out in the document in agreed terms marked **FF** (the "**Escrow Documents**") to the Secretary of State in the agreed form, accompanied by a notice that the Escrow Documents are to be Placed in Escrow.
- 1.2 The Franchisee shall deliver the Escrow Documents in accordance with paragraph 1.1 of this Schedule 9.2:
- (a) on the date of the Franchise Agreement;
 - (b) within seven days of the Start Date, but updated only as strictly necessary for any elapsed time between the actual Start Date and the date assumed to be the Start Date in the Initial Business Plan; and
 - (c) within seven days of any approval or audit of a Run of the Financial Model as provided for in paragraph 7 of Schedule 9.1 (Financial and Other Consequences of Change), but updated with the Revised Inputs and any Model Changes.
- 1.3 The Franchisee shall deliver with each such deposit of the Escrow Documents all of the following information to the extent that it is relevant:
- (a) details of the Escrow Documents deposited (including full filename and version details, any details required to access the Escrow Documents including media type, backup command/software used, compression used, archive hardware and operating system details);
 - (b) the names and contact details of persons who are able to provide support in relation to accessing and interpreting the Escrow Documents; and
 - (c) if required by the Secretary of State, a certificate from independent auditors approved by the Secretary of State, confirming that the deposited version of the Escrow Documents is in the agreed form in accordance with paragraph 1.2(a) or (as the case may be) is in accordance with paragraphs 1.2(b) or 1.2(c).

2. Secretary of State's Obligations

- 2.1 The Secretary of State shall:
- (a) within three days following receipt, acknowledge receipt to the Franchisee of any version of the Escrow Documents delivered to him for the purposes of being Placed in Escrow;
 - (b) save as provided under paragraph 2.1(c), store each copy of the Escrow Documents in a different physical location from any other copy of each such document and use all reasonable endeavours to ensure that each copy of

the Escrow Documents is at all times kept in a safe and secure environment. In so doing the Secretary of State shall be deemed to have Placed in Escrow the Escrow Documents for the purposes of the Franchise Agreement;

- (c) notify the Franchisee if he becomes aware at any time during the term of the Franchise Agreement that any copy of the Escrow Documents or part thereof stored in a particular location has been lost, damaged or destroyed. In such an event, the Secretary of State shall be permitted to create a new copy of the Escrow Documents or part thereof from the other copy Placed in Escrow and shall within seven days notify the Franchisee accordingly and afford it the right to make reasonable inspections in order to satisfy itself that a "complete and accurate" copy has been made. Following the making of such a new copy of the Escrow Documents, the Secretary of State shall retain all copies of the Escrow Documents in accordance with paragraph 2.1(b);
- (d) within seven days of receipt of a notice from the Franchisee stating that the Escrow Documents are required for the purposes of a Run of the Financial Model in relation to any Change, or should the Secretary of State himself so decide that the Escrow Documents are required by the Franchisee or by the Secretary of State for such purposes release one copy of the Escrow Documents accordingly and retain one copy of the Escrow Documents in escrow in accordance with paragraph 2.1(b);
- (e) maintain a record of any release of any copy of any version of the Escrow Documents made, including details of any version released and the date of release as well as the identity of the person to whom the Escrow Documents are released;
- (f) have no obligation or responsibility to any person whatsoever to determine the existence, relevance, completeness, accuracy, effectiveness or any other aspect of the Escrow Documents; and
- (g) not be liable for any loss, damage or destruction caused to the Franchisee arising from any loss of, damage to or destruction of the Escrow Documents.

2.2 If the Franchisee fails to perform a Run of the Financial Model pursuant to paragraph 6.2(a) of Schedule 9.1 (Financial and Other Consequences of Change) or fails to return the copy of the Escrow Documents released pursuant to paragraph 2.1(d):

- (a) such failure to perform or to return the released copy to the Secretary of State shall be a contravention of the Franchise Agreement;
- (b) the Secretary of State may release the other copy of the Escrow Documents Placed in Escrow and take a copy thereof (the "**Replacement Copy**") in order that the Secretary of State may perform a Run of the Financial Model pursuant to paragraph 6.2(a) of Schedule 9.1 (Financial and Other Consequences of Change);
- (c) once copied, the second copy of the Escrow Documents released pursuant to this paragraph 2.2 shall be Placed in Escrow; and
- (d) once the Run of the Financial Model has been approved or audited as provided for in paragraph 7 of Schedule 9.1 (Financial and Other

Consequences of Change), two copies of the Replacement Copy shall also be Placed in Escrow.

- (e) Nothing in this Schedule 9.2 shall prevent the Secretary of State or the Franchisee each retaining for their working use one or more copies of any of the Escrow Documents Placed in Escrow provided that no such working copy shall (unless otherwise explicitly agreed by the parties) be regarded as a copy released from Escrow for the purposes of this Schedule 9.2 or any Run of the Financial Model.

3. **Errors in Escrow Documents**

3.1 Any feature of the Escrow Documents which is in the reasonable opinion of the Secretary of State an error will be addressed as follows:

- (a) if rectification of such an error would (as the case may be) over the Franchise Term result in a net increase in the amount of Franchise Payments payable by the Secretary of State to the Franchisee or a net decrease in the amount of Franchise Payments payable by the Franchisee to the Secretary of State then such error shall be rectified provided that there shall not be a restatement of the values of the Annual Franchise Payment Components;
- (b) if rectification of such an error would (as the case may be) over the Franchise Term result in a net decrease in the amount of Franchise Payments payable by the Secretary of State to the Franchisee or a net increase in the amount of Franchise Payments payable by the Franchisee to the Secretary of State then such error shall be rectified and the values of the Annual Franchise Payment Components shall be restated where appropriate;
- (c) a record of the error shall be noted in the Record of Assumptions and, if applicable, the Financial Model; and
- (d) as soon as reasonably practicable after the date of the rectification of the error, the Franchisee shall (unless otherwise agreed by the Secretary of State) deliver to the Secretary of State a certificate from independent auditors approved by the Secretary of State confirming that the error has been rectified as required by this paragraph 3 and is now in the required form in accordance with paragraphs 1.2(a), 1.2(b) or 1.2(c) as the case may be.

SCHEDULE 9.3**Secretary of State Risk Assumptions****TRSP SoSRAs****1. Interpretation**

1.1 In paragraphs 1.2(a) to 1.2(g) (inclusive) except where the context otherwise requires, words and expressions defined in the MDCTA shall have the same meaning when used herein;

1.2 A Qualifying Change shall occur if and whenever any of the events set out below in any of the following risk assumptions occur during the Franchise Term:

(a) there is a variation or amendment to any of the TRSP Documents (which shall for this purpose exclude a variation or amendment proposed by the Franchisee unless the Secretary of State (in his sole discretion) determines otherwise) for any reason or there is a termination of any of the TRSP Documents or of any party's obligations under any of the TRSP Documents for any reason. The following shall also be regarded as a variation or amendment to the TRSP Document for these purposes:

(i) a variation which is made using any of the change processes in any of the TRSP Documents or otherwise (including any Run of the Owner Financial Model, Run of the TMM Financial Model, Run of the TSSSA Financial Model or Run of the Depot SPC Financial Model (as the case may be);

(ii) any exercise of any Priced Option under the TRSP MSA;

(iii) any refinancing arrangements under any of the TRSP Documents;

(iv) the commissioning and testing of the Depot Works (including any work associated with Introducing Into Operational Use) happening earlier than envisaged in the Contract Programme or the Depot Phasing Plans (as such terms are defined in the DAFLs) or there is a Closure (as such term is defined in the DAFLs);

(v) any Permitted Delay or any Permitted Depot Delay under any of the TRSP Documents. In this case, any such Change shall not take account of any increased costs or increased liabilities or other adverse impacts on the Franchisee consequent upon the occurrence of any Permitted Delay falling within limb (a) of the definition of Permitted Delay or in the case of Permitted Depot Delay any such delay arising by reason of any breach by the Franchisee of its obligations under any of the DAFLs;

(vi) any of the TRSP Documents is subject to a Force Majeure Event or there is any variation or termination of a TRSP Document as a consequence of a Force Majeure Event;

- (vii) any Change in Law (whether or not requiring a Mandatory Modification) which affects any of the TRSP Documents;
 - (viii) any assignment or other transfer of the rights and/or obligations of any party (other than the Franchisee at the end of the Franchise Period) under any of the TRSP Documents; and/or
 - (ix) any variation or amendment directed by the Secretary of State pursuant to paragraph 2.1(e) of Schedule 6.3 (TLP/TRSP Related Provisions); or
- (b) any of the TRSP Documents are terminated in accordance with their terms including on the occurrence of the following events:
- (i) on default by one or more of the parties to any of the TRSP Documents the Secretary of State:
 - (A) exercises his rights under the Umbrella Agreement to require the Franchisee to terminate or partially terminate any of the TRSP Documents in any of the circumstances described in paragraph 9.8 of the Umbrella Agreement which for these purposes shall include any of the following:
 - (1) a direction to the Franchisee to step into the obligations of any other party under any of the TRSP Documents;
 - (2) a TSSSA Requirement Notice being served in accordance with the Umbrella Agreement or the TSSSA is otherwise put into effect; and/or
 - (3) the Secretary of State does not grant his consent to the Franchisee exercising such rights as the Franchisee may have to terminate any such TRSP Document;
 - (ii) the Secretary of State exercises his rights under the Umbrella Agreement to:
 - (A) elect to terminate any of the TRSP Documents on the occurrence of an Uninsurable Risk; or
 - (B) voluntarily terminate any of the TRSP Documents in accordance with paragraph 1 of Schedule 2.7 of the Umbrella Agreement or clause 24 of the DAFLs; or
 - (iii) a Funding Shortfall Partial Termination occurs;
 - (iv) a Funding Availability Partial Termination occurs; or
 - (v) a Secretary of State Default occurs; or
 - (vi) without prejudice to the provisions of paragraph 2.3 of Schedule 6.3 (TLP/TRSP Related Provisions) the Owner

prevents the Franchisee from using or operating any of the Units in exercise of its rights under clause 13.1 of the Lease,

except that where any such termination of any TRSP Document has arisen as a result of any breach or default by the Operator then in agreeing or determining the relevant Revised Inputs no account shall be taken of any increased costs or increased liabilities or other adverse impacts of the Qualifying Change on the Franchisee;

- (c) the Fleet Rental is reduced as contemplated under paragraph 2 of Schedule 3.10 of the Lease. Where a Qualifying Change as contemplated under this paragraph 1.2(c) occurs there shall be a further Qualifying Change on the date that the Fleet Rental is reinstated to the amount that was payable prior to that reduction in accordance with the provisions of paragraph 3 of Schedule 3.10 of the Lease;
- (d) the Franchisee ceases to pay any Rentals in relation to any Unit in the circumstances contemplated in paragraph 4 of Schedule 3.10 of the Lease;
- (e) any of the Equipment is not delivered by its Expected Delivery Date. If a Qualifying Change as contemplated under this paragraph 1.2(e) occurs then in agreeing or determining the Revised Inputs the following shall apply:
 - (i) the parties shall take into account:
 - (A) any compensation amounts received or due to be received by the Franchisee from the TMM under the relevant TRSP Documents consequent upon the late delivery of any of the Equipment to the extent that any such amounts are not reimbursed to the TMM pursuant to paragraph 14.3 of schedule 6 of the TRSP MSA or paragraph 8.3 of schedule 13 of the TRSP MSA; and/or
 - (B) any liquidated damages received or due to be received by the Franchisee from the Owner pursuant to clauses 7.1, 7.5 and/or 7.6 of the Lease; and
 - (ii) no account shall be taken of:
 - (A) any liquidated damages payable by the Franchisee to the Owner pursuant to:
 - (1) clause 7.3 and/or clause 7.6 of the Lease to the extent that the obligation to pay the Owner liquidated damages under such clauses has arisen as a result of an event falling within paragraph (a) of the definition of Permitted Delay; and/or
 - (2) clause 7.5 of the Lease; and/or
 - (B) any other increased costs or increased liabilities or other adverse impacts to the Franchisee to the extent that any such increased costs, increased liabilities or adverse impacts has arisen as a result of a breach by

the Franchisee of any of its obligations under any of the TRSP Documents; and

- (iii) where a Qualifying Change as contemplated under this paragraph 1.2(e) occurs there shall be a further Qualifying Change on the date that any such delayed Equipment is Accepted; or
- (f) the circumstances described in paragraph 7.1 of Schedule 6.3 of the TSA occurs at any time during the Franchise Period; or

(g) **Platform Works SoSRA (Capital Costs)**

- (i) subject to:
 - (A) the Franchisee demonstrating to the reasonable satisfaction of the Secretary of State that it has complied with its obligations in paragraph 1.2(g)(ii); and
 - (B) the Franchisee notifying the Secretary of State prior to the commencement of any such Platform Works,

the Franchisee becomes liable under any of clauses 6.20 and/or 6.21 of the MSA to undertake any platform modifications that are necessary for the purposes of ensuring that the relevant stepping distances comply with the Applicable Laws and Standards (the "**Platform Works**") as a consequence of Network Rail not undertaking any such Platform Works. In agreeing or determining the Revised Inputs for the purposes of this Qualifying Change account shall be taken of only the capital costs incurred by the Franchisee in undertaking the Platform Works.

- (ii) The Franchisee shall:
 - (A) use all reasonable endeavours to manage the stepping distance to and from the Vehicle doorway within its Safety Management System so as to remove the need for or reduce the extent of some or all of the Platform Works;
 - (B) ensure that any Platform Works it undertakes are necessary for the purposes of ensuring that the stepping distances to and from each Vehicle doorway comply with Applicable Laws and Standards; and
 - (C) use all reasonable endeavours to ensure that the costs for undertaking the Platform Works are as low as reasonably practicable.
- (iii) At the request of the Secretary of State the Franchise shall promptly provide to the Secretary of State such information and supporting evidence as the Secretary of State may require for the purposes of verifying the costs for undertaking the Platform Works;

Southern Sub Lease Arrangements

- (h) **[REDACTED⁴³⁰]**
- (i) the Franchisee is required by the Secretary of State pursuant to paragraph 4 of Schedule 6.4 (Integration of the Southern Franchise Services) to enter into HLOS Phase 2 Sub Lease, HLOS Phase 2 Lease or Subsequent HLOS Phase 2 Sub Lease (as applicable) with the Southern Franchisee on terms which are materially inconsistent with:
- (i) in the case of the HLOS Phase 2 Lease, the terms of the document in the agreed terms marked **SOL**; and
 - (ii) in the case of the HLOS Phase 2 Sub Lease or Subsequent HLOS Phase 2 Sub Lease (as applicable) the following principle terms:
 - (A) the services to be provided by the Southern Franchisee will be substantially the same as specified in the document in the agreed terms marked **SOL**;
 - (B) in addition to the payments specified in the document in the agreed terms marked **SOL**, the HLOS Phase 2 Sub Lease or Subsequent HLOS Phase 2 Sub Lease (as applicable) shall provide for the payments of amounts equal to all rental, maintenance reserve and other amounts payable by the Southern Franchisee to the lessor under the HLOS Southern Operating Lease and other associated agreements; and
 - (C) the HLOS Phase 2 Sub Lease or Subsequent HLOS Phase 2 Sub Lease (as applicable) shall terminate upon expiry or termination of the HLOS Southern Operating Lease and in any case shall expire on 01:59 on 26 July 2015 or if later the date of expiry of the Previous Franchise Agreement to which the Southern Franchisee is a party;
- (j) the Franchisee does not enter into a HLOS Phase 2 Sub Lease, HLOS Phase 2 Lease or Subsequent HLOS Phase 2 Sub Lease (as applicable) with the Southern Franchisee as contemplated in paragraph 4.1 or 4.2 of Schedule 6.4 (Integration of the Southern Franchise Services); or
- (k) any of the HLOS Phase 2 Core Units fail to reach Acceptance on or before its Contractual Acceptance Date. If a Qualifying Change as contemplated under this paragraph 1.2(k) occurs then in agreeing or determining the Revised Inputs the parties shall take into account any Delay LDs received by the Franchisee from the Manufacturer under the HLOS Phase 2 MSA

⁴³⁰ 5 November 2014 (Date of Redactions Approval) – Where text has been omitted from the document this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

(whether in its capacity Financier or Operator under the HLOS Phase 2 MSA). For the purposes of this paragraph 1.2(k), "**Contractual Acceptance Date**", "**Delay LDs**" and "**Operator**" shall each have the meaning given to such term in the HLOS Phase 2 MSA;

Cascade Arrangements

- (l) where the provisions of paragraph 4.5(b)(ii) or 4.5(d)(i) of Schedule 6.4 (Integration of the Southern Franchise Services) apply, the Secretary of State:
- (i) does not exercise his rights in any of paragraphs 4.5(b)(i)(A) or 4.5(d)(i)(A) of Schedule 6.4 (Integration of the Southern Franchise Services) to require the Franchisee to enter into the sub leasing arrangements as contemplated in each such paragraph and, in the case of paragraph 4.5(b)(i)(A) of Schedule 6.4, on the date specified therein in respect of a HLOS Phase 2 Core Unit; or
 - (ii) does not exercise his rights in any of paragraphs 4.5(b)(i)(B) or 4.5(d)(i)(B) of Schedule 6.4 (Integration of the Southern Franchise Services) to require the Franchisee to enter into a deed of novation as contemplated in each such paragraphs, and in the case of paragraph 4.5(b)(i)(B) of Schedule 6.4, on the date specified therein in respect of the last HLOS Phase 2 Core Unit; or
 - (iii) exercises his rights in paragraph 4.5(d)(i) of Schedule 6.4 (Integration of the Southern Franchise Services) to require the Franchisee to enter into the sublease arrangements as contemplated in paragraph 4.5(d)(i)(A) of Schedule 6.4 (Integration of the Southern Franchise Services) or a deed on novation as contemplated in paragraph 4.5(d)(i)(B) of Schedule 6.4; or
- (m) where the provisions of paragraph 4.5(c)(ii) or 4.5(d)(ii) of Schedule 6.4 (Integration of the Southern Franchise) apply, the Secretary of State:
- (i) does not require the Franchisee to cease the leasing of an HLOS Phase 2 Core Unit as contemplated in paragraphs 4.5(c)(i); or
 - (ii) exercises his rights in paragraph 4.5(d)(ii) to require the Franchisee to cease to lease some or all of the HLOS Phase 2 Core Units;

HLOS Phase 2 Core Units are refinanced prior to the Combined Effective Date

- (n) in circumstances where the HLOS Southern Operating Lease is transferred or novated to the Franchisee pursuant to paragraph 4.5(a) of Schedule 6.4 (Integration of the Southern Franchise services), there is a difference between the Assumed HLOS Sub Lease Amounts (as such term is defined in paragraph 1 of this Schedule 9.3) and the Southern Lessor Lease Amounts. For the purposes of this paragraph 1.2(n), "**Southern Lessor Lease Amounts**" means the actual amounts of rentals payable by the Franchisee to the lessor under the HLOS Southern Operating Lease; or

HLOS Phase 2 Core Units are not refinanced prior to the Combined Effective Date

- (o) if on the transfer of the Relevant HLOS Phase 2 Agreements to the Franchisee pursuant to the novation specified in paragraph 4.5(a) of Schedule 6.4 (Integration of the Southern Franchise Services) or under the Combined Effective Date Transfer Scheme, the Franchisee steps into the HLOS Phase 2 MSA as Financier in place of the Southern Franchisee. In agreeing or determining the Revised Inputs for the purposes of this Qualifying Change the following shall apply:
- (i) no Revised Inputs shall be made in respect of the costs for undertaking any of the maintenance and stabling activities in respect of the HLOS Phase 2 Core Units on the basis that this has already been accounted for in the Financial Model and the Record of Assumptions applicable as at the Start Date;
 - (ii) no Revised Inputs shall be made in respect of the costs to be incurred by the Franchisee for the purposes of complying with its obligations under paragraph 4.7 of Schedule 6.4 (Integration of the Southern Franchise Services) on the basis that this will be accounted for as set out in paragraph 4.7(i) of Schedule 6.4 (Integration of the Southern Franchise Services);
 - (iii) the Revised Inputs shall take account of the amounts assumed by the Franchisee in its Financial Model and Records of Assumptions as being payable under the under the HLOS Phase 2 Sub Lease, HLOS Phase 2 Lease or Subsequent HLOS Phase 2 Sub Lease (as applicable) for the leasing of the HLOS Phase 2 Core Units (that is excluding any amounts assumed in relation to maintenance), on the basis that the Franchisee as Financier will be the owner of the HLOS Phase 2 Core Units and so will be under no obligation to make any lease payments to any person; and
 - (iv) no Revised Inputs shall be made in respect of the Outstanding Contract Price on the basis that this will be accounted for as set out in paragraph 4.6 of Schedule 6.4 (Integration of the Southern Services); or

HLOS Phase 2 Core Units are refinanced after the Combined Effective Date

- (p) the circumstances specified in paragraph 4.7(i) of Schedule 6.4 (Integration of the Southern Franchise Services) occur; or

Track Access Charges SoSRA

- (q) there is a difference between the Assumed Track Charges and the Actual Track Charges. For the purposes of this paragraph 1.2(q):
- (i) **"Assumed Track Charges"** means the Track Charges payable under the Track Access Agreement that the Franchisee is required to enter into with Network Rail pursuant to paragraph 1.1(a) of Schedule 6.4 (Integration

of the Southern Franchise Services) (the "**Combined Franchise TAA**") as assumed by the Franchisee in its Financial Model and Record of Assumptions applicable as at the date of the Franchise Agreement, such Track Charges being as shown in the input rows that are specified as active in section 6.1 and section 6.2 ("A3 Inputs") of the Financial Model;

- (ii) "**Actual Track Charges**" means the amount of the Track Charges payable by the Franchisee to Network Rail under the Combined Franchise TAA; and
- (iii) "**Track Charges**" will have the meaning given to it under the Combined Franchise TAA; or

(r) **Schedule 4/Schedule 8 of the Combined Franchise TAA**

- (i) there is a difference between:
 - (A) the assumptions made by the Franchisee in its Financial Model and Record of Assumptions applicable as at the date of the Franchise Agreement in relation to the basis for the population of Annexes A, B and C to Part 3 of schedule 4 of the Combined Franchise TAA and paragraph 1 of part 5 of schedule 4 of the Combined Franchise TAA; and
 - (B) the manner in which those annexes and part 5 of schedule 4 are actually populated on the date that the Combined Franchise TAA becomes effective; and/or
- (ii) there is a difference between:
 - (A) the assumptions made by the Franchisee in its Financial Model and Record of Assumptions applicable as at the date of the Franchise Agreement in relation to the basis for the population of appendices 1 and 3 of schedule 8 of the Combined Franchise TAA; and
 - (B) the manner in which those appendices of schedule 8 are populated on the date that the Combined Franchise TAA becomes effective,

provided that, in each case, in agreeing or determining the Revised Inputs pursuant to this paragraph 1.2(r) no account shall be taken of any change to any aspect of the provisions of Schedule 4 and Schedule 8 of the Combined Franchise TAA to the extent that the benefit and/or risk associated with any such provisions is retained by the Secretary of State pursuant to paragraph 7 of Schedule 6.2 (TSGN Franchise Specific Provisions). The provisions of paragraph 7.1(c) of Schedule 6.2 (TSGN Franchise Specific Provisions) shall apply, mutatis mutandis, to the provisions of this paragraph 1.2(r); or

- (s) there is an increase or decrease in the Fixed Track Charges payable by the Franchisee to Network Rail under its Track Access Agreement and any such increase or decrease has arisen as a direct consequence of:

- (i) the addition of the Passenger Services described in paragraph (b) of the definition of the TGN Franchise Services; or
- (ii) the transfer of the operation of certain Passenger Services from the Franchisee to the LSER Franchisee at the direction of the Secretary of State contemplated to occur on or around January 2018.

For the purposes of this paragraph 1.2(s), "**Fixed Track Charges**" has the meaning given to it in the Track Access Agreement.

- 2. A Change shall occur if and whenever any of the events set out below in any of the following risk assumptions occur during the Franchise Term:
 - 2.1 the Secretary of State directs the Franchisee to agree and implement an amendment to, or terminate any LSER Thameslink Trading Agreement pursuant to paragraphs 8.1(a)(ii) or 8.1(a)(iii) of Schedule 6.2 (TSGN Franchise Specific Provisions);
 - 2.2 ⁴³¹ **the Secretary of State directs the Franchisee to agree and implement an amendment to, or terminate, a Class 377 Sub Lease pursuant to paragraphs 8.4(d)(ii) or 8.4(d)(iii) of Schedule 6.2 (TSGN Franchise Specific Provisions).**

For the purposes of the Change referred to in this paragraph 2.2, the Franchisee shall take all reasonable steps to [Redacted]⁴³²

- 2.3 the Secretary of State exercises his rights under paragraph 8.3(a) of Schedule 6.2 (TSGN Franchise Specific Provisions) to require the Franchisee to enter into leases in respect of the Transfer Stations on a date that is earlier or later than 21 December 2014;
- 2.4 ⁴³³
 - (a) **the Secretary of State exercises his rights under paragraph 8.4(b) of Schedule 6.2 (TSGN Franchise Specific Provisions) to require the Franchisee to enter into the Class 377 Sub Lease Version 2 on a date that is later than the date of expiry of the Class 377 (2017 LSER Capacity Enhancement) Sub-Lease Version 1;**

⁴³¹ 08/09/2017 (Date of Deed of Amendment) Contract variation agreed by the secretary of State and Franchisee.

⁴³² 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.

⁴³³ 08/09/2017 (Date of Deed of Amendment) Contract variation agreed by the secretary of State and Franchisee.

- (b) the Secretary of State exercises his rights under paragraph 8.4(c) to require the Franchisee to enter into an amended form of the Class 377 (2017 LSER Capacity Enhancement) Sub-Lease Version 2 on terms which are inconsistent with the form set out in Schedule 4 to the 2017 LSER Capacity Enhancement Deed of Amendment;
- (c) the Secretary of State does not, by the date of expiry of the Class 377 (2017 LSER Capacity Enhancement) Sub-Lease Version 1, direct the Franchisee to enter into the Class 377 (2017 LSER Capacity Enhancement) Sub-Lease Version 2 under paragraph 8.4(b) of Schedule 6.2 (TSGN Franchise Specific Provisions);
- (d) the Secretary of State gives notice under paragraph 1.2 of Schedule 18 (Additional Reporting Periods) that the Franchise Agreement shall [Redacted⁴³⁴]Sub-Lease Version 2; or
- (e) (in the event that there has been a Run of the Financial Model pursuant to Clause 4 of the LSER Capacity Enhancement Deed of Amendment and, for whatever reason, Clause 4.3.2 of the LSER Capacity Enhancement Deed of Amendment has not been activated in respect of such Run of the Financial Model) the end date of the LSER Franchise Agreement is a date that is earlier or later than 9 December 2018. Any Change pursuant to this Clause 2.4(e) shall automatically be a Qualifying Change.

[Redacted⁴³⁵]

For the purposes of the Change referred to in paragraph 2.4(d), [Redacted⁴³⁶] is referred to both in the definitions of Class 377 Sub-Lease and Class 377 (2017 LSER Capacity Enhancement) Sub-Lease Version 2 and in the form of the Class 377 (2017 LSER Capacity Enhancement) Sub Lease Version 2 at Schedule 4 of the 2017 LSER Capacity Enhancement Deed of Amendment, the parties acknowledge and agree that:

- (i) the Financial Model and the Record of Assumptions (each as revised following the Run of the Financial Model required by Clause 4 of the 2017 LSER Capacity Enhancement Deed of

434 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.

435 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.

436 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.

Amendment) shall assume that [Redacted⁴³⁷]Class 377 (2017 LSER Capacity Enhancement) Sub Lease Version 2 [Redacted]and

(ii) any Model Changes and/or Revised Inputs in relation to the Change referred to in paragraph 2.4(d) shall be progressed as if [Redacted⁴³⁸]Class 377 (2017 LSER Capacity Enhancement) Sub Lease Version 2 [Redacted]; "

- 2.5 the Secretary of State exercises his rights under paragraph 8.4(e) of Schedule 6.2 (TSGN Franchise Specific Provisions) to require the Franchisee to incur further costs or liabilities as a term of consent or agree to any amendment, variation or supplement to the proposed terms of the Class 377 Sub Lease;
- 2.6 the Secretary of State directs the Franchisee to agree and implement an amendment to, or terminate any Southern Trading Agreement pursuant to paragraphs 9.1(b) or 9.1(c) of Schedule 6.2 (TSGN Franchise Specific Provisions);
- 2.7 there is a material change to the actual implementation plans (including the relevant timescales for the delivery of such plans) adopted by Network Rail in respect of the ERTMS Programme when compared to the plans as specified in the Proposed ERTMS Implementation Plan and, as a result, after taking into account any compensation that the Franchisee is entitled to claim whether under Schedule 4 of the Track Access Agreement, Condition G.2 of the Network Code or otherwise (and for these purposes it shall be assumed that the Track Access Agreement complies with the requirements of paragraph 6.3 of Schedule 6.2 (TSGN Franchise Specific Provisions)), the Franchisee is financially better off than would otherwise have been the case; or
- 2.8 the Franchisee is directed by the Secretary of State pursuant to any of paragraphs 2.1 or 2.2 of Schedule 5.9 (ITSO Certified Smartmedia) (as the case may be) to enter into the Southern SEFT Deed or the TGN SEFT Deed on terms which are materially inconsistent with:
- (a) in the case of the Southern SEFT Deed, the assumptions contained in the document in the agreed terms marked **SSD**; or
 - (b) in the case of the TGN SEFT Deed, the assumptions contained in the document in the agreed terms marked **TSD**.

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Derogations

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APPENDIX TO SCHEDULE 9.3⁴³⁹

Assumed HLOS Sub Lease Amounts

					-	-	-	-	-
					-	-	-	-	-

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Derogations

⁴³⁹ Where text has been omitted from the document this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

SCHEDULE 9.4**Component of FAT: Definition of Threshold Amount**

Column 1	Column 2	Column 3	[REDACTED⁴⁴⁰]
From	To	Franchisee Year	
14 September 2014	30 June 2015	Year 1 (Part Year)	
01 July 2015	30 June 2016	Year 2	
01 July 2016	30 June 2017	Year 3	
01 July 2017	30 June 2018	Year 4	
01 July 2018	30 June 2019	Year 5	
01 July 2019	30 June 2020	Year 6	
01 July 2020	30 June 2021	Year 7	
01 July 2021	18 September 2021	Year 8 (Part Year - Core)	
19 September 2021	30 June 2022	Year 8 (Part Year - Extension)	
01 July 2022	30 June 2023	Year 9 (Extension)	
01 July 2023	16 September 2023	Year 10 (Extension)	

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Derogations

⁴⁴⁰ 5 November 2014 (Date of Redactions Approval) – Where text has been omitted from the document this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

SCHEDULE 9.5**Variations to the Franchise Agreement and Incentivising Beneficial Changes**

1. **Variations to the Franchise Agreement and Incentivising Beneficial Changes**
- 1.1 The terms of the Franchise Agreement may be varied as follows but not otherwise:
 - (a) by the Secretary of State as contemplated (where relevant) in the Invitation to Tender, in relation to:
 - (i) any aspect of the Franchise Services; and/or
 - (ii) any provision of the Franchise Agreement other than those provisions specified in paragraph 1.2,

by service of a notice on the Franchisee referring to this paragraph 1.1(a) and setting out the variation to the terms of the Franchise Agreement; and
 - (b) in relation to any other provision of the Franchise Agreement, by agreement in writing between the parties to that effect,

(each a "**Variation**").
- 1.2 Without prejudice to the Secretary of State's rights under paragraph 1.1(a), the terms of each of:
 - (a) clause 4 (Term) of this Agreement;
 - (b) Schedules 8 (Payments), 9 (Changes and Variations), 10 (Remedies, Termination and Expiry), 12 (Financial Obligations and Covenants), 14 (Preservation of Assets), 18 (Additional Reporting Periods) and Schedule 19 (Other Provisions); and
 - (c) the definitions set out at clause 2 (Definitions) of this Agreement insofar as such affect the respective rights and obligations of the Secretary of State and the Franchisee pursuant to the provisions referred to at (a) and (b) above,

shall not be varied at any time other than in accordance with the terms of this Agreement or with the agreement of the parties.
- 1.3 The Secretary of State shall, to the extent reasonably practicable, allow the Franchisee a reasonable opportunity to make representations to the Secretary of State concerning any Variation to be made in accordance with paragraph 1.1(a), prior to making any such Variation.
- 1.4 The Secretary of State may:
 - (a) issue, revise and withdraw from time to time procedures that he requires to be followed for the purposes of orderly consideration of Variations. This will include for the purpose of establishing in relation to any Change whether it is a Qualifying Change; and

- (b) require the Franchisee to provide any information that the Secretary of State reasonably requires for this purpose (including in relation to prospective change to profit, costs and revenue as a consequence of proceeding with the Variation).
- 1.5 Procedures issued pursuant to paragraph 1.4 may provide for indicative iterations of Runs of the Financial Model in relation to one or more Changes that the Secretary of State is considering and may also provide for any number of Changes to be grouped together as a single Change for the purposes of agreeing or determining Revised Inputs and then performing a Run of the Financial Model.
- 1.6 Procedures issued pursuant to paragraph 1.4 shall have contractual effect between the parties in accordance with their terms.
- 1.7 The Franchisee may notify the Secretary of State of any proposal for a Variation by notice setting out the proposed method of implementing such Variation including:
- (a) the timescale for doing so;
 - (b) the effect (if any) on the timing of the performance of its other obligations under the Franchise Agreement;
 - (c) the impact of effecting the proposed Variation on the provision of the Franchise Services and the Franchisee's proposals as to how to minimise such impact; and
 - (d) the financial consequences of implementing the Variation proposed by the Franchisee in terms of the Revised Inputs that the Franchisee considers the Variation would require.
- 1.8 Not used.
- 1.9 Where the Franchisee proposes a Variation in sufficient detail for it to be apparent that its implementation is likely to result in an increase in the overall profitability of the Franchisee through costs saving measures (a "**Protected Proposal**"), the Secretary of State may not proceed with the Protected Proposal or seek to implement the substance of it by proposing a Variation of his own without complying with the provisions of paragraph 5.3 of Appendix 2 (Agreement or Determination of Revised Inputs) to Schedule 9.1 (Financial and Other Consequences of Change).
- 1.10
- (a) The Franchisee and the Secretary of State acknowledge that the Franchisee may during the Franchise Term identify actions that could be taken by the Franchisee to achieve savings and improved financial performance and that such actions may if implemented give rise to a Change under the terms of this Agreement which, if it is a Qualifying Change, will give a financial benefit to the Secretary of State. It is further acknowledged that it is appropriate for the Franchisee to seek to identify such actions for the purposes of improving the cost effective delivery of railway passenger services.
 - (b) To incentivise the Franchisee to seek to identify such actions it is agreed that the Franchisee may approach the Secretary of State with a proposal to take an action that would constitute a Change on the basis that if such

a Change occurred and was a Qualifying Change in agreeing or determining the Revised Inputs the parties or the Secretary of State would effect such change (if any) to the amount attributable to profit as they agree or the Secretary of State reasonably determines:

- (i) fairly rewards the Franchisee for proposing the Change; and
 - (ii) reasonably incentivises the Franchisee to propose further Changes that achieve savings and/or improved financial performance by sharing with the Franchisee a reasonable amount of the additional profit that is expected to arise from implementing the relevant Change.
- (c) The Secretary of State shall have an unfettered discretion as to whether or not to agree such a proposal but if he does so agree and a Qualifying Change in consequence occurs then in agreeing or determining Revised Inputs the provisions referred to in sub paragraph (b) above shall apply.

2. **Capital Expenditure**

Capital Expenditure Threshold

2.1 The Franchisee shall notify the Secretary of State promptly if it reasonably expects that a Change to which paragraph 1 relates would require it to incur, singly or in aggregate with other Changes from time to time, Capital Expenditure in excess of one per cent. of its annual Turnover as disclosed by its latest available Annual Audited Accounts and, when so notified, the Secretary of State shall either:

- (a) withdraw the Change;
- (b) undertake to meet the excess through additional funding as and when such Capital Expenditure is incurred; or
- (c) direct the Franchisee to use all reasonable endeavours to borrow or otherwise raise the money required to fund any Change on commercial terms and at rates which are consistent with market conditions at the time, unless borrowing or otherwise raising such money would result in the Franchisee failing to comply with the financial covenants contained in Schedule 12 (Financial Obligations and Covenants).

Franchisee to Seek Finance

2.2 If the Secretary of State elects to require the Franchisee to use all reasonable endeavours as described in paragraph 2.1(c) then the Franchisee shall:

- (a) seek finance from a representative range of lending institutions and other financial institutions including those which at that time provide finance to the Franchisee, the Parent and/or the Ultimate Parent;
- (b) if it is unable to raise funding, provide the Secretary of State with all information the Secretary of State may reasonably require in relation to the efforts made by the Franchisee and the reasons for a failure to raise additional finance;
- (c) so far as it is able (having used all reasonable efforts to do so), the Franchisee shall provide to the Secretary of State letters from lenders and financiers it has approached for finance stating their reasons for refusing

to provide it and if the Secretary of State so requires, arrange and attend meetings with them for the Secretary of State to discuss those reasons; and

- (d) if funding is not available, or is not available on terms that the Secretary of State considers to be commercial terms or at rates which are consistent with market conditions at that time the Secretary of State may:
 - (i) withdraw the Change; or
 - (ii) undertake to fund the Capital Expenditure as and when such Capital Expenditure is incurred.

Treatment of Borrowings in Revised Inputs

- 2.3 In calculating the Revised Inputs for the purposes of any Change referred to in this paragraph 2, the Franchisee shall account for the Capital Expenditure in accordance with GAAP, taking into account the basis on which such Capital Expenditure has been financed.

Meaning of Capital Expenditure

- 2.4 The expression Capital Expenditure when used in this Schedule 19 refers to the nature of the expenditure incurred by the Franchisee and, accordingly, does not include expenditure incurred under operating leases.

SCHEDULE 10

Remedies, Termination and Expiry

- Schedule 10.1: Remedial Plans and Remedial Agreements**
- Schedule 10.2: Termination and Expiry**
- Schedule 10.3: Events of Default and Termination Events**
- Schedule 10.4: Force Majeure**
- Schedule 10.5: Liability**

SCHEDULE 10.1**Remedial Plans and Remedial Agreements****1. Remedies for Contraventions of the Franchise Agreement**

- 1.1 If the Secretary of State is satisfied that the Franchisee is contravening or is likely to contravene any term of the Franchise Agreement he may serve a notice on the Franchisee requiring it to propose such steps as the Franchisee considers appropriate for the purpose of securing or facilitating compliance with the term in question (a "**Remedial Plan Notice**").

Contents of Remedial Plan Notices

- 1.2 Each Remedial Plan Notice shall specify the following:
- (a) the term or terms of the Franchise Agreement that the Secretary of State is satisfied that the Franchisee is contravening or is likely to contravene (each a "**Relevant Term**"); and
 - (b) the time period within which the Secretary of State requires the Franchisee to provide an appropriate plan for the purpose of facilitating or securing compliance with any Relevant Term (a "**Remedial Plan**").

Contents of Remedial Plans

- 1.3 If the Secretary of State issues a Remedial Plan Notice, the Franchisee shall submit a Remedial Plan to the Secretary of State within the period specified in such Remedial Plan Notice.
- 1.4 Each Remedial Plan shall set out:
- (a) the Relevant Term which has caused a Remedial Plan to be required;
 - (b) an explanation of the reasons for the contravention or likely contravention of the Relevant Term;
 - (c) the steps proposed for the purposes of securing or facilitating compliance with the Relevant Term; and
 - (d) the time period within which the Franchisee proposes to implement those steps.

Remedial Agreements

- 1.5 If the Secretary of State is satisfied that the matters referred to in paragraph 1.4(c) and (d) are appropriate (with or without further modification as the parties may agree) he may require the Franchisee to enter into a supplemental agreement (the "**Remedial Agreement**") with the Secretary of State to implement those matters.
- 1.6 It is a term of the Franchise Agreement that the Franchisee (at its own cost) complies with the Remedial Agreement in accordance with its terms.

Effect of Force Majeure Event

- 1.7 Without prejudice to the operation of paragraph 3.2 of Schedule 10.4 (Force Majeure), the following provisions shall apply in relation to Force Majeure Events affecting performance of a Remedial Agreement:
- (a) the Franchisee shall give written notice to the Secretary of State promptly after it becomes aware (and in any event within 24 hours after becoming aware) of the occurrence or likely occurrence of a Force Majeure Event which will or is likely to affect the Franchisee's ability to comply with a Remedial Agreement within the period specified therein;
 - (b) each notice submitted in accordance with paragraph 1.7(a) shall state the extent or likely extent of the relevant Force Majeure Event and, in the case of a Force Majeure Event which has not occurred at such time, the reasons why the Franchisee considers it likely to occur;
 - (c) the Franchisee shall use, and shall continue to use, all reasonable endeavours to avoid or reduce the effect or likely effect of any Force Majeure Event on its ability to comply with any Remedial Agreement; and
 - (d) subject to the Franchisee having complied with its obligations under paragraphs 1.7(a) to 1.7(c) (inclusive) the Franchisee shall be entitled to a reasonable extension of the remedial period applicable to a Remedial Agreement in order to take account of the effect of a Force Majeure Event which has occurred on the Franchisee's ability to comply with any Remedial Agreement.

Occurrence of a Contravention

- 1.8 Following the occurrence of a contravention of the Franchise Agreement, the Secretary of State may at his option (but shall not be obliged to) commence or increase the level and/or frequency of monitoring (whether by inspection, audit or otherwise) of the Franchisee's performance of any relevant obligations until such time as the Franchisee demonstrates, to the Secretary of State's reasonable satisfaction, that it is capable of performing and will perform such obligations as required by the Franchise Agreement.
- 1.9 The Franchisee shall co-operate fully with the Secretary of State in relation to the monitoring referred to in paragraph 1.8.
- 1.10 The results of such monitoring will be reviewed at each Franchise Performance Meeting held pursuant to Schedule 11 (Agreement Management Provisions).
- 1.11 The Franchisee shall compensate the Secretary of State for all reasonable costs incurred by the Secretary of State in carrying out such monitoring.

SCHEDULE 10.2**Termination and Expiry****1. Termination Notices**

1.1 The Secretary of State may, on and at any time after the occurrence of:

- (a) (subject to paragraphs 1.2 and 1.3) an Event of Default which:
 - (i) is unremedied or continuing; and
 - (ii) the Secretary of State considers to be material; or
- (b) a Termination Event specified in paragraph 3.1(a) of Schedule 10.3 (Events of Default and Termination Events) which is unremedied or continuing; or
- (c) a Termination Event specified in any of paragraphs 3.1(b) to 3.1(d) of Schedule 10.3 (Events of Default and Termination Events),

terminate the Franchise Agreement by serving a Termination Notice on the Franchisee. The Franchise Agreement shall terminate with effect from the date specified in any such Termination Notice.

1.2 The Secretary of State may not serve a Termination Notice in respect of an Event of Default in relation to which a Remedial Plan Notice has been issued until the period has expired within which the Franchisee is required to deliver to the Secretary of State the Remedial Plan specified in such Remedial Plan Notice.

1.3 The Secretary of State may not serve a Termination Notice in respect of an Event of Default for which the Franchisee is implementing a Remedial Agreement in accordance with its terms.

2. Consequences of Termination or Expiry

2.1 Upon termination of the Franchise Agreement (whether through default or effluxion of time or otherwise) the obligations of the parties shall cease except for:

- (a) any obligations arising as a result of any antecedent contravention of the Franchise Agreement;
- (b) any obligations which are expressed to continue in accordance with the terms of the Franchise Agreement; and
- (c) any other obligations which give effect to such termination or to the consequences of such termination or which otherwise apply (expressly or impliedly) on or after such termination.

2.2 Nothing in this paragraph 2 shall prevent the Secretary of State from bringing an action against the Franchisee in connection with the termination of the Franchise Agreement prior to the expiry of the Franchise Term.

SCHEDULE 10.3**Events of Default and Termination Events****1. Provisions Relating to Events of Default****Contravention**

- 1.1 The occurrence of an Event of Default shall constitute a contravention of the Franchise Agreement by the Franchisee.

Notification of Event of Default

- 1.2 The Franchisee shall notify the Secretary of State as soon as reasonably practicable on, and in any event within 24 hours of, it becoming aware of the occurrence of an Event of Default or an event which is likely to result in the occurrence of an Event of Default. The Franchisee shall take such action or steps as the Secretary of State may require to remedy any Event of Default or potential Event of Default.

Consequences of Event of Default

- 1.3 On the occurrence of an Event of Default, the provisions of Schedule 10.1 (Remedial Plans and Remedial Agreements) shall apply.

2. Events of Default

Each of the following is an Event of Default:

Insolvency**2.1**

- (a) **Administration:** Any step being taken by any person with a view to the appointment of an administrator to the Franchisee, the Parent, any of the Ultimate Parents or any Bond Provider;
- (b) **Insolvency:** Any of the Franchisee, the Parent, any of the Ultimate Parents or Bond Provider stopping or suspending or threatening to stop or suspend payment of all or, in the reasonable opinion of the Secretary of State, a material part of (or of a particular type of) its debts, or being unable to pay its debts, or being deemed unable to pay its debts under Section 123(1) or (2) of the Insolvency Act 1986 except that in the interpretation of this paragraph the words "it is proved to the satisfaction of the court that" in sub-section (1)(e) and sub-section (2) of Section 123 shall be deemed to be deleted;
- (c) **Arrangements with Creditors:** The directors of the Franchisee, the Parent, any of the Ultimate Parents or any Bond Provider making any proposal under Section 1 of the Insolvency Act 1986, or any of the Franchisee, the Parent, any of the Ultimate Parents or any Bond Provider proposing or making any agreement for the deferral, rescheduling or other readjustment (or proposing or making a general assignment or an arrangement or composition with or for the benefit of creditors) of all or, in the reasonable opinion of the Secretary of State, a material part of (or of a

particular type of) its debts, or a moratorium being agreed or declared in respect of or affecting all or, in the reasonable opinion of the Secretary of State, a material part of (or of a particular type of) its debts;

- (d) **Security Enforceable:** Any step being taken to enforce security over or a distress, execution or other similar process being levied or served against any property of the Franchisee or the whole or a substantial part of the assets or undertaking of the Franchisee, the Parent, any of the Ultimate Parents or any Bond Provider, including the appointment of a receiver, administrative receiver, manager or similar person to enforce that security;
- (e) **Stopping Business/Winding-Up:** Any step being taken by the Franchisee, the Parent, any of the Ultimate Parents or any Bond Provider with a view to its winding-up or any person presenting a winding-up petition or any of the Franchisee, the Parent, any of the Ultimate Parents or any Bond Provider ceasing or threatening to cease to carry on all or, in the reasonable opinion of the Secretary of State, a material part of its business, except for the purpose of and followed by a reconstruction, amalgamation, reorganisation, merger or consolidation on terms approved by the Secretary of State before that step is taken;
- (f) **Railway Administration Order:** A railway administration order being made in relation to the Franchisee under Sections 60 to 62 of the Act; and
- (g) **Analogous Events:** Any event occurring which, under the Law of any relevant jurisdiction, has an analogous or equivalent effect to any of the events listed in this paragraph 2.1,

subject, in the case of any relevant event occurring in relation to a Bond Provider where no such other Event of Default has occurred and is unremedied or continuing at such time, to a period of 20 business days having elapsed in order to allow the Franchisee to replace the relevant Bond Provider.

Non-payment

- 2.2 The Franchisee failing to pay to the Secretary of State any amount due under the Franchise Agreement within 28 days of the due date for such payment.

Change of Control

- 2.3 Otherwise than in accordance with a prior consent of the Secretary of State given under paragraph 4 of this Schedule 10.3, a change occurring in the identity of any one person, or two or more persons acting by agreement, who may Control the Franchisee on and from the date of the Franchise Agreement and during the Franchise Term, which shall include a person, or two or more persons acting by agreement, ceasing to Control the Franchisee at any time during the Franchise Term, whether or not any other person Controls the Franchisee at the same time (any such change a "**Change of Control**") and for the purposes of this paragraph 2.3, two or more persons shall be deemed to be acting by agreement in relation to the Franchisee if, assuming the Franchisee was a target company as defined in the Companies Act 2006, such persons would be under an obligation to disclose an interest in shares in such company by virtue of an agreement between such persons.

Revocation of Licence

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

Safety Certificate and Safety Authorisation

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

Passenger Service Performance

- 2.6 Except in respect of any Reporting Period falling within a No Breach Reporting Period, the Franchisee's performance in relation to any Benchmark exceeds (that is, is equal to or worse than) the Default Performance Level for that Benchmark for:
- (a) any three consecutive Reporting Periods;
 - (b) any four Reporting Periods within a period of 13 consecutive Reporting Periods; or
 - (c) any five Reporting Periods within a period of 26 consecutive Reporting Periods.

Remedial Agreements and Enforcement Orders

- 2.7
- (a) Non-compliance by the Franchisee with a Remedial Agreement, where such non-compliance is reasonably considered by the Secretary of State to be material.
 - (b) Non-compliance by the Franchisee with:
 - (i) a provisional order;
 - (ii) a final order;
 - (iii) a penalty; or
 - (iv) any other order made relating to contravention of either a relevant condition or requirement (as defined in Section 55 of the Act) or another order,in each case made by the Secretary of State under the Act.

TRSP Documents

- 2.8 Notice is served on the Secretary of State or the Secretary of State has reasonable grounds for considering that notice will be served by any other party to the TRSP Documents to terminate any such TRSP Document on the grounds of breach or default by the Franchisee of any of the terms and conditions of such TRSP Document.

Financial Ratios

- 2.9 Breach by the Franchisee of either or both of the financial ratios specified in paragraph 2 of Schedule 12 (Financial Obligations and Covenants).

Breach of Law

2.10

- (a) It becoming unlawful for the Franchisee to provide all or, in the reasonable opinion of the Secretary of State, a material part of the Passenger Services or to operate all or, in the reasonable opinion of the Secretary of State, a material number of the Stations or Depots (except to the extent not required so to do under the Franchise Agreement).
- (b) The Franchisee or any of the directors or senior managers of the Franchisee being convicted of manslaughter, fraud or any other indictable criminal offence in each case relating directly to the provision and operation of the Franchise Services.
- (c) The Franchisee being, in the reasonable opinion of the Secretary of State, in material non-compliance with a prohibition or enforcement order (or the equivalent thereof) issued by the ORR pursuant to its safety functions. If the Franchisee makes an appeal against such prohibition or enforcement order (or such equivalent thereof) in accordance with its terms, no Event of Default shall have occurred under this paragraph 2.10(c) until such appeal has been determined to be unsuccessful.

Contravention of Other Obligations

2.11 The occurrence of the following:

- (a) the Franchisee contravening to an extent which is reasonably considered by the Secretary of State to be material any one or more of its obligations under the Franchise Agreement (other than such non-performance or non-compliance as may constitute an Event of Default under the provisions of this Schedule 10.3 other than this paragraph 2.11);
- (b) the service by the Secretary of State on the Franchisee of a written notice specifying:
 - (i) such contravention; and
 - (ii) to the extent the contravention is capable of being remedied, the reasonable period within which the Franchisee is required to so remedy; and
- (c) the Franchisee contravening such obligation or obligations again to an extent which is reasonably considered by the Secretary of State to be material or permitting the contravention to continue or, if the contravention is capable of remedy, failing to remedy such contravention within such period as the Secretary of State has specified in the notice served pursuant to paragraph 2.11(b)(ii).

Non-membership of Inter-Operator Schemes

- 2.12 The Franchisee ceasing to be a member of, or ceasing to participate in or to be party to, any of the Inter-Operator Schemes, or having its membership or participation therein suspended.

Bonds

2.13

- (a) Any Performance Bond or Season Ticket Bond ceasing to be a legal, valid and binding obligation on the relevant Bond Provider (other than in accordance with its terms) or it otherwise becoming unlawful or impossible for any Bond Provider to perform its obligations thereunder;
- (b) A failure by the Franchisee to procure the provision to the Secretary of State of a Performance Bond (or Performance Bonds provided pursuant to paragraph 4.9 of Schedule 12 (Financial Obligations and Covenants)) which individually or in aggregate fulfil the requirements of Schedule 12 (Financial Obligations and Covenants); or
- (c) A failure by the Franchisee to procure the provision to the Secretary of State of a Season Ticket Bond which fulfils the requirements of Schedule 12 (Financial Obligations and Covenants).

Key Contracts

- 2.14 Termination of any Key Contract, or the failure by the Franchisee to take all reasonable steps to enter into an appropriate replacement contract prior to the scheduled expiry date of any Key Contract, except where requested by the Secretary of State or to the extent that the Franchisee has demonstrated to the reasonable satisfaction of the Secretary of State that for the duration of the Franchise Term:
- (a) it is no longer necessary for it to be party to such Key Contract; or
 - (b) it has made adequate alternative arrangements in order to be able to continue to provide and operate the Franchise Services.

Funding Deed/Funding Deed Guarantee

- 2.15 A failure by the Franchisee or the Parent to comply with their respective obligations under the Funding Deed and/or a failure by any of the Ultimate Parents to comply with their respective obligations under the Funding Deed Guarantee.

3. Termination Events

- 3.1 The Secretary of State may terminate the Franchise Agreement in accordance with Schedule 10.2 (Termination and Expiry) if:
- (a) any Force Majeure Event continues with the effect of preventing the Franchisee from delivering, wholly or mainly, the Passenger Services for more than six consecutive months; or
 - (b) the warranty given by the Franchisee pursuant to paragraph 6 of Schedule 12 (Financial Obligations and Covenants) is materially untrue; or

- (c) the Franchisee commits a material breach of its obligation to notify the Secretary of State of any Occasion of Tax Non-Compliance as required by paragraph 6.2(a) of Schedule 12 (Financial Obligations and Covenants); or
- (d) the Franchisee fails to provide details of proposed mitigating factors as required by paragraph 6.2(b) of Schedule 12 (Financial Obligations and Covenants) which in the reasonable opinion of the Secretary of State, are acceptable,

each a "**Termination Event**".

4. **Facilitation Fee**

- 4.1 The Franchisee may, at any time, apply in writing to the Secretary of State for his consent to a Change of Control (as such term is defined pursuant to paragraph 2.3).
- 4.2 The Secretary of State may require the Franchisee to pay a fee in consideration of the grant of such consent (the "**Facilitation Fee**").
- 4.3 The Secretary of State may require the Franchisee to pay an additional fee in respect of the staff, professional and other costs incurred by the Secretary of State in connection with the Franchisee's application (the "**Administration Fee**"). The Administration Fee shall be payable whether or not the Secretary of State consents to the proposed Change of Control.
- 4.4 On or after submitting such application to the Secretary of State, the Franchisee will provide, and will procure that the seller and the buyer provide, the Secretary of State with such documentation and information as the Secretary of State may require to assess such application and the amount of the Facilitation Fee. Without limiting paragraphs 4.9 or 4.10, it shall be deemed to be reasonable for the Secretary of State to delay or withhold consent to the Change of Control where any such documentation is not provided.
- 4.5 The Facilitation Fee shall be a sum equal to the greater of:
 - (a) pounds sterling one million (£1,000,000); or
 - (b) where the Estimated Profit Stream is greater than the Bid Profit Stream 5% of the difference between the Bid Profit Stream and the Estimated Profit Stream.
- 4.6 The Administration Fee shall be determined by the Secretary of State on the basis of:
 - (a) the aggregate time spent by officials within the Secretary of State's Department on matters relating to such application;
 - (b) the Secretary of State's hourly scale rates for such officials, as varied from time to time; and
 - (c) the aggregate costs and disbursements, including where applicable VAT and professional costs, incurred by the Secretary of State in connection with such application.
- 4.7 Any determination by the Secretary of State for the purposes of paragraphs 4.5 or 4.6 shall in the absence of manifest error be final and binding as between the

Secretary of State and the Franchisee (but without prejudice to the requirement of the Secretary of State to reasonably determine the Estimated Profit Stream).

- 4.8 Any consent by the Secretary of State to a Change of Control may be given subject to such conditions as the Secretary of State sees fit and the Franchisee shall, as applicable, comply with, and/or procure that the seller and/or the buyer comply with, any such conditions.
- 4.9 The Secretary of State shall have absolute discretion as to the grant of consent to any Change of Control and may accordingly refuse such consent for any reason he sees fit.
- 4.10 The Secretary of State shall have no liability whatever to the Franchisee in respect of any refusal of consent to a Change of Control, any delay in providing such consent, or any condition of such consent.

SCHEDULE 10.4**Force Majeure****1. Force Majeure Events**

The following events shall constitute Force Majeure Events, subject to the conditions specified in paragraph 2 being satisfied:

- (a) the Franchisee or any of its agents or subcontractors is prevented or restricted by Network Rail (including by virtue of the implementation of any Contingency Plan) from gaining access to any section or part of track (including any track running into, through or out of a station). For the purposes of this paragraph 1:
 - (i) references to a party being prevented or restricted from gaining access to any section or part of track shall mean that such party is not permitted to operate any trains on the relevant section or part of track, or is only permitted to operate a reduced number of trains from that which it was scheduled to operate;
 - (ii) the period of such prevention or restriction shall be deemed to commence with effect from the first occasion on which the Franchisee is prevented or restricted from operating a train on such section or part of track;
 - (iii) references in paragraphs 1(a)(i) and (ii) to the operation of trains include scheduled empty rolling stock vehicle movements; and
 - (iv) "**Contingency Plan**" means a contingency plan (as defined in the Railway Operational Code or where the Railway Operational Code ceases to exist such other replacement document of a similar or equivalent nature which contains a definition of contingency plan similar to that contained in the Railway Operational Code) implemented by and at the instigation of Network Rail, or such other contingency or recovery plan as the Secretary of State may agree from time to time;
- (b) the Franchisee or any of its agents or subcontractors is prevented or restricted by Network Rail or any Facility Owner (other than a Facility Owner which is an Affiliate of the Franchisee) from entering or leaving:
 - (i) any station or part thereof (excluding any prevention or restriction from gaining access to any section or part of track running into, through or out of a station); or
 - (ii) any depot or part thereof (including the movement of trains on tracks within any depot but excluding any prevention or restriction from gaining access to any track outside such depot running into or out of that depot);

- (c) any of the following events occurs:
- (i) a programme of Mandatory Modifications commences;
 - (ii) any Rolling Stock Units are damaged by fire, vandalism, sabotage or a collision and are beyond repair or beyond economic repair; or
 - (iii) a government authority prevents the operation of Rolling Stock Units on the grounds of safety,
- and, in each case, the greater of two Rolling Stock Units and ten per cent. of all rolling stock vehicles used by the Franchisee in the provision of the Passenger Services in relation to any Service Group are unavailable for use in the provision of the Passenger Services as a result of the occurrence of such event;
- (d) the Franchisee prevents or restricts the operation of any train on safety grounds provided that:
- (i) the Franchisee has, either before or as soon as reasonably practicable after initiating such prevention or restriction, sought the confirmation of the ORR in exercise of its safety functions, or any relevant other body with statutory responsibility for safety in the circumstances, of the necessity of such prevention or restriction; and
 - (ii) if and to the extent that the ORR, or other relevant body with statutory responsibility for safety in the circumstances, in exercise of its safety functions indicates that such prevention or restriction is not necessary, then no Force Majeure Event under this paragraph 1(d) shall continue in respect of that restriction or prevention after the receipt of such indication from the ORR or other relevant body;
- (e) act of God, war damage, enemy action, terrorism or suspected terrorism, riot, civil commotion or rebellion (together "**Emergency Events**") or the act of any government instrumentality (including the ORR but excluding the Secretary of State) in so far as the act of government instrumentality directly relates to any of the Emergency Events, provided that there shall be no Force Majeure Event under this paragraph 1(e) by reason of:
- (i) the suicide or attempted suicide of any person that does not constitute an act of terrorism;
 - (ii) the activities of the police, fire service, ambulance service or other equivalent emergency service that are not in response to acts of terrorism or suspected terrorism; or
 - (iii) an act of God which results in the Franchisee or its agents or subcontractors being prevented or restricted by Network Rail from gaining access to any relevant section or part of track; and

- (f) any strike or other Industrial Action by any or all of the employees of the Franchisee or any or all of the employees of:
 - (i) Network Rail;
 - (ii) the operator of any other railway facility; or
 - (iii) any person with whom the Franchisee has a contract or arrangement for the lending, seconding, hiring, contracting out or supervision by that person of train drivers, conductors, other train crew or station or depot staff used by the Franchisee in the provision of the Franchise Services,

or of the agents or sub-contractors of any such person listed in paragraphs 1(f)(i) to (iii) and for the purposes of this paragraph Industrial Action shall include any concerted action taken in connection with the employment of such employees (whether or not that action involves any breach of such employees' conditions of employment, and including any action taken in furtherance of a dispute, or with a view to improving the terms of employment of the relevant employees or by way of support for any other person) subject always, in the case of any unofficial Industrial Action, to the Franchisee being able to demonstrate the occurrence of such unofficial Industrial Action to the reasonable satisfaction of the Secretary of State.

2. **Conditions to Force Majeure Events**

- 2.1 The occurrence, and continuing existence of a Force Majeure Event shall be subject to satisfaction of the following conditions:
 - (a) in relation to an event occurring under paragraph 1(a), that event has continued for more than 12 consecutive hours;
 - (b) the Franchisee notifies the Secretary of State within two business days of it becoming aware or, if circumstances dictate, as soon as reasonably practicable thereafter, of:
 - (i) the occurrence or likely occurrence of the relevant event; and
 - (ii) the effect or the anticipated effect of such event on the Franchisee's performance of the Passenger Services;
 - (c) at the same time as the Franchisee serves notification on the Secretary of State under paragraph 2.1(b), it informs the Secretary of State of the steps taken and/or proposed to be taken by the Franchisee to prevent the occurrence of, and/or to mitigate and minimise the effects of, the relevant event and to restore the provision of the Passenger Services;
 - (d) the relevant event did not occur as a result of:
 - (i) any act or omission to act by the Franchisee or its agents or subcontractors, save that in respect of the occurrence of Industrial Action in accordance with paragraph 1(f), the provisions of paragraph 2.2 apply; or

- (ii) the Franchisee's own contravention of, or default under, the Franchise Agreement, any Access Agreement, Rolling Stock Related Contract, Property Lease or any other agreement;
- (e) the Franchisee used and continues to use all reasonable endeavours to avert or prevent the occurrence of the relevant event and/or to mitigate and minimise the effects of such event on its performance of the Passenger Services and to restore the provision of the Passenger Services as soon as reasonably practicable after the onset of the occurrence of such event; and
- (f) the Franchisee shall, to the extent reasonably so requested by the Secretary of State, exercise its rights and remedies under any relevant agreement to prevent the occurrence or recurrence of any such event and to obtain appropriate redress and/or compensation from any relevant person.

2.2 Where:

- (a) Industrial Action in accordance with paragraph 1(f) occurs as a result of an act or omission to act by the Franchisee or its agents or subcontractors;
- (b) the Secretary of State reasonably believes that it was reasonable for the Franchisee, its agents or subcontractors (as the case may be) so to act or omit to act; and
- (c) the other conditions specified in paragraph 2.1 have been satisfied, such occurrence shall be a Force Majeure Event.

3. **Consequences of Force Majeure Events**

On Obligations

- 3.1 The Franchisee shall not be responsible for any failure to perform any of its obligations under the Franchise Agreement, nor shall there be any contravention of the Franchise Agreement if and to the extent that such failure is caused by any Force Majeure Event.
- 3.2 If any Force Majeure Event continues, with the effect of preventing the Franchisee from delivering, wholly or mainly, the Passenger Services for more than six consecutive months, it shall be a Termination Event in accordance with paragraph 3.1(a) of Schedule 10.3 (Events of Default and Termination Events).

3.3 **Business Continuity**

First BCP

- (a) Within 1 month following the Start Date the Franchisee shall produce and provide to the Secretary of State a written Business Continuity Plan in respect of the Franchise Services and the people, facilities and assets used to provide them, that is adequate to minimise the effect of and deal promptly and efficiently with any Disaster which will as a minimum:
 - (i) reflect the degree of skill, care, foresight and prudence which can reasonably be expected from a highly experienced and competent operator of railway passenger services;

- (ii) use what the industry would (at the relevant time) regard as the best generally accepted processes, techniques and materials; and
- (iii) comply with all Laws.

Obligation to maintain the BCP

- (b) The Franchisee shall, at all times, maintain and comply with the Business Continuity Plan, and ensure that it is, at all times, able to implement the Business Continuity Plan immediately upon an event occurring which the Business Continuity Plan is expressed to cover, or reasonably can be expected to cover.
- (c) The Franchisee shall update the Business Continuity Plan at least once during each Franchisee Year.
- (d) The Franchisee will, on request, provide a copy of such plan to the Secretary of State and will provide to the Secretary of State any other information that the Secretary of State may reasonably require in relation thereto.
- (e) Nothing in this paragraph 3 will relieve the Franchisee from its obligations under this Franchise Agreement to create, implement and operate the Business Continuity Plan. Accordingly, if a Force Majeure Event affecting the Franchisee occurs which is an event or circumstance that is within the scope of the Business Continuity Plan, or would have been had the Franchisee and/or Business Continuity Plan complied with this paragraph 3.3, then paragraph 3.1 will only apply to that Force Majeure Event to the extent that the impacts of that Force Majeure Event would have arisen even if the Business Continuity Plan had complied with paragraph 3.3 and had been fully and properly implemented and operated in accordance with paragraph 3.3 and the terms of the Business Continuity Plan in respect of that Force Majeure Event.

On Payments

- 3.4 Subject to paragraph (q) of the definition of Change, following the occurrence of a Force Majeure Event, the payment of Franchise Payments shall continue unaffected.

SCHEDULE 10.5**Liability****1. Exclusion of Liability****Liability with respect to Passengers and Third Parties**

- 1.1 The Franchisee hereby acknowledges that the Secretary of State will not be responsible for the actions of the Franchisee or any Affiliate of the Franchisee and that, except as expressly provided in the Franchise Agreement, the Franchisee shall provide and operate the Franchise Services at its own cost and risk without recourse to the Secretary of State or government funds or guarantees.
- 1.2 The Franchisee, on demand, shall hold the Secretary of State fully protected and indemnified in respect of all losses, liabilities, costs, charges, expenses, actions, proceedings, claims or demands incurred by or made on the Secretary of State in connection with any death, personal injury, loss or damage suffered by passengers or by any third party using or affected by the Franchise Services which is caused or contributed to by the Franchisee, any Affiliate of the Franchisee, or any employee, agent, contractor or sub-contractor of the Franchisee or of any Affiliate of the Franchisee.

Liability of the Secretary of State

- 1.3 Neither the Secretary of State nor any of his officers, agents or employees shall in any circumstances be liable to the Franchisee for any loss or damage caused by the negligent exercise of any powers reserved to the Secretary of State under the Franchise Agreement, except to the extent that such negligence also constitutes a contravention of an obligation of the Secretary of State under the Franchise Agreement. The Franchisee may not recover from the Secretary of State or any of his officers, agents, or employees any amount in respect of loss of profit or consequential loss.

2. Review or Monitoring by the Secretary of State

- 2.1 The Secretary of State may for his own purposes (whether under the Franchise Agreement or under any other arrangement or otherwise and whether before or after the date of the Franchise Agreement) monitor or review any proposals, plans or projects (or any aspect thereof) of the Franchisee under the Franchise Agreement, but no review, enquiry, comment, statement, report or undertaking, made or given by or on behalf of the Secretary of State during such review or monitoring (and no failure to undertake, make or give any review, enquiry, comment or statement) shall operate to exclude or relieve either party from or reduce or otherwise affect the obligations of such party under the Franchise Agreement.
- 2.2 The exercise by or on behalf of the Secretary of State of (or, as the case may be, any failure to exercise) any of his functions, rights or obligations in respect of any review or monitoring process shall not in any way impose any liability, express or implied, on the Secretary of State to any other party save to the extent that the exercise (or failure to exercise) of any of such functions, rights or obligations results in a contravention by the Secretary of State of an express provision of the Franchise Agreement and the Secretary of State does not make or give any representation or warranty, either express or implied, as to whether any proposal,

plan or project will enable either party to comply with its obligations under the Franchise Agreement.

SCHEDULE 11

Agreement Management Provisions

1. **Not Used**

2. **Identification of Key Personnel and Provision of Organisation Chart**

2.1 The Franchisee shall identify and provide to the Secretary of State a schedule of Key Personnel who shall be employed by the Franchisee in the performance of the Franchise Agreement. This shall include but not be limited to the following persons:

- (a) a managing director whose role will include the overall management of the operation of the Franchise Services;
- (b) a Thameslink project manager who shall be a director of the Franchisee and whose role will include the overall management of the operation of the Thameslink Programme Office (as such term is defined in paragraph 7.2 of Schedule 6.3 (TLP/TRSP Related Provisions));
- (c) a mobilisation and business change manager whose role will include responsibility for ensuring that the Franchisee complies with its obligations under Schedule 6.4 (Integration of the Southern Franchise Services) and that business continuity is maintained for the duration of the Franchise Term;
- (d) a train service delivery manager, whose role will include responsibility for ensuring compliance by the Franchisee with Schedule 7.1 (Performance Benchmarks);
- (e) a safety manager, whose role will include responsibility for ensuring that the Franchisee complies with its legal obligations in relation to the Franchise Services including the Safety Certificate;
- (f) a finance manager, whose role will include responsibility in relation to the Financial Model; and
- (g) a Contract Manager.

2.2 On or before the Start Date the Franchisee shall provide to the Secretary of State an organisation chart detailing the responsibilities and reporting lines of each of the Key Personnel and shall update such chart (and provide a copy to the Secretary of State promptly thereafter) as and when any changes occur.

3. **Not Used**

4. **Franchise Performance Meetings**

4.1

- (a) The parties shall hold a Franchise Performance Meeting at least once in each Reporting Period (or such other interval as the Secretary of State may notify to the Franchisee in writing) at a time and location notified to the Franchisee by the Secretary of State.

- (b) Not used.
 - (c) Not used.
 - (d) Not used.
 - (e) The Franchisee shall ensure that each of its representatives at all Franchise Performance Meetings have full power and authority delegated to them by the Franchisee to act and to make binding decisions on behalf of the Franchisee and shall include such directors and/or senior managers of the Franchisee and the Parent as the Secretary of State may require.
- 4.2 Not used.
- 4.3 Not used.
- 4.4 The Franchisee shall prepare and present such reports to each Franchise Performance Meeting as the Secretary of State may reasonably request. The Franchisee's obligations under this paragraph 4.4 are subject to the Franchisee receiving at least 28 days' notice of the requirement to prepare and present any such report.
- 4.5 No comment or failure to comment nor any agreement or approval, implicit or explicit by the Secretary of State at such meetings will relieve the Franchisee of any of its obligations under the Franchise Agreement.
5. **Right of Assessment or Inspection**
- 5.1 The Franchisee shall, if requested by the Secretary of State, allow the Secretary of State and his representatives and advisers:
- (a) to inspect and copy any records referred to in Schedule 13 (Information and Industry Initiatives) and the Secretary of State may verify any such records; and
 - (b) to inspect and copy at any reasonable time any books, records and any other material kept by or on behalf of the Franchisee and/or its auditors and any assets (including the Franchise Assets) used by the Franchisee in connection with the Franchise Services.
- 5.2 The Franchisee shall make available to the Secretary of State, his representatives and advisers the information referred to in paragraph 5.1 and grant or procure the grant of such access (including to or from third parties) as the Secretary of State, his representatives and advisers shall reasonably require in connection therewith. The obligation of the Franchisee under this paragraph 5.2 shall include an obligation on the Franchisee to grant or procure the grant of such access to premises (including third party premises) where the information referred to in paragraph 5.1 is kept by or on behalf of the Franchisee.
- 5.3 The Secretary of State, his representatives and advisers shall be permitted to take photographs, film or make a video recording, or make any other kind of record of any such inspection.
- 5.4 If any inspection reveals that information previously supplied to the Secretary of State was, in the reasonable opinion of the Secretary of State, inaccurate in any material respect or if such inspection reveals any other contravention of the Franchisee's obligations under the Franchise Agreement which the Secretary of

State considers to be material, the costs of any such inspection shall be borne by the Franchisee.

SCHEDULE 12

Financial Obligations and Covenants

Schedule 12:

Financial Obligations and Covenants

Appendix 1: Form of Performance Bond

Appendix 2: Form of Season Ticket Bond

SCHEDULE 12**Financial Obligations and Covenants****1. Obligations**

Except to the extent that the Secretary of State may otherwise agree from time to time, the Franchisee shall not:

- (a) incur any liability or financial indebtedness except in the ordinary course of providing and operating the Franchise Services;
- (b) make any loan or grant any credit, or have or permit to subsist any loan or any credit, to any person (other than the deposit of cash with a Bank as permitted under paragraph 1(d) or to an employee in the ordinary course of its business);
- (c) create or permit to subsist any Security Interest over any of its assets or property or give any guarantee or indemnity to or for the benefit of any person or otherwise assume liability or become obliged (actually or contingently) in respect of any obligation of any other person, in each case other than in the ordinary course of the business of providing and operating the Franchise Services; or
- (d) create or acquire any subsidiary or make or have any investment in any other entity, except for the deposit of cash with a Bank.

2. Financial Ratios

2.1 The Franchisee covenants that as at the end of each Reporting Period during the Franchise Term:

- (a) the ratio of its Modified Revenue to its Actual Operating Costs during the Preceding 13 Reporting Periods of the Franchise Term (or, prior to the end of the thirteenth such Reporting Period, during all preceding Reporting Periods) will equal or exceed the ratio of 1.050:1; and
- (b) the ratio of its Forecast Modified Revenue to its Forecast Operating Costs for the next 13 Reporting Periods (or, where there are less than 13 Reporting Periods remaining in the Franchise Term, for all such remaining Reporting Periods) will equal or exceed the ratio of 1.050:1; and
- (c) For the purposes of this paragraph 2 "**Preceding 13 Reporting Periods**" means the Reporting Period just ended and the preceding 12 Reporting Periods of the Franchise Term.

2.2 If:

- (a) in respect of any Reporting Period, the Franchisee fails pursuant to paragraph 3.3(b) of Schedule 13 (Information and Industry Initiatives) to provide a statement of calculation of performance against the covenants set out in paragraph 2.1(b) for each of the next 13 Reporting Periods (or, where there are less than 13 Reporting Periods remaining in the Franchise Term, for all such remaining Reporting Periods) following any such Reporting Period; or

- (b) the Secretary of State reasonably considers that any particular item of Forecast Modified Revenue or Forecast Operating Cost used for the purposes of determining the Franchisee's performance against the covenants set out in paragraph 2.1(b) has not been accounted for on a reasonable basis (including where the accounting treatment looks to the form rather than the substance),

then the Secretary of State may:

- (i) in the circumstances referred to in paragraph 2.2(a) above reasonably determine the ratio of the Forecast Modified Revenue and Forecast Operating Cost on the basis of information available to him; or
- (ii) in the circumstances referred to in paragraph 2.2(b) above require any such particular item of Forecast Modified Revenue or Forecast Operating Cost to be adjusted in a manner which is fair and reasonable and, so far as reasonably determinable, on the basis on which such particular item of Forecast Modified Revenue or Forecast Operating Cost should have been accounted for by the Franchisee as reasonably determined by the Secretary of State,

in either case after having exercised his rights under paragraph 3.13 of Schedule 13 (Information and Industry Initiatives) to the extent that he considers appropriate in the circumstances for the purpose of making any such reasonable determination.

3. **Breach of Financial Ratios**

3.1 The Franchisee shall not during any Lock-up Period, do any of the following without the Secretary of State's consent:

- (a) declare or pay any dividend (equity or preference) or make any other distribution including surrendering any taxable losses to any of its Affiliates or pay any of its Affiliates in respect of taxable losses that they wish to surrender to the Franchisee, without the prior written consent of the Secretary of State;
- (b) pay management charges to any of its Affiliates in excess of those specified in the Initial Business Plan; or
- (c) make payment under any intra-group borrowings.

3.2 **Lock-up Period** means any period from the time when either of the ratios referred to in paragraphs 2.1(a) and 2.1(b) falls below the ratio of 1.070:1 until the time at which the Secretary of State is satisfied that the relevant ratio is again at or above the ratio of 1.070:1.

3.3 Failure by the Franchisee at any time to comply with either of the ratios referred to in paragraph 2.1 shall be an Event of Default under paragraph 2.9 of Schedule 10.3 (Events of Default and Termination Events).

4. **Performance Bond**

4.1

- (a) The Franchisee shall procure that there shall be a valid and effective Performance Bond in place with effect:

- (i) from the date of the Franchise Agreement;
 - (ii) throughout the Franchise Term; and
 - (iii) for a period of seven Reporting Periods after the end of the Franchise Period;
- (b) The Performance Bond that the Franchisee shall procure is in place pursuant to paragraph 4.1(a) and any replacement Performance Bonds shall:
- (i) be substantially in the form of Appendix 1 (Form of Performance Bond) to this Schedule 12;
 - (ii) have a value equal to the amount determined under paragraph 4.4; and
 - (iii) have a duration of three years except where a Performance Bond is to be renewed and the period of time from the date from which such Performance Bond is to be put in place until the date seven Reporting Periods after the end of the Franchise Term is less than three years, the duration of such Performance Bond shall be from the date of such renewal until the date seven Reporting Periods after the end of the Franchise Term.

Provision of Replacement Performance Bond

- 4.2 The Franchisee may replace the Performance Bond at any time, provided that the Secretary of State receives a replacement Performance Bond:
- (a) substantially in the form of Appendix 1 to this Schedule 12 (or in any other form acceptable to the Secretary of State in his discretion);
 - (b) duly executed and delivered by a Bond Provider acceptable to the Secretary of State; and
 - (c) in an amount determined in accordance with paragraph 4.4.
- 4.3 The Franchisee shall replace any Performance Bond at least six months prior to its scheduled expiry with a replacement that complies with the requirements of paragraph 4.2.

Amount of Performance Bond

- 4.4 The amount of any Performance Bond shall be as follows:
- (a) £20,000,000 (pounds sterling twenty million) in relation to the first Performance Bond;
 - (b) in relation to the second Performance Bond an amount which is £20,000,000 (pounds sterling twenty million) x RPI;
 - (c) in relation to each subsequent Performance Bond an amount which is the amount of the Performance Bond that it is replacing x RPI,

and for the purpose of this paragraph 4.4 RPI shall be the quotient of the Retail Prices Index for the month for which the Retail Prices Index has most recently been determined on the date on which the Franchisee is to replace the Performance Bond divided by the Retail Prices Index for the month in which the Performance Bond that is being replaced was required to be delivered to the Secretary of State.

Demands under the Performance Bond

4.5

- (a) The Performance Bond shall be on terms that it is payable without further enquiry by the Bond Provider to the Secretary of State in full in London on first written demand by the Secretary of State on the Bond Provider, certifying as to any one or more of the following:
- (i) that the Franchise Agreement has:
 - (A) either terminated or expired and, in either case, there are liabilities or obligations outstanding from the Franchisee to the Secretary of State; and/or
 - (B) terminated solely as a consequence of the occurrence of one or more Events of Default or a Termination Event of such type as described in any of paragraphs 3.1(b) to 3.1(d) (as the case may be) of Schedule 10.3 (Event of Default and Termination Events) in circumstances where the Secretary of State has incurred or expects to incur additional costs in connection with early termination of the Franchise;
 - (ii) that a railway administration order has been made in relation to the Franchisee pursuant to Sections 60 to 62 of the Act;
 - (iii) the occurrence of an Event of Default:
 - (A) under paragraph 2.13(a) of Schedule 10.3 (Events of Default and Termination Events) in relation to the Performance Bond; or
 - (B) under paragraph 2.13(b) of Schedule 10.3 (Events of Default and Termination Events),
whether or not the Franchise Agreement is, or is to be, terminated as a result thereof;
 - (iv) that the Franchisee has failed to perform or comply with its obligations under any Supplemental Agreement;
 - (v) that the Franchisee has failed to provide a replacement Performance Bond complying with this paragraph 4 at least six months prior to the scheduled expiry of the existing Performance Bond; or
 - (vi) that the Franchisee has failed to procure the execution and delivery of a new Performance Bond by a Bond Provider

acceptable to the Secretary of State when required to do so in accordance with paragraph 4.8.

- (b) If the Secretary of State makes a demand under the Performance Bond, he shall, within a reasonable period, account to the Franchisee for the proceeds of such Performance Bond less the amount of the losses, liabilities, costs or expenses which, in the reasonable opinion of the Secretary of State, the Secretary of State or a Successor Operator has incurred or suffered or may be reasonably likely to incur or suffer including as a result of:
 - (i) early termination of the Franchise Agreement; and/or
 - (ii) any failure by the Franchisee to perform or comply with any of its obligations to the Secretary of State under the Franchise Agreement or to a Successor Operator under the Supplemental Agreement.
- (c) Nothing in paragraph 4.5(b) shall oblige the Secretary of State to account to the Franchisee for the proceeds of such Performance Bond in the circumstances described in paragraph 4.5(a)(iii), (v) or (vi) until such time as the Franchisee has procured a replacement Performance Bond which complies with the requirements of this paragraph 4.

Characteristics of Performance Bond Provider

- 4.6 In determining whether a Bond Provider under any replacement Performance Bond is acceptable, the Secretary of State may exercise his discretion and shall not be obliged to accept a Bond Provider accepted under any previous Performance Bond.
- 4.7 The Franchisee shall provide such information relating to any Bond Provider or proposed Bond Provider as the Secretary of State may require from time to time.
- 4.8 If at any time the Secretary of State reasonably considers the Bond Provider under the then current Performance Bond to be unacceptable, the Secretary of State may require the Franchisee within 20 business days to procure the execution and delivery of a new Performance Bond by a Bond Provider acceptable to the Secretary of State. This applies:
 - (a) notwithstanding the other provisions of this paragraph 4; and
 - (b) irrespective of the scheduled expiry date of the then current Performance Bond.

Provision of more than one Performance Bond

- 4.9 The Franchisee shall be permitted subject to the prior consent of the Secretary of State (such consent not to be unreasonably withheld or delayed) to meet its obligations to provide a valid and effective Performance Bond by providing up to three valid and effective Performance Bonds the aggregate value of which at all times is equal to the value determined under paragraph 4.4. With the exception of the value of each individual Performance Bond the provisions of the Franchise Agreement in relation to the Performance Bond shall be deemed to apply separately in relation to each such Performance Bond. Where more than one Performance Bond is provided the Secretary of State shall have a discretion as to whether to make a demand under some or all of such Performance Bonds and the

extent to which he accounts for the proceeds of each such Performance Bond in accordance with the provisions of paragraph 4.5(b).

5. **Season Ticket Bond**

Provision of Season Ticket Bond

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

Provision of Replacement Season Ticket Bond

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

- (a) substantially in the form of Appendix 2 to this Schedule 12 (or in any other form acceptable to the Secretary of State in his discretion);
- (b) duly executed and delivered by a Bond Provider acceptable to the Secretary of State; and
- (c) in an amount determined in accordance with paragraph 5.3.

Amount of Season Ticket Bond

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

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

where:

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

STL equals, in respect of such Reporting Period:

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

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

provided that for these purposes only:

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

RPI equals the quotient of the Retail Prices Index for the month for which the Retail Prices Index has most recently been determined at the time the Franchisee is required under paragraph 5.4 to provide its estimate of the amount of the relevant Season Ticket Bond divided by the Retail Prices Index for the month falling 12 months before such month, provided that, for the first Franchisee Year, RPI shall be one;

k has the value attributed to it in Schedule 5 (Fares) for the Fare Year in which the Reporting Period in the relevant Bond Year falls; and

Z equals +1 or, if the relevant Reporting Period falls 26 Reporting Periods before such Reporting Period, an amount equal to:

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

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

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

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

5.6 If the amount of the Season Ticket Bond for each Reporting Period during a Bond Year has not been agreed two Reporting Periods before the end of the preceding Bond Year, then, until the amount is agreed or determined in accordance with the

Dispute Resolution Rules, the amount thereof shall be the amount determined by the Secretary of State.

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

Demands under the Season Ticket Bond

5.8

- (a) The Season Ticket Bond shall be on terms that it is payable without further enquiry by the Bond Provider to the Secretary of State in full in London on first written demand by the Secretary of State on the Bond Provider, certifying as to any one or more of the following:
- (i) that the Franchise Agreement has terminated or expired;
 - (ii) that a railway administration order has been made in relation to the Franchisee pursuant to Sections 60 to 62 of the Act; or
 - (iii) that an Event of Default:
 - (A) under paragraph 2.13(a) of Schedule 10.3 (Events of Default and Termination Events) in relation to the Season Ticket Bond; or
 - (B) under paragraph 2.13(c) of Schedule 10.3 (Events of Default and Termination Events),
 has occurred (whether or not the Franchise Agreement is, or is to be, terminated as a result thereof).
- (b) If the Secretary of State makes a demand under the Season Ticket Bond, he shall account to the Franchisee for the proceeds of such Season Ticket Bond remaining following settlement of all liabilities or obligations of the Franchisee in respect of any Season Ticket Fares and/or Stored Credit Balance that may be transferred or is transferred whether under a Transfer Scheme (or otherwise) to a Successor Operator.

Characteristics of Season Ticket Bond Provider

- 5.9 In determining whether a Bond Provider under any replacement Season Ticket Bond is acceptable, the Secretary of State may exercise his discretion and shall not be obliged to accept a Bond Provider accepted under any previous Season Ticket Bond.
- 5.10 The Franchisee shall provide such information relating to any Bond Provider or proposed Bond Provider as the Secretary of State may require from time to time.
- 5.11 The Secretary of State agrees that, subject to receipt of a Season Ticket Bond in an amount determined in accordance with paragraph 5.3 in respect of any Bond Year, he shall release the relevant Bond Provider from any liability under the Season Ticket Bond provided in relation to the preceding Bond Year on the expiry of such Bond Year, provided that no Event of Default has occurred and is unremedied or continuing.

Meaning of Reporting Period

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

6. Tax Compliance

- 6.1 The Franchisee represents and warrants that as at the Start Date, it has notified the Secretary of State in writing of any Occasions of Tax Non-Compliance or any litigation that it is involved in that is in connection with any Occasions of Tax Non-Compliance.

- 6.2 If, at any point during the Franchise Term, an Occasion of Tax Non-Compliance occurs, the Franchisee shall:

- (a) notify the Secretary of State in writing of such fact within 5 business days of its occurrence; and
- (b) promptly provide to the Secretary of State:
 - (i) details of the steps which the Franchisee is taking to address the Occasion of Tax Non-Compliance and to prevent the same from recurring, together with any mitigating factors that it considers relevant; and
 - (ii) such other information in relation to the Occasion of Tax Non-Compliance as the Secretary of State may reasonably require.

- 6.3 For the purposes of this paragraph 6 (Tax Compliance), the following defined terms shall have the following meanings:

- “Occasion of Tax Non-Compliance”**
- (a) any tax return of the Franchisee submitted to a Relevant Tax Authority on or after 1 October 2012 is found to be incorrect as a result of:
 - (i) a Relevant Tax Authority successfully challenging the Supplier under the General Anti-Abuse Rule or the Halifax Abuse Principle or under any tax rules or legislation that have an effect equivalent or similar to the General Anti-Abuse Rule or the Halifax Abuse Principle;
 - (ii) the failure of an avoidance scheme which the Franchisee was involved in, and which was,

or should have been, notified to a Relevant Tax Authority under the DOTAS or any equivalent or similar regime; and/or

- (b) the Franchisee's tax affairs give rise on or after 1 April 2013 to a criminal conviction in any jurisdiction for tax related offences which is not spent at the Start Date or to a penalty for civil fraud or evasion;

"DOTAS"

means the Disclosure of Tax Avoidance Schemes rules which require a promoter of tax schemes to tell HM Revenue & Customs of any specified notifiable arrangements or proposals and to provide prescribed information on those arrangements or proposals within set time limits as contained in Part 7 of the Finance Act 2004 and in secondary legislation made under vires contained in Part 7 of the Finance Act 2004 and as extended to National Insurance Contributions by the National Insurance Contributions (Application of Part 7 of the Finance Act 2004) Regulations 2012, SI 2012/1868 made under s.132A Social Security Administration Act 1992;

"General Anti-Abuse Rule"

means:

- (a) the legislation in Part 5 of the Finance Act 2013; and
- (b) any future legislation introduced into parliament to counteract tax advantages arising from abusive arrangements to avoid national insurance contributions;

"Halifax Abuse Principle"

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

"Relevant Tax Authority"

means HM Revenue & Customs, or, if applicable, a tax authority in the jurisdiction in which the Franchisee is established.

APPENDIX 1 TO SCHEDULE 12

Form of Performance Bond

[DOCUMENT "PB" - PERFORMANCE BOND]

Dated

20[•]

[BOND PROVIDER]

Performance Bond

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

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

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

We are further informed that the Franchise Agreement requires that the Secretary of State receives a duly executed performance bond in the amount of [*To be populated in for the duration of the Bond in accordance with 4.4*] (the "**Bond Value**") to secure the performance by the Franchisee of and its compliance with its obligations under the Franchise Agreement and any Supplemental Agreement.

Accordingly:

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

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

You may call on us for the whole or part of the amount of our liability hereunder and you may make any number of calls on us up to a maximum aggregate amount of the Bond Value. All sums payable hereunder shall be paid free of any restriction or condition and free and clear of and (except to the extent required by law) without any deduction or withholding, whether for or on account of tax, by way of set-off or otherwise.

1. The undertaking given by us above shall operate provided that:

- (a) our maximum liability shall be limited to a sum or sums not exceeding in the aggregate the amount of the Bond Value or such lesser amount as you may notify us of from time to time in writing, separately from any demand, shall constitute the Bond Value of this Bond; and
- (b) notwithstanding anything contained herein, our liability hereunder shall expire on the earlier of:
 - (i) the date falling six months after the date on which any railway administration order is made in relation to the Franchisee pursuant to Sections 60 to 62 of the Railways Act 1993; and
 - (ii) the later of:
 - (A) the date falling one month after the determination of the Purchase Price (as defined in any Supplemental Agreement) under each relevant Supplemental Agreement; and

- (B) the date falling seven Reporting Periods after the end of the Franchise Period; and
- (C) the end of the Franchise Term; and
- (iii) [date],⁴⁴¹

except in respect of any written demand for payment complying with all the requirements hereof which is received by us on or before such date for either the Bond Value, or for such lesser amount which, when aggregated with any previous demands, amounts to the Bond Value or less, after which date this undertaking shall be void whether returned to us or not.

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

- (a) the termination or expiry of the Franchise Agreement in circumstances where there are liabilities or obligations outstanding from the Franchisee to the Secretary of State;
- (b) the termination of the Franchise Agreement solely as a consequence of the occurrence of one or more Events of Default or a Termination Event of such type as described in any of paragraphs 3.1(b) or 3.1(d) (as the case may be) of Schedule 10.3 (Events of Default and Termination Events) in circumstances where the Secretary of State has incurred or expects to incur additional costs in connection with termination of the [*name of franchise*] franchise;
- (c) the making of a railway administration order in relation to the Franchisee pursuant to Sections 60 to 62 of the Railways Act 1993;
- (d) the occurrence of an Event of Default under the Franchise Agreement in respect of:
 - (i) paragraph 2.13(a) of Schedule 10.3 (Events of Default and Termination Events) of the Franchise Agreement in relation to the Performance Bond; or
 - (ii) paragraph 2.13(b) of Schedule 10.3 (Events of Default and Termination Events) of the Franchise Agreement,
 whether or not the Franchise Agreement is, or is to be, terminated as a result thereof;
- (e) the failure by the Franchisee to perform or comply with its obligations under any Supplemental Agreement;
- (f) the failure by the Franchisee to provide the Secretary of State with a replacement Performance Bond which complies with paragraph 4 of

⁴⁴¹ Such date to be consistent with the obligations of the Franchisee pursuant to paragraph 4.1(b)(iii) of Schedule 12 of the Franchise Agreement.

Schedule 12 (Financial Obligations and Covenants) of the Franchise Agreement; or

- (g) the failure by the Franchisee to procure the execution and delivery of a new Performance Bond by a Bond Provider in favour of and acceptable to the Secretary of State when required to do so in accordance with paragraph 4.8 of Schedule 12 (Financial Obligations and Covenants) of the Franchise Agreement.
3. This undertaking is made to you, your successors and your assigns.
 4. This undertaking shall not be discharged or released by time, indulgence, waiver, alteration or release of, or in respect to, the obligations of the Franchisee under the Franchise Agreement or any Supplemental Agreement or any other circumstances that might operate as a release of a guarantor at law or in equity.
 5. You may make demand or give notice to us under this Bond in writing by hand or facsimile transmission to us as follows:

Address: [Bond Provider's address]

Facsimile Number: [Bond Provider's fax number]
 6. References in this Bond to the Franchise Agreement and the Supplemental Agreement are to the Franchise Agreement and any Supplemental Agreement as amended from time to time.
 7. Where used in this Bond, capitalised terms have the same meanings as in the Franchise Agreement.
 8. This Bond shall be governed by and construed in accordance with the laws of England and Wales.

Executed as a deed this [day and month] of [year].

SCHEDULE TO THE PERFORMANCE BOND**SPECIMEN DEMAND NOTICE**

To: [name and address of Bond Provider]
[date of demand notice]

We refer to the performance bond issued by you on [date of Bond] (the "**Performance Bond**") in connection with the franchise agreement (the "**Franchise Agreement**") entered into between the Secretary of State for Transport (the "**Secretary of State**") and [name of Franchisee] (the "**Franchisee**") on [Franchise Agreement signature date].

We hereby notify you that the following Call Event (as defined in the Performance Bond) occurred on [date of occurrence of Call Event]: [delete as appropriate].

[The Franchise Agreement has [terminated/expired] on [date of termination/expiry] in circumstances where there are liabilities or obligations outstanding from the Franchisee to the Secretary of State.]

[The Franchise Agreement has terminated solely as a consequence of the occurrence of one or more Events of Default on [date of termination] in circumstances where the Secretary of State has incurred or expects to incur additional costs in connection with the termination of the [name of franchise] franchise.]

[A railway administration order has been made in relation to the Franchisee pursuant to Sections 60 to 62 of the Railways Act 1993.]

[That an Event of Default under the Franchise Agreement has occurred under:

[(a) paragraph 2.13(a) of Schedule 10.3 (Events of Default and Termination Events) of the Franchise Agreement in relation to the Performance Bond; or]

[(b) paragraph 2.13(b) of Schedule 10.3 (Events of Default and Termination Events) of the Franchise Agreement.]]

[The Franchisee has failed to perform or comply with its obligations under any Supplemental Agreement.]

[The Franchisee has failed to provide a replacement Performance Bond (as described in the Franchise Agreement) complying with paragraph 4 of Schedule 12 (Financial Obligations and Covenants) of the Franchise Agreement at least six months prior to the scheduled expiry of the existing Performance Bond.]

[The Franchisee has failed to procure the execution and delivery of a new Performance Bond by a Bond Provider acceptable to the Secretary of State when required to do so in accordance with paragraph 4.8 of Schedule 12 (Financial Obligations and Covenants) of the Franchise Agreement.]

We hereby demand immediate payment from you of [specify alternative amount if not Bond Value] or the Bond Value, whichever is smaller.

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

[account details to which Bond monies to be paid into]

Where used in this Notice, capitalised terms have the same meanings as in the Franchise Agreement.

For and on behalf of
Secretary of State for Transport

APPENDIX 2 TO SCHEDULE 12

Form of Season Ticket Bond

DOCUMENT "STB" - SEASON TICKET BOND

Dated

20[●]

[BOND PROVIDER]

Season Ticket Bond

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

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

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

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

Accordingly:

We hereby unconditionally and irrevocably undertake to pay to you in full in London, immediately upon receipt of your first written demand on us in the form set out in Schedule 1 and, without further enquiry, the sum specified therein. Such written demand shall state:

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

You may call on us for the whole or part of the amount of our liability hereunder and you may make any number of calls on us up to a maximum aggregate amount of the Bond Value (as defined in clause 3). All sums payable hereunder shall be paid free of any restriction or condition and free and clear of and (except to the extent required by law) without any deduction or withholding, whether for or on account of tax, by way of set-off or otherwise.

1. The undertaking given by us above shall operate provided that:
 - (a) our maximum liability shall be limited to a sum or sums not exceeding in the aggregate the amount of the Bond Value on the date of occurrence of the Call Event stated in your written demand on us; and
 - (b) you may only call on us (whether on one or more occasions) in relation to one Call Event, such Call Event to be determined by reference to the first written demand which is received by us in the form set out in Schedule 1.
2. Call Event means, in this Bond, any of:
 - (a) the termination or expiry of the Franchise Agreement;
 - (b) the making of a railway administration order in relation to the Franchisee pursuant to Sections 60 to 62 of the Railways Act; or
 - (c) the occurrence of an Event of Default under paragraph 2.13(a) (in relation to a Season Ticket Bond) or 2.13(c) of Schedule 10.3 (Events of Default and Termination Events) of the Franchise Agreement (whether or not the Franchise Agreement is, or is to be, terminated as a result thereof).
3. Bond Value shall mean, in respect of any date, the amount specified in Schedule 2 as being the value of this Bond for such date (provided that for these purposes the date of occurrence of the Call Event specified in clause 2(c) shall be deemed

to be the last date for which a Bond Value is assigned under Schedule 2 of this Bond).

4. Notwithstanding anything contained herein, but subject to clause 5, our liability hereunder in respect of any Call Event shall expire no later than the end of the Franchise Term and:
 - (a) in relation to a Call Event specified in clauses 2(a) and (b), at noon (London time) on the date falling three business days after the date of occurrence of such Call Event (business day being a day on which banks are open for business in the City of London); and
 - (b) in relation to any other Call Event, on the day falling one month after the last date for which a Bond Value is assigned under Schedule 2 of this Bond unless you notify us in writing prior to the relevant expiry time that the relevant Call Event has occurred (whether or not you call on us at the same time under this Bond).
5. If you do notify us under clause 4 our liability shall expire on:
 - (a) if the Call Event in respect of which you may call on us under this Bond is the termination of the Franchise Agreement, the date falling one month after the determination of the Purchase Price (as defined in the Supplemental Agreement) under each relevant Supplemental Agreement;
 - (b) if the Call Event in respect of which you may call on us under this Bond is the making of a railway administration order in relation to the Franchisee pursuant to Sections 60 to 62 of the Railways Act 1993, the date falling three months after the making of such railway administration order; or
 - (c) if the Call Event in respect of which you may call on us under this Bond is the occurrence of an Event of Default under paragraph 2.13(a) (in relation to a Season Ticket Bond) or paragraph 2.13(c) of Schedule 10.3 (Events of Default and Termination Events) of the Franchise Agreement (whether or not the Franchise Agreement is, or is to be, terminated as a result thereof), the date falling one month after your notification to us under clause 4,

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

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

Address: [Bond Provider's address]

Facsimile Number: [Bond Provider's fax number]

9. References in this Bond to the Franchise Agreement and the Supplemental Agreement are to the Franchise Agreement and the Supplemental Agreement as amended from time to time and terms defined therein shall have the same meaning in this Bond.
10. Where used in this Bond, capitalised terms have the same meanings as in the Franchise Agreement.
11. This Bond shall be governed by and construed in accordance with the laws of England and Wales.

Executed as a deed this [day and month] of [year].

SCHEDULE 1 TO THE SEASON TICKET BOND**SPECIMEN DEMAND NOTICE**

To: [Name and address of Bond Provider]
[date of demand notice]

We refer to the season ticket bond issued by you on [date of Bond] (the "**Season Ticket Bond**") in connection with the franchise agreement (the "**Franchise Agreement**") entered into between the Secretary of State for Transport (the "**Secretary of State**") and [name of Franchisee] (the "**Franchisee**") on [Franchise Agreement signature date].

We hereby notify you that the following Call Event (as defined in the Season Ticket Bond) occurred on [date of occurrence of Call Event]: [delete as appropriate].

[The Franchise Agreement [terminated][expired] on [date of termination][expiry]].

[A railway administration order has been made in relation to the Franchisee pursuant to Sections 60 to 62 of the Railways Act 1993.]

[An Event of Default occurred under paragraph 2.13(a) (in relation to a Season Ticket Bond) or paragraph 2.13(c) of Schedule 10.3 (Events of Default and Termination Events) of the Franchise Agreement.]

We hereby demand immediate payment from you of [specify alternative amount if not Bond Value] or the Bond Value, whichever is smaller.

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

[account details to which Bond monies to be paid into]

Where used in this Notice, capitalised terms have the same meanings as in the Franchise Agreement.

For and on behalf of
Secretary of State for Transport

SCHEDULE 2 TO THE SEASON TICKET BOND

BOND VALUE

Call Event occurring in Reporting Period	Bond Value
---	-------------------

[Dates to be specified]

SCHEDULE 13

Information and Industry Initiatives

Schedule 13:	Information and Industry Initiatives
	Appendix 1: Efficient Franchisee
	Appendix 2: Key Assets
	Appendix 3: Operational Information
	Appendix 4: Ticket and Revenue Information
	Appendix 5: Environmental Impact Monitoring Dataset

SCHEDULE 13**Information and Industry Initiatives****1. General Information****Corporate Information**

1.1 The Franchisee shall provide the following information to the Secretary of State on or before the Start Date and shall notify the Secretary of State of any change to such information within 21 days of such change:

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

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

Operational and Performance-related Information to be provided by the Franchisee

1.3 The Franchisee shall provide to the Secretary of State the information specified in the Appendices to this Schedule 13 at the times specified therein.

1.4 The Appendices to this Schedule 13 shall be interpreted in accordance with any guidance issued by the Secretary of State from time to time for that purpose.

Maintenance of Records

1.5 The Franchisee shall maintain true, up to date and complete records of all of the information required to be provided by the Franchisee under the Franchise Agreement.

1.6 Each record required to be maintained by the Franchisee in accordance with this Schedule 13 shall be held for a period of six years following the date on which such record was required to be created.

1.7 References to records in this Schedule 13 shall include records maintained under any Previous Franchise Agreement to the extent that such records relate to the

Franchise Services and the Franchisee has access to them (which it shall use all reasonable endeavours to secure).

- 1.8 The Franchisee shall not be responsible for any records maintained under any Previous Franchise Agreement, as referred to in paragraph 1.7, being true, complete and up to date. As soon as reasonably practicable after becoming aware that any such records are not true, complete and up to date, the Franchisee shall take all reasonable steps to remedy any such deficiency, and shall thereafter maintain such records in accordance with paragraph 1.5.

Information to the Passengers' Council and Local Authorities

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

2. Business Plans

Initial Business Plan

- 2.1 On or prior to the Start Date, the Franchisee shall deliver to the Secretary of State its Initial Business Plan, describing its planned activities for each Franchisee Year during the Franchise Term, which shall include:
- (a) a description as to how the Franchisee will be able to meet its obligations under the Franchise Agreement for the Franchise Term, supported by operational plans demonstrating this;
 - (b) to facilitate the agreement or determination of the amount of Assumed Revenue for each Franchisee Year during the Franchisee Term and the "Season Factor" percentages for each Reporting Period in each such Franchisee Year as contemplated in paragraph 3 of Schedule 8.1 (Franchise Payments), the Franchisee's view of the forecast Revenue for each Franchisee Year during the Franchise Term and the "Season Factor" percentages for each such Reporting Period in each such Franchisee Year together with a list of assumptions on the basis of which the Revenue forecast and the "Season Factor" percentages have been prepared (including such supporting information as the Franchisee considers reasonably necessary (or as the Secretary of State may reasonably require) for the purposes of demonstrating such view of forecast Revenue or the "Season Factor" percentages;
 - (c) details of any investments proposed to be made or procured by the Franchisee in relation to the Franchise Services during the Franchise Term;
 - (d) in accordance with paragraph 4.2 of Schedule 6.2 (TSGN Franchise Specific Provisions), details of any interim changes required to the Marketing Plan (including any expenditure specified therein); and
 - (e) a profit and loss forecast, cash flow forecast and forecast balance sheet for each of the first 13 Reporting Periods following the Start Date, together with a list of assumptions on the basis of which each such forecast has been prepared.

Updated Business Plans

- 2.2 Within one Reporting Period prior to the start of each Franchisee Year (other than the first Franchisee Year) the Franchisee shall deliver to the Secretary of State an Updated Business Plan in respect of that Franchisee Year and for the remainder of the Franchise Term:
- (a) in substantially the same form as the immediately preceding Business Plan delivered to the Secretary of State in accordance with the Franchise Agreement, revised to include the information available to the Franchisee as at the date of its delivery, describing the Franchisee's planned activities for each Franchisee Year during the remainder of the Franchise Term;
 - (b) containing a statement of the differences between such Updated Business Plan and the immediately preceding Business Plan delivered to the Secretary of State in accordance with the Franchise Agreement, together with an explanation of such differences;
 - (c) containing a statement of any updates to the Revenue forecasts and the "Season Factor" percentages as specified in the Initial Business Plan pursuant to paragraph 2.1(b) together with an explanation of the differences from the preceding Business Plan;
 - (d) containing the updates and review of the Marketing Plan as required pursuant to paragraphs 4.2 and 4.3 of Schedule 6.2 (TSGN Franchise Specific Provisions);
 - (e) containing a statement of all the Qualifying Changes that have occurred in the previous 13 Reporting Periods;
 - (f) containing details of any Business Action Plan notified to the Secretary of State and any progress made in respect of such Business Action Plans;
 - (g) containing a revised profit and loss forecast, cash flow forecast and forecast balance sheet for each of the 13 Reporting Periods in that Franchisee Year and each subsequent Franchisee Year of the Franchise Term; and
 - (h) **any proposals or planned activities in relation to the On-Train Wi-Fi Services.**⁴⁴²

Further Updated Business Plans

- 2.3 The Franchisee shall:
- (a) notify the Secretary of State as soon as reasonably practicable if the business outlook or prospective financial results of the Franchisee are likely to be materially different from those specified in the most recent Business Plan; and

⁴⁴² 09/12/2016 (date of Deed of Amendment) Contract insertion agreed by the Secretary of State and the Franchisee.

- (b) within one month of any request by the Secretary of State following receipt of a notification in accordance with paragraph 2.3(a), supply the Secretary of State with a revised Updated Business Plan for the remainder of the Franchise Term which reflects the latest view of its business.

Provisions relating to Business Plans

2.4 The Franchisee shall:

- (a) comply with any guidance issued by the Secretary of State from time to time as to his reasonable requirements for the format and content of any Business Plan or Business Action Plan. The contents and assumptions to be included in any Business Plan shall, unless the parties otherwise agree, be consistent with the Record of Assumptions. The profit and loss forecast, cash flow forecast and forecast balance sheet contained in any Business Plan shall be in the formats set out in the document in the agreed terms marked **FF**;
- (b) attend such meetings and make such presentations as the Secretary of State shall request in connection with any Business Plan or Business Action Plan; and
- (c) provide verification in respect of any information contained in a Business Plan as the Secretary of State may require.

2.5 The Franchisee shall not be relieved of any of its obligations under the Franchise Agreement as a result of any comment or failure to comment by the Secretary of State on any Business Plan or any agreement with or approval, implicit or explicit, of any Business Plan by the Secretary of State at any time.

2.6 The Secretary of State may at any time require the Franchisee to produce a Business Action Plan in respect of any aspect of the Business Plan. Such Business Action Plan may include steps relating to:

- (a) timetable and service pattern development;
- (b) Station facility improvement;
- (c) performance management improvement;
- (d) customer service improvement; and
- (e) improvements in the quality of service delivery or the efficiency of delivery of the Franchise Services.

2.7 The Franchisee shall comply with any guidance issued by the Secretary of State about how and with whom any consultation on the content of a Business Action Plan is to take place.

2.8 Any proposal in a Business Action Plan shall only be implemented if and to the extent that the Secretary of State decides it is appropriate to do so and subject to any conditions which he may impose.

2.9 The Secretary of State shall be permitted to carry out indicative Runs of the Financial Model for the purpose of considering whether or not to implement any proposal in a Business Action Plan.

3. Financial And Operational Information

Accounting Records

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

Reporting Period Financial Information

- 3.2 ^{xiv}The Franchisee shall deliver to the Secretary of State, within two weeks of the end of each Reporting Period:

- (a) Management Accounts for such Reporting Period, setting out a cashflow statement, profit and loss account and balance sheet for that Reporting Period and cumulatively for the Franchisee Year to date;
- (b) written confirmation that the Management Accounts, to the best of the knowledge information and belief of the board of directors of the Franchisee, contain a true and accurate reflection of the current assets and liabilities of the Franchisee (including contingent assets or liabilities and known business risks and opportunities) and, to the extent that they do not, identify in a written report relevant issues in reasonable detail and provide such further information that the Secretary of State shall reasonably require in relation thereto; and
- (c) in circumstances where the Franchisee was in a Lock-up Period during such Reporting Period written confirmation from a statutory director of the Franchisee that the Franchisee has complied with the restrictions applicable during a Lock-up Period pursuant to paragraph 3 of Schedule 12 (Financial Obligations and Covenants).

- 3.3 The Management Accounts shall also set out:

- (a) sufficient information to enable the Secretary of State to calculate Actual Operating Costs and Modified Revenue on a cumulative basis for the previous thirteen Reporting Periods;
- (b) the ratio of the Franchisee's:
 - (i) Total Modified Revenue to its Total Actual Operating Costs; and
 - (ii) Total Forecast Modified Revenue to its Total Forecast Operating Costs,

together with supporting information showing how the Franchisee has calculated such ratios including a breakdown of the Modified Revenue, Forecast Modified Revenue, Actual Operating Cost and Forecast Operating Costs for each of the Reporting Periods used for the purposes of the calculation of the ratios pursuant to this paragraph 3.3(b);

- (c) a comparison of the Franchisee's performance during such period against the forecast provided by the Franchisee in the then current Business Plan;

- (d) a comparison of the Franchisee's cumulative performance during the Franchisee Year in which such period occurs against the forecast referred to in paragraph 3.3(c);
- (e) a detailed statement and explanation of any material difference between such Management Accounts and the forecast referred to in paragraph 3.3(c); and
- (f) where the level of financial performance reported in the Management Accounts is, in the reasonable opinion of the Secretary of State, materially worse than forecast by the Franchisee in its current Business Plan, the Secretary of State may require the Franchisee to prepare and submit to him, as soon as reasonably practicable, a Financial Action Plan to ensure that the level of financial performance forecast in its current Business Plan for the remainder of the currency of that Business Plan is achieved and the Franchisee shall use all reasonable endeavours to implement such Financial Action Plan.

Quarterly Financial Information

- 3.4 Within four weeks after the end of the third, sixth, ninth and twelfth Reporting Periods in each Franchisee Year, the Franchisee shall deliver to the Secretary of State the following information:
- (a) an updated version of the profit and loss forecast, cash flow forecast and forecast balance sheet provided in accordance with paragraph 2.1(e), for each of the following 13 Reporting Periods; and
 - (b) a statement of calculation demonstrating the Franchisee's performance against each of the financial covenants in paragraph 2 of Schedule 12 (Financial Obligations and Covenants) at the beginning of each Reporting Period and a forecast of performance against such covenants for each of the following 13 Reporting Periods.
- 3.5 Where any Reporting Period falls partly within one Franchisee Year and partly within another, the results for each section of such Reporting Period falling either side of such Franchisee Year end shall be prepared on an accruals basis for each such section of such Reporting Period.

Annual Financial Information

- 3.6 Within three weeks of the end of each Franchisee Year, the Franchisee shall deliver to the Secretary of State its Annual Management Accounts for that Franchisee Year.
- 3.7 ⁴⁴³ **Not used**
- 3.8 Not used.

- 3.9 Within four Reporting Periods after the end of each Franchisee Year, the Franchisee shall deliver to the Secretary of State the following information:
- (a) certified true copies of its annual report and Annual Audited Accounts for that Franchisee Year, together with copies of all related directors' and auditors' reports;
 - (b) a reconciliation to the Management Accounts for the same period; and
 - (c) a statement from the Franchisee's auditors confirming compliance with the financial covenants in paragraph 2 of Schedule 12 (Financial Obligations and Covenants).

Accounting Standards and Practices

- 3.10 Each set of Management Accounts and Annual Management Accounts shall:
- (a) be in the formats set out in the document in the agreed terms marked **FF** or in such other format as the Secretary of State may reasonably specify from time to time;
 - (b) be prepared consistently in accordance with the Franchisee's normal accounting policies, details of which shall be supplied on request to the Secretary of State; and
 - (c) identify to the reasonable satisfaction of the Secretary of State, any changes in such accounting policies from those policies that were applied in preparing each of the profit and loss account, the cashflow projection and the balance sheet contained in the Financial Model Placed in Escrow on the date of the Franchise Agreement.
- 3.11 **⁴⁴⁴The Annual Audited Accounts shall:**
- (a) ***be prepared and audited in accordance with GAAP, consistently applied and in accordance with the Companies Act 2006; and***
 - (b) ***give a true and fair view of:***
 - (i) ***the state of affairs, profits and financial condition of the Franchisee for the period covered by such accounts; and***
 - (ii) ***the amount of its total revenue (being all revenue whatsoever from any source obtained from any commercial or non-commercial activity or undertaking of the Franchisee, such revenue to be disaggregated by reference to revenue derived by the Franchisee from the sale of tickets, income received from Network Rail pursuant to Schedule 4 and Schedule 8 to the Track Access Agreement and other***

income (including car park revenue) or to such other level of disaggregation as may be notified to the Franchisee by the Secretary of State from time to time) derived by the Franchisee in respect of that Franchisee Year.

Parent/Ultimate Parents Accounts

- 3.12 The Franchisee shall, upon the request of the Secretary of State, promptly deliver to, or procure delivery to, the Secretary of State, certified true copies of the annual reports and audited accounts of the Parent and each of the Ultimate Parents, together with copies of all related directors' and auditors' reports. If the Parent or any of the Ultimate Parents is domiciled outside England and Wales, the equivalent documents in the jurisdiction of residence of the Parent or any of the Ultimate Parents (as the case may be) shall be delivered to the Secretary of State.

Secretary of State Audit of calculations provided pursuant to paragraph 3.3(b) of Schedule 13 (Information and Industry Initiatives)

- 3.13 Without prejudice to paragraph 2.2 of Schedule 12 (Financial Obligations and Covenants) or to any other rights of the Secretary of State under the Franchise Agreement, the Secretary of State and his representatives shall be permitted to inspect at any time the books, records and any other material kept by or on behalf of the Franchisee in order to check or audit any item contained in or relating to the Management Accounts in so far as they relate to the statement of calculations required by paragraph 3.3(b) of this Schedule 13 and any other matter in connection with the Franchisee's obligations under paragraph 2 of Schedule 12 (Financial Obligations and Covenants).
- 3.14 The Franchisee shall make available to the Secretary of State and his representatives such information and grant such access or procure the grant of such access (including to or from third parties) as they shall reasonably require in connection with any audit to be carried out pursuant to paragraph 3.13. If any audit carried out pursuant to paragraph 3.13 reveals, in the reasonable opinion of the Secretary of State, any material inaccuracy in the Management Accounts (but only in so far as such accounts relate to the statement of calculations required by paragraph 3.3(b)) then the Secretary of State may exercise its rights as described in paragraphs 2.2(i) or 2.2(ii) of Schedule 12 (Financial Obligations and Covenants) and the Franchisee shall pay all reasonable costs of any such audit as a monitoring cost pursuant to paragraph 1.11 of Schedule 10.1 (Remedial Plans and Remedial Agreements).

4. Safety Information

Safety

- 4.1 The Franchisee shall co-operate with any request from any relevant competent authority for provision of information and/or preparation and submission of reports detailing or identifying compliance with safety obligations set out in the Safety Regulations including any breaches of the Safety Regulations.
- 4.2 The Franchisee shall notify the Secretary of State as soon as practicable of the receipt and contents of any formal notification relating to safety or any improvement or prohibition notice received from ORR. Immediately upon receipt of such notification or notice, the Franchisee shall provide the Secretary of State with a copy of such notification or notice.

4.3 The Franchisee shall participate in industry groups and committees addressing the domestic and European safety agenda of the Railway Group.

5. Further Information

5.1 The Franchisee shall:

- (a) deliver to the Secretary of State, or procure the delivery to the Secretary of State of, such information, records or documents as he may request within such period as he may reasonably require and which relate to or are connected with the Franchisee's performance of the Franchise Agreement; and
- (b) procure that each Affiliate of the Franchisee complies with paragraph 5.1(a) in respect of any information, records or documents that relate to its dealings with the Franchisee in connection with the Franchisee's performance of its obligations under the Franchise Agreement.

5.2 The information referred to in paragraph 5.1(a) shall include:

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

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

- (a) the information required to be provided under this Schedule 13 more frequently than set out in this Schedule 13;
- (b) the information required to be provided under this Schedule 13, or, in the Secretary of State's discretion, more detailed financial information, at any time in connection with the re-letting of the Franchise; and
- (c) such unaudited accounts under such accounting policies as may be prescribed by the Secretary of State, acting reasonably, from time to time.

6. Contraventions of the Franchise Agreement

6.1 The Franchisee shall notify the Secretary of State, so far as possible before it may occur and in any event as soon as reasonably practicable thereafter, of any contravention by the Franchisee of any provision of the Franchise Agreement. This includes where the Franchisee is under an obligation to use all reasonable endeavours to achieve a particular result by a particular time, where such result is not achieved by such time.

6.2 The Franchisee shall deliver to the Secretary of State, or procure the delivery to the Secretary of State of, such information, records or documents as the Secretary of State may request within such period as the Secretary of State may reasonably require for the purpose of determining the existence, likelihood, nature or scope of any contravention of, Event of Default or Termination Event under, the Franchise Agreement.

7. **Information from Third Parties**

7.1 The Franchisee shall, if the Secretary of State so requests, use all reasonable endeavours to ensure that the Secretary of State has direct access to any information, data or records relating to the Franchisee which is or are maintained by third parties and to which the Secretary of State is entitled to have access, or of which the Secretary of State is entitled to receive a copy under the Franchise Agreement.

7.2 The Franchisee shall, if the Secretary of State so requests, procure the provision by RSP to the Secretary of State of such information, data and records as the Franchisee is entitled to receive under the Ticketing and Settlement Agreement, in such form as the Secretary of State may specify from time to time.

7.3 The obligations of the Franchisee under this Schedule 13 to provide information to the Secretary of State shall not apply if the Secretary of State notifies the Franchisee that he has received the relevant information directly from any other person (including Network Rail or RSP). The Franchisee shall, if the Secretary of State so requests, confirm or validate any such information which is received from any such other person.

7.4 The Franchisee shall promptly advise the Secretary of State of any changes that are to be made to its systems or processes or the systems and processes of the RSP that will, in the reasonable opinion of the Franchisee, materially affect the continuity of any of the records that are provided pursuant to this Schedule 13. Any such advice shall include an assessment of the materiality of the relevant change.

8. **Compatibility of Information**

8.1 All financial, operational or other information, and any data and records required to be provided to the Secretary of State under the Franchise Agreement shall be provided, if so requested by the Secretary of State, in a form compatible with the Secretary of State's electronic data and records systems on the Start Date, as modified from time to time in accordance with paragraph 9.

8.2 The Franchisee shall ensure that the interconnection of such systems or the provision of such information, data and records to the Secretary of State under the Franchise Agreement will not result in any infringement of any third party intellectual property rights to which its systems or such information, data or records may be subject.

9. **Development of Industry Systems**

The Franchisee shall actively co-operate, in a manner consistent with it being a responsible Train Operator of the Franchise, with Network Rail, the Secretary of State, ORR and all other relevant railway industry bodies and organisations in relation to the development of anything that can reasonably be considered to be a railway industry system including systems in relation to the attribution of train

delay, the allocation of revenue and the collection and dissemination of industry wide information.

10. **Co-operation with Various Schemes**

The Franchisee shall co-operate (in good faith) with the Secretary of State, the relevant Local Authority and/or any other affected railway industry parties in the development and the implementation of initiatives relating to its participation in Integrated Transport Schemes, multi-modal fares schemes, Traveline and Transport Direct (the "**Industry Schemes**"), where such Industry Schemes relate to the Franchise.

11. **Co-operation with Network Rail and Alliancing**

11.1 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 the Franchise Agreement.

11.2 Where the Franchisee considers pursuant to its obligations under paragraph 11.1 above that it is appropriate to enter into an alliance agreement with Network Rail that would require its obligations under this Agreement to be varied (an "**Alliance Agreement**") it may make a proposal for the Secretary of State to consider. The Franchisee agrees that any such proposal (unless otherwise agreed by the Secretary of State) shall:

- (a) be for the purposes of improved delivery of some or all of the following:
 - (i) the efficient and cost effective operation of some or all of the network over which the Passenger Services operate;
 - (ii) the efficient and cost effective maintenance of some or all of the network over which the Passenger Services operate;
 - (iii) the efficient and cost effective renewal of some or all of the network over which the Passenger Services operate;
 - (iv) the efficient and cost effective delivery of some or all enhancement projects on the network over which the Passenger Services operate; and
 - (v) such other infrastructure enhancement projects as may be agreed by the Franchisee and Network Rail and approved by the Secretary of State during the Franchise Term; and
- (b) be on terms which are commercially fair and reasonable so that:
 - (i) the incentives of the Franchisee and Network Rail are more effectively aligned in a way that gives a reasonable expectation that the matters subject to the alliance will be delivered in a more efficient and effective way;
 - (ii) the financial and operational risk of the Franchisee arising out of the operation of the Franchise is not unreasonably increased (including through the agreement of appropriate limitations of liability); and

- (iii) the Secretary of State has rights to require the termination of the Alliance Agreement in appropriate circumstances including so that the term of the alliance is aligned with the Franchise Term and liabilities do not accrue to any Successor Operator.
- 11.3 The Franchisee shall provide such information, updates and reports on the progress of its negotiation with Network Rail as the Secretary of State shall reasonably require and meet with the Secretary of State to discuss the progress of the negotiations when reasonably requested to do so.
- 11.4 On reaching agreement in principle with Network Rail on the terms of an Alliance Agreement the Franchisee shall present the draft Alliance Agreement to the Secretary of State for approval and shall not enter into any such agreement without the prior written consent of the Secretary of State (which he shall have an unfettered discretion to withhold).
- 11.5 The Franchisee agrees that any approval of an Alliance Agreement shall (without prejudice to the unfettered discretion of the Secretary of State to refuse to consent to such an alliance) be conditional upon:
 - (a) the Secretary of State being satisfied that such Alliance Agreement is consistent with the provisions of paragraph 11.2 above;
 - (b) the Franchisee agreeing to a fair and reasonable allocation of the gain from such alliance being passed to the Secretary of State (whether through profit share or otherwise) consistent with the role of the Secretary of State in funding the railway network; and
 - (c) the Franchisee entering into a deed of amendment to the Franchise Agreement in a form reasonably determined by the Secretary of State.

12. **Sustainable Construction**

- 12.1 For construction projects (including building refurbishment or fit out):
 - (a) which are either being funded by the Franchisee or in respect of which the Franchisee has design responsibility; and
 - (b) in respect of which the total capital cost exceeds £250,000 (indexed by the Retail Prices Index in the same way as variable costs are indexed in Schedule 8.2 (Annual Franchise Payments)),

the Franchisee shall use reasonable endeavours to achieve at least an "excellent" rating from an accredited assessor using Building Research establishment environmental assessment methodology (or an equivalent recognised standard) at both the design stage and the post-construction stage unless the Secretary of State (acting reasonably) agrees that the relevant project is not of a suitable scale or type to be so assessed (and the Franchisee shall provide to the Secretary of State such information in relation to any construction project as the Secretary of State may reasonably request).

13. Environmental Management and Sustainability Accreditation

The Franchisee shall by no later than the date which is 18 months after:

- (a) the Start Date attain and at all times thereafter maintain accreditation pursuant to ISO14001 and ISO50001 or equivalent standards in relation to the TGN Franchise Services; and
- (b) the Combined Effective Date attain and at all times thereafter maintain accreditation pursuant to ISO14001 and ISO50001 or equivalent standards in relation to the Southern Franchise Services.

14. Community Rail Partnerships

- 14.1 The Franchisee shall, at the request of the Secretary of State, co-operate with the Secretary of State, Network Rail, the 'Association of Community Rail Partnerships', the relevant Community Rail Partnership and/or any other person as the Secretary of State may nominate in the development of the Secretary of State's initiatives in relation to options for a more cost effective delivery of the railway passenger services operated on any Community Rail Route.
- 14.2 The Franchisee shall become a member of any new Community Rail Partnership that is established during the Franchise Term.
- 14.3 The Franchisee shall from the Start Date invest at least £25,000 (pounds sterling twenty five thousand) to support any initiatives developed in conjunction with local Community Rail Partnerships and which encourage adoption of Stations by local groups for the purpose of improving the care and condition of Stations.
- 14.4 The Franchisee shall continue to be a member of the Sussex Community Rail Partnership and in addition to its obligations in paragraph 14.3, shall from the Combined Effective Date until the end of the Franchise Term, invest at least £40,000 (pounds sterling forty thousand) in each Franchisee Year on projects, payment of the salary for the partnership officer and other administration costs relating to the Sussex Community Rail Partnership. Any such amounts not invested at the end of each Franchisee Year shall be required to be invested in the following Franchisee Year and any outstanding investment must be paid to the Sussex Community Rail Partnership by the end of the Franchise Term.

15. Station Investment

- 15.1 The Franchisee shall at all times during the Franchise Term, co-operate with the Secretary of State and any third party nominated by the Secretary of State and notified to the Franchisee in developing opportunities for financing investment at Stations and Franchisee Access Stations in order to improve the station environment at such stations.
- 15.2 In co-operating with the Secretary of State and/or any nominated third party in developing any such financing opportunities, the Franchisee shall:
 - (a) attend meetings with the Secretary of State and/or such third party to discuss such opportunities;
 - (b) provide the Franchisee's opinion on those opportunities;
 - (c) review and comment on implementation timetables and programmes for any such opportunities; and

- (d) use all reasonable endeavours to achieve any necessary amendments to any Station Leases in order to facilitate the implementation of those opportunities.

16. **Small and Medium-sized Enterprises**

- 16.1 The Franchisee shall at all times keep accurate and complete records of its use of and interaction with SMEs in delivering the Franchise Services.
- 16.2 By no later than 31 January in each year (and within one month of the end of the Franchise Period) the Franchisee shall deliver to the Secretary of State a breakdown of the number of SMEs used by the Franchisee in providing the Franchise Services during the calendar year (or part thereof) which ended on the immediately preceding 31 December or at the end of the Franchise Period (as applicable).

17. **Apprenticeships**

- 17.1 The Franchisee shall at all times keep accurate and complete records of the training and apprenticeships offered by the Franchisee and/or its immediate UK-based supply chain in delivering the Franchise Services.
- 17.2 By no later than 31 January in each year (and within one month of the end of the Franchise Period) the Franchisee shall deliver to the Secretary of State a breakdown of the number of training and apprenticeships offered by the Franchisee and/or its supply chain in providing the Franchise Services during the calendar year (or part thereof) which ended on the immediately preceding 31 December or at the end of the Franchise Period (as applicable).

18. **Development of Business Cases**

The Franchisee shall co-operate in good faith with the Secretary of State in the development of business cases connected with the improvement of the Franchise (including the development of initiatives which enhance revenue earning potential, deliver additional passenger benefits and enhance the future value of the Franchise including by improving efficiency or reducing costs).

19. **Environmental impact monitoring, data collection and contractual targets**

- 19.1 The Franchisee shall, by no later than 3 months:
 - (a) after the Start Date, in relation to the TGN Franchise Services; and
 - (b) after the Combined Effective Date, in relation to the Southern Franchise Services,

provide a report to the Secretary of State setting out:

- (i) which measures included in the Dataset the Franchisee is unable to provide, despite using reasonable endeavours to do so ("**Excluded Data**");
- (ii) for each item of Excluded Data, the technical, operational or commercial reason why the Franchisee is unable to provide the Excluded Data; and

- (iii) a plan ("**Environmental Data Implementation Plan**") detailing, in relation to each item of Excluded Data, the actions which the Franchisee would need to take in order to be able to provide such Excluded Data, the Franchisee's best estimate of the cost of taking such action and the date by which, if such actions were taken, the Franchisee would be able to begin providing such Excluded Data to the Secretary of State.

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

19.2 The Secretary of State may require:

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

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

19.3 Where the Franchisee is:

- (a) undertaking works, whether at a station or depot or in respect of rolling stock;
- (b) procuring rolling stock; or
- (c) taking any other action which could enable the Franchisee to provide any item of Excluded Data in a cost effective manner,

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

19.4 With effect from the date which is 3 months after:

- (a) the Start Date, in respect of the TGN Franchise Services; and
- (b) the Combined Effective Date, in respect of the Southern Franchise Services,

the Franchisee shall measure, collect and provide to the Secretary of State in accordance with this paragraph 19, that data included on the Initial Dataset so as to allow the Secretary of State and the Franchisee to understand the current environmental performance of the Franchise and any potential for improvement in terms of environmental impact.

19.5 The Franchisee may, in its discretion, measure and collect additional data provided that the minimum required Initial Dataset is adhered to and the Franchisee will co-operate with the Secretary of State to seek to identify improvements in the efficiency and/or cost effectiveness of the collection of the data in the Dataset.

- 19.6 ⁴⁴⁵The Franchisee shall ensure that the form of measurement of the Initial Dataset enables it to report a consolidated Periodic or annual (as applicable) usage figure to the Secretary of State for each periodic or Franchisee Year (as applicable).
- 19.7 ⁴⁴⁶The Franchisee shall submit to the Secretary of State a report setting out the result of the collection of the Initial Dataset required by this paragraph 19 in accordance with the applicable granularity and regularity specified in Appendix 5 (Environmental Information) to this Schedule 13 (the "Environmental Impact Monitoring Report") within five (5) months following the end of each Franchisee Year.
- 19.8 ⁴⁴⁷Not Used.
- 19.9 ⁴⁴⁸The Franchisee shall submit the report required by paragraph 19.7 above to the Secretary of State in such format as the Secretary of State may (acting reasonably) from time to time specify. Such report will include the actual periodic or annual results (as applicable) and, with effect from:
- (a) the first Reporting Period which commences at least 15 months after the Start Date; and
 - (b) in respect of any measure which, as a result of an amendment to the Initial Dataset, the Franchisee subsequently becomes obliged to report against, the first Reporting Period which commences at least 12 months after the date on which the Franchisee first became obliged to report against that measure,
- the average of the results for the relevant Reporting Period and the previous twelve Reporting Periods ("Moving Annual Average").
- 19.10 ⁴⁴⁹The 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").

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- ⁴⁴⁵ 22 May 2018 (Date of Contract Change Letter) – Contract variation agreed by the Secretary of State and Franchisee.
- ⁴⁴⁶ 22 May 2018 (Date of Contract Change Letter) – Contract variation agreed by the Secretary of State and Franchisee.
- ⁴⁴⁷ 22 May 2018 (Date of Contract Change Letter) – Contract variation agreed by the Secretary of State and Franchisee.
- ⁴⁴⁸ 22 May 2018 (Date of Contract Change Letter) – Contract variation agreed by the Secretary of State and Franchisee.
- ⁴⁴⁹ 22 May 2018 (Date of Contract Change Letter) – Contract variation agreed by the Secretary of State and Franchisee.

19.11 ⁴⁵⁰The Franchisee shall procure that the independent body appointed pursuant to paragraph 19.10 includes in the Environmental Impact Monitoring Audit:

- (a) a retrospective assessment (covering the Franchisee Year to which the audit relates) of the Franchisee's data collection methodology and level of data granularity carried out in accordance with paragraph 19 and any recommendations by the Independent body in respect of such methodology and level of data granularity;
- (b) a verification of the accuracy of past data submissions made in respect of the Initial Dataset and as summarised by the Environmental Impact Monitoring Report; and
- (c) an assessment of the Franchisee's proposed data collection methodology and level of data granularity for the following Franchisee Year's data collection, and

In each case where the independent body has identified as part of its audit any errors, discrepancies or concerns with any of the items described in paragraphs 19.11(a) to 19.11(c), the Environmental Impact Monitoring Audit shall state whether these are, in the reasonable opinion of the independent body undertaking the audit, material or minor errors, discrepancies or concerns.

19.12 ⁴⁵¹The Franchisee shall submit a copy of the Environmental Impact Monitoring Audit to the Secretary of State at the same time the Environmental Impact Monitoring Report is submitted in accordance with paragraph 19.7 above.

19.13 ⁴⁵²Where the Environmental Impact Monitoring Audit highlights errors, discrepancies or concerns with any of the items described in paragraphs 19.11(a) to 19.11(c) above, the Franchisee shall, at the Franchisee's cost:

- (a) in the case of minor errors, discrepancies or concerns which are capable of rectification without material additional expenditure – rectify such minor errors, discrepancies or concerns and resubmit the relevant Environmental Impact Monitoring Report updated to address these to the Secretary of State as soon as reasonably practicable, and in any event within fifteen (15) Weekdays, following the date of the submission of the Environmental Impact

⁴⁵⁰ 22 May 2018 (Date of Contract Change Letter) – Contract variation agreed by the Secretary of State and Franchisee.

⁴⁵¹ 22 May 2018 (Date of Contract Change Letter) – Contract variation agreed by the Secretary of State and Franchisee.

⁴⁵² 22 May 2018 (Date of Contract Change Letter) – Contract variation agreed by the Secretary of State and Franchisee.

Monitoring Audit to the Secretary of State so that there is a complete and accurate record of the data in question;

- (b) **in the case of material errors, discrepancies or concerns which are capable of rectification - rectify such material errors, discrepancies or concerns and resubmit the relevant Environmental Impact Monitoring Report updated to address these to the Secretary of State as soon as reasonably practicable, and in any event within fifteen (15) 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**
- (c) **in the case of concerns in relation to the Franchisee's proposed data collection methodology and level of data granularity for the forthcoming Franchisee Year's data collection - make such amendments to such methodology as recommended in the Environmental Impact Monitoring Audit so as to address those concerns.**

19.14 Within eighteen months following the:

- (a) Start Date, in respect of the TGN Franchise Services; and
- (b) Combined Effective Date, in respect of the Southern Franchise Services,

the Franchisee shall propose to the Secretary of State annual targets for future Franchisee Years against the measures listed below or, if such measures are Excluded Data, against such alternate measures included in the Initial Dataset as the Secretary of State may specify, that demonstrate a reasonable improvement compared with the first Moving Annual Average which is reported in line with paragraph 19.9:

- (i) Traction energy:
 - (A) kWh ppkm; and
 - (B) kWh or litres/vehicle mile;
- (ii) Non-traction energy:
 - (A) Total non-traction kWh;
- (iii) Carbon emissions:
 - (A) Traction (kg CO₂); and
 - (B) Non traction (kg CO₂);
- (iv) Water consumption: Water consumption (m³); and
- (v) Waste: Waste to landfill (tonnes).

19.15 The Franchisee must as soon as reasonably practicable following notification of the annual targets described in paragraph 19.14 above produce an implementation plan which, in the opinion of the Secretary of State, is capable of achieving the

annual targets notified to the Secretary of State in accordance with paragraph 19.14. The Franchisee shall use all reasonable endeavours to implement that plan.

- 19.16 In the event that an annual target is not met, the Franchisee must as soon as reasonably practicable produce a revised implementation plan, which, in the reasonable opinion of the Secretary of State, is capable of achieving the annual targets. The Franchisee shall use all reasonable endeavours to implement that plan.
- 19.17 The Franchisee shall review the annual targets, and provide to the Secretary of State a revised implementation plan after 5 years (5 years after the original annual targets were agreed), and after every 5 years thereafter.
- 19.18 The Franchisee shall publish any annual targets notified to the Secretary of State pursuant to paragraph 19.14 above and the Franchisee's performance against those targets in widely accessible forms including, as a minimum, publishing them on its website.
- 19.19 If:
- (a) the Secretary of State has required the Franchisee to propose targets against alternate measures pursuant to paragraph 19.14; and
 - (b) subsequently, the relevant item of Excluded Data is included in the Initial Dataset,

the Secretary of State may require the Franchisee to propose, within 18 months of the date that the Secretary of State so requires, an annual target against the relevant measure listed in paragraph 19.14 that demonstrates a reasonable improvement compared with the first Moving Annual Average which is reported in respect of the relevant measure in line with paragraph 19.9.

APPENDIX 1 TO SCHEDULE 13

Efficient Franchisee

1. Information about the Efficiency of the Franchisee

1.1 The Franchisee shall:

- (a) at all times during the Franchise Term maintain records in relation to the areas and the information described in this Appendix 1 to Schedule 13; and
- (b) subject to paragraph 1.2, provide to the Secretary of State the information set out in the following tables at the frequency specified in the column of each such table headed "When information to be provided".

1.2 When so requested by the Secretary of State, the Franchisee shall, within such reasonable period as the Secretary of State may specify, make such information available for review by the Secretary of State by reference to:

- (a) such level of disaggregation (including by Route or Service Group) as is reasonably specified by the Secretary of State; and
- (b) any particular day, week or other longer period as is reasonably specified by the Secretary of State.

1.3 The following key shall apply to the tables in this Appendix 1:

- A = Information to be provided on or before any Passenger Change Date;
- B = Information to be provided for every Reporting Period within ten days of the last day of each Reporting Period;
- C = Information to be provided annually within ten days of the last day of each Franchisee Year; and
- D = Information to be provided whenever a change to the information contained in Schedule 1.7 (The Train Fleet) occurs.

Table 1 Rolling Stock Vehicles

Information to be provided	Class of Rolling Stock Vehicle			When information to be provided
	Class [aaa]	Class [bbb]	Class [xxx]	
Number of rolling stock vehicles in the Train Fleet	[number]	[number]	[number]	A

Information to be provided	Class of Rolling Stock Vehicle			When information to be provided
	Class [aaa]	Class [bbb]	Class [xxx]	
Number of rolling stock vehicles scheduled to be in service in the Peak as a percentage of the number of rolling stock vehicles in the Train Fleet	[%]	[%]	[%]	A
Number of rolling stock vehicles scheduled in service per Reporting Period as a percentage of the number of rolling stock vehicles in the Train Fleet x 24 x 28 (total rolling stock vehicle hours)	[%]	[%]	[%]	A
Total standard time scheduled preventative maintenance rolling stock vehicle hours per Reporting Period as a percentage of total rolling stock vehicle hours	[%]	[%]	[%]	A

Where trains operated by the Franchisee consist of locomotive(s) and coaches, the Franchisee shall separate the information provided for locomotive(s) and coaches.

Table 2 Information related to Efficiency of Operation

Information to be provided	When information to be provided
Total passenger journey miles divided by the total of staff hours and contractor hours	A
Number of scheduled unit diagrams per Reporting Period divided by the number of drivers (employees and contractors)	A
The number of depot maintenance employees and contractors (including train maintenance staff, depot drivers and supervisory and administrative staff at the relevant depot) divided by the number of rolling stock vehicles in the Train Fleet	A
Scheduled driving/train crew in service time compared to total driver/train crew (employees and contractors) expressed as a percentage	A
Total number of employees (including contractors) divided by the number of rolling stock vehicles in the Train Fleet	A
Number of indirect employees and contractors (head office, management and supervisory and administrative staff) relative to the number of direct employees and	A

Information to be provided	When information to be provided
contractors (drivers, train crew, station staff and train maintainers), expressed as a percentage	

Table 3 Financial Efficiency Ratio

Information to be provided	When information to be provided
Total cost of service operations (all Franchisee's costs excluding head office, management and supervisory and administrative staff costs and head office lease and facilities costs) divided by total scheduled vehicle miles	A
Total maintenance cost (including depot costs, spare parts replacement train maintenance staff (including employees and contractors) and depot supervisory costs, interior and exterior cleaning costs, depot maintenance costs excluding any vehicle fuel costs) divided by total scheduled vehicle miles	A
Total cost (sum of all Franchisee's costs) divided by total number of total passenger journey miles	A
Total cost of service operations (all Franchisee's costs excluding head office, management and supervisory and administrative staff costs and head office lease and facilities costs) divided by total passenger journeys	A
Administrative costs (head office, management and supervisory and administrative staff costs and head office lease and facilities costs) divided by total scheduled vehicle miles	A
Total fares revenue divided by the total number of total passenger journey miles	A
Ticket selling and revenue protection costs* as a percentage of total revenue	A
Percentage of ticket sales revenue collected by ticket office staff	A
Percentage of ticket sales revenue collected by on train staff	A
Percentage of ticket sales revenue collected by automatic ticket machines	A
Percentage of total revenue obtained from season tickets	A

*Ticket selling and revenue protection costs include ticket office staff costs, ticket machine and ticket validation equipment maintenance costs, ticket procurement and ticket costs, revenue protection staff costs (less penalty fare (if any) receipts), costs associated with RSP and Ticketing and Settlement Agreement compliance, and commissions paid to third parties in respect of ticket sales.

Table 4 Safety

Information to be provided	When information to be provided
Accidents reported (staff and passengers) divided by the number of passenger journeys	C
Crime incidents reported (staff and passengers) divided by the number of passenger journeys	C

Table 5 HR Information

Information to be provided	When information to be provided
Evidence of Franchisee's vision, company goals and HR Strategy that supports it	C
Evidence of a human resource database capable of informing the operation of the Franchisee and supporting the production of a manpower plan	C
Evidence of a 5 year manpower plan, rolling forward and updated annually	C
Evidence of working towards "Investors in People" accreditation	C
Evidence of a performance management process applicable to all staff	C
Evidence of an objective, transparent and fair recruitment process	C
Evidence of analysis of employment and recruitment data by gender, ethnic category, disability function and grade	C
Evidence of analysis of turnover by cause, retirement, dismissal, redundancy, ill health retirement, death	C
Evidence of succession planning, identification of prospective "hot spots" and actions taken to address them	C
Evidence of a diversity plan and impact of implementing it	C
Evidence of historical and current data on salaries, earnings, hours of work, overtime worked, free day/rest day working, and other main terms and conditions for all key grade groups	C
Evidence of benchmark comparator data	C
Evidence of non-financial reward and recognition initiatives	C
Evidence of a competence framework in place based on national occupational standards	C

Information to be provided	When information to be provided
Evidence of an assessment and verification framework to enable the delivery of NVQs and SVQs	C
Evidence of a structured induction programme (supported by hard data) incorporating a railway industry perspective to all new entrants	C
Hard data (numbers / %) of staff with NVQs / SVQs (or equivalent externally recognised qualification) by grade against target	C
Evidence (supported by hard data (numbers / %)) of structured training and development for "Strategic", "Supervisory" and "Operational" managers as well as the wider workforce	C
Evidence of a collective "consultation and bargaining framework"	C
Hard data on people days lost through industrial action and a record of industrial action short of strike action	C
Evidence of an annual staff attitude survey	C
Evidence of actions taken arising from feedback received from the staff attitude survey	C
Evidence of company links to the community through its staff	C
Evidence of a company communication and briefing strategy	C
Evidence of a robust process of briefing, core briefing material and 2-way communication and feedback	C
Evidence of staff hours lost through sickness and other absence	C
Evidence of staff hours lost through training	C

APPENDIX 2 TO SCHEDULE 13**Key Assets****1. Information About Assets Used In The Franchise**

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

APPENDIX 3 TO SCHEDULE 13

Operational Information

1. **Information about the Performance of the Franchisee**
 - 1.1 The Franchisee shall at all times during the Franchise Term maintain records in relation to its operational performance under the Franchise Agreement, covering the areas and the information described in this Appendix 3 to Schedule 13. Such information shall include details as to whether or not any curtailment, diversion, delay or failure to attain any connection is attributable, in the Franchisee's opinion, to either a Force Majeure Event or the implementation of a Service Recovery Plan.
 - 1.2 The Franchisee shall, subject to paragraph 1.3, provide to the Secretary of State the information set out in the following tables at the frequency specified in the column of each such table headed "When information to be provided".
 - 1.3 When so requested by the Secretary of State, the Franchisee shall, within such reasonable period as the Secretary of State may specify, make such information available for review by the Secretary of State by reference to:
 - (a) such level of disaggregation (including by Route or Service Group) as is reasonably specified by the Secretary of State; and
 - (b) any particular day, week or other longer period as is reasonably specified by the Secretary of State.
 - 1.4 The following key shall apply to the table in this Appendix 3:
 - A = information to be provided on or before any Passenger Change Date;
 - B = information to be provided for every Reporting Period within 17 days of the last day of each Reporting Period; and
 - C = information to be provided annually within 10 days of the last day of each Franchisee Year.
 - 1.5 For the purpose of this Appendix 3, a **business day** is any day between Monday to Friday (inclusive) excluding public holidays.

Table 1 Operational Information

Information to be provided	Information (format)	When information to be provided
Number of Passenger Services		
Number of Passenger Services in the Timetable	[number]	B
Number of Passenger Services in the Enforcement Plan of the Day	[number]	B

Information to be provided	Information (format)	When information to be provided
Number of Cancellations and Partial Cancellations		
Number of Passenger Services in the Enforcement Plan of the Day which were the subject of a Cancellation	[number]	B
Number of Passenger Services in the Enforcement Plan of the Day which were the subject of a Partial Cancellation	[number]	B
Number of Passenger Services in the Enforcement Plan of the Day which were the subject of a Cancellation attributable to the Franchisee's implementation of a Service Recovery Plan	[number]	B
Number of Passenger Services in the Enforcement Plan of the Day which were the subject of a Partial Cancellation attributable to the Franchisee's implementation of a Service Recovery Plan	[number]	B
Number of Passenger Services in the Enforcement Plan of the Day which were the subject of a Network Rail Cancellation	[number]	B
Number of Passenger Services in the Enforcement Plan of the Day which were the subject of a Network Rail Partial Cancellation	[number]	B
Number of Passenger Services in the Enforcement Plan of the Day which were the subject of a Disputed Cancellation	[number]	B
Number of Passenger Services in the Enforcement Plan of the Day which were the subject of a Disputed Partial Cancellation	[number]	B
Number of Disputed Cancellations and Disputed Partial Cancellations for the 12 preceding Reporting Periods for which the attribution remains in dispute between Network Rail and the Franchisee	[number]	B
Number of Disputed Cancellations and Disputed Partial Cancellations from the 12 preceding Reporting Periods for which disputed attribution has been resolved or determined since the Franchisee's previous report pursuant to paragraph 2.1 of Schedule 7.1 (Performance Benchmarks) including whether each relevant Disputed Cancellation and/or Disputed Partial Cancellation was attributed to Network Rail or to the Franchisee	[number]	B

Information to be provided	Information (format)	When information to be provided
<p>Where there is a difference between the Timetable and the Plan of the Day on any day the following:</p> <p>(a) the fact of such difference (together with an annotation showing whether the difference was initiated by Network Rail or the Franchise); and</p> <p>(b) the number of:</p> <p>(i) Passenger Services affected; and</p> <p>(ii) Cancellations or Partial Cancellations which would have arisen if the Timetable on that day had been the same as the Plan of the Day</p>	[number]	B
<p>Where there is a difference between the Plan of the Day and the Enforcement Plan of the Day on any day:</p> <p>(a) the fact of such difference; and</p> <p>(b) the number of:</p> <p>(i) Passenger Services affected; and</p> <p>(ii) Cancellations or Partial Cancellations which would have arisen if the Plan of the Day had been the same as the Enforcement Plan of the Day</p>	[number]	B
<p>Number of Passenger Services in the Enforcement Plan of the Day which were the subject of a cancellation and which satisfied the conditions of the term Cancellation, except that such cancellations occurred for reasons attributable to the occurrence of a Force Majeure Event</p>	[number]	B
<p>Number of Passenger Services in the Enforcement Plan of the Day which were the subject of a partial cancellation and which satisfied the conditions of the term Partial Cancellation, except that such partial cancellations occurred for reasons attributable to the occurrence of a Force Majeure Event</p>	[number]	B
<p>Peak Short Formation</p>		
<p>Number of Peak Passenger Services that have less than the required Passenger Carrying Capacity specified in the Train Plan</p>	[number]	B
<p>Number of Peak Passenger Services that have less than the required Passenger Carrying</p>	[number]	B

Information to be provided	Information (format)	When information to be provided
Capacity specified in the Train Plan attributable to the Franchisee's implementation of a Service Recovery Plan		
Number of Peak Passenger Services that have less than the required Passenger Carrying Capacity specified in the Train Plan attributable to the occurrence of a Force Majeure Event	[number]	B
Minutes Delay and Punctuality		
Number of Minutes Delay attributable to the Franchisee	[minutes]	B
Number of Minutes Delay attributable to Network Rail	[minutes]	B
Number of Minutes Delay for such Reporting Period for which the attribution is in dispute between Network Rail and the Franchisee	[minutes]	B
Number of Minutes Delay for the 12 preceding Reporting Periods for which the attribution remains in dispute between Network Rail and the Franchisee	[minutes]	B
Number of Minutes Delay from the 12 preceding Reporting Periods for which disputed attribution has been resolved or determined since the Franchisee's previous report pursuant to paragraph 2.6 of Schedule 7.1 (Performance Benchmarks) and the number of such Minutes Delay attributed to each of the Franchisee and Network Rail as a result of such resolution or determination	[minutes]	B
Number of Minutes Delay attributed to the occurrence of a Force Majeure Event	[minutes]	B
Train Mileage		
Aggregate Train Mileage scheduled in the Timetable	[mileage]	A
Aggregate Train Mileage operated	[mileage]	B
Year to Date Loaded Train Miles (millions)	[mileage]	B

APPENDIX 4 TO SCHEDULE 13**Ticket and Revenue Information****1. Information about Ticket Sales, Revenue and Commission**

- 1.1 The Franchisee shall at all times during the Franchise Term maintain records in relation to Revenue covering the areas and the information described in this Appendix 4 to Schedule 13. Such information shall include details as to the number of Fares sold in aggregate and by ticket type and the Revenue derived from the sale of tickets as allocated to the Franchisee by RSP or otherwise attributable to the sale of Fares in respect of passenger journeys made on the Passenger Services;
- 1.2 The Franchisee shall, subject to paragraph 1.3, provide to the Secretary of State the information set out in the following table at the frequency specified in the column of each such table headed "When information to be provided".
- 1.3 When so requested by the Secretary of State, the Franchisee shall, within such reasonable period as the Secretary of State may specify, make such information available for review by the Secretary of State by reference to:
- (a) such level of disaggregation (including by Route or Service Group) as is reasonably specified by the Secretary of State; and
 - (b) any particular day, week or other longer period as is reasonably specified by the Secretary of State.
- 1.4 The following key shall apply to the table in this Appendix 4:
- A = information to be provided on or before any Passenger Change Date;
 - B = information to be provided for every Reporting Period within 10 days of the last day of each Reporting Period; and
 - C = information to be provided annually within 10 days of the last day of each Franchisee Year.

Table Ticket Sales and Other Information

Information to be provided	Information (format)	When information to be provided
Revenue		
Total Revenue disaggregated by reference to revenue derived from the sale of Fares (" Ticket Revenue ") and all other Revenue (other than Ancillary Revenue)	[£]	B
Total Ticket Revenue by ticket type	[£]	B

Information to be provided	Information (format)	When information to be provided
Total Ticket Revenue by Route	[£]	B
Total Ticket Sales net of retail commission and net of ToD issuing commission	[£]	B
Penalty Fares		
Number of penalty fare notices issued	[number]	B
Number of penalty fare notices issued by Route	[number]	B
Value of penalty fares in respect of which penalty fares notices issued	[£]	B
Value of penalty fares in respect of which penalty fares notices issued by Route	[£]	B
Number of penalty fares that remain unpaid at the end of each Reporting Period	[number]	B
Excess Fares		
Number of excess fares issued	[number]	B
Number of excess fares issued by Route	[number]	B
Value of excess fares issued	[£]	B
Value of penalty fares issued by Route	[£]	B
Value of recorded Fares recoveries	[£]	B
Commission		
Total commission earned by the Franchisee through the sale of Fares for passenger journeys on railway passenger services other than the Passenger Services	[£]	B
Delay Repay Compensation		
The amount of the Delay Repay Compensation paid by the Franchisee to passengers in accordance with the Passenger Charter.	[£]	B
Ancillary Services		
The extent and nature of the Ancillary Services (other than the Passenger Services)	[description]	C

Information to be provided	Information (format)	When information to be provided
Revenue accruing to the Franchisee from the carrying out of Ancillary Services	[£]	C
Revenue accruing to the Franchisee from the carrying out of Ancillary Services by Ancillary Service	[£]	C
Advertising Revenue		
Advertising revenue accruing to the Franchisee from advertising on trains	[£]	C
Advertising revenue accruing to the Franchisee from advertising on Stations	[£]	C
Car Park Revenue		
Total car park revenue accruing to the Franchisee	[£]	C
Total car park revenue accruing to the Franchisee by Station car park	[£]	C

- 1.5 Where the information referred to in this Appendix 4 is held in a system operated by RSP (or any other system), the Franchisee may fulfil its obligations under paragraph 1.1 by procuring that the Secretary of State shall be granted access free of charge to such records in a readily accessible manner and in a format acceptable to the Secretary of State.
- 1.6 The Franchisee shall advise the Secretary of State of any changes made to its systems or processes or those of RSP which materially change or affect the continuity of the records maintained pursuant to this Appendix 4. Such advice shall include an assessment of the materiality of the relevant change.

APPENDIX 5 to SCHEDULE 13⁴⁵³**Environmental Impact Monitoring Dataset**

Environmental Impact Monitoring Dataset SUBJECT (UNIT)		OPERATOR TO REPORT	GRANULARITY
TRACTION	EC4T (kWh)	Breakdown per distinct fleet - metered	4-week period
	EC4T (kWh)	Breakdown per distinct fleet - unmetered	4-week period
	Gas-oil (litres)	Breakdown per distinct fleet	4-week period
NONTRACTION	Electricity (kWh)	Total	4-week period or monthly
	Gas (kWh)	Total	4-week period or monthly
	Gas-oil (litres)	Total	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 £250,000	Total	Per Project
WATER	Mains Water consumption (m3)	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	Enforcement/information Notices	Total	Annual
	Environmental fines or prosecutions	Total	Annual
	Environmental incidents reported through EMS	Total	Annual
	Environmental training records % personnel briefed/trained	Total	Annual

14 SCHEDULE 14

Preservation of Assets

- Schedule 14.1: Maintenance of Franchise**
- Schedule 14.2: Maintenance of Operating Assets**
- Schedule 14.3: Key Contracts**
 - Appendix: List of Key Contracts**
- Schedule 14.4: Designation of Franchise Assets**
 - Appendix: List of Primary Franchise Assets**
- Schedule 14.5: Dealings with Franchise Assets**

SCHEDULE 14.1**Maintenance of Franchise****Maintenance as a going concern**

1. The Franchisee shall maintain and manage the business of providing the Franchise Services so that, to the greatest extent possible and practicable:
 - (a) the Franchisee is able to perform its obligations under the Franchise Agreement; and
 - (b) a Successor Operator would be able to take over the business of providing the Franchise Services immediately at any time.
2. The Franchisee's obligation under paragraph 1 shall include an obligation to ensure that any computer and information technology systems of the Franchisee shared in whole or in part with Affiliates or third parties can be operated by a Successor Operator as a stand alone system without continued reliance on such Affiliates or other third parties immediately from the date of termination of the Franchise Agreement without any reduction in functionality or any increase in maintenance or support costs to the Successor Operator (this obligation being without prejudice to any requirement for the Franchisee to obtain consent to such arrangements relating to sharing computer and information technology systems from the Secretary of State).
3. The Franchisee shall use all reasonable endeavours to ensure that such Successor Operator would have immediate access to all Franchise Employees and Primary Franchise Assets for such purpose.
4. The Franchisee shall maintain and manage the business of providing the Franchise Services on the basis that such business will be transferred, in the manner contemplated under the Franchise Agreement, as a going concern at the end of the Franchise Period to, and continued immediately thereafter by, a Successor Operator.
5. The Franchisee shall use all reasonable endeavours to ensure that an appropriate number of employees (having sufficient skills, qualifications and experience) will transfer by operation of Law to any Successor Operator following the expiry of the Franchise Period.
6. The Franchisee shall comply with all reasonable requirements of the Secretary of State to obtain or maintain the property and rights that a Successor Operator would require, or that it would be convenient for it to have, on the basis that the same will transfer by operation of Law to any Successor Operator following the expiry of the Franchise Period.

Post-Franchise timetables

7. Both prior to and following the selection of a Successor Operator (whether a franchisee or otherwise and whether or not subject to the satisfaction of any conditions), the Franchisee shall:
 - (a) co-operate with, where a Successor Operator has been appointed, that Successor Operator, or where not, the Secretary of State; and

- (b) take such steps as may reasonably be requested by the Secretary of State, so as to ensure the continuity of, and orderly handover of control over of the Franchise Services.
8. The steps that the Secretary of State may reasonably request the Franchisee to take pursuant to paragraph 7 include:
- (a) participating in any timetable development process that takes place during the Franchise Period, but which relates to any timetable period applying wholly or partly after the expiry of the Franchise Term ("**Successor Operator Timetable**"), including bidding for and securing any Successor Operator Timetable, whether or not:
 - (i) the Successor Operator has been identified; or
 - (ii) there is in place an Access Agreement relating to the period over which that Successor Operator Timetable is intended to be operated;
 - (b) using reasonable endeavours to seek amendments to and/or extensions of Access Agreements which can be transferred to the Successor Operator on expiry of the Franchise Period;
 - (c) assisting the Secretary of State or the Successor Operator (as the case may be) in the preparation and negotiation of any new Access Agreement relating to any Successor Operator Timetable; and/or
 - (d) entering into that Access Agreement in order to secure the relevant priority bidding rights required by the Successor Operator to operate that Successor Operator Timetable, provided that the Franchisee shall not be required to enter into any such Access Agreement unless the Secretary of State has first provided to it confirmation in writing that he will include that Access Agreement in any Transfer Scheme pursuant to paragraph 3.1 of Schedule 15.4 (Provisions Applying on and after Termination).

SCHEDULE 14.2**Maintenance of Operating Assets****1. Operating Assets**

- 1.1 The Franchisee shall maintain, protect and preserve the assets (including any intellectual property or intangible assets employed in the performance of its obligations under the Franchise Agreement (the "**Operating Assets**") in good standing or good working order, subject to fair wear and tear.
- 1.2 The Franchisee shall carry out its obligations under paragraph 1.1 so that the Operating Assets may be transferred at the end of the Franchise Period to a Successor Operator and used by such Successor Operator in the provision or operation of similar services to the Franchise Services.
- 1.3 Where any Operating Asset is lost, destroyed or otherwise beyond repair, the Franchisee shall replace the Operating Asset with property, rights or liabilities in modern equivalent form to the Operating Asset to be replaced. The Franchisee shall at all times maintain an appropriate volume of Spares, and/or an appropriate level of access to Spares from a third party, to enable it to perform its obligations under the Franchise Agreement.
- 1.4 The Secretary of State may at any time require the Franchisee to provide to the Secretary of State a schedule specifying the condition of any asset or class of assets that he specifies for this purpose. Such schedule shall cover such aspects of asset condition as the Secretary of State may reasonably require. If the parties are unable to agree the content of such schedule of condition, either party may refer the dispute for resolution in accordance with the Dispute Resolution Rules. Until such dispute is resolved, the Franchisee shall comply with the Secretary of State's requirements in respect of such schedule of condition.
- 1.5 The Franchisee shall keep vested in it at all times during the Franchise Period all Franchise Assets designated as such pursuant to Schedule 14.4 (Designation of Franchise Assets) as it may require in order to comply with:
- (a) the Licences;
 - (b) any contracts of employment with Franchise Employees;
 - (c) any relevant Fares;
 - (d) any Key Contracts; and
 - (e) any applicable safety legislation regulations or safety standards and the Safety Certificate,

in order to ensure that the Secretary of State may designate such assets as Primary Franchise Assets.

2. Brand Licences And Branding**Brand Licences**

- 2.1 The Franchisee shall comply with its obligations under each of the Brand Licences.

Branding

2.2 Subject to any applicable obligations or restrictions on the Franchisee (including the terms of the Rolling Stock Leases), the Franchisee may apply registered or unregistered trade marks (including company names, livery and other distinctive get-up) to any assets owned or used by it in the operation and provision of the Franchise Services.

- (a) Subject to paragraphs 2.2(c) and (g), the Franchisee may:
- (i) in respect of unregistered Marks, provide or procure the provision of an irrevocable undertaking to any relevant Successor Operator to the effect that neither it nor the owner of the Marks will enforce such rights as it may have or may in the future have in respect of such Marks against such Successor Operator and its successors; and
 - (ii) in respect of registered Marks, grant or procure the grant of an irrevocable licence to use such Marks to such Successor Operator and its successors.
- (b) Any such licence or undertaking under paragraph 2.2(a) shall be in such form as the Secretary of State shall reasonably require except that the terms of any such licence and, to the extent appropriate, any such undertaking shall accord with the provisions of paragraph 8.3 of Schedule 15.4 (Provisions Applying on and after Termination).
- (c) Subject to paragraph 2.2(g), to the extent that:
- (i) the Franchisee does not provide a relevant undertaking or licence in accordance with paragraph 2.2(a);
 - (ii) the Secretary of State considers the relevant Marks to be so distinctive or otherwise such that a Successor Operator could not reasonably be asked to use the relevant assets to which the Marks are applied; or
 - (iii) the Franchisee has not otherwise removed or covered such Marks in such a way as may be reasonably acceptable to the Secretary of State prior to the expiry of the Franchise Period,

then the Franchisee shall pay to the relevant Successor Operator such amount as may be agreed between the Franchisee and such Successor Operator, as being the reasonable cost (including any Value Added Tax for which credit is not available under Sections 25 and 26 of the Value Added Tax Act 1994) of covering such Marks or otherwise removing all indications of or reference to the Marks in a manner reasonably acceptable to the Secretary of State. Such amount shall not in any event exceed the cost to the Successor Operator of replacing such Marks with its own. If the Franchisee and the relevant Successor Operator fail to agree such cost within 28 days of the expiry of the Franchise Period, the Franchisee shall submit such dispute for resolution in accordance with such dispute resolution procedures as the Secretary of State may require.

- (d) The amount to be paid to a Successor Operator under paragraph 2.2(c) may include the reasonable cost of:

- (i) removing or covering Marks from the exterior of any rolling stock vehicle;
 - (ii) removing or covering interior indications of the Marks including upholstery and carpets;
 - (iii) replacing or covering all station or other signs including bill boards; and
 - (iv) otherwise ensuring that such removal, covering or replacement is effected with all reasonable care and in such manner that the relevant assets may reasonably continue to be used by a Successor Operator in the provision of the Franchise Services.
- (e) The Franchisee shall, in addition to making a payment under paragraph 2.2(c) grant or procure the grant of a licence or undertaking complying with paragraphs 2.2(a) and (b) except that such licence shall only be for such period as may be agreed between the Franchisee and the Successor Operator as being reasonably required by the Successor Operator to remove the Marks from all relevant assets without causing excessive disruption to the operation of services similar to the Franchise Services provided by such Successor Operator. If such period cannot be agreed, the Franchisee shall submit such dispute for resolution in accordance with such dispute resolution procedures as the Secretary of State may require.
- (f) The Secretary of State shall determine at or around the end of the Franchise Period, and after consultation with the Franchisee, the maximum liability of the Franchisee under paragraph 2.2(c) and the maximum length of licence or undertaking under paragraph 2.2(e);
- (g) The provisions of paragraphs 2.2(a) to (f) shall not apply to the extent that the relevant asset is not to be used by a Successor Operator in the provision of services similar to the Franchise Services. The Secretary of State shall notify the Franchisee as soon as he becomes aware of whether or not any such asset is to be so used.

Non-designation of New Brands

- 2.3 The Secretary of State agrees not to designate as a Primary Franchise Asset any registered or unregistered trade mark which is developed by the Franchisee.

SCHEDULE 14.3**Key Contracts****1. Key Contracts**

1.1 The provisions of this Schedule 14.3 apply to all contracts designated as Key Contracts from time to time.

1.2 The Key Contracts as at the date of the Franchise Agreement are set out in the Appendix (List of Key Contracts) to this Schedule 14.3. The Franchisee shall, in respect of any category of agreement, contract, licence or other arrangement which, by virtue of the provisions of this paragraph 1.2, is a Key Contract and to which the Franchisee, as at date of the Franchisee Agreement, is not already a party:

- (a) inform the Secretary of State from time to time of any such agreement, contract, licence or other arrangement which it may be intending to enter into; and
- (b) the provisions of paragraph 5.1 shall apply in respect of any such agreement, contract, licence or other arrangement.

1.3 Without prejudice to the provisions of paragraphs 2, 3 and 4 of this Schedule 14.3, the Appendix (List of Key Contracts) to this Schedule 14.3 shall be amended as considered necessary from time to time to take account of any:

- (a) designation by the Secretary of State of any actual or prospective agreement, contract, licence or other arrangement or any category of agreement, contract, licence or other arrangement, to which or under which the Franchisee is (or may become) a party or a beneficiary pursuant to paragraph 2 of this Schedule 14.3; or
- (b) de-designation by the Secretary of State of any Key Contract pursuant to paragraph 3 of this Schedule 14.3; or
- (c) re-designation by the Secretary of State pursuant to paragraph 4 of this Schedule 14.3.

2. Designation of Key Contracts

2.1 Where the Secretary of State considers that it is reasonably necessary for securing the continued provision of the Franchise Services or the provision of services similar to the Franchise Services by a Successor Operator in accordance with the Franchise Agreement, he may make a designation pursuant to paragraph 2.2.

2.2 The Secretary of State may at any time, by serving notice on the Franchisee, designate as a Key Contract:

- (a) any actual or prospective agreement, contract, licence or other arrangement; and/or
- (b) any category of agreement, contract, licence or other arrangement, to which or under which the Franchisee is (or may become) a party or a beneficiary,

with effect from the date specified in such notice.

- 2.3 Key Contracts may include any agreement, contract, licence or other arrangement whether in written, oral or other form, whether formal or informal and whether with an Affiliate of the Franchisee or any other person and may include any arrangement for the storage of assets (including electronic systems or Computer Systems) or accommodation of employees.

3. **De-Designation of Key Contracts**

The Secretary of State may at any time, by serving a notice on the Franchisee, de-designate any Key Contract from continuing to be a Key Contract with effect from the date specified in such notice.

4. **Re-Designation of Key Contracts**

The Secretary of State may at any time, by serving notice on the Franchisee, re-designate as a Key Contract anything which has ceased to be designated as a Key Contract in accordance with paragraph 3 with effect from the date specified in such notice.

5. **Direct Agreements**

- 5.1 Unless the Secretary of State otherwise agrees, or unless directed to do so by the ORR, the Franchisee shall not enter into any prospective Key Contract unless the counterparty to that prospective Key Contract:

- (a) is a Train Operator; or
- (b) has entered into a Direct Agreement with the Secretary of State in respect of that prospective Key Contract, providing on a basis acceptable to the Secretary of State, amongst other things, for the continued provision of the Passenger Services and/or the continued operation of the Stations and Depots in the event of:
 - (i) breach, termination or expiry of such Key Contract;
 - (ii) termination or expiry of the Franchise Agreement; or
 - (iii) the making of a railway administration order in respect of the Franchisee.

- 5.2 Where the Secretary of State designates or re-designates as a Key Contract:

- (a) any agreement, contract, licence or other arrangement to which the Franchisee is already a party; or
- (b) any category of agreement, contract, licence or other arrangement where the Franchisee is already a party to a contract, licence or other arrangement which, by virtue of the Secretary of State's designation or re-designation, is classified in such category,

the Franchisee shall use all reasonable endeavours to assist the Secretary of State in entering into a Direct Agreement as envisaged by paragraph 5.1(b).

- 5.3 The Franchisee shall pay to the Secretary of State an amount equal to any losses, costs, liabilities, charges or expenses which may be suffered or incurred by the

Secretary of State under the provisions of any Direct Agreement and which may be notified to the Franchisee as a result of, or in connection with:

- (a) any breach by the Franchisee of the terms of the Key Contract to which the relevant Direct Agreement relates; or
- (b) any unsuccessful claim being brought by the Franchisee against the counterparty of any such Key Contract in relation to the termination of such Key Contract.

6. **Emergencies**

Where any emergency may arise in connection with the provision and operation of the Franchise Services, the Franchisee:

- (a) may enter into on a short-term basis such contracts, licences or other arrangements as it considers necessary or appropriate to deal with the emergency;
- (b) need not procure that the relevant counterparty enters into a Direct Agreement in respect of such contracts or use all reasonable endeavours to assist the Secretary of State in entering into the same;
- (c) shall promptly inform the Secretary of State of any such emergency and the contracts, licences or other arrangements which it proposes to enter into; and
- (d) shall take such action in relation to such emergency, contracts, licences or other arrangements as the Secretary of State may request.

7. **No Amendment**

The Franchisee shall not without the prior consent of the Secretary of State (which shall not be unreasonably withheld) vary, or purport to vary, the terms or conditions of any Key Contract at any time, unless directed to do so by the ORR.

8. **Replacement of Key Contracts**

454 The Franchisee shall:

- (a) **(other than in respect of the MSP Agreement described at paragraph 14 of the Appendix (List of Key Contracts) to Schedule 14.3 (Key Contracts)) 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**

454 09/12/2018 (Date of Deed of Amendment) Contract insertion agreed by the Secretary of State and the Franchisee.

- (b) **comply with the reasonable instructions of the Secretary of State in relation to such replacement contract.**

9. **Termination of Key Contracts**

The Franchisee shall, to the extent so requested by the Secretary of State, exercise its right to terminate any Key Contract on the Expiry Date.

APPENDIX TO SCHEDULE 14.3**List of Key Contracts**

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

1. any Access Agreement to which the Franchisee is a party other than in its capacity as a Facility Owner;
2. any Property Lease;
3. any Rolling Stock Related Contract including the Rolling Stock Leases listed in Table 1 and Table 2 of Schedule 1.7 (The Train Fleet);
4. any contract for the maintenance and renewal works at Stations including any framework delivery contracts for the provision of building and civil engineering works, mechanical and electrical works at Stations;
5. any contract or arrangement for the lending, seconding, hiring, contracting out, supervision, training, assessment, or accommodation by another Train Operator of any train drivers, conductors or other train crew used by the Franchisee in the provision of the Passenger Services;
6. any contract or arrangement for the subcontracting or delegation to another Train Operator of the provision of any of the Passenger Services (whether or not the consent of the Secretary of State is required to such subcontracting or delegation under paragraph 1 of Schedule 2.3 (Third Party Delivery of Passenger Services and Other Franchisees));
7. any contract or arrangement with a Train Operator (other than an Access Agreement) for the provision to the Franchisee of train dispatch, performance or supervision of platform duties, security activities, evacuation procedures, advice or assistance to customers, assistance to disabled customers, operation of customer information systems, cash management or ticket issuing systems administration;
8. any contract or arrangement with a Train Operator for the provision of breakdown or recovery, and track call services to assist in the provision of the Passenger Services;
9. any contract or arrangement for the supply of spare parts or Spares;
10. any contract or arrangement for the maintenance of track and other related infrastructure;
11. any licences of Marks to the Franchisee;
12. any licence of any CRM System or Yield Management System; and
13. any contract or arrangement for the provision or lending of Computer Systems (other than the CRM System and Yield Management System) used by the Franchisee for the delivery of the Franchise Services.

- 14. **455 MSP Agreement [REDACTED⁴⁵⁶] relating to the provision of the On-Train Wi-Fi Services; and**
- 15. **the OTW Network Provider Agreements entered into by the Franchisee relating to the provision of the Network for On-Train Wi-Fi Services.**

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Derogations

455 09/12/2018 (Date of Deed of Amendment) Contract insertion agreed by the Secretary of State and the Franchisee.

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

SCHEDULE 14.4**Designation of Franchise Assets****1. Franchise Assets**

1.1 Subject to paragraph 1.2, all property, rights and liabilities of the Franchisee from time to time during the Franchise Period shall be designated as Franchise Assets and shall constitute Franchise Assets for the purposes of Section 27(11) of the Act.

1.2 The rights and liabilities of the Franchisee in respect of the following items shall not be designated as Franchise Assets and shall not constitute franchise assets for the purposes of Section 27(11) of the Act:

- (a) any contracts of employment;
- (b) the Franchise Agreement and any Transfer Scheme or Supplemental Agreement;
- (c) the Ticketing and Settlement Agreement;
- (d) any sums placed on deposit with a bank or other financial institution;
- (e) such other property, rights and liabilities as the Franchisee and the Secretary of State may agree from time to time or as the Secretary of State may de-designate as Franchise Assets under paragraph 10.2; and
- (f) any Rolling Stock Leases.

2. Primary Franchise Assets and Investment Assets

2.1 The following property, rights and liabilities shall (to the extent that they constitute Franchise Assets) be designated as Primary Franchise Assets with effect from the following dates:

- (a) the property, rights and liabilities listed as such in the Appendix (List of Primary Franchise Assets) to this Schedule 14.4 (which constitute Primary Franchise Assets agreed between the parties as at the date of the Franchise Agreement), on the Start Date;
- (b) any additional property, rights and liabilities designated under paragraph 3 during the Franchise Period, on the date of such designation;
- (c) any property or right which is vested in the Franchisee and used for the purpose of maintaining, replacing, repairing or renewing any property designated as Primary Franchise Assets and which forms or replaces part or all of such designated property on completion of such maintenance, replacement, repair or renewal, on the date of its use for such purpose;
- (d) the rights and liabilities of the Franchisee under any Key Contract designated under paragraph 5, on the date of such designation;

- (e) the rights and liabilities of the Franchisee in respect of the terms of any Fare or Discount Card designated under paragraph 6, on the date of such designation;
- (f) any CRM Data and/or Yield Management Data and, to the extent that any CRM System and/or Yield Management System is the property of the Franchisee, such CRM System and/or Yield Management System on the later of the Start Date and:
 - (i) in relation to CRM Data or Yield Management Data, the date on which such CRM Data or Yield Management Data (as applicable) is collected; or
 - (ii) in relation to any such CRM System or Yield Management System, the date on which such CRM System or Yield Management System is created,

save, in relation to CRM Data and Yield Management Data, any data in respect of which the Data Subject has not consented to such data being disclosed and Processed by any Successor Operator and/or the Secretary of State; and
- (g) any licence of any CRM System and/or Yield Management System, on the date of such licence.

2.2 Investment Assets

- (a) On each Investment Asset Request Date the Franchisee shall provide to the Secretary of State a list of all Franchise Assets acquired since the Start Date (in the case of the first such list) or the previous Investment Asset Request Date (in the case of subsequent lists) which it wishes the Secretary of State to designate as Investment Assets. Such list shall clearly identify each relevant Franchise Asset, its purpose, specification, usual location, acquisition price, any ongoing charge payable by the Franchisee in relation to the Franchise Asset and any other asset upon which the operation of the Franchise Asset is dependent. The Franchisee shall provide such additional information as the Secretary of State shall reasonably request in relation to any such Franchise Asset.
- (b) The Franchisee shall not be permitted to nominate as Investment Assets without the prior written consent of the Secretary of State (which the Secretary of State shall have an unfettered discretion as to whether or not to give) Franchise Assets which:
 - (i) individually have an acquisition cost exceeding pounds sterling two million (£2,000,000);
 - (ii) when aggregated with the Franchise Assets already designated as Investment Assets in a Franchisee Year have an aggregate acquisition cost exceeding pounds sterling five million (£5,000,000) (apportioned proportionately where a Franchisee Year is less than 13 Reporting Periods);
 - (iii) when aggregated with Franchise Assets already designated as Investment Assets during the Franchise Term have an aggregate acquisition cost exceeding pounds sterling fifteen million (£15,000,000); or

- (iv) are already designated as Primary Franchise Assets.
- (c) The Secretary of State shall designate any Franchise Asset nominated by the Franchisee as an Investment Asset within three months of the Investment Asset Request Date unless he serves notice on the Franchisee of designation of such Franchise Asset as a Primary Franchise Asset in accordance with paragraph 3 of this Schedule 14.4 or if in his reasonable opinion such Franchise Asset:
 - (i) is an information technology or computer system which is of a specification which, in the reasonable opinion of the Secretary of State, materially limits its utility to a Successor Operator including because it is constructed to a bespoke specification of or otherwise intended to work with the systems of the Parent, any company of which the Parent has Control or any of the Ultimate Parents; or
 - (ii) has had branding applied to it which renders it unsuitable for continued use by a Successor Operator; or
 - (iii) is not reasonably appropriate for the purposes of delivering the Franchise Services in a reasonable, proper and cost effective manner.
- (d) The Franchisee acknowledges the definition of Franchise Assets and agrees not to put forward for designation as an Investment Asset any asset not falling within such definition including, without limitation, accounting entries and assets in which the Franchisee does not have title.
- (e) On the final Investment Asset Request Date the Franchisee shall in addition to the list referred to in paragraph 2.2(a) also provide an additional list in two parts confirming:
 - (i) in part 1 of such additional list which Investment Assets that have already been designated as such should be designated as Primary Franchise Assets and not be capable of de-designation as such without the prior agreement of the Franchisee and which Investment Assets should not be capable of being designated as Primary Franchise Assets without the prior agreement of the Franchisee and the Secretary of State; and
 - (ii) in part 2 of such additional list which Franchise Assets which the Franchisee is proposing should be designated as Investment Assets should be designated as Primary Franchise Assets and not be capable of de-designation as such without the prior agreement of the Franchisee and which should not be capable of being designated as Primary Franchise Assets without the prior agreement of the Franchisee and the Secretary of State in both cases only if such Franchise Assets are designated as Investment Assets in accordance with paragraphs 2.2(a) to 2.2(c).
- (f) The Secretary of State shall comply with the requirement of the Franchisee set out in the list referred to in paragraph 2(e)(i) above. The Secretary of State shall comply with the requirements of the Franchisee in the list referred to in paragraph 2(e)(ii) above in relation to any Franchise Assets

on such list which are actually designated by the Secretary of State as Investment Assets in accordance with paragraphs 2.2(a) to 2.2(c) but not otherwise. This paragraph is without prejudice to the other rights of the Secretary of State to designate Franchise Assets as Primary Franchise Assets.

3. **Designation of Additional Primary Franchise Assets**

Subject to paragraph 2.2(f) the Secretary of State may at any time and from time to time during the Franchise Period, by serving notice on the Franchisee, designate any or all of the Franchise Assets as Primary Franchise Assets. Such designation shall take effect from the delivery of such notice and may refer to all or certain categories of property, rights or liabilities. Any such notice shall specify the reasons for such designation. On or before designation of any Franchise Asset as a Primary Franchise Asset, the Secretary of State may agree not to subsequently de-designate such Primary Franchise Asset without the prior written consent of the Franchisee. If the Secretary of State so agrees, the notice designating the relevant Franchise Asset as a Primary Franchise Asset shall state that the Secretary of State shall not de-designate such Primary Franchise Asset without the prior written consent of the Franchisee.

4. **Designation during last 12 Months of Franchise Period**

If the Secretary of State designates a Franchise Asset as a Primary Franchise Asset under paragraph 3 at any time during the last 12 months of the Franchise Period then, within 28 days of such designation, the Secretary of State may de-designate such Primary Franchise Asset by serving notice on the Franchisee provided that, in relation to any Primary Franchise Asset in respect of which the Secretary of State agreed pursuant to paragraph 3 that he would not de-designate without the prior written consent of the Franchisee, such consent has been obtained. Such de-designation shall take effect upon delivery of such notice.

5. **Designation of Key Contracts as Primary Franchise Assets**

The Secretary of State shall, subject to paragraphs 1.2(b) and 7, be entitled to designate any Key Contract as a Primary Franchise Asset at any time during the Franchise Period by serving notice on the Franchisee. Such designation shall take effect from delivery of such notice.

6. **Designation of Fares and Discount Cards**

The Secretary of State may designate any Fare or Discount Card as a Primary Franchise Asset at any time during the Franchise Period by serving a notice on the Franchisee. Such designation shall take effect from delivery of such notice.

7. **Rights and Liabilities**

The Secretary of State, in designating the rights and liabilities of the Franchisee (whether under a particular contract or other arrangement) as a Primary Franchise Asset may, in his discretion, elect to designate some but not all of the rights and liabilities under a particular contract or other arrangement, or to designate only those rights and liabilities arising after or otherwise relating to a period after a particular time (including the period after the expiry of the Franchise Period) or to those relating only to the Franchise Services or a particular part thereof.

8. Disputes over Designation

- 8.1 The Franchisee may object in writing to the Secretary of State to any designation pursuant to paragraph 3 or 4.
- 8.2 Such objection may be made solely on the grounds that the designation of the relevant property, rights or liabilities specified in the objection is not, in the Franchisee's opinion, reasonably necessary to secure the continued provision of the Franchise Services by a Successor Operator on the expiry of the Franchise Period on a basis reasonably acceptable to the Secretary of State or to facilitate the transfer to such Successor Operator of the provision of the Franchise Services at such time.
- 8.3 Any such objection may only be made within 28 days of a designation made more than 12 months prior to the end of the Franchise Period or 14 days of a designation made during the last 12 months of the Franchise Period.
- 8.4 The Secretary of State shall respond to any such objection as soon as reasonably practicable and shall take account of any representations made by the Franchisee regarding the use of the relevant Primary Franchise Asset otherwise than in the provision and operation of the Franchise Services.
- 8.5 If the Franchisee's objection cannot be resolved by agreement within a period of 14 days from the date of submission of that objection, the Franchisee may refer the dispute for resolution in accordance with the Dispute Resolution Rules.
- 8.6 Any body duly appointed to resolve such dispute shall determine whether or not the designation of the relevant property, rights or liabilities was reasonably necessary for securing that the Franchise Services may continue to be provided by a Successor Operator on the expiry of the Franchise Period on a basis reasonably acceptable to the Secretary of State or otherwise facilitating the transfer of the provision of the Franchise Services at such time, and accordingly whether or not they should cease to be so designated.
- 8.7 If any dispute as to any designation pursuant to paragraph 3 remains outstanding on the expiry of the Franchise Period, then such dispute shall be deemed to cease immediately before the expiry of the Franchise Period and the relevant Franchise Assets shall continue to be designated as Primary Franchise Assets on and after the expiry of the Franchise Period.

9. Provision of Information to the Secretary of State

- 9.1 The Franchisee shall provide such information as the Secretary of State may reasonably require in order to satisfy the Secretary of State that any Franchise Assets which are to be designated as Primary Franchise Assets after the Start Date under this Schedule 14.4 will at the time of such designation be vested in the Franchisee. Such information may include details of any Security Interests over such property, rights and liabilities.
- 9.2 The Franchisee shall further provide such information as to the property, rights and liabilities of the Franchisee as the Secretary of State may reasonably require in connection with the designation of Primary Franchise Assets. Such information shall be supplied to the Secretary of State within such timescale as the Secretary of State may reasonably require.

10. De-Designation of Franchise Assets and Primary Franchise Assets

- 10.1 The Secretary of State and the Franchisee may agree in writing at any time during the Franchise Period that a Franchise Asset shall cease to be so designated as a Franchise Asset or that a Primary Franchise Asset shall cease to be so designated as a Primary Franchise Asset, and the relevant Franchise Asset or Primary Franchise Asset (as the case may be) shall cease to be designated upon such agreement coming into effect.
- 10.2 The Secretary of State may in addition at any time during the Franchise Period, by serving notice on the Franchisee, cause a Franchise Asset which is not a Primary Franchise Asset to cease to be so designated as a Franchise Asset. Such Franchise Asset shall cease to be so designated on the date specified in such notice.
- 10.3 The Secretary of State may in addition, at any time during the Franchise Period, by serving notice on the Franchisee, cause a particular Primary Franchise Asset to cease to be designated as such provided that, in relation to any Primary Franchise Asset in respect of which the Secretary of State agreed pursuant to paragraph 3 that he would not de-designate without the prior written consent of the Franchisee, such consent has been obtained. Such Primary Franchise Asset shall cease to be so designated on the date specified in such notice. Such right may be exercised, in respect of any rights and liabilities in respect of a Fare or Discount Card, at any time and, in respect of any other Primary Franchise Asset, no later than one year prior to the expiry of the Franchise Term.

11. Amendment of the Appendix to this Schedule 14.4

The Appendix (List of Primary Franchise Assets) to this Schedule 14.4 shall be amended as the Secretary of State considers necessary or desirable from time to time to take account of designation and de-designation of Primary Franchise Assets pursuant to this Schedule 14.4.

12. Spares

The obligation of the Franchisee to maintain, preserve and protect Primary Franchise Assets under this Schedule 14.4 shall, in respect of Spares, include the obligation to replace any Spare which has been designated as a Primary Franchise Asset, which subsequent to its designation ceases to be part of the stock of Spares available to the Franchisee for use in the provision of the Franchise Services, with an equivalent Spare of equal or better quality than the Spare so replaced.

APPENDIX TO SCHEDULE 14.4⁴⁵⁷**List of Primary Franchise Assets**

Description of Primary Franchise Asset	Commitment not to de-designate
Operator Owned Spares (as such term is defined in the MDCTA)	Yes
Operator Owned Special Tools (as such term is defined in the MDCTA)	Yes
Integrated Laboratory Equipment (as such term is defined in the MDCTA)	Yes

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Derogations

⁴⁵⁷ 27 April 2015 - (Date of Contract Change Letter) – Contract variation agreed by the Secretary of State and Franchisee.

SCHEDULE 14.5**Dealing with Franchise Assets****1. Assets not Designated as Primary Franchise Assets**

1.1 This paragraph 1 relates to any Franchise Assets that are property or rights and are not designated as Primary Franchise Assets.

1.2 For the purposes of Section 27(3) of the Act, the Secretary of State consents to the Franchisee:

- (a) transferring or agreeing to transfer any such Franchise Assets or any interests in, or right over, any such Franchise Assets; and
- (b) creating or extinguishing, or agreeing to create or extinguish, any interest in, or right over, any such Franchise Assets.

2. Liabilities not Designated as Primary Franchise Assets

2.1 This paragraph 2 relates to any liabilities which are not designated as Primary Franchise Assets.

2.2 For the purposes of Section 27(3) of the Act, the Secretary of State consents to the Franchisee entering into any agreement under which any such liability is released or discharged, or transferred to another person.

3. Franchise Assets and Primary Franchise Assets

3.1 This paragraph 3 relates to Franchise Assets (whether or not designated as Primary Franchise Assets) which are property or rights.

3.2 The Secretary of State hereby consents to the installation of Spares which have been designated as Primary Franchise Assets on any rolling stock vehicles. Any Spare which is so installed shall cease to be so designated on such installation.

3.3 For the purposes of Section 27(3) of the Act, the Secretary of State hereby consents to the Franchisee creating or agreeing to create any Security Interest over any of these Franchise Assets to the extent that the terms of any such Security Interest provided that:

- (a) if the relevant Franchise Asset becomes the subject of a transfer scheme made under Section 12 and Schedule 2 of the Railways Act 2005, it shall be fully and automatically released from the relevant Security Interest immediately before the coming into force of such transfer scheme;
- (b) if the relevant Franchise Asset is assigned, novated or otherwise transferred to another person pursuant to and in accordance with the Franchise Agreement, it shall be fully and automatically released from the relevant Security Interest immediately before such assignment, novation or transfer; and
- (c) such Security Interest shall not be enforced or enforceable until the date on which such Franchise Asset ceases to be designated as a Franchise Asset.

4. **Prohibition on Other Security Interests**

The Franchisee shall not create or agree to create a Security Interest over any Franchise Asset except on the terms permitted under paragraph 3.3.

5. **Miscellaneous**

The Franchisee shall promptly inform the Secretary of State of any Security Interest arising at any time over any of its property or rights and shall provide the Secretary of State with such information in relation thereto as he may reasonably require.

SCHEDULE 15

Obligations Associated with Termination

- Schedule 15.1: Reletting Provisions**
- Schedule 15.2: Last 12 or 13 Months of Franchise Period and other conduct of business provisions**
- Schedule 15.3: Handover Package**
Appendix: Form of Handover Package
- Schedule 15.4: Provisions Applying on and after Termination**
Appendix 1: Form of Transfer Scheme
Appendix 2: Form of Supplemental Agreement

SCHEDULE 15.1**Reletting Provisions****1. Reletting of Franchise**

1.1 The Franchisee acknowledges that the Secretary of State may wish, at or before the expiry of the Franchise Period, either to invite persons to tender for the right to provide all or some of the Passenger Services under a franchise agreement or alternatively to enter into a franchise agreement in respect of the Passenger Services without having gone through a tendering process.

1.2 The Franchisee further acknowledges that the Secretary of State has in certain circumstances a duty under Section 30 of the Act to secure the continued provision of the Passenger Services on expiry or termination of the Franchise Agreement. The Franchisee accordingly accepts and agrees to the restrictions and obligations imposed on it under Schedule 1.6 (Franchise Services), Schedule 14 (Preservation of Assets) and this Schedule 15.

2. Preparation for Reletting

2.1 The Franchisee shall, if so requested by the Secretary of State:

(a) provide the Secretary of State and his representatives and advisers with access to officers, the Franchise Employees and all books, records and other materials kept by or on behalf of the Franchisee in connection with the Franchise Services (including electronic or magnetic records, any CRM System and any Yield Management System) for the purpose of assisting such representatives and advisers:

(i) to prepare reports or other documents in connection with any invitation to potential Successor Operators to tender for the right and obligation to operate all or any of the Franchise Services;

(ii) to prepare invitations to other potential franchisees to tender for the right and obligation to provide any other railway passenger services or operate any other additional railway asset; or

(iii) to enter into any franchise agreement or other agreement (including any agreement entered into by the Secretary of State in fulfilment of his duties under section 30 of the Act) relating to the Franchise Services, without undergoing a tendering process,

provided that the exercise of such access rights by the Secretary of State and his representatives and advisers shall not unduly interfere with the continuing provision and operation of the Franchise Services by the Franchisee; and

(b) at its own cost, publish and display such publicity and promotional material and notices as the Secretary of State may provide to the Franchisee for the purposes of informing passengers of any matters relating to the process described in paragraph 1 and/or any intention by the Secretary of State to

enter into a franchise agreement or other agreement (including for the purposes of the fulfilment of his duties under section 30 of the Act) relating to the Franchise Services without having gone through a tendering process ("**Tendering/Reletting Process**") including:

- (i) the commencement of any Tendering/Reletting Process;
 - (ii) making passengers aware of any consultation being undertaken by the Secretary of State in relation to any such Tendering/Reletting Process; and
 - (iii) informing passengers of the outcome of any Tendering/Reletting Process.
- (c) The obligation to publish and display pursuant to paragraph 2.1(b) shall mean making the relevant publicity and promotional material and notices available to passengers by such means as the Secretary of State may reasonably require including by displaying publicity and promotional material and notices at Stations and on trains, publishing relevant information in any reports published to passengers or including such information in any leaflets, newspapers or other promotional material published to passengers by the Franchisee from time to time.

2.2

- (a) The Franchisee shall make available to the Secretary of State and his representatives and advisers such Data Site Information (as defined at paragraph (e)) as they shall reasonably require in connection with the matters referred to in paragraph 2.1.
- (b) The Franchisee shall prepare and present such information in such manner (including in disaggregated form) as the Secretary of State may require, and shall provide such assistance as the Secretary of State may require in connection with the verification of such information.
- (c) The Franchisee shall provide such confirmation in relation to the accuracy of:
 - (i) the contents of the documents referred to in paragraph 2.1; and
 - (ii) any Data Site Information uploaded to such electronic data site as the Secretary of State may require pursuant to paragraph 2.2(d),

in each case, as the Secretary of State shall require from time to time.

- (d) The Franchisee shall upload such Data Site Information as the Secretary of State may require to such electronic data site as he may specify and shall make a sufficient number of appropriate staff available for that purpose. The Franchisee shall ensure that such staff are trained in the use of such data site (such training to be at the expense of the Secretary of State). For the avoidance of doubt, the Data Site Information required by the Secretary of State under this paragraph may cover the entire Franchise Period or any part of it.

- (e) **"Data Site Information"** means information relating to any of the following:
- (i) the Franchise or the Franchisee, any Affiliate of the Franchisee or their respective businesses (including their audited and management accounts, asset registers and contract lists);
 - (ii) past and present demand for the Franchise Services or any similar services (including passenger count data, Yield Management Data and CRM Data);
 - (iii) information required to be provided by the Franchisee pursuant to Schedule 1.5 (Information about Passengers);
 - (iv) the total revenue (being all revenue whatsoever from any source obtained from any commercial or non-commercial activity or undertaking of the Franchisee) received or which the Franchisee expects to receive during the Franchise Period;
 - (v) the Franchisee's safety authorisation, safety certificate or safety management system (in each case as defined in the Safety Regulations);
 - (vi) any other safety matter;
 - (vii) the arrangements contained within the Railways Pension Scheme, the Pension Trust, the Franchise Sections, or any other pension arrangement in respect of employees of the Franchisee or employees of any person who was a franchisee or franchise operator in relation to a Previous Franchise Agreement;
 - (viii) the management structure of the Franchisee's business (including organograms and any planned changes);
 - (ix) employees and contractors (including details of responsibilities, job title, remuneration, grade, qualifications and any other personnel records);
 - (x) terms and conditions of employment and human resources policies;
 - (xi) public and working timetables;
 - (xii) driver, other train crew and rolling stock diagrams;
 - (xiii) rolling stock (including train and vehicle miles, restrictions of use, fleet examinations and servicing, fleet performance, casualty data and any relevant reports);
 - (xiv) any station (including any leases, documents of title, maintenance arrangements, station facilities, plans and contingency or security plans relating to any station);
 - (xv) health and safety and environmental information;

- (xvi) copies of contracts (including Access Agreements, policies of insurance, property, rolling stock and other leases, catering contracts, contracts for outsourced services, and rolling stock maintenance and spares contracts);
- (xvii) Network Rail charges and requirements (including rules of the route/plan);
- (xviii) any information technology system (hardware or software) used or owned by the Franchisee or any Affiliate of the Franchisee (including any software licences);
- (xix) performance data;
- (xx) customer service (including staffing levels, call volumes and opening hours);
- (xxi) fares and fares baskets;
- (xxii) relationships with stakeholders (including minutes of meetings with unions, Passenger Transport Executives, local authorities or Transport for London); or
- (xxiii) any other matter which the Secretary of State may specify from time to time,

and in this paragraph (e) the term "employee" includes any person engaged by the Franchisee pursuant to a contract of personal service.

(f) The Franchisee shall:

- (i) comply with its obligations under paragraph 2.1 or this paragraph 2.2 promptly and in any case in accordance with any reasonable timetable with which the Secretary of State requires the Franchisee by notice in writing to comply;
- (ii) where the Secretary of State raises with the Franchisee any query in relation to any Data Site Information, make a full and substantive response to such query within 5 working days. Such response shall include any further information requested by the Secretary of State in relation to such query; and
- (iii) nominate a person to whom:
 - (A) all queries or requests for information pursuant to paragraph 2.2(f)(ii);
 - (B) requests for access to premises pursuant to paragraph 4; and
 - (C) requests for access to employees,

shall be addressed and who shall be personally responsible for complying with any such queries or requests for information and such requests for access to employees and premises. The Franchisee shall notify the Secretary of State (his

representatives and advisers) of the name and contact details of such person.

- 2.3 In connection with any proposal (whether or not yet finalised) to enter into separate franchise agreements and/or other agreements with more than one Successor Operator, each relating to some only of the Franchise Services (whether or not together with other railway passenger services) at or following the end of the Franchise Period, the Franchisee agrees and acknowledges that the Secretary of State may require:
- (a) that the Franchisee provides the Secretary of State with additional information and reports and analysis in respect of such Service Groups as the Secretary of State may specify. This may include:
 - (i) information relating to the operational and financial performance of the Franchisee in relation to such Service Groups; and
 - (ii) identification of those employees, assets and liabilities which relate to such Service Groups together with an indication of the extent to which the same are shared between the operation of different Service Groups; and
 - (b) subject to paragraph 2.4, that the Franchisee reorganises the business of providing the Franchise Services in order to facilitate the transfer anticipated by this Schedule 15.1 on an ongoing basis of the business of providing the Franchise Services within each of such Service Groups to separate Successor Operators. This may include, to the extent reasonably practicable:
 - (i) the re-organisation of personnel such that an appropriate number of employees (having sufficient skills, qualifications and experience) will transfer by operation of Law to each Successor Operator of each such Service Group; and/or
 - (ii) entering into additional or clarificatory contractual or other arrangements so that the Successor Operator of each such Service Group will have the necessary assets and rights to operate the Franchise Services within that Service Group; and
 - (c) that the Franchisee uploads Data Site Information to more than one data site.
- 2.4 Subject to paragraph 2.5, the Secretary of State shall reimburse any reasonable out-of-pocket expenses that the Franchisee may incur in complying with its obligations under this paragraph 2.
- 2.5 Without prejudice to any other rights the Secretary of State may have (under the Franchise Agreement or otherwise) in respect of any contravention by the Franchisee of its obligations under this paragraph 2, if the Secretary of State is of the reasonable opinion that the Franchisee does not have sufficient resources to enable its compliance with its obligations under this paragraph 2 he may:
- (a) require the Franchisee (at its own cost) to employ; or
 - (b) after notification to the Franchisee, employ,

such suitable additional resource as may be required to ensure that the Franchisee can comply with its obligations under this paragraph 2. The Franchisee shall reimburse to the Secretary of State, by way of adjustment to Franchise Payments, any proper costs (including staff costs) incurred by him in the employment of any such additional resource pursuant to paragraph 2.5(b).

- 2.6 To the extent reasonably practicable, prior to taking any of the actions referred to in paragraph 2.5, the Secretary of State shall allow the Franchisee a reasonable opportunity to make representations to him concerning the exercise by the Secretary of State of his rights under paragraph 2.5 but the Secretary of State shall not be obliged by those representations to refrain from exercising any of the actions specified under paragraph 2.5.

3. **Non-Frustration of Transfer to Successor Operator**

- 3.1 The Franchisee shall take no action or steps which is or are designed, directly or indirectly:

- (a) to prevent, prejudice or frustrate the transfer as a going concern of the business of providing the Franchise Services at the end of the Franchise Period to a Successor Operator; or
- (b) to avoid, frustrate or circumvent any provision of the Franchise Agreement (including in particular the provisions of Schedule 14 (Preservation of Assets) and this Schedule 15) which is included in whole or in part for the purpose of preventing any such preventive, prejudicial or frustrating action or steps.

- 3.2 Subject to the restrictions set out in paragraph 3.1 and the other provisions of the Franchise Agreement, the Franchisee may take such action as it may require for the purposes of bidding to become, or becoming, a Successor Operator.

4. **Inspection Rights at premises used for the provision of the Franchise Services**

- 4.1 Without limiting any other rights of the Secretary of State under the Franchise Agreement and subject to paragraph 4.2, the Franchisee shall, if so requested by the Secretary of State, permit the Secretary of State (or his nominee, which for these purposes shall include potential Successor Operators or potential bidders who have expressed an interest in tendering for the right and obligation to operate any or all of the Franchise Services) to have such access to premises owned or occupied by the Franchisee or any of its Affiliates (including Stations and Depots and which for these purposes shall include any premises used in connection with the provision of the Franchise Services by the Franchisee or any of its Affiliates) as the Secretary of State may reasonably require in connection with any Tendering/Reletting Process including for the purposes of inspecting such premises (including the taking of inventories) and undertaking such surveys as may be necessary or desirable for the purposes of ascertaining the condition of any such premises.

- 4.2 The Secretary of State shall use reasonable endeavours to ensure that any access rights required pursuant to paragraph 4.1 shall be undertaken so as not to unduly interfere with the continuing provision and operation of the Franchise Services by the Franchisee.

SCHEDULE 15.2**Last 12 or 13 Months of Franchise Period and other conduct of business provisions****1. Last 12 or 13 Month Period**

1.1 Where reference is made in the Franchise Agreement to the last 12 or 13 months of the Franchise Period, such period shall be deemed to commence on the earliest of the following dates:

- (a) the date which is 12 or 13 months, as the case may be, prior to the Expiry Date or if the actual date of expiry of the Franchise Period is known the date which is 12 or 13 months prior to that date;
- (b) the date on which the Secretary of State notifies the Franchisee that such period of 12 or 13 months shall be deemed to commence on the grounds that the Secretary of State reasonably considers that an Event of Default may occur within the following 12 months; or
- (c) the date on which the Secretary of State notifies the Franchisee that such period of 12 or 13 months shall be deemed to commence on the grounds that the Secretary of State considers it reasonably likely that the Franchise Agreement will be terminated by agreement between the parties within such period.

1.2 Any such period (which may be longer or shorter than 12 or 13 months, as the case may be) shall expire on the Expiry Date or, if earlier:

- (a) in the case of periods commencing under paragraph 1.1(b) or (c), the date falling 12 or 13 months after the date of any notice under paragraph 1.1(b) or (c); or
- (b) such earlier date as the Secretary of State may determine.

2. Franchise Employees**Terms of Employment of Existing Employees**

2.1 The Franchisee shall not, and shall secure that each other relevant employer shall not, without the prior consent of the Secretary of State (which shall not be unreasonably withheld), vary or purport or promise to vary the terms or conditions of employment of any Franchise Employee (in particular, the Franchisee shall not promise to make any additional payment or provide any additional benefit or vary any term or condition relating to holiday, leave or hours to be worked) where such variation or addition:

- (a) takes effect in the last 12 months of the Franchise Period unless it is in the ordinary course of business and, when aggregated with any other variation or addition which takes effect during such period, represents an increase in the remuneration of a Franchise Employee of no more than the amount determined in accordance with the following formula:

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

where:

MAWE is the change in the Average Weekly Earnings between March in the preceding 12 months and the corresponding March one year before, expressed as a percentage;

JAWWE is the change in the Average Weekly Earnings between June in the preceding 12 months and the corresponding June one year before, expressed as a percentage;

SAWE is the change in the Average Weekly Earnings between September in the preceding 12 months and the corresponding September one year before, expressed as a percentage; and

DAWE is the change in the Average Weekly Earnings between December in the preceding 12 months and the corresponding December one year before, expressed as a percentage;

- (b) wholly or partly first takes effect after the end of the Franchise Period;
- (c) results in any such employment not being terminable by the Franchisee or other relevant employer within six months of the expiry of the Franchise Period;
- (d) relates to a payment or the provision of a benefit triggered by termination of employment;
- (e) relates to the provision of a benefit (excluding base salary) which any such employee will or may have a contractual right to receive after the expiry of the Franchise Period; or
- (f) prevents, restricts or hinders any such employee from working for a Successor Operator or from performing the duties which such employee performed for the Franchisee.

It is agreed that the Franchisee will be permitted to make a decrease in the remuneration of any Franchise Employee that takes effect in the last 12 months of the Franchise Period without first obtaining the consent of the Secretary of State in circumstances where such decrease is in the ordinary course of business and when aggregated with any other variation which takes effect during such period, represents a decrease in the remuneration of a Franchise Employee of no more than the amount determined in accordance with the formula contained in paragraph 2.1(a) where a calculation pursuant to such formula gives rise to a negative percentage. In any other circumstances the prior consent of the Secretary of State will be required to any decrease in the remuneration of a Franchise Employee in the last 12 months of the Franchise Period.

- 2.2 Without limiting the foregoing, the Franchisee shall consult the Secretary of State as soon as reasonably practicable in any circumstances in which the Secretary of State's consent under paragraph 2.1 may be required. Further, it shall always be deemed to be reasonable for the Secretary of State to withhold his consent to a variation or addition which is prohibited without such consent under paragraph 2.1(a) provided the Secretary of State:

- (a) makes an overall increase in Franchise Payments equal to the amount of the direct net losses suffered by the Franchisee on the days when the Passenger Services are affected by Industrial Action taken by the Franchise Employees which is a consequence of a refusal by the Secretary of State to agree to the variation or addition; and
- (b) agrees that, to the extent that the Franchisee would otherwise be in contravention of the Franchise Agreement as a consequence of the Industrial Action referred to in this paragraph 2.2, no such contravention shall have occurred, save where such contravention relates to safety requirements.

2.3 The expression "promise to vary" when used in paragraph 2.1 includes any offer or indication of willingness to vary (whether or not such offer or willingness is made conditional upon obtaining the Secretary of State's consent).

Terms of Employment of New Employees

2.4 The Franchisee shall not, and shall secure that each other relevant employer shall not, without the prior consent of the Secretary of State (which shall not be unreasonably withheld), create or grant, or promise to create or grant, terms or conditions of employment for any Franchise Employee where the employment of such Franchise Employee by the Franchisee or such other relevant employer may commence on or after the Start Date if and to the extent that:

- (a) such terms or conditions are, in the reasonable opinion of the Franchisee, materially different from the terms or conditions of employment of equivalent or nearest equivalent Franchise Employees at the date on which such employment is scheduled to commence; and
- (b) if such terms or conditions were granted to such equivalent Franchise Employees already employed by the Franchisee by way of variation to their terms or conditions of employment, the Franchisee would be in contravention of paragraph 2.1.

Changes in Numbers and Total Cost of Employees

2.5 Subject to and excluding any increase in the remuneration of Franchise Employees permitted under paragraph 2.1, the Franchisee shall not, and shall secure that each other relevant employer shall not, without the prior written consent of the Secretary of State (which shall not be unreasonably withheld) increase or decrease in the last 12 months of the Franchise Period the number of Franchise Employees such that:

- (a) the total number of Franchise Employees or the total cost per annum to the Franchisee and each other relevant employer of employing all Franchise Employees is increased; or
- (b) the total number of Franchise Employees is decreased,

in each case, by more than five per cent. during such period of 12 months provided that where the last 12 months or 13 months of the Franchise Period has been deemed to have commenced under paragraph 1.1 and the period of the restriction contemplated by this paragraph 2.5 lasts longer than 12 months such restriction shall apply in respect of the longer period.

3. Restrictions in respect of Sale of Advance Purchase Train-specific Fares**3.1**

- (a) It is acknowledged that the Franchisee will make available for sale prior to the end of the Franchise Period Advance Purchase Train-specific Fares which are valid for travel after the end of the Franchise Period.
- (b) In making such Advance Purchase Train-specific Fares available for purchase the Franchisee shall not change its commercial practice in terms of the number of such Advance Purchase Train-specific Fares made available or the Passenger Services on which they are valid for use when compared with its previous commercial practice in respect of Advance Purchase Train-specific Fares valid for travel prior to the end of the Franchise Period.
- (c) The Franchisee will be permitted to take into account reasonable seasonal factors in determining its previous commercial practice. In assessing reasonableness, account will be taken of the Franchisee's practice in addressing such seasonal factors in the corresponding period in the previous year.

SCHEDULE 15.3^{xv}**Handover Package****1. Handover Package Status**

1.1 The Franchisee shall:

- (a) on or before the Start Date, provide to the Secretary of State:
 - (i) the Handover Package; and
 - (ii) a letter in a form approved by and addressed to the Secretary of State confirming the details of any insurer providing insurance to the Franchisee and authorising the insurer (and any relevant broker) to release any insurance-related information to any of the Secretary of State, a Successor Operator or its agent on demand;
- (b) maintain the Handover Package and update it at least every three Reporting Periods; and
- (c) in respect of the information required pursuant to paragraph 1.1(a)(ii), supply revised information and/or letters to the Secretary of State as and when required in order to ensure that such information and letters remain accurate and up to date.

1.2 The Franchisee shall ensure that any Successor Operator will have immediate access to the Handover Package on the expiry of the Franchise Period.

1.3 The Franchisee shall also ensure that the Key Contacts List is provided to the Secretary of State within 24 hours of the receipt of any Termination Notice.

2. Director's Certificate

Once in each Franchisee Year, the Franchisee shall provide to the Secretary of State a certificate signed by a nominated and duly authorised director of the Franchisee, addressed to the Secretary of State, which confirms that the Handover Package contains the information and objects specified in the Appendix (Form of Handover Package) to this Schedule 15.3 and that such information is accurate as at the date of the certificate.

APPENDIX TO SCHEDULE 15.3**Form of Handover Package****1. Property**

A list of all property owned, leased, operated or occupied by the Franchisee which shall include the address and contact telephone number of each property. Where applicable, the list will also include the name, address and telephone number of the lessor and/or the party which has granted authority to use or occupy the property, and any relevant reference numbers applicable to that lease or occupation.

2. Contracts

A printed or electronic list (in a format acceptable to the Secretary of State) of all contracts (sales, purchases or otherwise including leases and licences) between the Franchisee and the counterparty or counterparties to each such contract, showing the name, address and telephone number of each counterparty; the contract reference number of the Franchisee and each counterparty (if any); and the contract price/value, term and expiry date. This requirement shall apply to all contracts unless otherwise agreed by the Secretary of State.

3. Systems

A list of the electronic systems in use by the Franchisee, together with the name, office address and telephone number of the Franchisee's Information Technology Manager (or the holder of any equivalent post) who is responsible for administration of each such system.

4. Daily Operations

A printed or electronic list (in a format acceptable to the Secretary of State) of all assets owned or operated by the Franchisee, together with their location.

5. Insurance

A list of the names, addresses and telephone numbers of all insurers and any relevant broker providing insurance to the Franchisee, together with the relevant policy numbers and other references and details of any outstanding claims or unresolved disputes.

SCHEDULE 15.4**Provisions Applying on and after Termination**

1. **Novation of Access Agreements on Termination of the Franchise Agreement**
 - 1.1 The Franchisee shall, to the extent so requested by the Secretary of State on termination of the Franchise Agreement, in relation to any Access Agreement to which it is a party, novate its interest under any relevant Access Agreement (and any related Collateral Agreement) to the Secretary of State or as he may direct.
 - 1.2 Such obligation to novate shall be subject to the agreement of any counterparty to such Access Agreement or Collateral Agreement and, to the extent applicable, the ORR.
 - 1.3 Such novation shall be on such terms as the Secretary of State may reasonably require, including:
 - (a) that the Franchisee shall not be released from any accrued but unperformed obligation, the consequences of any breach of the relevant agreement which is the subject of arbitration or litigation between the parties or any liability in respect of any act or omission under or in relation to the relevant agreement prior to, or as at the date of, any such novation (except to the extent that the Secretary of State or his nominee agrees to assume responsibility for such unperformed obligation, such liability or the consequences of such breach in connection with the relevant novation); and
 - (b) that neither the Secretary of State nor his nominee shall be obliged, in connection with such novation, to agree to assume responsibility for any unperformed obligation, liability or consequences of a breach referred to in paragraph 1.3(a),

but shall not, unless the Franchisee otherwise agrees, be on terms which release any counterparty to the relevant agreement from any liability to the Franchisee arising prior to the date of such novation.
 - 1.4 The Franchisee shall, on the occurrence of any of the circumstances specified in paragraph 1.1 in relation to any other Train Operator who is a party to an Access Agreement to which the Franchisee is also party, agree to the novation of the relevant Train Operator's interest under the relevant Access Agreement to the Secretary of State or as he may direct, subject, to the extent applicable, to the consent of the ORR. The provisions of paragraph 1.3 shall apply to any such novation.
 - 1.5 The Franchisee shall notify the Secretary of State on becoming aware of any circumstances which might lead to the Secretary of State being able to require the Franchisee to novate its interest or agree to the novation of another Train Operator's interest under this paragraph 1.

2. Co-operation with Successor Operator

2.1 In order to ensure the continuity of, and an orderly handover of control over, the Franchise Services, the Franchisee shall co-operate with:

- (a) where a Successor Operator has been appointed, such Successor Operator;
or
- (b) where a Successor Operator has not been so appointed, the Secretary of State,

and shall take such steps as may be reasonably requested by the Secretary of State in connection therewith.

2.2 In satisfaction of its obligations under paragraph 2.1, the Franchisee shall:

- (a) publish and display such publicity and promotional material as the Successor Operator may provide to the Franchisee for the purposes of providing information to passengers in connection with the handover of control over the Franchise Services from the Franchisee to the Successor Operator (including informing passengers of any new initiatives or change to the existing arrangements that are to be introduced by the Successor Operator). The obligation to publish and display pursuant to this paragraph 2.2(a) shall include the display of posters and other promotional material at Stations and on trains and the distribution of leaflets to passengers at Stations and on trains or the publication of such information in any reports published to passengers. The obligation of the Franchisee pursuant to this paragraph 2.2(a) is subject to the Successor Operator paying to the Franchisee the reasonable and proper costs incurred by the Franchisee in the publication and display of any such information.
- (b) make appropriately skilled and qualified Franchise Employees reasonably available to attend such meetings with the Secretary of State, the Successor Operator, Network Rail, any rolling stock lessor and/or and other relevant third party as are reasonably required in order to determine:
 - (i) those actions that are required in order to facilitate such continuity and orderly handover, in particular those actions arising under, but not limited to, the following agreements:
 - (A) Access Agreements;
 - (B) Property Leases;
 - (C) agreements in relation to Shared Facilities;
 - (D) Rolling Stock Leases;
 - (E) Rolling Stock Related Contracts;
 - (F) any other Key Contract; and
 - (ii) without prejudice to the Secretary of State's rights under this Schedule 15.4, those rights and liabilities as may be specified in any Transfer Scheme.

3. **Transfer of Primary Franchise Assets**

Option Arrangements

3.1

- (a) The Secretary of State hereby grants to the Franchisee the right to require the Secretary of State to make, and the Franchisee hereby grants to the Secretary of State the right to make, a Transfer Scheme in accordance with Section 12 and Schedule 2 of the Railways Act 2005 for the transfer of any or all Primary Franchise Assets on the expiry of the Franchise Period.
- (b) On or within 14 days before the expiry of the Franchise Period:
 - (i) either party may serve notice on the other party specifying the Primary Franchise Assets to be transferred; and
 - (ii) the other party may (within such timescale) serve a subsequent notice specifying any additional Primary Franchise Assets to be transferred.
- (c) The Secretary of State may (and shall if required by the Franchisee) make one or more such Transfer Schemes for the transfer of the Primary Franchise Assets specified in any such notice within 14 days after service of such notice (except in relation to any such Primary Franchise Assets which are, in accordance with Schedule 14.4 (Designation of Franchise Assets), de-designated as such prior to the end of the Franchise Period).
- (d) Any Franchise Assets or Primary Franchise Assets which are not so transferred shall cease to be designated as such 14 days after service of such notice.

Supplemental Agreement

- 3.2 Without prejudice to the duties, powers, rights and obligations of the Secretary of State under the Railways Act 2005 in respect of any Transfer Scheme, any Transfer Scheme shall impose on the Franchisee and the transferee an obligation to enter into an agreement substantially in the form of the Supplemental Agreement which shall provide for the determination of amounts to be paid in respect of the property, rights and liabilities which are transferred under such Transfer Scheme. The Franchisee shall enter into any such Supplemental Agreement and shall comply with its obligations thereunder.

Payment of Estimated Transfer Price

3.3

- (a) The Secretary of State may require the Franchisee to pay to any transferee under a Transfer Scheme, or may require any such transferee to pay to the Franchisee, on the day on which the Transfer Scheme comes into force such sum as the Secretary of State may determine should be so paid having regard to:
 - (i) his estimate of the sum likely to be paid under the relevant Supplemental Agreement in respect of the Primary Franchise Assets being transferred under the relevant Transfer Scheme;

- (ii) his estimate of any other sums likely to be paid thereunder;
 - (iii) the financial condition of the Franchisee and the transferee and whether any estimate so paid would be likely to be repaid, if in excess of the sums eventually payable thereunder; and
 - (iv) such other matters as the Secretary of State may consider appropriate.
- (b) The Franchisee shall pay to any such transferee the sum determined by the Secretary of State in accordance with paragraph 3.3(a) on the day on which the relevant Transfer Scheme comes into force.

Possession of Franchise Assets

- 3.4 On the coming into force of a Transfer Scheme, the Franchisee shall deliver up to the Secretary of State (or his nominee) possession of the Primary Franchise Assets transferred under such Transfer Scheme.

4. Associated Obligations on Termination

Assistance in Securing Continuity

4.1

- (a) In order to facilitate the continuity of the Franchise Services on expiry of the Franchise Period, the Franchisee shall take such steps, both before and after the expiry of the Franchise Period, as the Secretary of State may reasonably require, to assist and advise any Successor Operator in providing and operating the Franchise Services.
- (b) In particular, the Franchisee shall provide any Successor Operator with such records and information relating to or connected with the Franchise Services as the Secretary of State may reasonably require (other than confidential financial information but including all records relating to the Franchise Employees).

Access

- 4.2 On the expiry of the Franchise Period, the Franchisee shall grant the Secretary of State and his representatives such access as the Secretary of State may reasonably request to any property owned, leased or operated by the Franchisee at such time, for the purpose of facilitating the continued provision of the Franchise Services.

Key Contracts

4.3

- (a) The Franchisee shall provide such assistance to any Successor Operator as the Secretary of State may reasonably require in ensuring that, pursuant to any Direct Agreements, such Successor Operator may enter into (or enjoy the benefit of) contracts equivalent to the relevant Key Contracts (or part thereof).

- (b) In satisfaction of its obligations under paragraph 4.3(a), the Franchisee shall terminate, surrender, cancel or undertake not to enforce its rights under any Key Contract (or part thereof) provided that nothing in this paragraph shall require the Franchisee to undertake not to enforce any rights under a Key Contract relating to the period prior to the expiry of the Franchise Period.

Change of Name

- 4.4 The Franchisee shall cease to use any trade marks which are licensed to the Franchisee under any of the Brand Licences forthwith upon expiry of the Franchise Period and shall take all necessary steps to change any company name which incorporates any such marks as soon as practicable.

Property Leases

4.5

- (a) The Franchisee shall, on the expiry of the Franchise Period, if requested by the Secretary of State, assign its interest under all or any Property Leases to the Secretary of State or as he may direct, subject where applicable to the agreement of any other party to such Property Lease or the ORR.
- (b) Such assignment shall be on such terms as the Secretary of State may reasonably require, including:
- (i) that the Franchisee shall not be released from any accrued but unperformed obligation, the consequences of any antecedent breach of a covenant or obligation in the Property Leases or any liability in respect of any act or omission under or in relation to the Property Lease prior to, or as at the date of, any such assignment (except to the extent that the Secretary of State or his nominee agrees to assume responsibility for such unperformed obligation, such liability or the consequences of such breach in connection with the relevant assignment); and
 - (ii) that neither the Secretary of State nor his nominee shall be obliged, in connection with such assignment, to agree to assume responsibility for any unperformed obligation, liability or consequences of a breach referred to in paragraph 4.5(b)(i), and the Franchisee shall indemnify the Secretary of State or his nominee, as the case may be, on demand, on an after-tax basis against any costs, losses, liabilities or expenses suffered or incurred in relation thereto.
- (c) The Franchisee shall, on the occurrence of any of the circumstances specified in paragraph 4.5(a) in relation to any other Train Operator who is a party to a Property Lease to which the Franchisee is also party, agree to the assignment of such Train Operator's interest under the relevant Property Lease to the Secretary of State or as he may direct, subject, where applicable, to the consent of Network Rail. The provisions of paragraph 4.5(b) shall apply to any such assignment.
- (d) The Franchisee shall notify the Secretary of State on becoming aware of any circumstances which might lead to the Secretary of State being able to

require the Franchisee to assign its interest or agree to the assignment of another Train Operator's interest under this paragraph 4.

5. **Actions required immediately on Handover**

5.1 The Franchisee shall immediately on the expiry of the Franchise Period make available to the Secretary of State:

- (a) information as to the status of each purchase order or contract, including its award date, anticipated delivery date, confirmation of receipt of goods or services and the payment records for each purchase order, together with any matters in dispute with the appointed subcontractor and, to the extent that the Franchisee is a subcontractor to another Train Operator, equivalent information in respect of that Train Operator; and
- (b) information concerning any contract necessary for the continued operation of the Franchise where a procurement or bidding process has been initiated.

5.2 The Franchisee agrees that the Secretary of State or his agents may have access to and use free of charge any information contained in any Computer System or in hard copy format as he sees fit (for the purposes of continuing the operation of the Franchise Services).

6. **Maintenance Records**

The Franchisee shall immediately on expiry of the Franchise Period provide to the Secretary of State:

- (a) records of the status of the maintenance of the rolling stock vehicles used in the provision of the Passenger Services;
- (b) records of the status of the maintenance of any lifting equipment;
- (c) a list of any deferred maintenance; and
- (d) records of the status of the maintenance of any depot or station which is a Franchise Asset,

including the extent of completion of examinations and the modification status of each such rolling stock vehicle

7. **Ticketing Arrangements**

The Franchisee shall provide immediately on expiry of the Franchise Period a statement certifying:

- (a) all ticketing transactions with the public or credit card agencies that are in process and not yet complete, together with any allocations on multi-modal travel with other agencies or local authorities;
- (b) the extent of any outstanding claims with ticketing settlement agencies;
- (c) refund arrangements (whether under the Passenger's Charter or not) with members of the public or other Train Operators or ticketing settlement agencies that are in process and not yet complete; and
- (d) commissions owed and/or due.

8. Franchisee's Intellectual Property

8.1

- (a) On the expiry of the Franchise Period, the Franchisee will grant to any Successor Operator licences of any intellectual property which:
- (i) is owned by or licensed to the Franchisee;
 - (ii) was not owned by or licensed to it immediately prior to the Start Date;
 - (iii) has not been designated as a Primary Franchise Asset;
 - (iv) does not represent or constitute a Mark; and
 - (v) may, in the reasonable opinion of the Secretary of State, be necessary for any Successor Operator to operate the Franchise Services on an efficient and economic basis after the expiry of the Franchise Period.
- (b) When agreeing the terms on which intellectual property is to be licensed to it, the Franchisee shall use all reasonable endeavours to ensure that such terms include the right to sub-license such intellectual property in accordance with this paragraph 8.1. The Franchisee shall not enter into a licence that does not include such a provision without first obtaining the Secretary of State's prior written consent (such consent not to be unreasonably withheld).

8.2

- (a) Any such licence shall be granted to the relevant Successor Operator for such period as the Secretary of State may determine to be reasonably necessary for the purpose of securing continuity of the provision of the Franchise Services and shall be free of charge and royalty-free for a period of one month or less.
- (b) If such licence is for a period in excess of one month, the grant of the licence shall be subject to payment of a reasonable royalty (backdated to the expiry of the Franchise Period) on the basis of a willing licensor and licensee entering into a licence on comparable terms to similar licences of such intellectual property. If the Franchisee and the relevant Successor Operator are unable to agree such royalty, the Franchisee shall submit such dispute for resolution in accordance with such dispute resolution rules as the Secretary of State may require.

8.3 Any such licence shall be in such form as the Secretary of State shall reasonably determine and shall:

- (a) be non-exclusive and limited to use solely for the purposes of the provision and operation of the Franchise Services and will not provide for any right to use such intellectual property for any other purpose (including its marketing or exploitation for any other purpose);
- (b) be terminable on material breach by the Successor Operator;

- (c) contain an indemnity from the Franchisee to the effect that to the best of its knowledge and belief it owns the relevant intellectual property or has the right to license it and the licensing of it and the subsequent use of the intellectual property will not infringe any third party intellectual property rights; and
- (d) require the Successor Operator, to the extent that it relates to any trade marks, to use such trade marks in such manner as may reasonably be required by the Franchisee provided that it shall not be reasonable for the Franchisee to require any such trade mark to be used in a manner materially different from its use during the Franchise Period.

9. **Information about Passengers**

The Franchisee shall immediately on the expiry of the Franchise Period make available to the Secretary of State and/or his nominee:

- (a) passenger numbers information specified in paragraph 1 of Schedule 1.5 (Information about Passengers), in such format and to such level of disaggregation as the Secretary of State and/or his nominee may reasonably require;
- (b) the CRM Data and Yield Management Data.

APPENDIX 1 TO SCHEDULE 15.4

Form of Transfer Scheme

Dated _____ 20[•]

**TRANSFER SCHEME
OF
THE SECRETARY OF STATE FOR TRANSPORT
MADE PURSUANT TO SCHEDULE 2 OF THE RAILWAYS ACT 2005**

**IN FAVOUR OF
[SUCCESSOR OPERATOR]**

**IN RESPECT OF
CERTAIN PROPERTY, RIGHTS AND LIABILITIES
OF
[FRANCHISEE]**

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

Whereas:

- (A) [Franchisee] (the "**Transferor**") has been providing certain services for the carriage of passengers by railway and operating certain stations and light maintenance depots pursuant to a franchise agreement with the Secretary of State for Transport (the "**Secretary of State**") dated [_____] (the "**Franchise Agreement**").
- (B) The Franchise Agreement terminated or is to terminate on [_____] and [Successor Operator] (the "**Transferee**") is to continue the provision of all or part of such services or the operation of all or some of such stations and light maintenance depots under a new franchise agreement or in connection with the performance or exercise of the duties and powers of the Secretary of State to secure the provision of such services or the operation of such stations or light maintenance depots.
- (C) Certain property, rights and liabilities of the Transferor which were designated as franchise assets for the purpose of the Franchise Agreement are to be transferred to the Transferee under a transfer scheme made by the Secretary of State under Section 12 and Schedule 2 of the Railways Act 2005.

The Secretary of State, in exercise of the powers conferred on him by Schedule 2 of the Railways Act 2005, hereby makes the following scheme:

1. **Definitions and Interpretation**

In this Transfer Scheme functions has the meaning ascribed to it in the Railways Act 2005 and relevant enactment has the meaning ascribed to it in paragraph 6 of Schedule 2 of the Railways Act 2005.

2. **Transfer of Property, Rights and Liabilities**

With effect from [_____] the property, rights and liabilities of the Transferor specified or described in the Schedule shall be transferred to, and vest in, the Transferee.

3. **Statutory Functions**

Subject to any amendment to the relevant enactment which comes into force on or after the date on which this Transfer Scheme is made, there shall be transferred to the Transferee all the functions of the Transferor under any relevant enactments if and to the extent that any such relevant enactment:

- (a) relates to any property which is to be transferred by this Transfer Scheme; or
- (b) authorises the carrying out of works designed to be used in connection with any such property or the acquisition of land for the purpose of carrying out any such works.

4. **Supplemental Agreement**

Each of the Transferor and the Transferee shall enter into the Supplemental Agreement (as defined in the Franchise Agreement) on the coming into force of this Transfer Scheme.

5. **TRSP Documents**

5.1 [Each of the Transferor and the Transferee shall enter into the Deed of Accession (as defined in the MDCTA) on the coming into force of this Transfer Scheme.]
[Delete if the TRSP Documents are to be transferred to a Successor Operator under the Transfer Scheme.]

This Transfer Scheme is made by the Secretary of State on [_____. ____].

THE CORPORATE SEAL
OF THE SECRETARY OF
STATE FOR TRANSPORT
IS HEREUNTO AFFIXED:



.....
Authenticated by authority of the
Secretary of State for Transport

SCHEDULE TO THE TRANSFER SCHEME

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

APPENDIX 2 TO SCHEDULE 15.4

Form of Supplemental Agreement

Dated _____ 20[•]

[OUTGOING FRANCHISEE]

and

[SUCCESSOR OPERATOR]

SUPPLEMENTAL AGREEMENT

to the transfer scheme dated [•] made
by the Secretary of State for Transport in respect of
certain property rights and liabilities of
[OUTGOING FRANCHISEE]

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

This Supplemental Agreement is made on [_____] 20[___]

BETWEEN

[*OUTGOING FRANCHISEE*] whose registered office is at [*registered office*] (the "**Transferor**"); and

[*SUCCESSOR OPERATOR*] whose registered office is at [*registered office*] (the "**Transferee**").

WHEREAS

- (C) The Transferor has been providing certain services and the carriage of passengers by railway and operating certain stations and light maintenance depots pursuant to a franchise agreement with the Secretary of State for Transport (the "**Secretary of State**") dated [_____] (the "**Franchise Agreement**").
- (D) The Franchise Agreement terminated or is to terminate on [_____] and the Transferee has been selected by the Secretary of State to continue the provision of all or part of such services pursuant either to a franchise agreement with the Secretary of State or arrangements made with the Secretary of State in connection with the Secretary of State's duties and powers.
- (E) Certain property, rights and liabilities of the Transferor are to be transferred to the Transferee pursuant to a transfer scheme made by the Secretary of State on [_____] under Section 12 and Schedule 2 of the Railways Act 2005 (the "**Transfer Scheme**").
- (F) This Agreement is supplemental to the Transfer Scheme and sets out certain terms between the Transferor and the Transferee in relation to the transfer of such property, rights and liabilities under the Transfer Scheme and the transfer of certain other property, rights and liabilities at the same time.

IT IS AGREED THAT

1. DEFINITIONS AND INTERPRETATION

Definitions

1.1 The following words and expressions shall have the following meaning:

"**Business**" means such of the undertaking or part of the undertaking of the Transferor prior to the Transfer Date as may be continued by the Transferee after the Transfer Date;

"**Credit**" has the meaning assigned to that term under the Ticketing and Settlement Agreement;

"**Debit**" has the meaning assigned to that term under the Ticketing and Settlement Agreement;

"**Estimated Completion Payment**" has the meaning ascribed to that term in clause 2.1;

"**Net Asset Statement**" means the statement to be drawn up pursuant to clause 2.2;

"Net Asset Value" means the aggregate of the amounts of the Relevant Franchise Assets, the Relevant Contract Liabilities, the Relevant Debits and Credits and the Relevant Employee Liabilities as shown in the Net Asset Statement agreed or determined pursuant to clause 2.2;

"Permitted Delay" means any delay or failure in the performance of some, all or those specified of the TMM's obligations under, and in accordance with, the TRSP MSA and the Contract Programme due to the occurrence of any breach by the Transferor or its employees of any of its obligations under any of the TRSP Documents or act of prevention by the Transferor or its employees (other than an act which constitutes the proper exercise of the Transferor's rights under any of the TRSP Documents) and for the purposes of this definition the terms **"Contract Programme"** and **"TMM"** shall have the meaning given to each such term in the MDCTA;

"Purchase Price" has the meaning ascribed to that term in clause 2.1;

"Relevant Contract Liabilities" means such rights and liabilities of the Transferor as may be transferred to the Transferee on the expiry of the Franchise Period in relation to any Licence, Access Agreement or Property Lease under paragraphs 1 and 4.5 of Schedule 15.4 (Provisions Applying on and after Termination) of the Franchise Agreement;

"Relevant Debits and Credits" means such Debits and Credits of the Transferor which relate to Fares sold before the Transfer Date and which may be received by the Transferee as a result of Clause 11-33 of the Ticketing and Settlement Agreement;

"Relevant Employee Liabilities" means such rights and liabilities of the Transferor (or any other relevant employer or person) under any contracts of employment relating to the Relevant Employees which have been or are to be transferred to the Transferee by virtue of the operation of Law (including the Transfer Regulations);

"Relevant Employees" means all persons employed in the Business immediately before the Transfer Date (whether employed by the Transferor or otherwise) whose contract of employment has been or is to be transferred to the Transferee by virtue of the operation of Law (including the Transfer Regulations) or any other person employed at any time in the Business in respect of whom liabilities arising from a contract of employment or employment relationship have or will be transferred by virtue of the operation of Law (including the Transfer Regulations);

"Relevant Franchise Assets" means such of the property, rights and liabilities that are legally or beneficially owned by the Transferor and which are or are to be transferred to the Transferee under the Transfer Scheme;

"Relevant TRSP Past Liabilities" means a liability (whether or not such liability has crystallised) as may be assumed by the Transferee under a relevant Replacement Lease (as such term is defined in the MDCTA) or as may be transferred to the Transferee under the Transfer Scheme or Deed of Accession (as such term is defined in the MDCTA) (as the case may be):

(a)

- (i) in respect of the grant of a Permitted Delay and/or recognition of any such Permitted Delay (including any liability to pay any applicable

costs related thereto) to the TMM in accordance with Schedule 13 of the TRSP MSA; and/or

- (ii) to pay liquidated damages to the Owner (as such term is defined in the MDCTA) if and when required to in accordance with the terms of the Replacement Lease (as such term is defined in the MDCTA) to be entered into by the Transferor and/or with the Umbrella Agreement after the Operator Succession Date (as such term is defined in the MDCTA) to the extent that such liability has arisen due to an act, omission, breach or default of the Transferor occurring before the Operator Succession Date,

in each case as contemplated in paragraph 7.2(a) of Schedule 2.1 of the Umbrella Agreement; and/or

- (b) to pay to the Owner any costs for undertaking remedial works in the circumstances specified under paragraph 6.30 of Schedule 2.1 of the Umbrella Agreement;

"Reporting Accountants" means such firm of accountants as may be selected by agreement between the parties within four weeks of the preparation of the Net Asset Statement or, in the absence of such agreement, selected by the Secretary of State upon the request of either party;

"Season Ticket Fare" means a Fare which entitles the purchaser to make an unlimited number of journeys in any direction during the period for which, and between the stations and/or the zones for which, such Fare is valid;

⁴⁵⁸ **"Smart Ticketing Project"** means the Project (as defined in the SEFT Deed) and the STNR Project;

"Stored Credit Balance" means any monetary amount held by the Franchisee which a passenger can apply at a future date to the purchase of a Fare (stored in any medium);

"Taxation" comprises all forms of taxation, duties, contributions and levies of the United Kingdom whenever imposed and (except in so far as attributable to the unreasonable delay or default of the Transferee) all penalties and interest relating thereto;

"TOGC" has the meaning assigned to that term in clause 6.2;

"Transfer Date" means the date and, where relevant, the time on or at which the Transfer Scheme comes into force;

"Transfer Regulations" means the Transfer of Undertakings (Protection of Employment) Regulations 2006 (as amended, replaced or substituted from time to time);

⁴⁵⁸ 17/01/2018 (Date of Deed of Amendment) Contract insertion agreed by the Secretary of State and the Franchisee.

"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).

⁴⁵⁹ **"Upgraded SEFT Asset" means those tangible assets owned by the Franchisee and in respect of which an upgrade to such asset has been funded by the Secretary of State as part of the Smart Ticketing Project;**

Construction and Interpretation

1.2 In this Agreement terms and expressions defined in the Franchise Agreement shall have the same meaning and the terms "contract of employment", "collective agreement", "employee representatives" and "trade union" shall have the same meanings respectively as in the Transfer Regulations.

2. Transfer Price

Amount and Payment

2.1 The price for the transfer of:

- (a) the Relevant Franchise Assets;
- (b) the Relevant Contract Liabilities;
- (c) the Relevant Debits and Credits;
- (d) the Relevant Employee Liabilities; and
- (e) the Relevant TRSP Past Liabilities,

(together the **"Transferring Assets and Liabilities"**) shall (subject to adjustment as expressly provided in this Agreement) be an amount equal to the Net Asset Value (the **"Purchase Price"**). The sum of £[amount], as determined under paragraph 3.3 of Schedule 15.4 (Provisions Applying on and after Termination) of the Franchise Agreement (the **"Estimated Completion Payment"**) shall be paid in immediately available funds by the Transferor to the Transferee, or by the Transferee to the Transferor, as determined under paragraph 3.3 of Schedule 15.4 (Provisions Applying on and after Termination) of the Franchise Agreement, on the Transfer Date. On determination of the Purchase Price a balancing payment (if any) shall be made by the Transferor to the Transferee or the Transferee to the Transferor (as the case may be) in accordance with clause 2.5.

Net Asset Statement

2.2 The Transferee shall procure that, as soon as practicable and in any event not later than two months following the Transfer Date, there shall be drawn up a

⁴⁵⁹ 17/01/2018 (Date of Deed of Amendment) Contract insertion agreed by the Secretary of State and the Franchisee.

statement showing a true and fair view of the aggregate of the amount of each separate asset and liability of the Transferring Assets and Liabilities as at the Transfer Date.

2.3 The Net Asset Statement shall be:

- (a) drawn up in the manner described in the Schedule;
- (b) prepared on such basis as would enable the Transferee's auditors, if so requested, to give an unqualified audit report thereon to the effect that it had been drawn up in accordance with the Schedule; and
- (c) presented, initially as a draft, to the Transferor immediately following its preparation for review in conjunction with its auditors.

2.4 If the Transferor and the Transferee have failed to agree the Net Asset Statement within four weeks following such presentation, the matter shall be referred to the Reporting Accountants who shall settle and complete the Net Asset Statement as soon as practicable and shall determine the amount of the Net Asset Value as shown by the Net Asset Statement.

Adjustment of Price

2.5 If the Purchase Price exceeds or is less than the Estimated Completion Payment, the Transferee shall pay to the Transferor or, as the case may be, the Transferor shall pay to the Transferee, in either case within 14 days of the agreement or determination of the Net Asset Value, an amount equal to such excess or deficiency together in either case with interest thereon calculated from the Transfer Date at the Interest Rate.

3. References to the Reporting Accountants

Whenever any matter is referred under this Agreement to the decision of the Reporting Accountants:

- (a) the Reporting Accountants shall be engaged jointly by the parties on the terms set out in this Agreement and otherwise on such terms as shall be agreed, provided that neither party shall unreasonably (having regard, amongst other things, to the provisions of this Agreement) refuse its agreement to terms proposed by the Reporting Accountants or by the other party. If the terms of engagement of the Reporting Accountants have not been settled within 14 days of their appointment having been determined (or such longer period as the parties may agree) then, unless one party is unreasonably refusing its agreement to those terms, such accountants shall be deemed never to have been appointed as Reporting Accountants, save that the accountants shall be entitled to their reasonable expenses under clause 3(d), and new Reporting Accountants shall be selected in accordance with the provisions of this Agreement;
- (b) if the Reporting Accountants acting or appointed to act under this Agreement resign, withdraw, refuse to act, or are disqualified for any reason from performing their duties then, except as may be agreed between the parties, the parties shall appoint a replacement in accordance with the definition of Reporting Accountants;
- (c) the Reporting Accountants shall be deemed to act as experts and not as arbitrators;

- (d) the Reporting Accountants shall have power to allocate their fees and expenses for payment in whole or in part by any party at their discretion. If not otherwise allocated they shall be paid as to half by the Transferor and as to half by the Transferee;
- (e) each of the parties shall promptly on request supply to the Reporting Accountants all such documents and information as they may require for the purpose of the reference;
- (f) the decision of the Reporting Accountants shall (in the absence of objection on the grounds of any manifest error discovered within 14 days of the issue of their decision) be conclusive and binding (and in accordance with clause 3(g) below) and shall not be the subject of any appeal by way of legal proceeding or arbitration or otherwise; and
- (g) without prejudice to clauses 3(a) to 3(f) above, either party may, prior to or during the course of the reference to the Reporting Accountants, seek a declaration from the court on a relevant point of law, including but not limited to a point of legal interpretation. Upon such application for a declaration being issued and served all applicable time limits relative to the reference to the Reporting Accountant shall be stayed pending the outcome of such application (including any appeal). The Reporting Accountants are bound to make their determination in a manner consistent with the findings of the Court.

4. **WARRANTY**

The Transferor warrants and represents to the Transferee that the Relevant Contract Liabilities and the Relevant Franchise Assets are, to the extent they are property or rights, transferring to the Transferee free and clear of all Security Interests.

5. **INTEREST**

If the Transferor or the Transferee defaults in the payment when due of any sum payable under this Agreement (whether determined by agreement or pursuant to an order of a court or otherwise) the liability of the Transferor or the Transferee (as the case may be) shall be increased to include interest on such sum from the date when such payment is due until the date of actual payment (after as well as before judgement) at a rate equal to the Interest Rate. Such interest shall accrue from day to day.

6. **VALUE ADDED TAX**

- 6.1 All amounts under this Agreement are expressed as exclusive of Value Added Tax where Value Added Tax is applicable.
- 6.2 The Transferor and the Transferee shall use all reasonable endeavours to secure that the transfer of the Transferring Assets and Liabilities is treated for Value Added Tax purposes as the transfer of a business as a going concern ("**TOGC**") and accordingly as neither a supply of goods nor a supply of services for the purposes of Value Added Tax.
- 6.3 If HM Revenue & Customs direct that the transfer of the Transferring Assets and Liabilities cannot be treated as a TOGC, the Transferor shall provide the Transferee with a copy of such direction within five days of receipt thereof by the Transferor.

- 6.4 The Transferee shall thereafter pay upon the receipt of a valid tax invoice the amount of any Value Added Tax which as a result of that direction may be chargeable on the transfer of the Transferring Assets and Liabilities. If the aforementioned direction was issued as a result of any action or inaction of the Transferee then the Transferee shall in addition to the Value Added Tax indemnify the Transferor for any penalties and interest that may be incurred upon receipt of such evidence from HM Revenue & Customs.
- 6.5 If the Transferee considers the direction issued by HM Revenue & Customs referred to in clause 6.3 to be incorrect then, without prejudice to the Transferee's obligation under clause 6.4 to pay to the Transferor the amount of any Value Added Tax which as a result such direction may be chargeable on the transfer of the Transferring Assets and Liabilities, the Transferee may, within 30 days of receipt of such direction by the Transferor, give notice to the Transferor that it requires the Transferor to appeal such direction. Upon requesting such an appeal the Transferee agrees to indemnify the Transferor for all reasonable costs that the Transferor may incur in taking such action upon receipt of evidence of those costs. If such an appeal is successful the Transferor agrees to reimburse the Transferee for such reasonable costs and penalties and interest to the extent that those costs have been reimbursed by HM Revenue & Customs.
- 6.6 If any amount paid by the Transferee to the Transferor in respect of Value Added Tax pursuant to this Agreement is subsequently found to have been paid in error the Transferor shall issue a valid tax credit note for the appropriate sum to the Transferee and promptly repay such amount to the Transferee.
- 6.7 If any amount is payable by the Transferor to the Transferee in respect of the transfer of the Relevant Franchise Assets, Relevant Contract Liabilities, Relevant Debits and Credits and Relevant Employee Liabilities pursuant to this Agreement, clauses 6.3 to 6.6 inclusive shall apply mutatis mutandis to such payment substituting Transferor for Transferee and vice versa.
- 6.8 **460 Not Used.**
- 6.9 **461 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.**

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- 460** 05 November 2014 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.
- 461** 05 November 2014 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

7. EMPLOYEES

Transfer Regulations

7.1 The parties accept that, to the extent that the undertaking or part of the undertaking of the Transferor is continued by the Transferee after the Transfer Date, this Agreement and the transfer of the Business which is effected in connection with the Transfer Scheme are governed by the Transfer Regulations and the following provisions shall apply in connection therewith:

- (a) ⁴⁶²the 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

⁴⁶² 05 November 2014 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

- liabilities (as the case may be) are or will be transferred to the Transferee in accordance with the Transfer Regulations;
or
- (ii) anything done or omitted before the Transfer Date by or in relation to the Transferor in respect of any such contract of employment or collective agreement or any Relevant Employee, which is deemed by the Transfer Regulations to have been done or omitted by or in relation to the Transferee save where the thing done or omitted to be done before the Transfer Date relates to the Transferee's failure to comply with its obligations referred to in clause 7.4;
- (d) if any contract of employment or collective agreement which is neither disclosed in writing to the Transferee by the Transferor prior to the Transfer Date nor made available to the Secretary of State under Schedule 15.3 (Handover Package) of the Franchise Agreement prior to the Transfer Date shall have effect as if originally made between the Transferee and any employee (the "**Undisclosed Employee**") or a trade union or employee representatives as a result of the provisions of the Transfer Regulations (without prejudice to any other right or remedy which may be available to the Transferee):
- (i) the Transferee may, upon becoming aware of the application of the Transfer Regulations to any such contract of employment or collective agreement terminate such contract or agreement forthwith;
- (ii) the Transferor shall indemnify the Transferee against each and every action, proceeding, cost, claim, liability (including, without limitation, any Taxation), expense (including, without limitation, reasonable legal fees) or demand relating to or arising out of such termination and reimburse the Transferee for all costs and expenses (including, without limitation, any Taxation) incurred in employing such employee in respect of his employment following the Transfer Date; and
- (iii) the Transferor shall indemnify the Transferee in respect of any Undisclosed Employee on the same terms mutatis mutandis as the Transferor has indemnified the Transferee in respect of a Relevant Employee pursuant to the terms of clauses 7.1(b) and 7.1(c); and
- (e) the Transferor shall indemnify the Transferee and keep the Transferee indemnified against each and every action, proceeding, cost, claim, liability (including without limitation, any Taxation) expense (including, without limitation, reasonable legal fees) or demand which relates to or arises out of any dismissal (including, without limitation, constructive dismissal) by the Transferor of any employee (not being a Relevant Employee) and which the Transferee may incur pursuant to the provisions of the Transfer Regulations.

Transferee's Indemnities

- 7.2 The Transferee shall indemnify the Transferor and keep the Transferor indemnified against each and every action, proceeding, liability (including, without limitation,

any Taxation), cost, claim, loss, expense (including reasonable legal fees) and demand arising out of or in connection with:

- (a) any substantial change in the working conditions of the Relevant Employees to his or her detriment or any of them occurring on or after the Transfer Date;
- (b) the change of employer occurring by virtue of the Transfer Regulations and/or the Franchise Agreement being significant and detrimental to any of the Relevant Employees;
- (c) the employment by the Transferee on or after the Transfer Date of any of the Relevant Employees other than on terms (including terms relating to any occupational pension scheme) at least as good as those enjoyed prior to the Transfer Date or the termination of the employment of any of them on or after the Transfer Date; or
- (d) any claim by any Relevant Employee (whether in contract or in tort or under statute (including the Treaty of the European Community or European Union and any Directives made under the Secretary of State of any such Treaty or any successor thereof)) for any remedy (including, without limitation, for unfair dismissal, redundancy, statutory redundancy, equal pay, sex or race discrimination) as a result of any act or omission by the Transferee after the Transfer Date.

7.3 ⁴⁶³The 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.

Details of Relevant Employees

7.4 ⁴⁶⁴Without 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 15.4 (Provisions Applying on and after Termination) of the Franchise Agreement prior to the Transfer Date) provided the Transferee prior to the Transfer Date with full particulars of:

- (a) each Relevant Employee, including name, sex, and the date on which continuity of employment began for each Relevant Employee for statutory purposes;
- (b) terms and conditions of employment of each such person;

⁴⁶³ Date of change 05/11/2014

⁴⁶⁴ Date of change 05/11/2014

[address]

[fax]

Attention: [name]

8.5 Any such notice or other communication shall be delivered by hand or sent by courier, fax or prepaid first class post. If sent by courier or fax such notice or communication shall conclusively be deemed to have been given or served at the time of despatch. If sent by post such notice or communication shall conclusively be deemed to have been received two business days from the time of posting.

Counterparts

8.6 This Agreement may be executed in any number of counterparts each of which shall be deemed an original, but all the counterparts shall together constitute one and the same instrument.

Third Parties

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

Governing Law

8.8 This Agreement shall be governed by and construed in accordance with the laws of England and Wales and the parties irrevocably agree that the courts of England and Wales are to have exclusive jurisdiction to settle any disputes which may arise out of or in connection with this Agreement.

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

SIGNED FOR AND ON
BEHALF OF THE
[TRANSFEROR]



DIRECTOR:

DIRECTOR/SECRETARY:

SIGNED FOR AND ON
BEHALF OF THE
[TRANSFeree]



DIRECTOR:

DIRECTOR/SECRETARY:

SCHEDULE TO THE SUPPLEMENTAL AGREEMENT

Net Asset Statement

The Net Asset Statement shall be drawn up (except to the extent otherwise agreed by the Transferor and the Transferee) in accordance with accounting principles generally accepted in the United Kingdom and such that the Transferring Assets and Liabilities are valued on the following basis:

1. Rights and liabilities relating to an obligation of carriage under the terms of any Fare shall be valued in accordance with the following formula:

$$(C - D) \times \frac{A}{B} + E$$

where:

C equals the Credit (exclusive of any Valued Added Tax) received by the Transferor in respect of the Fare provided that:

- (a) such Credit shall be deemed not to include any reduction in respect of a discount allowed to the purchaser of the Fare pursuant to the Passenger's Charter or any other passenger's charter of the Transferor;
- (b) if the Fare is a Season Ticket Fare, such Credit shall be the New Credit (as defined in the Ticketing and Settlement Agreement) relating to that Season Ticket Fare on the Transfer Date if different to the Credit that was in fact received by the Transferor in respect of such Season Ticket Fare;
- (c) such Credit shall be net of any Private Settlement Credit (as defined in the Ticketing and Settlement Agreement) arising in respect of that Fare; and
- (d) such Credit shall be deemed to exclude any Credit received by the Transferor in respect of any commission due to it in respect of the sale of such Fare (provided that for these purposes the amount of such commission shall not exceed the National Standard Rate of Commission (as defined in the Ticketing and Settlement Agreement) in respect of the Fare);

D equals the Debit (exclusive of any Value Added Tax) received by the Transferor in respect of the commission due in respect of the sale of the Fare (provided that for these purposes the amount of such commission shall not exceed the National Standard Rate of Commission (as defined in the Ticketing and Settlement Agreement) in respect of the Fare);

$\frac{A}{B}$ equals

- (a) in the case of a Season Ticket Fare, the number of journeys which the purchaser of the Fare is estimated to make from (and including) the Transfer Date to (and including) the last day on which the Fare is valid (including any extensions to its

original period of validity) divided by the total number of journeys which the purchaser of the Fare is estimated to make with that Fare (as determined in each case in accordance with Schedule 28 of the Ticketing and Settlement Agreement);

(b) in the case of any other Fare which entitles the holder thereof to make more than two journeys, the number of days for which the Fare continues to be valid after the Transfer Date (including any extensions to its original period of validity) divided by the total number of days for which such Fare is valid on issue (except to the extent that it can reasonably be estimated what proportion of the journeys which could be made on issue of the Fare have not been made prior to the Transfer Date); or

(c) in the case of any other Fare, zero; and

E equals, if $\frac{A}{B}$ is greater than zero:

the amount of any discount to which it can be reasonably estimated that the purchaser of the Fare would be entitled pursuant to the Passenger's Charter or any other passenger's charter of the Transferor on purchasing an equivalent Fare on the expiry of the relevant Fare.

2. Rights and liabilities relating to an Excess Fare, Reservation or Upgrade (as such terms are defined in the Ticketing and Settlement Agreement) shall be valued at zero unless such Excess Fare, Reservation or Upgrade involves more than two journeys, in which case they shall be valued in accordance with paragraph 1 and references to Fare in paragraph 1 shall be construed accordingly.

3. Rights and liabilities under a Discount Card shall be valued in accordance with the following formula:

$$(C - D) \times \frac{A}{B}$$

where:

C equals the Credit (exclusive of any Value Added Tax) received by the Transferor in respect of the Discount Card;

D equals the Debit (exclusive of any Value Added Tax) received by the Transferor in respect of the commission due in respect of the sale of the Discount Card (provided that for these purposes the amount of such commission shall not exceed the National Standard Rate of Commission (as defined in the Ticketing and Settlement Agreement) in respect of the Discount Card); and

$\frac{A}{B}$ equals the number of days for which the Discount Card continues to be valid after the Transfer Date (including any extensions to its original period of validity) divided by the total number of days for which such Discount Card is valid on issue, or in the case of any Discount Card listed in Schedules 12 or 39 of the Ticketing and Settlement Agreement on the Start Date, zero,

and for these purposes a Credit or Debit shall be deemed to be received when the relevant Discount Card is Accepted for Clearing (as defined in the Ticketing and Settlement Agreement).

- 4. Relevant Debits and Credits shall be valued at the full amount of such Debits and Credits (inclusive of any Value Added Tax) but excluding any Debits and Credits arising in respect of Adjustment Amounts (as defined in the Ticketing and Settlement Agreement) which are received by the Transferee in respect of a change to the Credit which is used to value any relevant Season Ticket Fare under paragraph 1 of this Schedule to the extent such Adjustment Amounts relate to a period after the Transfer Date.
- 5. Rights and liabilities in respect of any contract, ⁴⁶⁵(including any **STNR Contract**) lease (including any Station Lease), licence ⁴⁶⁶ (**including any licences granted to the Franchisee of Intellectual Property Rights in respect of the STNR System (including the database containing the data processed by the STNR System) owned by an Affiliate**) or other equivalent arrangement (excluding rights and liabilities valued under paragraphs 1 to 4) shall be valued at nil except to the extent that the relevant rights and liabilities include matters specified in the left hand column of the following table, which shall be valued on the basis specified in the right hand column of the following table:

RIGHTS AND LIABILITIES	VALUE
Any accrued rights to receive payment	Monetary amounts so accrued, subject to any provision being made for payment not being received from any other person
Any right to receive payment in respect of goods and/or services provided by the Transferor prior to the Transfer Date where the due date for such payment is after the Transfer Date	Amount payable under such contract, lease, licence or other equivalent arrangement for the goods and/or services so provided by the Transferor, subject to any provision being made for payment not being received from any other person
Any accrued liabilities to make payment	Monetary amounts so accrued
Any liability to make payment in respect of goods and/or services provided to the Transferor prior to the Transfer Date where the due date for such payment is after the Transfer Date	Amount payable under such contract, lease, licence or other equivalent arrangement for the goods and/or services provided to the Transferor

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Derogations

⁴⁶⁵ 17/01/2018 (Date of Deed of Amendment) Contract insertion agreed by the Secretary of State and the Franchisee.

⁴⁶⁶ 17/01/2018 (Date of Deed of Amendment) Contract insertion agreed by the Secretary of State and the Franchisee.

RIGHTS AND LIABILITIES	VALUE
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 and Yield Management Data shall be valued at nil.	
7. The Stored Credit Balance held by the Franchisee at the Transfer Date shall be valued at the monetary amount so held.	
8. Any Relevant TRSP Past Liabilities shall be valued at the amount of such liability or to the extent that such amount is not ascertained, the parties reasonable estimate of the amount of such liability.	
9. ⁴⁶⁷Each of any Operator Owned Spares, Operator Owned Special Tools, and the Integrated Laboratory Equipment as transferred by Transferor to Transferee pursuant to the Transfer Scheme shall be valued at nil. The terms Operator Owned Spares, Operator Owned Special Tools, and the Integrated Laboratory Equipment shall each have the meanings given to them under the MDCTA.	
10. ⁴⁶⁸Subject to paragraph 11, any ITSO equipment (including smart card and ITSO Certified Smartmedia readers and ITSO database) transferred from the Transferor to the Transferee pursuant to the Transfer Scheme shall be valued at nil.	
11. ⁴⁶⁹Each of:	
(a)	

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Derogations

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- ⁴⁶⁷** 27 April 2015 - (Date of Contract Change Letter) – Contract variation agreed by the Secretary of State and Franchisee.
 - ⁴⁶⁸** 17/01/2018 (Date of Deed of Amendment) Contract insertion agreed by the Secretary of State and the Franchisee.
 - ⁴⁶⁹** 17/01/2018 (Date of Deed of Amendment) Contract insertion agreed by the Secretary of State and the Franchisee.

- (i) those tangible assets comprised in the STNR System that are newly acquired by the Franchisee; and**
 - (ii) the Equipment (as defined in the SEFT Deed), in each case, that are funded by the Secretary of State as part of the Smart Ticketing Project (which shall include those elements set out in Annex B and Annex C of the STNR Scope of Work and marked "nil") shall be valued at nil;**
- (b)**
 - (i) the upgraded tangible assets comprised in the STNR System in respect of which the relevant upgrade has been funded by the Secretary of State as part of the STNR Project (including those elements set out in Annex B and Annex C of the STNR Scope of Work and marked "WBWP"; and**
 - (ii) the Upgraded SEFT Assets shall, in each case, be valued on the basis of the valuation principles set out in paragraph 12 except that in assessing the value of such upgraded tangible asset and/or such Upgraded SEFT Asset arising as a consequence of any upgrade and/or regular maintenance funded by the Secretary of State as part of the Smart Ticketing Project;**
- (c) the Intellectual Property Rights in respect of the STNR System (including the database containing the data processed by the STNR System) and owned by the Franchisee shall be valued at nil;and**
- (d) all data processed or generated by the STNR System, shall be valued at nil;**
- 12. Any other property, rights or liabilities shall be valued on the basis of a willing vendor and purchaser and ongoing usage within the railway industry

SCHEDULE 16

Pensions

1. Franchise Sections

1.1 The Franchisee shall:

- (a) with effect from the Start Date, participate in and become the Designated Employer in relation to the First Capital Connect Shared Cost Section of the Railway Pension Scheme; and
- (b) in addition, with effect from the Combined Effective Date, participate in and become the Designated Employer in relation to the Southern Shared Cost Section of the Railway Pension Scheme,

(together to be known as the "**Franchise Sections**") and in each case in respect of the Franchise Services. Subject to paragraphs 1.2, 2 and 3.2(d) membership of a Franchise Section will be offered to each employee of a Franchisee only.

1.2 The Franchisee shall offer membership of a Franchise Section to New Employees as follows:

- (a) any New Employee whose role at the time at which membership of a Franchise Section is offered in accordance with the requirements of paragraph 1.1 is associated more closely to the TGN Franchise Services than the Southern Franchise Services shall be offered membership of the First Capital Connect Shared Cost Section;
- (b) any New Employee whose role at the time at which membership of a Franchise Section is offered in accordance with the requirements of paragraph 1.1 is associated more closely to the Southern Franchise Services than the TGN Services shall be offered membership of the Southern Shared Cost Section; and
- (c) where the role of any New Employee is not associated more closely with either of the TGN Franchise Services or the Southern Franchise Services than with the other then the Franchisee shall offer such New Employee membership of a Franchise Section in such a way as to ensure that as far as reasonably practicable the size of the total active membership of each of the First Capital Connect Shared Cost Section and the Southern Shared Cost Section are maintained in a similar proportion, as compared to the size of the total active membership of each such Franchise Sections as at the Combined Effective Date,

provided that should such offer not be accepted an offer of membership of the other Franchise Section shall not be made.

The Franchisee shall make an offer of membership of a Franchise Section to Transferring Employees who are not already members of one or other of the Franchise Sections at the time of their transfer into the employment of the Franchisee on the same basis and subject to the same proviso.

Where Transferring Employees are already members of one or other of the Franchise Sections at the time of their transfer into the employment of the

Franchisee, the Franchisee shall permit them to remain members of that Franchise Section and shall not offer them membership of the other one.

For the purposes of this paragraph 1.2:

"New Employee" means any person who becomes an employee of the Franchisee after the Combined Effective Date (other than a person whose contract of employment transfers to the Franchisee at the Start Date or the Combined Effective Date (as the case may be) by virtue of the operation of Law (including the Transfer of Undertakings (Protection of Employment) Regulations 2006));

"Transferring Employee" means any person whose contract of employment transfers to the Franchisee at the Start Date or the Combined Effective Date (as the case may be) by virtue of the operation of Law (including the Transfer of Undertakings (Protection of Employment) Regulations 2006); and

"Role at the time at which membership of a Franchise Section is offered" means the role which at that time it is intended the New Employee will carry out.

2. **Closed Schemes**

2.1 Subject to any requirements of Her Majesty's Revenue and Customs, the Franchisee shall take any necessary steps (including entering into any relevant deed of participation) to allow Closed Scheme Employees to continue in membership of the British Railways Superannuation Fund or the BR (1974) Pension Fund in accordance with their terms during the Franchise Period.

2.2 For the purposes of this paragraph 2, **"Closed Scheme Employees"** means such of the employees of the Franchisee who were, immediately prior to the commencement of their employment with the Franchisee, members of either of the British Railways Superannuation Fund or the BR (1974) Pension Fund.

3. **Variations in benefits, contributions and investment**

3.1 If a Franchisee is considering making a proposal that falls within the scope of paragraphs 3.2(a) to (g) inclusive, it shall promptly consult with the Secretary of State in relation to that proposal prior to putting such a proposal to the Pensions Committee of any Franchise Section, the Trustee of the Railways Pension Scheme (the **"Trustee"**), or to any trade union. The Franchisee must otherwise consult in good time with the Secretary of State in relation to any proposal falling within the scope of paragraphs 3.2(a) to (g) inclusive.

3.2 Separately and in addition to complying with its obligations under paragraph 3.1, the Franchisee shall not, without the prior written consent of the Secretary of State (which may be given on such terms and subject to such conditions as the Secretary of State thinks fit):

- (a) restructure or change the composition of the earnings of employees of the Franchisee in such a way as to increase the part of those earnings which qualifies as pensionable earnings under the Rules applicable to any Franchise Section or take any action (or consent to the taking of any action) which could detrimentally affect the funding of any Franchise Section, including varying or providing different or additional benefits under that Franchise Section or promising to do so, unless this change:

- (i) is required by Law; or

- (ii) only affects benefits payable in respect of past service of members of that Franchise Section and on or prior to the effective date of the change the Franchisee pays an additional cash payment to the Trustee which, in the opinion of the Actuary, meets in full the additional funding cost imposed on that Franchise Section; or
 - (iii) would not lead to substantial changes in the funding of any Franchise Section and is the result of the normal application of that Franchise Section's Rules in the ordinary day to day running of the business of the Franchise, for example, where individual employees are, from time to time promoted or transferred to higher paid or different employment which has a different composition of earnings;
- (b) make or consent to any proposal to change any of the provisions of the Pension Trust in respect of the Franchise Sections unless the change is required by Law;
- (c) provide retirement, death or life assurance benefits in respect of any of its employees other than under any Franchise Section or as provided in paragraph 2;
- (d) omit to provide the above-mentioned benefits in respect of its employees save that, without prejudice to any rights which any such employee may otherwise have, the Franchisee shall not under this Schedule 16 be obliged for the purposes of the Franchise Agreement to offer such benefits to any employee employed on a fixed term contract of 12 months or less;
- (e) take any action (or consent to the taking of any action) which could affect the contributions payable by Participating Employers under any Franchise Section, including exercising any discretion allowed to the Franchisee as Designated Employer arising out of any actuarial valuation of a Franchise Section, and varying or providing different or additional benefits under the Franchise Sections in respect of future service, unless such action is required by Law;
- (f) close a Franchise Section to new members; or
- (g) take (or omit to take) any action which could result in any Franchise Section being wound up, in whole or in part.

3.3 The Franchisee shall consult with the Secretary of State on:

- (a) any proposal made by the Trustee to change the statement of investment principles applicable to any Franchise Section; and
- (b) any proposal to alter the rate of contributions payable by the Franchisee or its employees under a new schedule of contributions for the Franchise Section.

3.4 With respect to any proposal falling within the scope of paragraph 3.3(a) or (b), the Franchisee shall also consult with the Trustee on the basis of any response it receives from the Secretary of State in relation to any such proposal.

4. **Funding liabilities**

4.1 The Franchisee shall pay the employer contributions required under the schedule of contributions applicable to each Franchise Section (or either of the British Railways Superannuation Fund or the BR (1974) Pension Fund in which it participates) in respect of the Franchise Term subject to the provisions of paragraph 4.2 below.

4.2 Where, during the Franchise Term, either:

- (a) Franchise Services are aggregated or disaggregated by the Secretary of State (for example, as a result of remapping) and, as a consequence, a Franchise Section of which the Franchisee is the Designated Employer is required to accept a transfer in or to make a transfer out of members; or
- (b) the Secretary of State or the Trustee of the Railways Pension Scheme require one or more bulk transfer of the assets and liabilities of the Franchise Sections so that all of the assets and liabilities of the Franchise Sections become held in one section of the Railways Pension Scheme (such transfer(s) being a "**Franchise Section Merger**"),

the Secretary of State shall ensure that the Franchisee has no liability for any resulting deterioration immediately arising in the funding level of the Franchise Section measured in accordance with the Franchise Sections' technical provisions in Part 3 of the Pensions Act 2004, or for any amount arising under article 7(4) of the Railway Pensions (Protection and Designation of Schemes) Order 1994. Notwithstanding the above the Secretary of State shall have no liability for any future deterioration in the funding levels of the Franchise Section linked to such transfer in or out of members, assets or liabilities nor shall the Secretary of State have any liability for any of the costs or expenses of the Franchisee in arranging or implementing the Franchise Section Merger.

5. **Discharge of obligations**

5.1 The Secretary of State may at any time during the Franchise Term seek information from the Trustee with a view to satisfying himself that the Franchisee and the other Participating Employers (if any) have fully discharged their respective obligations under the Railways Pension Scheme, including their obligations in respect of the payment of contributions to any Franchise Section.

5.2 The Franchisee shall, at its expense, promptly provide such information in relation to any Franchise Section, including actuarial advice and information, as the Secretary of State may from time to time request and shall authorise and consent to the Trustee doing so.

5.3 The Franchisee shall, in respect of the Franchise Term, use all reasonable endeavours to provide to the Secretary of State:

- (a) within one month of the expiry of each Franchisee Year; and
- (b) at other times as soon as practicable following a request by the Secretary of State,

a certificate signed by the Trustee in relation to the Franchise Sections stating either that the Franchisee has fully complied with its obligations under the Railways Pensions Scheme, including its obligation to contribute to the Franchise Sections or, if it has not so complied, stating the extent to which it has not done

so. Where the certificate is given pursuant to paragraph 5.3(a), it shall cover the relevant Franchisee Year. Where the certificate has been given pursuant to paragraph 5.3(b), it shall cover such period as the Secretary of State shall specify.

- 5.4 If the Trustee does not certify under paragraph 5.3 in relation to the Franchise Sections that the Franchisee has fully complied with its obligations under the Railways Pension Scheme or if the Secretary of State otherwise reasonably considers that the Franchisee has not complied with such obligations, the Secretary of State may adjust Franchise Payments payable under Schedule 8 (Payments) by an amount which is, in his opinion, no greater than the amount of any contribution that the Franchisee has thereby failed to make or avoided making.
- 5.5 The Secretary of State may, under paragraph 5.4, continue to make such adjustments to Franchise Payments payable under Schedule 8 (Payments) until such time as he reasonably determines that the relevant contributions have been made in full by the Franchisee. Following that determination, any amounts so withheld by the Secretary of State shall become payable (without interest) on the next day on which a Franchise Payment becomes payable under Schedule 8, being a day which falls no less than seven days after such determination or, if there is no such day, 14 days after the date of such determination. To the extent that the Secretary of State has not so determined within four weeks after the expiry of the Franchise Period, the Franchisee's right to receive the amount so withheld under the Franchise Agreement shall lapse and the Secretary of State shall not be obliged to pay such amount.

6. **Termination of Franchise**

The Secretary of State shall at the end of the Franchise Period ensure that the Franchisee has no liability for any deficit in the Franchise Sections (other than for contributions due and payable by the Franchisee to the Franchise Sections for any period prior to the end of the Franchise Term) and shall have no right to benefit from any surplus which may exist in the Franchise Sections. For the avoidance of doubt, this paragraph 6 shall apply where the Franchise Services are either aggregated or disaggregated (for example, as a result of remapping) or transferred into one as described in paragraph 4.2(b)).

7. **Definitions**

Unless otherwise defined in the Franchise Agreement, terms used in this Schedule 16 shall have the meanings given to them in the Railways Pension Scheme.

17 SCHEDULE 17

Confidentiality and Freedom of Information

1. Confidentiality

Subject to the provisions of the Act, the Transport Act, the Railways Act 2005, the Environmental Information Regulations, the Freedom of Information Act (and any code of practice or other guidance related to the same) and paragraphs 2 to 8 of this Schedule 17 inclusive, each party shall hold in confidence all documents, materials and other information, whether technical or commercial, supplied by or on behalf of the other party (including all documents and information supplied in the course of proceedings under the Dispute Resolution Rules or the rules of any other dispute resolution procedures to which a dispute is referred in accordance with the Franchise Agreement) (all together the "**Confidential Information**") and shall not, except with the other party's prior written authority, publish or otherwise disclose any Confidential Information otherwise than as expressly provided for in the Franchise Agreement unless or until the recipient party can demonstrate that any such document, material or information is in the public domain through no fault of its own and through no contravention of the Franchise Agreement, whereupon to the extent that it is in the public domain this obligation shall cease.

2. Disclosure of Confidential Information

Each party may disclose any data or information acquired by it under or pursuant to the Franchise Agreement or information relating to a dispute arising under the Franchise Agreement without the prior written consent of the other party if such disclosure is made in good faith:

- (a) to any Affiliate of such party or outside consultants or advisers of such Affiliate, upon obtaining from such Affiliate and/or such outside consultants or advisers of such Affiliate an undertaking of confidentiality equivalent to that contained in paragraph 1;
- (b) to any outside consultants or advisers engaged by or on behalf of such party and acting in that capacity, upon obtaining from such consultants or advisers an undertaking of confidentiality equivalent to that contained in paragraph 1;
- (c) to any lenders, security trustee, bank or other financial institution (and its or their advisers) from which such party is seeking or obtaining finance, upon obtaining from any such person an undertaking of confidentiality equivalent to that contained in paragraph 1;
- (d) to the extent required by Law or pursuant to an order of any court of competent jurisdiction or under the Dispute Resolution Rules or the rules of any other dispute resolution procedures to which a dispute is referred in accordance with the Franchise Agreement or the rules of a recognised stock exchange or a formal or informal request of any taxation authority;
- (e) to any insurer, upon obtaining from such insurer an undertaking of confidentiality equivalent to that contained in paragraph 1;

- (f) to any director, employee or officer of such party, to the extent necessary to enable such party to perform its obligations under the Franchise Agreement or to protect or enforce its rights under the Franchise Agreement; or
- (g) by the Franchisee, to the ORR, the Passengers' Council or a Local Authority.

3. **Publication of Certain Information**

3.1 Notwithstanding the provisions of paragraph 1, the Secretary of State may publish (whether to the press, the public or to one or more individuals, companies or other bodies, including to any prospective Successor Operator) in such form and at such times as he sees fit, the following (irrespective of whether the same was provided to the Secretary of State by the Franchisee or a third party):

- (a) any or all of the Franchise Documents provided that the Secretary of State will, prior to publishing the same, redact from any Franchise Document any information contained therein which the Secretary of State and the Franchisee agree or failing which the Secretary of State determines, in his absolute discretion, is exempt from disclosure in accordance with the provisions of the Freedom of Information Act and/or the Environmental Information Regulations.
- (b) the amount of any Franchise Payments payable under the Franchise Agreement and the aggregate amount of Franchise Payments paid in each year under the Franchise Agreement;
- (c) such information as the Secretary of State may consider reasonably necessary to publish in connection with the performance of his functions in relation to any Closure or proposed Closure;
- (d) the amounts of any payments by the Franchisee under the Passenger's Charter;
- (e) such information (including CRM Data and Yield Management Data) as may reasonably be required in connection with the Tendering/Reletting Process or the retendering or reletting of any other railway passenger services, provided that such information may only be published during the period of, or during the period leading up to, such retendering or reletting;
- (f) any reports and accounts delivered to him under Schedule 13 (Information and Industry Initiatives) including any analyses, statistics and other information derived from such reports and accounts;
- (g) the results of any monitoring or measurement of the performance of the Franchisee in the provision of the Franchise Services (including any information provided under Schedule 11 (Agreement Management Provisions));
- (h) the results, on a Service Group, Route, station or other comparable basis, of any calculation of passenger numbers under Schedule 1.5 (Information about Passengers);
- (i) the Franchisee's performance under Schedule 7.2 (PEM Regime) (including the Pass Rates and the Franchisee's performance against the QuEST Benchmarks, NPS Benchmarks and PEM Benchmarks);

- (j) the results of any assessment or inspection under Schedule 11 (Agreement Management Provisions);
 - (k) details of the Franchisee's plans and performance in respect of safety;
 - (l) not used;
 - (m) such information as the Secretary of State may reasonably require to include in his annual report in respect of the Franchisee provided that, in preparing that report, the Secretary of State shall have regard to the need for excluding, so far as is practicable, the matters specified in paragraphs (a) and (b) of Section 71(2) of the Act for this purpose, taking references in those paragraphs to the ORR as references to the Secretary of State; and
 - (n) such information as the Secretary of State may reasonably require to publish at or around the expiry or possible termination of the Franchise Period in order to secure continuity of the provision and operation of the Franchise Services.
- 3.2 Without prejudice to any other provision of this Schedule 17, the Secretary of State may publish any other information relating to the Franchisee if he has previously notified the Franchisee and the Franchisee does not demonstrate to the reasonable satisfaction of the Secretary of State within 14 days of such notification that the publication of such information would, in the reasonable opinion of the Franchisee, be materially detrimental to its business. If the Franchisee attempts so to demonstrate to the Secretary of State but he is not so satisfied, the Secretary of State shall allow seven more days before publishing the relevant information.
4. **Service Development Information**
- Nothing in this Schedule 17 shall be deemed to prohibit, prevent or hinder, or render either party liable for, the disclosure by either party to Network Rail, the ORR, other Train Operators, any operators of services for the carriage of goods by rail, the Passengers' Council and/or any Local Authority of any information relating to the development of the Train Service Requirement in accordance with Schedule 1.1 (Service Development).
5. **Publication by Secretary Of State**
- Nothing in this Schedule 17 shall be deemed to prohibit, prevent or hinder, or render the Secretary of State liable for, the disclosure of any information by the Secretary of State to the ORR, the Parliamentary Commissioner for Administration, a Minister of the Crown, any department of the government of the United Kingdom, the Scottish Parliament, the National Assembly for Wales, the Mayor of London, the Greater London Authority or any department or officer of any of them or of information which is otherwise disclosed for the purpose of facilitating the carrying out of his functions.
6. **Provision of Information to the ORR**
- The Franchisee hereby authorises the Secretary of State to provide to the ORR, to the extent so requested by the ORR, such information as may be provided to the Secretary of State in relation to the Franchisee under the Franchise Agreement.

7. **Disclosure by Comptroller and Auditor General**

The parties recognise that the Comptroller and Auditor General may, in pursuance of his functions under the Exchequer and Audit Department Act 1921, the National Audit Act 1983 and the Government Resources and Accounts Act 2000, disclose information which he has obtained pursuant to those Acts and which a party to the Franchise Agreement would not be able to disclose otherwise than under this Schedule 17.

8. **Continuing Obligation**

This Schedule 17 (and any other provisions necessary to give effect hereto) shall survive the termination of the Franchise Agreement, irrespective of the reason for termination.

9. **Freedom of Information - General Provisions**

9.1 The Franchisee acknowledges and shall procure that its agents and subcontractors acknowledge that the Secretary of State is subject to the requirements of the Freedom of Information Act and the Environmental Information Regulations and accordingly the Franchisee shall and shall procure that its agents and subcontractors shall assist and co-operate with the Secretary of State to enable the Secretary of State to comply with his information disclosure obligations under the Freedom of Information Act and/or the Environmental Information Regulations.

9.2 The Franchisee shall and shall procure that its agents and subcontractors shall:

- (a) transfer to the Secretary of State any Requests for Information received by the Franchisee (or its agents or subcontractors) as soon as practicable and in any event within two working days of receiving any such Request for Information;
- (b) provide the Secretary of State with a copy of all information in its (or their) possession or power in the form that the Secretary of State requires within five working days of the Secretary of State's request (or within such other period as he may specify); and
- (c) provide all necessary assistance as reasonably requested by the Secretary of State to enable him to respond to any Request for Information within the time for compliance set out in section 10 of the Freedom of Information Act or regulation 5 of the Environmental Information Regulations as applicable.

9.3 The Secretary of State shall be responsible for determining in his absolute discretion, and notwithstanding any other provision in the Franchise Agreement or any other agreement, whether Confidential Information (as such term is defined in paragraph 1 of this Schedule 17) and/or any other information is exempt from disclosure in accordance with the provisions of the Freedom of Information Act and/or the Environmental Information Regulations.

9.4 The Franchisee shall not and shall procure that its agents and subcontractors shall not respond directly to any Request for Information unless expressly authorised to do so by the Secretary of State.

9.5 The Franchisee acknowledges and shall procure that its agents and subcontractors acknowledge that notwithstanding any provision to the contrary in the Franchise

Agreement the Secretary of State may be obliged under the Freedom of Information Act and/or the Environmental Information Regulations and any related Code of Practice or other guidance to disclose information concerning the Franchisee and/or its agents and subcontractors:

- (a) in certain circumstances without consulting the Franchisee (or its agents and/or subcontractors where applicable); or
- (b) following consultation with the Franchisee and having taken its views into account (and the views of its agents and/or subcontractors where applicable),

provided always that where applicable the Secretary of State shall in accordance with the provisions of the Freedom of Information Act and/or the Environmental Information Regulations take reasonable steps where appropriate to give the Franchisee advance notice or failing that to draw the disclosure to the Franchisee's attention after any such disclosure.

10. **Redactions**

10.1 By no later than the date which is:

- (a) 4 weeks after the date of this Agreement (in respect of the Franchise Documents referred to in paragraph (a) of the definition thereof);
- (b) 30 days after the date on which the Certificate of Commencement is issued (in respect of the Franchise Documents referred to in paragraph (b) of the definition thereof); and
- (c) 30 days after the date of any document varying the terms of any Franchise Document,

the Franchisee will provide to the Secretary of State details of any provisions of the Franchise Documents or any such variation which the Franchisee believes are exempt from disclosure in accordance with the provisions of the Freedom of Information Act, the Environmental Information Regulations and/or Section 73(3) of the Act ("**Redactions**").

10.2 For each such Redaction the Franchisee should specify:

- (a) the exact text of the Franchise Document or variation that the Franchisee proposes is redacted;
- (b) whether the Franchisee proposes that the Redaction applies in relation to the publication of the relevant Franchise Document or variation on the website of the Department for Transport, on the register required to be maintained by the Secretary of State pursuant to Section 73 of the Act or on both such website and such register;
- (c) the reasons why the Franchisee believes that the proposed Redaction is justified in accordance with the Freedom of Information Act, the Environmental Information Regulations and/or Section 73(3) of the Act.

10.3 The Secretary of State shall consult with the Franchisee in relation to the Franchisee's proposed Redactions (provided that the same are provided to the Secretary of State in accordance with paragraph 10.1). If the Secretary of State and the Franchisee are unable to agree upon any proposed Redaction, the

Secretary of State shall be entitled to determine, in his absolute discretion, whether or not to make such proposed Redaction. If the Franchisee does not provide its proposed Redactions to the Secretary of State in accordance with paragraph 10.1, the Franchisee shall be deemed to have consented to publication of the relevant document without any Redactions.

18 SCHEDULE 18

Additional Reporting Periods

1. Additional 26 Reporting Periods

- 1.1 Subject to paragraph 1.2, the Franchise Agreement shall expire at 0159 on 19 September 2021.
- 1.2 If the Secretary of State gives notice to the Franchisee not less than three months before the date on which the Franchise Agreement is due to expire in accordance with paragraph 1.1, the Franchise Agreement shall continue after such date on the terms set out in the Franchise Agreement for not less than one and not more than twenty-six (26) Reporting Periods, as the Secretary of State may stipulate.

Key Contracts

- 1.3 The Franchisee shall enter into any and all Key Contracts which are necessary for the Franchise Agreement to continue in accordance with paragraph 1.2 of this Schedule 18.

19 SCHEDULE 19

Other Provisions

1. **Not Used**

2. **Rights Cumulative**

The rights of the Secretary of State under the Franchise Agreement are cumulative, may be exercised as often as he considers appropriate and are in addition to his rights under the general Law. The exercise of such rights shall not limit the Secretary of State's right to make payment adjustments, claim damages in respect of contraventions of the Franchise Agreement or pursue any available remedies under general Law.

3. **Disputes**

Disputes under the Franchise Agreement

3.1 Wherever the Franchise Agreement provides that the Secretary of State may reasonably determine any matter, the Franchisee may, unless the Franchise Agreement expressly provides otherwise, dispute whether a determination made by the Secretary of State is reasonable, but the Secretary of State's determination shall prevail unless and until it is agreed or found to have been unreasonable.

3.2 Where either party is entitled, pursuant to the terms of the Franchise Agreement, to refer a dispute arising out of or in connection with the Franchise Agreement for resolution or determination in accordance with the Dispute Resolution Rules, then such dispute shall, unless the parties otherwise agree and subject to any duty of the Secretary of State under Section 55 of the Act, be resolved or determined by arbitration pursuant to the Dispute Resolution Rules.

3.3 Where, in the absence of an express provision in the Franchise Agreement entitling it to do so, either party wishes to refer a dispute arising out of or in connection with the Franchise Agreement to arbitration pursuant to the Dispute Resolution Rules, the following process shall apply:

- (a) the party seeking to refer to arbitration shall serve a written notice upon the other party stating (i) the nature and circumstances of the dispute, (ii) the relief sought including, to the extent possible, an indication of any amount(s) claimed, and (iii) why it is considered that the dispute should be resolved by way of arbitration rather than litigation;
- (b) the other party shall respond within 20 working days of service of the notice confirming whether or not referral of the dispute to arbitration is agreed. In the absence of any response, the referral to arbitration shall be deemed not to have been agreed;
- (c) in the event that the parties agree to refer the dispute to arbitration then it shall be resolved or determined in accordance with the Dispute Resolution Rules;
- (d) in the event that the parties do not agree to refer to arbitration then it shall be resolved or determined in accordance with Clause 8 (Governing Law) of the Franchise Agreement; and

- (e) nothing in this paragraph 3.3 shall preclude either party from commencing, continuing or otherwise taking any step by way of litigation in pursuit of the resolution or determination of the dispute unless an agreement is reached to refer the dispute to arbitration.

3.4 The arbitrator in any dispute referred for resolution or determination under the Dispute Resolution Rules shall be a suitably qualified person chosen by agreement between the parties or, in default of agreement, chosen by the Disputes Secretary from a panel of persons agreed from time to time for such purposes between the Secretary of State and the Franchisee or, in default of agreement as to the arbitrator or as to such panel, selected on the application of any party by the President of the Law Society or the President of the Institute of Chartered Accountants in England and Wales from time to time (or such other person to whom they may delegate such selection).

Disputes under Other Agreements

3.5 The Franchisee shall notify the Secretary of State of any disputes to which it is a party under any Inter-Operator Scheme, Access Agreement, Property Lease or Rolling Stock Related Contract, or under any other agreement in circumstances where the relevant dispute could have an adverse effect on the Franchisee's ability to comply with its obligations under the Franchise Agreement or on the provision of the Franchise Services and which have been submitted for resolution either to the courts or to any other procedure for dispute resolution provided for under such agreements.

3.6 Such notification shall be made both:

- (a) at the time of such submission (and such notification shall include reasonable details of the nature of the dispute); and
- (b) at the time of the resolution of the dispute (whether or not subject to appeal) (and such notification shall include reasonable details of the result of the dispute, any associated award and whether it is subject to appeal).

3.7 The Franchisee shall provide such further details of any dispute referred to in paragraph 3.5 as the Secretary of State may reasonably request from time to time.

4. Notices

Notices

4.1

- (a) Any notice, notification or other communication under or in connection with the matters specified in Schedule 10.2 (Termination and Expiry) or any dispute under or in connection with the Franchise Agreement shall be in writing and shall be delivered by hand or recorded delivery or sent by pre-paid first class post to the relevant party at the address for service set out below, or to such other address in the United Kingdom as each party may specify by notice in writing to the other party:

Name: The Department for Transport

Address: 33 Horseferry Road, London SW1P 4DR

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

Attention: Director, Rail Commercial

Name: Govia Thameslink Railway Limited

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

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

Attention: The Company Secretary

(b) Any other notice, notification or other communication under or in connection with the Franchise Agreement shall be in writing and shall be delivered:

(i) in accordance with paragraph 4.1(a); or

(ii) by electronic data transfer,

except that it shall be marked for the attention of the Contract Manager or the Franchise Manager.

Deemed Receipt

4.2 Any such notice or other communication shall be deemed to have been received by the party to whom it is addressed as follows:

- (a) if sent by hand or recorded delivery, when delivered;
- (b) if sent by pre-paid first class post, from and to any place within the United Kingdom, three business days after posting unless otherwise proven; and
- (c) if sent by electronic data transfer, upon sending, subject to receipt by the sender of a "delivered" confirmation (provided that the sender shall not be required to produce a "read" confirmation).

5. Assignment

The Franchisee shall not without the prior written consent of the Secretary of State assign, hold in trust for any other person, or grant a Security Interest in or over, the Franchise Agreement or any part hereof or any benefit or interest or right herein or hereunder (other than any right of the Franchisee to receive monies under a Supplemental Agreement).

6. Set-Off

6.1 Save as otherwise expressly provided under the Franchise Agreement or required by law, all sums payable under the Franchise Agreement shall be paid in full and without any set-off or any deduction or withholding including on account of any counter-claim.

6.2 Notwithstanding paragraph 6.1 the Secretary of State shall be entitled to set-off against any amounts payable by him under the Franchise Agreement:

- (a) any amount or liability payable or due to him under or in relation to the Franchise Agreement (whether such amount or liability is present, contingent and/or future, liquidated or unliquidated); and
- (b) any monetary penalty payable under the Act.

7. **Miscellaneous Provisions**

Waivers

7.1

- (a) Either party may at any time waive any obligation of the other party under the Franchise Agreement and the obligations of the parties hereunder shall be construed accordingly.
- (b) No waiver by either party of any default by the other party in the performance of such party's obligations under the Franchise Agreement shall operate or be construed as a waiver of any other or further such default, whether of a like or different character. A failure to exercise or delay in exercising a right or remedy under the Franchise Agreement shall not constitute a waiver of any right or remedy or a waiver of any other rights or remedies and no single or partial exercise of any right or remedy under the Franchise Agreement shall prevent any further exercise of such right or remedy or the exercise of any other right or remedy.

Time Limits

- 7.2 Where in the Franchise Agreement any obligation of a party is required to be performed within a specified time limit (including an obligation to use all reasonable endeavours or best endeavours to secure a particular result within such time limit) that obligation shall be deemed to continue after the expiry of such time limit if such party fails to comply with that obligation (or secure such result, as appropriate) within such time limit.

Partial Invalidity

- 7.3 If any provision in the Franchise Agreement is held to be void, illegal, invalid or unenforceable, in whole or in part, under any enactment or rule of Law, such provision or part shall to that extent be deemed not to form part of the Franchise Agreement but the legality, validity and enforceability of the remainder of the Franchise Agreement shall not be affected.

Further Assurance

- 7.4 Each party agrees to execute and deliver all such further instruments and do and perform all such further acts and things as shall be necessary or expedient for the carrying out of the provisions of the Franchise Agreement.

Rights of Third Parties

7.5

- (a) A person who is not a party to the Franchise Agreement shall have no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Franchise Agreement except to the extent set out in this paragraph 7.5.

- (b) Any Successor Operator or potential Successor Operator nominated by the Secretary of State and notified to the Franchisee for the purposes of this paragraph 7.5 may enforce and rely on the provisions of Schedule 15 (Obligations Associated with Termination) to the same extent as if it were a party but subject to paragraphs 7.5(c) and (d).
- (c) The Franchise Agreement may be terminated, and any term may be amended or waived, in each case in accordance with the terms of the Franchise Agreement, without the consent of any person nominated under paragraph 7.5(b).
- (d) The person nominated under paragraph 7.5(b) shall only be entitled to enforce and rely on Schedule 15 (Obligations Associated with Termination) to the extent determined by the Secretary of State (whether at the time of nomination or at any other time) and, to the extent that any such person is entitled to enforce and rely on Schedule 15 (Obligations Associated with Termination), any legal proceedings in relation thereto must be commenced within one year of the expiry of the Franchise Period and any such person shall not be entitled to enforce or rely on Schedule 15 (Obligations Associated with Termination) to the extent that it has consented to any particular act or omission of the Franchisee which may constitute a contravention of Schedule 15 (Obligations Associated with Termination) or has been afforded a reasonable opportunity to indicate to the Franchisee that it is not so consenting and has not so indicated (the extent of such reasonable opportunity to be determined by the Secretary of State unless otherwise agreed).

Secretary of State's Consent or Approval

- 7.6 Where any provision of the Franchise Agreement provides for any matter to be subject to the consent or approval of the Secretary of State, then (subject only to the express terms of that provision as to the basis on which that consent or approval may be given or withheld) the Secretary of State shall be entitled to give that consent or approval subject to any condition or conditions as he considers appropriate, which may include the adjustment of any of the terms of the Franchise Agreement.

8. Enforcement Costs

The Franchisee shall compensate the Secretary of State for all reasonable costs incurred by the Secretary of State as a result of the Franchisee failing to perform its obligations under the Franchise Agreement in accordance with their terms in the exercise of the Secretary of State's rights under Schedule 10 (Remedies, Termination and Expiry).

9. Currency

If at any time the Bank of England or other competent monetary authority of the United Kingdom or competent organ of HM Government of the United Kingdom recognises the Euro as lawful currency and tender of the United Kingdom, the Secretary of State may, by reasonable notice to the Franchisee and the Franchisee may by reasonable notice to the Secretary of State, elect that all payment obligations arising under the Franchise Agreement shall be denominated and/or constituted in Euros on the basis that all outstanding amounts and obligations previously denominated and/or constituted in pounds sterling shall be translated into Euros at the exchange rate applied or recognised by the United Kingdom

authority or organ which granted recognition of the Euro for the purpose of such translation on the date on which it granted recognition of the Euro.

10. **Arm's Length Dealings**

The Franchisee shall ensure that every contract or other arrangement or transaction to which it may become party in connection with the Franchise Agreement with any person is on bona fide arm's length terms.

11. **Non discrimination**

11.1 The Franchisee will not discriminate in seeking offers in relation to, or in awarding, a contract for the purchase or hire of goods on the grounds:

- (a) of nationality, against a person who is a national of and established in a relevant State; or
- (b) that the goods to be supplied under the contract originate in another relevant State.

11.2 For the purpose of this paragraph 11, "**relevant State**" has the meaning given in the Public Contracts Regulations 2006.

DEROGATIONS/WAIVERS POST CONTRACT SIGNATIVE DATE

ⁱ By virtue of a derogation the Secretary of State has granted the Franchise Operator a derogation against Sch 1.4 para 1.2 (One week delay publishing Dec 2015 timetable booklet).

Original Due Date: 15/11/2015

Revised Due Date: 22/11/2015

ⁱⁱ By virtue of a derogation the Secretary of State has granted the Franchise Operator a derogation against Sch 6.1 para 6.18 obligation (Cascade support to receiving operators).

Original Due Date: 15/12/2014

Revised Due Date: 30/04/2015

ⁱⁱⁱ 21 December 2017 (Date of derogation letter) – The Secretary of State has granted the Franchisee a derogation against the requirements of Paragraph 6.21 (d) of Schedule 6.1 of the Franchise Agreement in respect of the requirement to fit LED Lighting to 46 units of Class 455 rolling stock.

Original Due Date: 31/12/2017

Revised Due Date: 30/04/2018

^{iv} By virtue of a derogation the Secretary of State has granted the Franchise Operator a derogation against Sch 6.1 para 9.3 obligation (High capacity infrastructure possession management team).

Original Due Date: 23/12/2014

Revised Due Date: 30/06/2015

^v 24 January 2018 (Date of derogation letter) – The Secretary of State has granted the Franchisee a derogation against the requirements of Paragraph 9.12 of Schedule 6.1 of the Franchise Agreement in respect of the requirement to mark each of the platforms in the Thameslink Core and at London Bridge for the purposes of informing passengers where to stand or not stand on each platform.

Original Due Date: 28/02/2018

Revised Due Date: 31/03/2018

^{vi} By virtue of a derogation the Secretary of State has granted the Franchise Operator a three month derogation against Sch 6.1 para 17.8(a) - Improved Station committed obligation.

Original Due Date: 30/01/2017

Revised Due Date: 30/04/2017

^{vii} Date of derogation – 30/04/2017 - By virtue of a derogation the Secretary of State has granted the Franchise Operator a derogation against Sch 6.1 para 18.4 (Delay Repay Notification Facility) by two months.

Original Due Date: 30/04/2017

Revised Due Date: 30/06/2017

^{viii} By virtue of a derogation the Secretary of State has granted the Franchise Operator a derogation against Sch 6.2 para 3.3 (a) (Staffing of Automatic Ticket Gates at Stations) extending the deadline by which the Franchise Operator is obligated to provide all day staffing at each gated station.

Original Due Date: 30/09/2016

Revised Due Date: 31/10/2016

^{ix} By virtue of a derogation the Secretary of State has granted the Franchise Operator a derogation against Sch 6.2 para 3.3 (a) (Staffing of Automatic Ticket Gates at Stations)

extending the deadline by which the Franchise Operator is obligated to provide all day staffing at each gated station.

Original Due Date: 31/10/2016

Revised Due Date: 30/11/2016

^x **By virtue** of a derogation the Secretary of State has granted the Franchise Operator a derogation against Sch 6.2 para 3.3 (a) (Staffing of Automatic Ticket Gates at Stations) extending the deadline by which the Franchise Operator is obligated to provide all day staffing at each gated station.

Original Due Date: 30/11/2016

Revised Due Date: 30/04/2017

^{xi} **28/04/2017** – The Secretary of State has granted a derogation against Paragraph 3.3(a) of Schedule 6.2 in respect of the requirement to to provide staffing at each Gated Station.

Original Due Date: 30/04/2017

Revised Due Date: 22/05/2017

^{xii} **22/05/2017** – The Secretary of State has granted a derogation against Paragraph 3.3(a) of Schedule 6.2 in respect of the requirement to to provide staffing at each Gated Station.

Original Due Date: 22/05/2017

Revised Due Date: 12/08/2017

^{xiii} By virtue of a derogation the Secretary of State has granted the Franchise Operator a derogation against Sch 6.2 para 11.2 (Publishing Customer Reports)

Original Due Date: 30/06/2016

Revised Due Date: 14/07/2016

^{xiv} By virtue of a derogation the Secretary of State has granted the Franchise Operator a derogation against Sch 13 para 3.2 obligation (Reporting period financial information).

Original Due Date: 14/04/2015

Revised Due Date: 17/04/2015

^{xv} By virtue of a derogation the Secretary of State has granted the Franchise Operator a derogation against Sch 15.3 para 1.1(a) – Provision of Handover Pack.

Original Due Date: 14/09/2014

Revised Due Date: 14/10/2014