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Dated 19 September 2020

THE SECRETARY OF STATE FOR TRANSPORT

and

WEST MIDLANDS TRAINS LIMITED

EMERGENCY RECOVERY MEASURES AGREEMENT (“ERMA”)

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This Agreement is made on the 19 September 2020 **between:**

- (1) **SECRETARY OF STATE FOR TRANSPORT**, whose principal place of business is at Great Minster House, 33 Horseferry Road, London SW1P 4DR (the "**Secretary of State**"); and
 - (2) **WEST MIDLANDS TRAINS LIMITED** (company number 09860466), whose registered office is at 2nd Floor St Andrew's House, 18-20 St Andrew Street, London EC4A 3AG (the "**Franchisee**"),
- each a "**Party**" and, together, the "**Parties**".

Recitals:

- (A) The Secretary of State and the Franchisee entered into a franchise agreement dated 8 September 2017 in respect of certain railway passenger services designated by the Secretary of State as eligible for provision under franchise agreements (the "**Franchise Agreement**").
- (B) On 11 March 2020 the World Health Organisation declared the coronavirus disease 2019 ("**COVID-19**") a pandemic. COVID-19 has had (and it is anticipated that COVID-19 will continue to have) a significant impact on the operation of rail services in the United Kingdom.
- (C) The Secretary of State and the Franchisee amended the Franchise Agreement to address the impact of the COVID-19 outbreak on Train Operators by suspending or amending the operation of specific provisions, and introducing additional requirements, under the terms of the Franchise Agreement in accordance with the terms of, and for the duration of the term of, an emergency measures agreement which was entered into on 31 March 2020 and took effect on 1 April 2020 (the "**EMA Start Date**") between the Secretary of State and the Franchisee (the "**EMA**").
- (D) The Parties now wish to record their agreement regarding further amendments to the Franchise Agreement by further suspending, supplementing and/or amending certain provisions of the Franchise Agreement (including certain amendments to protect taxpayers' interests and to reflect the ongoing reduction in rail travel as a result of COVID-19) to address the ongoing direct and indirect impacts of COVID-19 during the term of this Agreement by entering into this Emergency Recovery Measures Agreement (the "**ERMA**") to replace the EMA following its expiry at 01:59 on 20 September 2020.
- (E) The Franchisee acknowledges that this ERMA is entered into pursuant to article 5(5) of Regulation (EC) 1370/2007.

The Parties agree as follows:

1 Interpretation and Construction

1.1 Interpretation

In this ERMA (unless the context otherwise requires):

- 1.1.1 words and expressions defined under the Franchise Agreement and the Act shall have the same meanings when used in this ERMA 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;
- 1.1.2 words and expressions defined in the Interpretation Act 1978 shall have the same meanings when used in this ERMA;
- 1.1.3 the words "including", "include" and "in particular" are to be construed without limitation;
- 1.1.4 references to a person include its successors, transferees and assignees;
- 1.1.5 references in this ERMA to Clauses and Schedules are to Clauses and Schedules of this ERMA unless expressly specified to the contrary;
- 1.1.6 headings and references to headings shall be disregarded in construing this ERMA;
- 1.1.7 references to an agreement or other document shall be construed as referring to that agreement or document as from time to time supplemented, varied, replaced, amended, assigned or novated;
- 1.1.8 words importing the masculine gender include the feminine gender and vice versa and words in singular include the plural and vice versa;
- 1.1.9 wherever provision is made for the giving or issuing of any notice, endorsement, consent, approval, waiver, certificate, direction, guidance 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**", "**direct**", "**guide**" or "**determine**" and other cognate expressions shall be construed accordingly;
- 1.1.10 references to sums of money being expended by the Franchisee shall be to such sums exclusive of Value Added Tax; and
- 1.1.11 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 Construction

- 1.2.1 This ERMA shall succeed the EMA immediately upon the expiry of the EMA in accordance with its terms on 20 September 2020.
- 1.2.2 This ERMA is supplemental to and shall be read and construed together with the Franchise Agreement and this ERMA and the Franchise Agreement shall together constitute one and the same document.
- 1.2.3 In the event of conflict between:

- (i) the terms of this ERMA and the terms of the Franchise Agreement, subject to Clause 2.1.2, the terms of this ERMA shall prevail; and
- (ii) the terms of the Passenger Survey Methodology and the terms of the Franchise Agreement (as amended pursuant to the terms of this ERMA), the terms of the Franchise Agreement (as amended pursuant to the terms of this ERMA) shall prevail.

1.2.4 Save as expressly provided for in this ERMA, the Franchise Agreement shall continue in full force and effect.

1.2.5 Any reference to the "term" or "duration" of this ERMA shall mean the ERMA Term and any Extended Term (if applicable) in accordance with Clause 3 (*Commencement and Term*) of this ERMA.

2 Purpose of this ERMA and survival of EMA provisions

2.1 The Parties acknowledge that:

2.1.1 this ERMA is based on the following overriding principles:

- (i) the Parties recognising the circumstances presented by COVID-19 and the ongoing direct and indirect impacts of COVID-19 on, among other things, rail passenger numbers and public finances;
- (ii) the Parties seeking to ensure that, as far as possible, operational performance and the provision of Passenger Services continues to be maintained and (if applicable) improved;
- (iii) the Parties seeking to ensure the Franchisee is incentivised to maintain or improve performance standards, financial performance and co-operation with Network Rail and other relevant third parties through a performance-based fee structure in connection with the re-allocation of cost and revenue risk as between the Parties, including the removal of and imposition of certain other obligations from or on the Franchisee; and
- (iv) the Parties co-operating with an overall goal of acting in the national interest; and

2.1.2 this ERMA has been prepared as an emergency measure in response to the ongoing direct and indirect impacts of COVID-19 following the expiry of the EMA. If and to the extent that there are any anomalies or inconsistencies within this ERMA or with the terms of the Franchise Agreement, as a result of the variations imposed by this ERMA, the Parties shall discuss such matters in good faith and work towards a practical and sensible solution and/or to further amend the Franchise Agreement to reflect the overriding principles of this ERMA as set out in Clause 2.1.1. If the Parties cannot agree such solution and/or amendments within one (1) month of one Party notifying the other Party of the relevant anomaly or inconsistency, the Secretary of State may reasonably determine (having

regard to the overriding principles of this ERMA as set out in Clause 2.1.1) the solution and/or amendment to the Franchise Agreement that shall apply and the Franchisee shall act in accordance with such determination.

2.2 The Parties agree that, notwithstanding the provisions of the EMA, the following provisions of the EMA and any other provisions of the EMA reasonably required for the purpose of giving such provisions full effect shall survive the termination or expiry of the EMA and the ERMA and continue in full force and effect in accordance with their terms except as otherwise specified in this ERMA:

2.2.1 clause 10 (*Treatment of Revenue and Profit Share Mechanisms*);

2.2.2 schedule 8.A (*Franchise Payments*) and schedule 8.B (*Performance Payment*) insofar as is necessary to determine the Franchise Payments that relate to the term of the EMA or to give effect to the provisions of this ERMA; and

2.2.3 the amendments to schedule 10.2 (*Events of Default and Termination Events*) and schedule 10.3 (*Force Majeure and Business Continuity*) to the Franchise Agreement set out in schedule 1 (*Amendments to the Franchise Agreement*) to the EMA.

3 Commencement and Term

3.1 This ERMA shall take effect from 2.00 a.m. on 20 September 2020 (the "**ERMA Start Date**") and shall, subject to Clauses 3.2 and 3.3, continue until 01:59 am on 19 September 2021 (the "**ERMA Term**").

3.2 ^{1 2}**The Secretary of State may, at the Secretary of State's sole discretion and by written notice to the Franchisee given no later than 14 April 2021, terminate this ERMA with effect from 01:59 on 2 May 2021 (the "Early ERMA Termination Date") if:**

3.2.1 the Franchisee informs the Secretary of State that it does not accept the Termination Sum (as defined in Schedule 2 (Termination of the Franchise Agreement)) pursuant to paragraph 3.6 of Schedule 2 (Termination of the Franchise Agreement) or is deemed not to have accepted the Termination Sum pursuant to paragraph 3.7 of Schedule 2 (Termination of the Franchise Agreement);

3.2.2 the waiver letters referred to in paragraph 4 (Rolling Stock) and paragraph 5 (Network Rail) of Schedule 2 (Termination of the Franchise Agreement) have not been procured;

3.2.3 the Franchisee fails to procure the amendments to the Funding Deed, Bond and Performance Bond specified in Schedule 4 (Funding Deed, Bond and Performance Bond); or

¹ 18 November 2020 (Date of Contract Change Letter) Contract variation agreed by the Secretary of State and Franchisee.

² 20 January 2021 (Date of Contract Change Letter) Contract variation agreed by the Secretary of State and Franchisee.

- 3.2.4 any legal action or other challenge brought by a third party or any investigation by a competent authority under UK or EU Law is commenced in respect of this ERMA or any part of it on or before the date of any notice given under this Clause 3.2.
- 3.3 The Secretary of State may, at the Secretary of State's sole discretion, on one or more occasions and in each case with at least one (1) Reporting Period's written notice (or any shorter period as agreed between the Parties) extend this ERMA and the variations to the Franchise Agreement effected by this ERMA by such further period as shall be specified by the Secretary of State at the Secretary of State's sole discretion (such extension, or as the case may be all such extensions taken together, being the "**Extended Term**"), but provided that the Extended Term may not extend beyond 1 April 2022.
- 3.4 The Secretary of State shall have an unfettered discretion in proposing any extensions to the ERMA Term pursuant to Clause 3.3 (save as provided therein).
- 3.5 Subject to Clause 3.6 and as otherwise provided in this Agreement, the amendments to the Franchise Agreement pursuant to this ERMA shall, unless otherwise required by the Secretary of State or pursuant to this ERMA, cease to have effect on the later of the expiry of the ERMA Term or the relevant Extended Term (as applicable).
- 3.6 The following provisions and any other provisions of this ERMA and/or the Franchise Agreement (as applicable) reasonably required for the purpose of giving full effect to such provisions or the overriding principles of this ERMA shall survive the termination or expiry of this ERMA and the Franchise Term (however arising) and continue in full force and effect in accordance with their terms and the continued operation of such provisions following the termination or expiry of this ERMA and the Franchise Term shall not constitute a Change for the purposes of the Franchise Agreement:
- 3.6.1 Clause 3.10;
 - 3.6.2 Clause 4 (Termination);
 - 3.6.3 Clause 8 (Meetings);
 - 3.6.4 Clause 10.2;
 - 3.6.5 Clause 12.2;
 - 3.6.6 Clause 16.1;
 - 3.6.7 Clause 18.2;
 - 3.6.8 the amendments to clause 11.3 (Disputes under Schedule 8 (Payments) of this Agreement) of the Franchise Agreement set out in Schedule 1 (Amendments to the Franchise Agreement);
 - 3.6.9 the amendments to schedule 7.1 (Operational Performance), schedule 7.2 (National Rail Passenger Surveys, Customer Report and CCIF Scheme) and schedule 7.3 (*West Midlands Franchise Service Quality Regime*) to the Franchise Agreement set out in Schedule 1 (*Amendments*

to the Franchise Agreement) to the extent necessary for the purpose of giving effect to any surviving provisions of schedule 8.1B (*Performance Based Fee*) of the Franchise Agreement as effected pursuant to the terms of this ERMA subject to paragraphs 1.1.9 to 1.1.12 of Schedule 3 (*Early ERMA Termination*) if the Secretary of State exercises the Secretary of State's right to terminate this ERMA pursuant to Clause 3.2;

3.6.10 schedule 8.1A (*Franchise Payments*) to the Franchise Agreement as effected pursuant to the terms of this ERMA, but only insofar as is necessary to determine the Franchise Payments that relate to the ERMA Term and/or the relevant Extended Term (as applicable);

3.6.11 schedule 8.1B (*Performance Based Fee*) to the Franchise Agreement as effected pursuant to the terms of this ERMA, but only insofar as is necessary to determine the Franchise Payments that relate to the ERMA Term and/or the relevant Extended Term (as applicable);

3.6.12 paragraph 9 (*Financial Information*) of schedule 11.2 (*Management Information*) to the Franchise Agreement as amended pursuant to Schedule 1 (*Amendments to the Franchise Agreement*), subject to paragraph 1.1.16 of Schedule 3 (*Early ERMA Termination*) if the Secretary of State exercise the Secretary of State's right to terminate this ERMA pursuant to Clause 3.2; and

3.6.13 Schedule 2 (*Termination of the Franchise Agreement*).

3.7 Subject to Clause 3.8, the Franchise Agreement shall terminate concurrently with the expiry of this ERMA.

3.8 Subject to Schedule 3 (*Early ERMA Termination*), if this ERMA expires on the Early ERMA Termination Date, the Franchise Agreement shall not terminate and the terms of the Franchise Agreement that prevailed immediately prior to the EMA Start Date (save as amended pursuant to any Variation agreed between the Parties during the period from the EMA Start Date until the Early ERMA Termination Date other than the Variation constituted by the EMA or this ERMA) shall apply from the Early ERMA Termination Date.

3.9 The Parties agree that the Recalibration Items (as defined in the EMA) shall not be required following the expiry of the EMA and neither Party shall be under any obligation in relation thereto.

3.10 The Franchisee:

3.10.1 acknowledges that the decisions by the Secretary of State:

- (i) not to extend the EMA beyond 20 September 2020; and/or
- (ii) to enter into this ERMA; and/or
- (iii) to offer this ERMA on the terms set out herein and conditional on the termination of the underlying Franchise Agreement,

including the policy and procedure adopted by the Secretary of State to reach and implement these decisions (together, the “**Decisions**”) are reasonable; and

3.10.2 covenants that it will not, and will procure that none of its Related Parties will, make, maintain, support, assist or encourage any Claim of any kind against the Secretary of State or any other party in connection with or arising out of the Decisions.

3.11 For the purposes of Clause 3.10:

3.11.1 “**Claim**” means any action, suit or other proceeding of any kind whatsoever, in or by way of legal proceedings or otherwise, in England and Wales or any other jurisdiction; and

3.11.2 “**Related Parties**” means the Franchisee's Affiliates and Guarantors and their respective assigns, transferees, representatives, principals, agents, officers or directors.

4 Termination of the Franchise Agreement

The Parties acknowledge and agree that, unless the Secretary of State exercises the Secretary of State's right to terminate this ERMA pursuant to Clause 3.2, the provisions of Schedule 2 (*Termination of the Franchise Agreement*) shall have effect between them and each Party shall comply with its respective obligations thereunder.

5 Amendments to the Franchise Agreement

Subject to Clause 3.6 with effect from the ERMA Start Date until the expiry of the ERMA Term or the Extended Term (as applicable), the Franchise Agreement shall be varied as set out in Schedule 1 (*Amendments to the Franchise Agreement*) to this ERMA and by Clauses 6 (*Co-operation*) to 18 (*Long Term Arrangements*) below.

6 Co-operation

6.1 The Franchisee agrees to co-ordinate and co-operate with other Train Operators, Network Rail and other rail industry bodies, to ensure the continuation of Passenger Services across the network in a co-ordinated manner, and in line with the priorities and directions, as may be set out by the Secretary of State from time to time, including:

6.1.1 co-ordinating with other Train Operators to ensure consistency of coverage to all communities across the national network, including changes to Franchise Services to assist where other Train Operators are unable to fully perform their own Franchise Services;

6.1.2 assisting altered or additional freight services to operate on the national rail network and, where appropriate, enabling certain essential goods (such as medical equipment or other urgent items) to be carried on Passenger Services; and

6.1.3 continuing where possible and appropriate to enforce any agreements with third parties to deliver quality and value for money.

6.2 The Franchisee agrees to co-operate with the Secretary of State in an open and transparent manner, which shall include an obligation on the Franchisee to disclose to the Secretary of State anything which the Secretary of State would reasonably expect notice of in connection with the matters arising under this ERMA or the Franchise Agreement.

7 Additional Services

7.1 The Franchisee acknowledges that the Secretary of State may require special measures, in the form of increased co-operation or additional services, to be implemented during the ERMA Term and/or the Extended Term and the Franchisee shall use its best endeavours to accommodate such requests and act in the national interests.

7.2 The Franchisee, if requested by the Secretary of State, shall use its best endeavours to provide additional services, such as enhanced cleaning regimes to a standard reasonably proposed by the Secretary of State.

7.3 The reasonable and proper costs incurred by the Franchisee in performing its obligations under this Clause 7 shall be recoverable from the Secretary of State as part of the Actual Costs, subject to the provisions of schedule 8.1A (*Franchise Payments*) to the Franchise Agreement.

8 Meetings

Where the Franchise Agreement or this ERMA refers to a "meeting" of the Parties or the Parties and other third parties, such meetings may be conducted by conference call or other remote link as mutually agreed between the Parties or the Parties and any relevant third parties (as applicable).

9 Remedial Plans

9.1 Definitions

In this Clause 9:

"ERMA Remedial Plan" means any Remedial Plan or Remedial Agreement in relation to:

- (a) any matter that arises during the term of this ERMA; and/or
- (b) any matter that arose prior to the ERMA Start Date and is continuing during the term of this ERMA,

in each case that is put in place during the term of this ERMA;

"ERMA Action Plan" means any:

- (a) Business Action Plan;
- (b) Financial Action Plan;

- (c) Diversity Action Plan;
- (d) NRPS Action Plan; or
- (e) Action Plan,

in relation to:

- (a) any matter that arises during the ERMA Term; and/or
- (b) any matter that arose prior to the ERMA Start Date and is continuing during the ERMA Term,

in each case that is put in place during the ERMA Term;

"Pre-EMA Remedial Plan" means any Remedial Plan or Remedial Agreement that was in place prior to the EMA Start Date and continues to be in place as at the ERMA Start Date.

9.2 Pre-EMA Remedial Plans

9.2.1 The Secretary of State may review and determine (at the Secretary of State's sole discretion) whether any Pre-EMA Remedial Plan and/or any Pre-EMA Improvement Plan (as applicable) shall be:

- (i) implemented or continued in its original form;
- (ii) implemented or continued in accordance with such amended scope and application as may have been determined during the EMA;
- (iii) implemented or continued in accordance with such amended scope and application as the Secretary of State may determine in light of the Secretary of State's latest review;
- (iv) delayed (or further delayed);
- (v) suspended (in whole or in part); or
- (vi) actioned in accordance with such other instructions as the Secretary of State may direct.

9.2.2 Unless otherwise agreed by the Secretary of State, the costs of implementing a Pre-EMA Remedial Plan shall be a Disallowable Cost for the purposes of the Franchise Agreement.

9.2.3 The Secretary of State shall act in accordance with clause 6.4 of the Franchise Agreement in making the determinations contemplated in this Clause 9.

9.3 ERMA Remedial Plans and ERMA Action Plans

9.3.1 Save to the extent the Secretary of State otherwise directs from time to time, any ERMA Remedial Plan shall be treated in accordance with the provisions of schedule 10.1 (*Procedure for Remedying a Contravention of the Franchise Agreement*) to the Franchise Agreement.

9.3.2 Unless otherwise agreed by the Secretary of State:

- (i) the costs of developing an ERMA Remedial Plan or an ERMA Action Plan shall be a Disallowable Cost for the purposes of the Franchise Agreement; and
- (ii) the costs of implementing an ERMA Remedial Plan or an ERMA Action Plan (the "**Implementation Costs**") shall be for the account of the Secretary of State, provided that:
 - (a) the Secretary of State's liability pursuant to this Clause 9.3.2(ii) shall be limited to costs that would have been incurred by a Good and Efficient Operator; and
 - (b) if and to the extent that the Implementation Costs are greater than the cost that the Franchisee would have incurred in performing the obligation which is the subject of the relevant Remedial Plan or ERMA Action Plan (the "**Original Cost**") as a result of the Franchisee having failed to comply with such obligation or otherwise having failed to act as a Good and Efficient Operator prior to the implementation of the Remedial Plan or ERMA Action Plan then the Franchisee shall be liable for the difference between Implementation Costs and the Original Cost.

10 Fares

10.1 The Franchisee shall remain responsible for the collection of fare revenue and in doing so shall act as a Good and Efficient Operator, whilst giving consideration to appropriate customer service in light of the prevailing circumstances and any guidance from the Secretary of State, Public Health England (or any replacement body or organisation) or other relevant authority in relation to public interaction.

10.2 If and to the extent that a ticket is sold which relates:

10.2.1 partially to the period when the EMA subsisted and partially to the period before the EMA subsisted; and/or

10.2.2 partially to the period when the EMA subsisted and partially to the ERMA Term or, if extended, the Extended Term; and/or

10.2.3 partially to the ERMA Term or, if extended, the Extended Term and partially to the period after the expiry of the ERMA Term or, if extended, the Extended Term,

(the "**Cross-Term Fares**"), the Franchisee shall account for the Cross-Term Fares on a consistent basis such that:

10.2.4 the principles applied to account for the Cross-Term Fares at the EMA Start Date shall continue to apply to the Cross-Term Fares at the ERMA Start Date; and

10.2.5 the principles applied to account for the Cross-Term Fares at the ERMA Start Date shall continue to apply to the Cross-Term Fares for the duration of the term of this ERMA up to and including the date on which this ERMA and the Franchise Agreement are terminated in accordance with the terms of this ERMA.

11 Funding Deed

11.1 The Parties acknowledge and agree that the provisions of Schedule 4 (*Funding Deed, Bond and Performance Bond*) shall have effect between them and each Party shall comply with its respective obligations thereunder.

11.2 The Franchisee acknowledges and agrees that, during the term of this ERMA, it shall not:

11.2.1 pay any interest accruing in relation to any loans provided under the Funding Deed during the term of this ERMA. Such interest shall remain due at the expiry of this ERMA; or

11.2.2 repay any part of any PCS Advance or PCS Facility Loan (each as defined in the Funding Deed) that has been advanced pursuant to the Funding Deed).

12 Change

12.1 Save as specified in Schedule 1 (*Amendments to the Franchise Agreement*), the provisions of schedule 9.1 (*Financial and Other Consequences of Change*) to the Franchise Agreement shall be suspended for the duration of this ERMA.

12.2 If the Secretary of State exercises the Secretary of State's right to terminate this ERMA pursuant to Clause 3.2 then any impact of COVID-19 will only constitute a Change if and to extent that such impact falls within the scope of any of the limbs of the definition of "Change" and the Parties agree that the occurrence of the COVID-19 pandemic will not of itself constitute a Change. The Parties acknowledge that the provisions of schedule 9.1 (Financial and Other Consequences of Change) to the Franchise Agreement were suspended during the term of the EMA pursuant to schedule 1 (Amendments to the Franchise Agreement) to the EMA and remain suspended during the term of this ERMA pursuant to Schedule 1 (Amendments to the Franchise Agreement).

12.3 In relation to Change events which occurred prior to the EMA Start Date ("**Pre-EMA Changes**"):

12.3.1 the processing of the Pre-EMA Change shall continue and be treated on the terms of the Franchise Agreement that existed before the Parties entered into the EMA;

12.3.2 any payments in respect of the relevant Pre-EMA Change that are agreed or determined in accordance with that process shall be made as and when determined; and

- 12.3.3 notwithstanding Clauses 12.3.1 and 12.3.2, any Estimated Revisions shall not be payable until the termination or expiry of the term of this ERMA.
- 12.4 In relation to Change events which occurred during the term of the EMA ("**EMA Changes**"), the Parties acknowledge and agree that:
- 12.4.1 notwithstanding the provisions of the EMA, clause 12.3 of the EMA shall not apply following the expiry of the EMA;
- 12.4.2 save as specified in schedule 1 (*Amendments to the Franchise Agreement*) to the EMA, the provisions of schedule 9 (*Changes and Variations*) to the Franchise Agreement were suspended for the duration of the EMA pursuant to the terms of the EMA;
- 12.4.3 except as otherwise provided in this Clause 12.4, there shall be no processing of any EMA Changes at any time during the term of the ERMA or upon the termination of the ERMA and the Franchise Agreement in accordance with the terms of this ERMA; and
- 12.4.4 if the Secretary of State exercises the Secretary of State's right to terminate this ERMA pursuant to Clause 3.2, any EMA Change shall, after the Early ERMA Termination Date, be evaluated in accordance with the provisions of schedule 9 (*Changes and Variations*) to the Franchise Agreement.
- 12.5 In relation to Change events that occur during the term of this ERMA ("**ERMA Changes**"), the Parties acknowledge and agree that:
- 12.5.1 except as otherwise provided in this Clause 12.5, there shall be no processing of any ERMA Changes at any time during the term of the ERMA or upon the termination of the ERMA and the Franchise Agreement in accordance with the terms of this ERMA; and
- 12.5.2 if the Secretary of State exercises the Secretary of State's right to terminate this ERMA pursuant to Clause 3.2, any ERMA Change shall, after the Early ERMA Termination Date, be evaluated in accordance with the provisions of schedule 9 (*Changes and Variations*) to the Franchise Agreement.
- 12.6 The Parties agree that nothing in the EMA or this ERMA shall constitute a Change for the purpose of any of the limbs of the definition of "Change" unless explicitly stated in this ERMA.

13 Early ERMA Termination

- 13.1 If the Secretary of State exercises the Secretary of State's right to terminate this ERMA pursuant to Clause 3.2, the provisions of Schedule 3 (*Early ERMA Termination*) shall apply.

14 Committed Obligations

- 14.1 The Parties acknowledge and agree that the terms of the Committed Obligations and Franchise Specific Obligations were reviewed and, where relevant either

delayed, suspended or reduced in scope or application in accordance with the EMA.

- 14.2 For the purposes of this Clause 14, "**EMA Review Agreement**" means the EMA Review Agreement of Amendment to the Franchise Agreement which may be entered into by the Parties on or after the date of this ERMA. The Parties agree that:

14.2.1 the entry into this ERMA shall not cause any of the EMA Review Variations (as defined in the EMA Review Agreement) to expire; and

14.2.2 any references to the "EMA Period" contained in the EMA Review Variations shall be defined as "the period commencing on 1 March 2020 and ending upon the expiry of the term of the ERMA".

- 14.3 For the duration of this ERMA, the Secretary of State may in accordance with schedule 9.3 (*Variations to the Franchise Agreement and Incentivising Beneficial Changes*) to the Franchise Agreement vary any Committed Obligations or Franchise Specific Obligations (as applicable) (including for the avoidance of doubt, any EMA Review Variations).

15 Covid-19 Related Support

- 15.1 The Franchisee shall use all reasonable endeavours to avail itself of, including applying for, any governmental support or support from any local authority or other such body that is offered in relation to the impact of and/or recovery from the impacts of COVID-19 from time to time.

- 15.2 If and to the extent the Franchisee is successful in receiving such support, this shall be taken into account in relation to the application of the mechanisms in schedule 8.1A (*Franchise Payments*) to the Franchise Agreement, such that the Franchisee does not benefit from double recovery.

16 State Aid and Procurement

- 16.1 The Franchisee acknowledges and agrees that the EMA and this ERMA must not result in any financial advantage being granted to Franchisee that is incompatible with the EU rules on State aid and, in particular, Articles 107 and 108 of the Treaty on the Functioning of the European Union. In that regard, it is noted in particular that the replacement schedule 8.1A (*Franchise Payments*) to the Franchise Agreement defines the parameters on the basis of which the compensation payment for discharging the public service obligations is to be calculated. In accordance with Articles 4(1) and 6(1) of Regulation (EC) N° 1370/2007 of 23 October 2007 on public passenger transport services by rail and by road, these parameters have been determined in such a way that no compensation payment may exceed the amount required to cover the net financial effect on costs incurred and revenues generated in discharging the public service obligations, taking account of revenue relating thereto kept by the Train Operator and a reasonable profit. At the end of the term of this ERMA, the Secretary of State will carry out an ex-post check to ensure that there has been no overcompensation for the discharge of the public service obligations over the

duration of the EMA and this ERMA. The Secretary of State will recover, in accordance with the EU State aid rules, any overcompensation in relation to the provision of the management role over the duration of the EMA and/or this ERMA or any other financial advantage that is identified as having been granted as a result of the EMA and/or this ERMA in violation of the EU State aid rules, whether such overcompensation or other advantage has been identified by the Secretary of State or by the European Commission and the Franchisee agrees to repay such monies promptly.

- 16.2 The Franchisee shall maintain and comply with a procurement policy that is consistent with all requirements (including all publication or notification requirements that apply from time to time) of the Utilities Contracts Regulations 2016 ("**Procurement Policy**"). The Franchisee shall act in accordance with such Procurement Policy in relation to all processes to procure goods and services that are commenced during the ERMA Term or, if extended, the Extended Term.

17 Warranties

The Franchisee shall, within ten (10) days of the execution of this ERMA, provide a warranty in writing, from a statutory director of the Franchisee to the Secretary of State confirming that:

- (i) the information relating to claims and endogenous factors provided by the Franchisee in response to the Secretary of State's request for information for the purposes of the non-COVID trajectory model made on 3 September 2020 was true and accurate and not misleading in all material respects as at the date it was provided;
- (ii) the budget submitted by the Franchisee prior to the ERMA Start Date was prepared on the basis of recent historical financial information and reasonable assumptions, was arrived at after careful consideration and was a true and valid reflection of the Franchisee's actual and forecast financial position; and
- (iii) in the preparation of such budget, no measures have been undertaken to:
 - (a) suppress revenue and/or increase costs during the term of the EMA and/or this ERMA;
 - (b) reallocate costs to, or revenues from, the period when the EMA and/or this ERMA was or is in place; or
 - (c) act in a way that is contrary to the principles of the EMA and/or this ERMA by using the existence or cessation of the EMA and/or this ERMA to increase profitability.

18 Long Term Arrangements

- 18.1 The Franchisee shall not, without the prior written consent of the Secretary of State, enter into or extend the duration or scope of any agreements with third parties (including Affiliates), where the termination date for such agreement is

later than the end of the ERMA Term or, if applicable, the Extended Term, as applicable.

18.2 If:

18.2.1 the Franchisee enters into or extends the duration or scope of an agreement with a third party during the ERMA Term or the Extended Term; and

18.2.2 such agreement requires the Franchisee to pay a fee in relation to the termination of such agreement or the Franchisee incurs or will incur any other sum or cost in relation to the early termination of such agreement in connection with the termination of the Franchise Agreement in accordance with this ERMA or the termination of this ERMA pursuant to Clause 3.2,

such fee shall be for the account of the Franchisee and shall be a Disallowable Cost.

19 Confidentiality and Disclosure

19.1 Schedule 17 (*Confidentiality and Freedom of Information*) to the Franchise Agreement shall apply to this ERMA *mutatis mutandis*.

19.2 Subject to Clauses 19.3 and 19.4 below the Franchisee agrees to provide to the Secretary of State in advance for approval the detail of any announcement disclosing the existence or terms of this ERMA that it considers it is required to make by law or pursuant to an order of any court of competent jurisdiction or the rules of a recognised stock exchange or a formal or informal request of any Taxation authority and the Secretary of State agrees to act reasonably and promptly in terms of providing that approval and/or in relation to any amendments the Secretary of State proposes to make to the form provided.

19.3 The Secretary of State may make disclosure in relation to the existence and subject matter of this ERMA to:

19.3.1 any United Kingdom government body for any proper purpose of the Secretary of State or of the relevant United Kingdom government body;

19.3.2 parliament and parliamentary committees or if required by any parliamentary reporting requirement; and

19.3.3 the extent that the Secretary of State (acting reasonably) deems disclosure necessary or appropriate in the course of carrying out the Secretary of State's public functions.

19.4 Each Party may make disclosure in relation to the existence and subject matter of this ERMA to any outside consultants or advisers engaged by or on behalf of such Party and acting in that capacity subject to any such consultant or advisers being subject to an undertaking of confidentiality.

20 Entire Agreement

- 20.1 This ERMA contains all the terms which the Parties have agreed in relation to the subject matter of this ERMA and supersedes any prior written or oral agreements, representations or understandings between the Parties in relation to such subject matter.
- 20.2 The Franchisee acknowledges that this ERMA has not been entered into wholly or partly in reliance on, nor has the Franchisee been given any warranty, statement, promise or representation other than as expressly set out in this ERMA. If any such warranties, statements, promises or representations have been given the Franchisee unconditionally and irrevocably waives any claims, rights or remedies which it might otherwise have had in relation to them.
- 20.3 Nothing in this Clause 20 shall exclude any liability which one Party would otherwise have to the other Party in respect of any statements made fraudulently.

21 Counterparts

This ERMA may be executed in any number of counterparts all of which when taken together shall constitute one and the same instrument.

22 Costs

Each Party shall bear its own legal, accountancy and other costs and expenses incurred in connection with the preparation, execution and implementation of this ERMA and all documents ancillary to it.

23 Governing Law

This ERMA (and any non-contractual obligations arising out of or in connection with it) shall be governed 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 ERMA except as specified to the contrary.

24 Rights of Third Parties

No person who is not a Party to this ERMA shall have any right under the Contracts (Rights of Third Parties) Act 1999 to enforce any of its terms.

This Agreement has been entered into on the date stated at the beginning of this Agreement.

SIGNED FOR AND SIGNED FOR AND ON
BEHALF OF THE **SECRETARY OF**
STATE FOR TRANSPORT



Print name of authorised signatory:



Position:



SIGNED FOR AND SIGNED FOR AND ON
BEHALF OF THE **WEST MIDLANDS
TRAINS LIMITED**



Print name of authorised signatory:



Position:



Schedule 1
Amendments to the Franchise Agreement

The Franchise Agreement shall be amended as set out in the table below.

For the avoidance of doubt:

- any reference to “N/A” in the table below shall mean that the version of the schedule that prevailed immediately prior to the EMA Start Date (save as amended pursuant to any Variation agreed between the Parties following the EMA Start Date other than the Variation constituted by the EMA or this ERMA) remains unamended and continues to apply;
- any text that appears in blue and is underlined shall be added to existing clauses, paragraphs or schedules (as applicable) of the Franchise Agreement; and
- any text that appears in blue and is struck-out shall be deleted from existing clauses, paragraphs/schedules of the Franchise Agreement.

REFERENCE (CLAUSE/PARAGRAPH/SCHEDULE)	AMENDMENT
Main Body	
1.1 – Interpretation	<p>The following new subclauses shall be inserted into clause 1.1 after sub-clause (aa):</p> <p><u><i>“(ab) a reference to a sum being calculated in accordance with Schedule 8.1 or Schedule 8.2 (including references to RPI having the meaning given in Schedule 8.1 or 8.2, or references to amounts or costs being varied or indexed as amounts or costs are indexed in Schedule 8.1 or Schedule 8.2) shall be interpreted as a reference to Schedule 8.1 and 8.2 in the form which applied immediately prior to the EMA Start Date; and</i></u></p> <p><u><i>(ac) the Parties acknowledge and agree that any reference to the “last twelve (12) or thirteen (13) months of the Franchise Period” or the “last twelve (12) months of the Franchise Period” shall be deemed to be replaced with a reference to the duration of the ERMA Term or, where applicable, the Extended term”</i></u></p> <p>The full stop at the end of clause 1.1(aa) shall be deleted and replaced with “.”.</p>

REFERENCE (CLAUSE/PARAGRAPH/SCHEDULE)	AMENDMENT
3 – Definitions	<p>The word “and” at the end of clause 1.1(z) shall be deleted.</p> <p>The following new definitions shall be inserted into paragraph 3.1:</p>
	<p><u>“1 March RV Asset Transfer Value”</u> <i>means the transfer value of a Partially Complete RV Asset as at 1 March 2020, determined by the Secretary of State in accordance with paragraph 1.3A(d);</i></p>
	<p><u>“Accessibility Panel”</u> <i>means the regular forum of disabled passengers, including users of assisted travel, which the Franchisee must operate and consult on accessibility issues by virtue of section B5 of the Accessible Travel Policy Guidance and which the Franchisee will establish by no later than 31 January 2021;</i></p>
	<p><u>“Accessible Travel Policy”</u> <i>means the Franchisee's policy for accessible travel 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;</i></p>
	<p><u>“Accessible Travel Policy Guidance”</u> <i>means the “Accessible Travel Policy: Guidance for Train and Station Operators”, published by the ORR in</i></p>

REFERENCE (CLAUSE/PARAGRAPH/SCHEDULE)	AMENDMENT
	<i><u>July 2019 as amended and/or replaced from time to time;</u></i>
<i><u>“Accrued Revenue Foregone”</u></i>	<i><u>has the meaning given in paragraph 9.10 of Schedule 8.1A (Franchise Payments);</u></i>
<i><u>“Actual Capex”</u></i>	<i><u>means the actual Capital Expenditure of the Franchisee in the relevant period;</u></i>
<i><u>“Actual Costs”</u></i>	<i><u>means the actual Costs of the Franchisee in the relevant period;</u></i>
<i><u>“Actual Revenue”</u></i>	<i><u>means the actual Revenue of the Franchisee in the relevant period;</u></i>
<i><u>“Actual All Cancellations Performance Level”</u></i>	<i><u>means, in respect of a Reporting Period, All Cancellations as most recently published by Network Rail for that Reporting Period in relation to the Franchisee;</u></i>
<i><u>“Actual T-3 Performance Level”</u></i>	<i><u>means, in respect of a Reporting Period, Time to 3 Minutes as most recently published by Network Rail for that Reporting Period in relation to the Franchisee;</u></i>
<i><u>“Actual T-15 Performance Level”</u></i>	<i><u>means, in respect of a Reporting Period, Time to 15 Minutes as most recently published by Network Rail for that</u></i>

REFERENCE (CLAUSE/PARAGRAPH/SCHEDULE)	AMENDMENT	
		<u>Reporting Period in relation to the Franchisee:</u>
	<u>"All Cancellations"</u>	<u>means the sum of Cancellations, Partial Cancellations, Network Rail Cancellations and Network Rail Partial Cancellations relating to the Franchise as produced and/or published by Network Rail:</u>
	<u>"Action Plan"</u>	<u>has the meaning given to it in paragraph 9.1(e) of Schedule 7.1 (Operational Performance):</u>
	<u>"Approved D&I Strategy"</u>	<u>means such D&I Strategy as agreed by the Parties in accordance with paragraph 9A.1(b) of Schedule 13.1 (Rail Industry Initiatives) or as reasonably determined by the Secretary of State in accordance with paragraph 9A.1(c) of Schedule 13.1 (Rail Industry Initiatives).</u>
	<u>"Audited Accounts Reconciliation"</u>	<u>has the meaning given to that term in paragraph 9.4(b)(ii) (Annual Financial Information) of Schedule 11.2 (Management Information):</u>

REFERENCE (CLAUSE/PARAGRAPH/SCHEDULE)	AMENDMENT	
	<u>"Bond"</u>	<u>has the meaning given to that term in the Funding Deed;</u>
	<u>"Branch Line Trains"</u>	<u>means any train engaged in the provision of Passenger Services on the Branch Lines;</u>
	<u>"Budget"</u>	<u>has the meaning given to it in paragraph 1A (Definitions) of Schedule 8.1A (Franchise Payments);</u>
	<u>"Budgeted Capex"</u>	<u>means the Capital Expenditure budgeted to be incurred by the Franchisee in a Reporting Period and specified in the Budget, as such Budget may be updated and/or extended from time to time in accordance with paragraph 8 (Revisions to the Budget) of Schedule 8.1A (Franchise Payments);</u>
	<u>"Budgeted Costs"</u>	<u>means the Costs budgeted to be incurred by the Franchisee in each Reporting Period and specified in the Budget, as such Budget may be updated and/or extended from time to time in accordance with paragraph 8 (Revisions to the Budget) of Schedule 8.1A (Franchise Payments);</u>

REFERENCE (CLAUSE/PARAGRAPH/SCHEDULE)	AMENDMENT
<u>"Cash Balance"</u>	<u>means in respect to any Weekday during the Franchise Term, the Franchisee's actual cash balance excluding the value of Season Ticket Fare suspense liabilities as at the end of business hours on the previous Weekday;</u>
<u>"Certificate of Partial Completion"</u>	<u>means a certificate of partial completion issued by the Secretary of State in accordance with paragraph 1.3A(e);</u>
<u>"Completed RV Assets"</u>	<u>means RV Assets in respect of which a Certificate of Completion has been issued in accordance with the terms of paragraph 1.3 in respect of RV Assets in operational use prior to 1 March 2020 and "Completed RV Asset" means any one of them;</u>
<u>"Control Centres"</u>	<u>means each integrated control centre, signalling centre, rail operating centre and other equivalent operational locations;</u>
<u>"Costs"</u>	<u>means costs and expenses properly incurred during the term of the ERMA and relating to the Franchisee's performance of the Franchise</u>

REFERENCE

(CLAUSE/PARAGRAPH/SCHEDULE)

AMENDMENT

Agreement and stated in the Franchisee's profit and loss account (including accruals and prepayments recognised in the Reporting Period in which the related costs are incurred) but excluding:

- (a) Franchise Payments (which shall include the value of any Fixed Fee and Performance Based Fee);
- (b) corporation tax and any deferred tax charge in the Franchisee's profit and loss account;
- (c) any accounting transaction which does not require the Franchisee to make a cash payment, including notional pensions accounting adjustments and the accounting impact of financial instrument revaluations, other than depreciation and amortisation; and
- (d) Capital Expenditure;
provided that:
- (e) if the Franchisee's relevant profit and loss account includes any

REFERENCE (CLAUSE/PARAGRAPH/SCHEDULE)	AMENDMENT
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cost(s) in respect of right of use assets treated in accordance with IFRS16 (the “IFRS16 Cost”), then, for the purpose of this definition, the amount for each IFRS16 Cost shall be deemed to be replaced (for the purposes of this definition and all related consequential purposes under this Agreement) with the amount which would have applied if the cost had been treated on a cash basis, as such cost is incurred in accordance with the relevant contractual arrangements, rather than in accordance with IFRS16; and

- (f) any liability of the Franchisee to the Secretary of State arising under or in connection with the Franchise Agreement prior to 1 March 2020 shall not be treated as or give rise to a cost or expense for the purpose of the Franchisee's profit and loss account;

REFERENCE (CLAUSE/PARAGRAPH/SCHEDULE)	AMENDMENT
<u>"CE(SQR)"</u>	<u>means the element of the Performance Based Fee attributable to Customer Experience that is calculated in accordance with the SQR Methodology;</u>
<u>"COVID-19"</u>	<u>means the coronavirus disease 2019;</u>
<u>"Customer Experience Fee"</u>	<u>means the element of the Performance Based Fee the purpose of which is to measure the Franchisee's effectiveness in delivering:</u>
<u>"CE"</u>	<ul style="list-style-type: none"> <li data-bbox="1317 746 1850 890">(a) <u>high levels of satisfaction and positive sentiment amongst users of the Passenger Services; and/or</u> <li data-bbox="1317 911 1850 1098">(b) <u>high-quality provision of facilities, services, customer care and other outputs that affect passengers' satisfaction and sentiment;</u>
<u>"D&I Annual Report"</u>	<u>means a report produced by the Franchisee developed in accordance with paragraph 9A.3(e) of Schedule 13.1 (Rail Industry Initiatives) in respect of the previous twelve (12)</u>

REFERENCE (CLAUSE/PARAGRAPH/SCHEDULE)	AMENDMENT
	<p><i><u>months or, if shorter, the period since the ERMA Start Date.</u></i></p>
	<p><i><u>“D&I Annual Reporting Date”</u></i></p> <p><i><u>means the date on which the Franchisee must provide the D&I Annual Report to the Secretary of State as stated in the D&I Strategy, provided that if this date, in any Franchisee Year, occurs after the expiry of the term of the ERMA then the D&I Annual Reporting Date shall be one (1) month before the expiry of the term of the ERMA.</u></i></p>
	<p><i><u>“D&I Champion”</u></i></p> <p><i><u>means the director or senior executive that is accountable and responsible for implementing the D&I Strategy and ensuring that the Franchisee complies with its obligations relating to diversity and inclusion excluding the obligations in paragraph 9A.4.</u></i></p>
	<p><i><u>“D&I Characteristics KPIs”</u></i></p> <p><i><u>means the KPIs set out in the Franchisee’s D&I Strategy used to assess the impact of the Franchisee’s initiatives on diversity at different levels of the workforce and in connection with different characteristics (including gender, age, ethnicity and disability)</u></i></p>

REFERENCE (CLAUSE/PARAGRAPH/SCHEDULE)	AMENDMENT
	<p><u>compared to the region and/or nationally.</u></p>
	<p><u>“D&I Improvement Plan”</u></p> <p><u>has the meaning given to it in paragraph 9A.7 of (Improvement and Remedial Plans) Schedule 13.1 (Rail Industry Initiatives).</u></p>
	<p><u>“D&I Initiatives KPIs”</u></p> <p><u>means the KPIs set out in the Franchisee’s D&I Strategy used to measure its performance against diversity initiatives and policies, which may include KPIs along the following lines:</u></p> <ul style="list-style-type: none"> (a) <u>the number of positive action initiatives implemented and maintained by the Franchisee;</u> (b) <u>the number of adverts in targeted publications;</u> (c) <u>membership of diversity and inclusion networks and forums;</u> (d) <u>the percentage of staff trained annually in diversity and inclusion;</u> (e) <u>the number of line managers completing diversity and inclusion training;</u>

REFERENCE (CLAUSE/PARAGRAPH/SCHEDULE)	AMENDMENT
	<p>(f) <u>the number of members of the board of directors completing diversity and inclusion training; and</u></p> <p>(g) <u>the number of diversity and inclusion training sessions.</u></p>
	<p><u>“D&I Strategy”</u></p> <p><u>means the Franchisee’s diversity and inclusion strategy developed in accordance with paragraph 9A.1 of Schedule 13.1 (Rail Industry Initiatives) (substantially in the form set out in Appendix 2 (D&I Strategy) to Schedule 13.1 (Rail Industry Initiatives) and references to the D&I Strategy shall include the Approved D&I Strategy;</u></p>
	<p><u>“Delay Attribution Principles and Rules”</u></p> <p><u>means the version of the document known as the Delay Attribution Principles and Rules referenced in the Network Code;</u></p>
	<p><u>“Devolved Transport Body”</u></p> <p><u>means, any public sector body which has been given responsibility for public passenger transport in the United Kingdom including Transport for London, Transport for Wales, Transport Scotland, Rail North, any Passenger Transport Executive or Combined</u></p>

REFERENCE (CLAUSE/PARAGRAPH/SCHEDULE)	AMENDMENT
	<p><u>Authority and any other public body with relevant public passenger transport responsibilities;</u></p>
	<p><u>“Disallowable Costs”</u></p> <p><u>means any Costs or Capital Expenditure which are described within Appendix 1 (Disallowable Costs) to Schedule 8.1A (Franchise Payments) and may include amounts stated in the Budget, Financial Model and/or Record of Assumptions (as applicable) which have been Placed in Escrow;</u></p>
	<p><u>“EMA”</u></p> <p><u>means the Emergency Measures Agreement entered into by the Parties on or around 1 April 2020 to deal with the impacts of COVID-19;</u></p>
	<p><u>“EMA FWCA”</u></p> <p><u>has the meaning given to “FWCA” in schedule 8.1A (Franchise Payments) to the Franchise Agreement as effected by the EMA, (and, for the purposes of this definition and the definition of “FWCA” in schedule 8A (Franchise Payments) to the Franchise Agreement as effected by the EMA, “Final Working Capital Adjustment” shall have the meaning given to that term in paragraph 10.3 to schedule 8.1A (Franchise Payments) of</u></p>

REFERENCE (CLAUSE/PARAGRAPH/SCHEDULE)	AMENDMENT
	<p><i><u>the Franchise Agreement as effected by the EMA and all definitions related to "Final Working Capital Adjustment" shall have the meanings given to them in schedule 8A (Franchise Payments) to the Franchise Agreement as effected by the EMA);</u></i></p>
	<p><i><u>"EMA Review"</u></i></p> <p><i><u>has the meaning given to it in paragraph 1 (Definitions) to schedule 8B (Performance Payment) to the Franchise Agreement as effected by the EMA;</u></i></p>
	<p><i><u>"EMA Review Scorecard"</u></i></p> <p><i><u>has the meaning given to it in paragraph 1 (Definitions) to schedule 8B (Performance Payment) to the Franchise Agreement as effected by the EMA;</u></i></p>
	<p><i><u>"EMA Scorecard Criterion"</u></i></p> <p><i><u>has the meaning given to "EMA Criterion" in paragraph 1 (Definitions) of schedule 8.A (Franchise Performance Payments) to the Franchise Agreement as effected by the EMA;</u></i></p>
	<p><i><u>"EMA SoS Claims"</u></i></p> <p><i><u>has the meaning given to "SoS Claim" in paragraph 1 (Definitions) of schedule 8.A (Franchise Payments) to the</u></i></p>

REFERENCE (CLAUSE/PARAGRAPH/SCHEDULE)	AMENDMENT
	<p><u>Franchise Agreement as effected by the EMA;</u></p>
	<p><u>“EMA Start Date”</u> means 1 April 2020;</p>
	<p><u>“Enforcement Benchmark”</u> means the:</p> <ul style="list-style-type: none"> (a) <u>Enforcement Cancellations Benchmarks for each Reporting Period during a PBF Assessment Period; and</u> (b) <u>Enforcement Short Formation Benchmarks for each Reporting Period during a PBF Assessment Period; and</u> (c) <u>Enforcement TOC Minutes Delay Benchmarks for each Reporting Period during a PBF Assessment Period;</u>
	<p><u>“Enforcement Cancellations Benchmarks”</u> means the benchmark that applies to <u>WMSBU Cancellations and the benchmark that applies to WCSBU Cancellations in each case in relation to a Reporting Period during the PBF Assessment Period, as agreed or determined in accordance with</u></p>

REFERENCE (CLAUSE/PARAGRAPH/SCHEDULE)	AMENDMENT
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paragraph 4.5 of Schedule 8.1B (Performance Based Fee);

“Enforcement Short Formation Benchmarks” means the benchmark that applies to WMSBU Short Formations and the benchmark that applies to WCSBU Short Formations in each case in relation to a Reporting Period during the PBF Assessment Period, as agreed or determined in accordance with paragraph 4.5 of Schedule 8.1B (Performance Based Fee);

“Enforcement TOC Minutes Delay Benchmarks” means the benchmark that applies to WMSBU TOC Minutes Delay and the benchmark that applies to WCSBU TOC Minutes Delay in each case in relation to a Reporting Period during the PBF Assessment Period, as agreed or determined in accordance with paragraph 4.5 of Schedule 8.1B (Performance Based Fee);

“Enhanced Disability Awareness Training” means training compliant with the requirements set out in section 4, paragraph B6 of the Accessible Travel Policy Guidance;

REFERENCE (CLAUSE/PARAGRAPH/SCHEDULE)	AMENDMENT	
	<u>"ERMA"</u>	<u>means the Emergency Recovery Measures Agreement entered into by the Parties on or around the ERMA Start Date to deal with the impacts of COVID-19;</u>
	<u>"ERMA Term"</u>	<u>has the meaning given to that term in the ERMA;</u>
	<u>"ERMA Start Date"</u>	<u>means 20 September 2020;</u>
	<u>"ERMA Stub Reporting Period"</u>	<u>means the period comprising the Reporting Periods following the period covered by the most recently delivered Annual Audited Accounts to the end of the ERMA Term or Extended Term, as applicable;</u>
	<u>"Estimated Revenue"</u>	<u>means the Revenue reasonably estimated by the Secretary of State using available resources as is practicable at the time of the estimation;</u>
	<u>"Extended Term"</u>	<u>has the meaning given to that term in the ERMA;</u>
	<u>"Final Accounts"</u>	<u>means the set of financial statements prepared in accordance with GAAP and</u>

REFERENCE (CLAUSE/PARAGRAPH/SCHEDULE)	AMENDMENT
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delivered to the Secretary of State in accordance with the requirements set out in paragraph 9.4A(m) of Schedule 11.2 (Management Information) which comprise, as a minimum, a profit and loss account, balance sheet and a cashflow statement containing only transactions properly accounted for which relate to the ERMA Stub Reporting Periods, to a level of disaggregation which the Secretary of State may reasonably require;

“Final Adjustment”

has the meaning given to it in paragraph 1A (Definitions) of Schedule 8.1A (Franchise Payments);

“Final PBF Assessment Period”

has the meaning given to it in paragraph 1A (Definitions) of Schedule 8.1B (Performance Based Fee);

“Final Working Capital Adjustment” or “FWCA”

means the adjustment determined in accordance with paragraph 14.1 of Schedule 8.1A (Franchise Payments)

“Floor Cash Position”

means [REDACTED³] (excluding the value of Season Ticket Fare suspense

³ December 2020 (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.

REFERENCE (CLAUSE/PARAGRAPH/SCHEDULE)	AMENDMENT
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liabilities) or such other value as the Secretary of State may determine in accordance with paragraph 12.8 of Schedule 8.1A (Franchise Payments);

“Forecast Closing Cash Position” means, with respect to a Reporting Period, the Franchisee’s forecast working capital position, excluding:

- (a) the Franchise Payment to be made in the following Reporting Period and
- (b) the value of Season Ticket Fare suspense account liabilities,

as at the last day of that Reporting Period and taking into account the Franchisee’s latest Management Accounts;

“Franchise Payment Component” means:

- (a) each of the components of “FP” as described in paragraph 1.2 of Schedule 8.1A (Franchise Payment); and
- (b) any component or element, described in the relevant provisions of Schedule 8.1A (Franchise Payments) and

REFERENCE (CLAUSE/PARAGRAPH/SCHEDULE)	AMENDMENT
	<p data-bbox="1406 304 1856 528"><u>Schedule 8.1B (Performance Based Fee), as the case may be, which is used in determining or calculating the value of those components described in paragraph (a) above;</u></p> <p data-bbox="824 555 1267 582"><u>“Good and Efficient Operator”</u></p> <p data-bbox="1317 555 1856 1370"><u>means in the context of all other relevant provisions of this Franchise Agreement, a notional train operator, having the same commercial, regulatory and operational arrangements as the Franchisee and being subject to the same operational circumstances (which shall recognise the extraordinary impact of COVID-19, the existence of the EMA and the ERMA and the requirement for operators to act in the national interest in response to COVID-19), which is a party to a franchise agreement on equivalent terms to the Franchise Agreement, with performance targets and standards equivalent to those set out in Schedule 8.1B (Performance Based Fee), which complies with its obligations under such franchise agreement and the Licences in a timely, efficient and economical</u></p>

REFERENCE (CLAUSE/PARAGRAPH/SCHEDULE)	AMENDMENT
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manner and with the degree of skill, diligence, prudence and foresight which can be expected from a skilled and experienced train operator so that in this context costs and revenues are optimised in combination to the greatest extent reasonably practicable, adopting a reasonable balance in respect of short, medium and longer term consequences for the relevant franchise;

“Improvement Plan Level”

means:

- (a) *a NRPS Improvement Plan Level; and/or*
- (b) *an SQR Improvement Plan Level, as applicable;*

“Initial PBF Assessment Period”

has the meaning given to it in paragraph 1 (Definitions) of Schedule 8.1B (Performance Based Fee);

“Integrated Control Centres Implementation Plan”

means a detailed plan jointly produced between the Franchisee, Network Rail and any other Train Operators setting out how and when they will implement the Integrated Control Centres Initiative;

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	<p><u><i>“Integrated Control Centres Initiative”</i></u> means measures and initiatives to improve performance outcomes between Network Rail and the Franchisee through collaboration, co-location and unified policies such that an integrated and cost-efficient approach to operations is adopted at specified Control Centres;</p>
	<p><u><i>“Management Fee and Performance Payment”</i></u> or <u><i>“MFPP”</i></u> paragraph 1 (Definitions) of schedule 8.A (Franchise Payments) to the Franchise Agreement as effected by the EMA;</p>
	<p><u><i>“Modernising Retail”</i></u> means the work in relation to modernising the retail of train tickets that is being developed pursuant to and in accordance with the ‘Memorandum of Understanding for Modernising Retail’ between the Secretary of State and the RDG dated 29 July 2020;</p>
	<p><u><i>“Non-Recoverable Costs”</i></u> means any costs and expenses incurred by the Franchisee during a Reporting Period (as stated in the Franchisee’s profit and loss account for that Reporting Period) which are inconsistent with the definitions of</p>

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Costs, EMA Costs, Capital Expenditure and EMA Capital Expenditure;

“NRPS Improvement Plan Level” means, in relation to a NRPS Measure applicable to a NRPS Service Group, the target (expressed as a specific value) which the Franchisee’s performance is expected to equal or exceed during each PBF Assessment Period, as agreed or determined in accordance with paragraph 4.5 of Schedule 8.1B (Performance Based Fee) (and “NRPS Improvement Plan Levels” shall be construed accordingly);

“NRPS Target” has the meaning given to it in paragraph 1 (Definitions) of Schedule 8.1B (Performance Based Fee);

“OP Target” means the target, expressed as a range within which the Franchisee’s performance is expected to fall, which applies to an Operational Performance Component in relation to a Reporting Period during the relevant PBF Assessment Period, as agreed or determined in accordance with

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paragraph 4.5 of Schedule 8.1B
(Performance Based Fee);

“Operational Performance Components” means each of the matters in relation to which the Operational Performance Fee is assessed using the Quantified Target Methodology, being:

- (a) Cancellations;
- (b) TOC Minutes Delay;
- (c) Short Formations;
- (d) T-3;
- (e) T-15; and
- (f) All Cancellations;

“Operational Performance Fee” or “OP” means the element of the Performance Based Fee, the purpose of which is to measure the Franchisee's effectiveness in delivering punctual and reliable journeys and in providing an appropriate amount of passenger-carrying capacity;

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	<u>"Outturn Cost" or "OTC"</u>	<u>means in relation to the relevant PBF Assessment Period, the aggregate of all Costs (excluding Disallowable Costs, Unreimbursed Disallowable Costs and Capital Expenditure) expressed as a positive number, as set out in the Audited Accounts Reconciliation provided pursuant to paragraph 9.4 (Annual Financial Information) of Schedule 11.2 (Management Information);</u>
	<u>"Outturn Profit" or "OTP"</u>	<u>means, in relation to the relevant PBF Assessment Period, the aggregate of all Revenue (expressed as a positive number) and all Costs (excluding Disallowable Costs and Capital Expenditure and expressed as a negative number), as set out in the Audited Accounts Reconciliation provided pursuant to paragraph 9.4 (Annual Financial Information) of Schedule 11.2 (Management Information);</u>
	<u>"Overall Customer Service Pass Rate"</u>	<u>has the meaning given to it in paragraph 3.6(b)(iii) of Appendix 5 (Quantified Target Methodology) of</u>

REFERENCE (CLAUSE/PARAGRAPH/SCHEDULE)	AMENDMENT
	<p><u>Schedule 8.1B (Performance Based Fee)</u>;</p>
	<p><u>“Overall Pass Rate”</u></p>
	<p><u>means the:</u></p>
	<p>(a) <u>Overall Station Pass Rate;</u></p>
	<p>(b) <u>Overall Trains Pass Rate; and/or</u></p>
	<p>(c) <u>Overall Customer Service Pass Rate;</u></p>
	<p><u>as applicable;</u></p>
	<p><u>“Overall Station Pass Rate”</u></p>
	<p><u>has the meaning given to it in paragraph 3.6(b)(i) of Appendix 5 (Quantified Target Methodology) of Schedule 8.1B (Performance Based Fee);</u></p>
	<p><u>“Overall Trains Pass Rate”</u></p>
	<p><u>has the meaning given to it in paragraph 3.6(b)(ii) of Appendix 5 (Quantified Target Methodology) of Schedule 8.1B (Performance Based Fee);</u></p>
	<p><u>“Partially Complete RV Assets”</u></p>
	<p><u>means each Potential Partially Complete RV Asset in respect of which a Certificate of Partial Completion has been issued in accordance with paragraph 1.3A and which is not a</u></p>

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“PBF Assessment Period”

Completed RV Asset and “Partially Complete RV Asset” means any one of them;

means each of the following periods:

- (a) the Initial PBF Assessment Period;
- (b) the Final PBF Assessment Period;
and
- (c) each period in the intervening period comprising
 - (i) the first to sixth Reporting Period (inclusive) to fall in the relevant Reporting Year; and/or
 - (ii) the seventh to the thirteenth Reporting Period (inclusive) to fall in the relevant Reporting Year;

as the case may be;

“Performance Based Fee”

means the performance-based element of the Franchise Payments as calculated pursuant to Schedule 8.1B (Performance Based Fee);

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	<p><u>“Potential Partially Complete RV Asset”</u> <i>means an RV Asset (i) listed in Column 1 of the table in Appendix 1 (List of the RV Assets) to this Schedule 14.6 (List of RV Assets) in respect of which a Certificate of Completion had not been issued as at 1 March 2020 but in respect of which delivery has commenced such that the asset was partially complete as at that date; and (ii) details of which have been notified to the Secretary of State in accordance with paragraph 1.3A(a);</i></p>
	<p><u>“Quantified Target Methodology”</u> <i>means, in relation to a QTM PBF Component, the methodology set out in Appendix 5 (Quantified Target Methodology) of Schedule 8.1B (Performance Based Fee);</i></p>
	<p><u>“Quarterly Forecast”</u> <i>has the meaning given to it in paragraph 9.3(a) of Schedule 8.1A (Franchise Payments);</i></p>
	<p><u>“Recognised Accreditation Scheme”</u> <i>means any of the following diversity accreditation schemes:</i></p>

- (a) Investors in Diversity;
- (b) Clear Assured;
- (c) National Equality Standards;
- (d) Diversity Development Standard;
- (e) Inclusive Employers; and/or
- (f) such other scheme as the Secretary of State may designate as a Recognised Accreditation Scheme from time to time;

“Request for Data”

has the meaning given to it in paragraph 12.4(a) of Schedule 11.2 (Management Information);

“Revenue Foregone”

means an amount equal to the amount of Revenue or other value which was not received or receivable by the Franchisee, including:

- (a) the:
 - (i) debts or other receivables waived, not collected or written off; and/or
 - (ii) value of any other asset not realised in whole or in part,

but which would have been receivable and received or

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- otherwise realised by the Franchisee if it had acted as a Good and Efficient Operator; and
- (b) subject always to paragraph 6.1 (No Double Recovery) of Schedule 8.1A (Franchise Payments), the amount by which the Purchase Price (as defined in clause 2.1 of the Supplemental Agreement) receivable by the Franchisee is lower than it would have been but for the Franchisee:
- (i) incurring Disallowable Costs; and/or
- (ii) otherwise acting other than as Good and Efficient Operator;

save where, in respect of both paragraphs (a) and (b) above, such Revenue or other value is not received or receivable as a result of the Franchisee acting in accordance with the instructions of the Secretary of State;

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	<p><u><i>“RV Asset Transfer Values”</i></u> means each of the transfer values relating to the RV Assets as specified in Column 2 of the table in Appendix 1 (List of the RV Assets) to this Schedule 14.6 (List of RV Assets);</p>
	<p><u><i>“Revised RV Asset Transfer Values”</i></u> means each of the RV Asset Transfer Values as adjusted by the Secretary of State in accordance with the provisions of paragraph 1.4(a), paragraph 1.4(b) and paragraph 1.5 (as applicable);</p>
	<p><u><i>“SBU Action Plan Level”</i></u> means the target (expressed as a specific value for each SBU OP Measure) which the Franchisee's performance is expected to equal or exceed for each SBU OP Measure during each PBF Assessment Period as agreed or determined in accordance with paragraph 4.5 of Schedule 8.1B (Performance Based Fee) (and <i>“SBU Action Plan Levels”</i> shall be construed accordingly);</p>
	<p><u><i>“SBU OP Measure”</i></u> means each of (a) WMSBU Cancellations; (b) WCSBU Cancellations; (c) WMSBU TOC Minutes Delay; (d) WCSBU TOC Minutes Delay;</p>

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	<u>(e) WMSBU Short Formations and (f) WCSBU Short Formations.</u>
	<u>"Short Formations"</u> <u>means Passenger Services in any Reporting Period formed with less than the required Passenger Carrying Capacity specified in the Train Plan;</u>
	<u>"Smart Media"</u> <u>means any of the following which can be used as part of a Smart Ticketing Scheme:</u> (a) <u>digital barcodes;</u> (b) <u>a barcode printed on paper either by customers (e.g. at home, office) or by Franchisee staff at Stations or on board trains;</u> (c) <u>ITSO Certified Smart Media;</u> (d) <u>contactless payment media (cEMVs);</u> (e) <u>Oyster (TfL's smartcard); and</u> (f) <u>any of the above formats stored and presented on a portable electronic device;</u>
	<u>"SoS Claim"</u> <u>means all losses, liabilities, costs, damages and expenses that the Secretary of State does or will incur or</u>

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suffer (including any such losses, liabilities, costs, damages and expenses that are unliquidated or which are contingent):

(a) as a consequence of any breach, negligence or other default of the Franchisee under or in connection with the Franchise Agreement and/or any agreement ancillary to this Franchise Agreement, the ERMA and/or the EMA, including the Supplemental Agreement; and/or

(b) in respect of any matter for which the Franchisee is to indemnify the Secretary of State pursuant to this Franchise Agreement, the ERMA and/or the EMA or any agreement ancillary to this Franchise Agreement, the ERMA and/or the EMA, including the Supplemental Agreement;

“SQR Component”

means each of:

(a) the SQR Trains Component;

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- (b) the SQR Stations Component;
and
- (c) the SQR Customer Service Component;

“SQR Improvement Plan Level” means, in relation to a Service Quality Area, the target (expressed as a specific value) which the Franchisee’s performance is expected to equal or exceed during each Reporting Period that falls within the relevant PBF Assessment Period, as agreed or determined in accordance with paragraph 4.5 of Schedule 8.1B (Performance Based Fee) (and “SQR Improvement Plan Levels” shall be construed accordingly);

“SQR Methodology” means the methodology set out in paragraph 3.6 (Calculation of CE(SQR)) of Appendix 5 (Quantified Target Methodology) of Schedule 8.1B (Performance Based Fee);

“SQR Customer Service Component” means the benchmark for each those Service Quality Areas that relate relating to Customer Service, as set out in Column 2 of the table in Appendix 2 to Schedule 7.3 (West Midlands

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~~Franchise Quality Regime) more particularly described in paragraph 3.6 (Calculation of CE(SQR)) of Appendix 5 (Quantified Target Methodology) Schedule 8.1B (Performance Based Fee);~~

“SQR Stations Component”

~~means the Stations in the WMSBU excluding Barlaston, Wedgwood and Norton Bridge and on the Branch Lines excluding Bletchley, Bedford and Watford Junction those Service Quality Areas that relate to Stations, as more particularly described in paragraph 3.6 (Calculation of CE(SQR)) of Appendix 5 of Schedule 8.1B (Performance Based Fee);~~

“SQR Trains Component”

~~means:~~

- ~~(a) any train branded with the WMSBU Brand engaged in the provision of Passenger Services; and/or~~
- ~~(b) any train engaged in the provision of Passenger Services on the Branch Lines;~~

~~those Service Quality Areas that relate to trains engaged in the provision of Passenger Services, as more~~

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		<i>particularly described in paragraph 3.6 (Calculation of CE(SQR)) of Appendix 5 (Quantified Target Methodology) of Schedule 8.1B (Performance Based Fee);</i>
	<u>"SQR Target"</u>	<i>means the target which applies to a SQR Component, expressed as a range within which the Franchisee's performance is expected to fall, during the relevant PBF Assessment Period, as agreed or determined in accordance with paragraph 4.4 of Schedule 8.1B (Performance Based Fee);</i>
	<u>"T-3"</u>	<i>means the percentage of recorded station stops called at within three (3) minutes of the planned time relating to the Franchise as produced and/or published by Network Rail;</i>
	<u>"T-15"</u>	<i>means the percentage of recorded station stops called at within fifteen (15) minutes of the planned time relating to the Franchise as produced and/or published by Network Rail;</i>
	<u>"Target Cost" or "TC"</u>	<i>means, in relation to:</i>

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- (a) any PBF Assessment Period beginning on 1 April in any year, the aggregate of all forecast Costs falling within the relevant PBF Assessment Period (excluding any Capital Expenditure, forecast Non-Recoverable Costs or forecast Disallowable Costs) set out in the profit and loss accounts included in the Annual Business Plan, expressed as a positive number;
or
- (b) any Subsequent PBF Assessment Period beginning on any date other than 1 April in any year, the aggregate of all forecast Costs falling within the relevant PBF Assessment Period (excluding any Capital Expenditure, forecast Non-Recoverable Costs or forecast Disallowable Costs) set out in the profit and loss accounts included in the most recent Quarterly Financial Information provided prior to commencement of the

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relevant PBF Assessment Period, expressed as a positive number;

“Target Cost Record of Assumptions” means a record of assumptions setting out:

- (a) the non-trivial assumptions, methodologies and data sources used to prepare the Target Cost Template in sufficient detail to document a line-by-line understanding of the contents of the Target Cost Template;
- (b) an explanation in relation to any deviations from preceding cost trends; and
- (c) any updates to the Budget Supporting Materials;

“Target Cost Template” has the meaning given to it in paragraph 5.1(a) of Schedule 8.1B (Performance Based Fee);

“Target Profit” or “TP” means in relation to:

- (a) any PBF Assessment Period beginning on 1 April of any year, the aggregate of;

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(i) all forecast items of Revenue falling within the relevant PBF Assessment Period set out in the profit and loss accounts included in the Annual Business Plan, expressed as a positive number;

(ii) all forecast items of Cost falling within the relevant PBF Assessment Period (excluding any Capital Expenditure, forecast Non-Recoverable Costs or forecast Disallowable Costs) included in the Annual Business Plan, expressed as a negative number; and

(b) any PBF Assessment Period beginning on any date other than 1 April of any year, the aggregate of:

(i) all forecast items of Revenue falling within the relevant PBF Assessment

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Period set out in the profit and loss accounts included in the Quarterly Financial Information, expressed as a positive number; and

(ii) all forecast items of Cost falling within the relevant PBF Assessment Period (excluding any Capital Expenditure, forecast Non-Recoverable Costs or forecast Disallowable Costs) included in the Quarterly Financial Information expressed as a negative number;

“Target Profit Record of Assumptions” *means a record of assumptions setting out:*

(a) the non-trivial assumptions, methodologies and data sources used to prepare the Target Profit Template in sufficient detail to document a line-by-line understanding of the contents of the Target Profit Template;

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	<p>(b) <u><i>an explanation in relation to any deviations from preceding cost and/or revenue trends; and</i></u></p> <p>(c) <u><i>any updates to the Budget Supporting Materials;</i></u></p>
	<p><u><i>“Target Profit Template”</i></u> <u><i>has the meaning given to it in paragraph 5.2(a) of Schedule 8.1B (Performance Based Fee);</i></u></p>
	<p><u><i>“TOC Minutes Delay”</i></u> <u><i>means the minutes of delay to the Passenger Services that are attributed to the Franchisee pursuant to the Track Access Agreement and disregarding any minutes of delay that are imputed to Passenger Services that were cancelled;</i></u></p>
	<p><u><i>“Unreimbursed Disallowable Costs”</i></u> <u><i>has the meaning given to it in paragraph 9.1 of Schedule 8.1A (Franchise Payments);</i></u></p>
	<p><u><i>“Wavelength Survey”</i></u> <u><i>means the weekly survey relating to the Passenger Services (in such form as may be agreed from time to time), which is undertaken as part of the Wavelength Programme to monitor, amongst other things, the Franchisee’s performance against certain journey touchpoints (as specified in the</i></u></p>

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	<u>Wavelength Survey) and certain key commitments based on core passenger priorities;</u>
	<u>“WCSBU Cancellations”</u> means <u>Cancellations of West Coast Separable Business Unit Passenger Services;</u>
	<u>“WCSBU Partial Cancellations”</u> means <u>Partial Cancellations of West Coast Separable Business Unit Passenger Services;</u>
	<u>“WCSBU Short Formations”</u> means <u>the West Coast Separable Business Unit Passenger Services formed with less Passenger Carrying Capacity than specified in the Train Plan;</u>
	<u>“WCSBU TOC Minutes Delay”</u> means <u>TOC Minutes Delay incurred in respect of West Coast Separable Business Unit Passenger Services;</u>
	<u>“WMSBU Cancellations”</u> means <u>Cancellations of West Midlands Separable Business Unit Passenger Services;</u>
	<u>“WMSBU Partial Cancellations”</u> means <u>Partial Cancellations of West Midlands Separable Business Unit Passenger Services;</u>

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<u><i>“WMSBU Short Formations”</i></u>	<u><i>means the West Midlands Separable Business Unit Passenger Services formed with less Passenger Carrying Capacity than specified in the Train Plan;</i></u>
<u><i>“WMSBU TOC Minutes Delay”</i></u>	<u><i>means TOC Minutes Delay incurred in respect of West Midlands Separable Business Unit Passenger Services;</i></u>
<u><i>“WMSBU Station”</i></u>	<u><i>means the West Midlands Stations;</i></u>
<u><i>“WMSBU Train”</i></u>	<u><i>means any train branded with the WMSBU Brand engaged in the provision of Passenger Services;</i></u>
<u><i>“Workforce Diversity Data”</i></u>	<u><i>means data on the diversity of the Franchisee’s workforce including statistics showing:</i></u> <ul style="list-style-type: none"> <li data-bbox="1317 1018 1850 1166">(a) <u><i>the gender, race, disability, sexual orientation and working pattern breakdown for specified jobs, categories and levels;</i></u> <li data-bbox="1317 1182 1850 1289">(b) <u><i>religion and gender reassignment across the whole workforce;</i></u>

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- (c) the promotion of the Franchisee's workforce that fall into the following groups: marriage and civil partnership; pregnancy and maternity; social mobility; and parental leave and caring responsibilities; and
- (d) such other data as the Secretary of State may notify the Franchisee in accordance with paragraph 9A.6(b)(ii) of Schedule 13.1 (Rail Industry Initiatives and Co-operation);

"Working Capital Payment"

means the Franchise Payment Component calculated in accordance with paragraph 12.3 of Schedule 8.1A (Franchise Payments);

"Working Capital Repayment"

means the Franchise Payment Component calculated in accordance with paragraph 13.2 of Schedule 8.1A (Franchise Payments);

The following existing definitions shall be amended or replaced as follows:

"Benchmark"

~~means any of the Cancellations Benchmark (West Coast Separable Business Unit), the Cancellations Benchmark (West Midlands Separable Business Unit), the TOC Minute Delay Benchmark, the Short Formation Benchmark (West Coast Separable Business Unit) or the Short Formation Benchmark (West Midlands Separable Business Unit) (as the context may require);~~

"Breach Performance Level"

~~has the meaning given to it in paragraph 1.1 of Schedule 7.1 (Operational Performance) means, in relation to an Enforcement Benchmark for any Reporting Period, the number agreed or determined as such in accordance with paragraph 4.5 of Schedule 8.1B (Performance Based Fee);~~

"Capital Expenditure"

~~has the meaning given to it in paragraph 3.4 of Schedule 9.3 (Variations to the Franchise Agreement and Incentivising Beneficial Changes); means:~~

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- (a) the costs of creating non-current or fixed assets which are not Costs and which are properly accrued during the term of the ERMA and relating to the Franchisee's performance of the Franchise Agreement; or
- (b) for the purposes of Schedule 9.3 (Variations to the Franchise Agreement and Incentivising Beneficial Changes) only, the meaning given to it in paragraph 3.4 of Schedule 9.3 (Variations to the Franchise Agreement and Incentivising Beneficial Changes);

“Central Government Body”

means a body listed in one of the following sub-categories of the Central Government classification of the Public Sector Classification Guide, as published and amended from time to time by the Office for National Statistics:

- (a) Government Department;
- (b) Non-Departmental Public Body or Assembly Sponsored Public Body (advisory, executive, or tribunal);
- (c) Non-Ministerial Department; ~~or~~

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“Default Performance Level”

- (d) Executive Agency; or
- (e) any other body that is a limited company and is controlled directly or indirectly by a Government Department;

means, in relation to an Enforcement Benchmark for any Reporting Period, the number agreed or determined pursuant to paragraph 4.5 of Schedule 8.1B (Performance Based Fee)—in relation to a Benchmark for any Reporting Period, the number set out in the relevant Column of the Benchmark Table to Schedule 7.1 (Operational Performance) relating to that Benchmark and in the row of that table for that Reporting Period;

“Expiry Date”

- means the later of:*
- (a) 1:59 a.m. on ~~1 April 2026~~ 19 September 2021 unless the Secretary of State exercises the Secretary of State's right to terminate the ERMA pursuant to clause 3.2 of the ERMA in which

- case the Expiry Date will be 01:59 on 1 April 2026; or
- (b) any such later date that is specified by the Secretary of State pursuant to clause 5.3 (Duration of the Franchise Agreement); or
 - (c) any such later date to which the Franchise Agreement is continued in accordance with clause 3.3 of the ERMA;—5.2 (Duration of the Franchise Agreement);

“Franchise Documents”

means:

- (a) *this Agreement;*
- (b) *the Conditions Precedent Agreement;*
- (c) *the Funding Deed;*
- (d) *the Train Service Requirement;*
and
- (e) *any other agreement signed by the Franchisee at the time of the award of the Franchise which is in the possession of the Secretary of State and which is notified by the Secretary of State*

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"Franchise Payment"	<p>to the Franchisee as being required for publication; <u>and</u></p> <p>(f) <u>the ERMA;</u></p> <p>means, in relation to any Reporting Period, the amount determined in accordance with paragraph 1.1 of Schedule 8. <u>1A7</u> (Franchise Payments);</p>
"Franchisee Owned RV Asset"	<p><u>means each of the assets listed in Column 1 of the table set out in Appendix 1 (List of the RV Assets) to Schedule 14.6 (Residual Value Mechanism), or where applicable the partially completed elements of such assets, in each case which:</u></p> <p>(a) <u>are not annotated in Column 4 of such table as Network Rail Fixture Assets; and</u></p> <p>(b) <u>are designated as Primary Franchise Assets in accordance with paragraph 2.1(h) of Schedule 14.4 (Designation of Franchise Assets) such that they can be transferred to a Successor Operator at the applicable value specified in Column 2 of the table</u></p>

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“Network Rail Fixture Asset”

in Appendix 1 (List of the RV Assets) to Schedule 14.6 (Residual Value Mechanism) (as such value may be amended during the Franchise Term in accordance with the provisions of paragraphs 1.4, 1.5 or 2.2 of Schedule 14.6 (Residual Value Mechanism));

means a tangible asset annotated as such in Column 4 of the table in Appendix 1 (List of the RV Assets) to Schedule 14.6 (Residual Value Mechanism), or where applicable the partially completed elements of such assets, in each case which is:

(a) funded by the Franchisee and affixed to a Station or Depot (as the case may be) such that it is regarded as a fixture to and part of such Station or Depot (as the case may be); and

(b) designated as a Primary Franchise Asset in accordance with paragraph 2.1(h) of Schedule 14.4 (Designation of Franchise Assets)

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	<p><u>such that it can be transferred as the unencumbered property of the Franchisee to a Successor Operator at the applicable value specified in Column 2 of the table in Appendix 1 (List of the RV Assets) to Schedule 14.6 (Residual Value Mechanism) (as such value may be amended during the Franchise Term in accordance with the provisions of paragraphs 1.4, 1.5 or 2.2 of Schedule 14.6 (Residual Value Mechanism));</u></p>
	<p><u>“Overall Performance Score”</u></p> <p><u>means, in respect of an NRPS Measure, the average of the scores achieved by the Franchisee (in each case as recorded in the relevant National Rail Passenger Survey(s)) in respect of that NRPS Measure across each of the 3 NRPS Service Groups</u></p>
	<p><u>“Pass Rate”</u></p> <p><u>means in respect of a Reporting Period and for each Service Quality Schedule, the pass rate (i.e. the number of Service Quality Indicators that have passed rather than failed) for a Service Quality Area comprised in such Service Quality</u></p>

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Schedule as calculated in accordance with paragraph 10 of this Schedule 7.3:

“Payment Date”

means the date for the payment of Franchise Payments in accordance with paragraph ~~3.3~~ 2.3 of Schedule 8.1A~~1~~ (Franchise Payments);

“Reporting Period”

means:

- (a) for the purposes of the Season Ticket Bond, any consecutive seven (7) day period or any other period, each within a Reporting Period (as defined in paragraph (b)) agreed in accordance with paragraph 5.10 of Schedule 12 (Financial Covenants and Bonds); or*
- (b) for all other purposes, a period of twenty eight (28) days, provided that:*
 - a. the first such period during the Franchise Period shall exclude any days up to but not including the Start Date;*
 - b. the first and last such period in any Reporting Year may be*

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varied by up to seven (7) days by notice from the Secretary of State to the Franchisee;

c. each such period shall start on the day following the last day of the preceding such period; and

d. the last such period during the Franchise Period shall end at the end of the Franchise Period, except for the purpose of giving effect to any provision which survives the end of the Franchise Period including those provisions in Schedule 8.1A which anticipate Franchise Payments being made after the end of the Franchise Period;

“Required Improvement”

Performance ~~*has the meaning given to it in paragraph 21.1 of Schedule 7.1 (Operational Performance) means an*~~

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improvement in the Franchisee's performance against:

- (a) the SBU Action Plan Level for WMSBU Cancellations or WCSBU Cancellations (as the case may be) so that such performance is equal to or better than the applicable SBU Action Plan Level for WMSBU Cancellations or WCSBU Cancellations; or
- (b) the SBU Action Plan Level for WMSBU TOC Minutes Delay or WCSBU TOC Minutes Delay (as the case may be) so that such performance is equal to or better than the applicable SBU Action Plan Level for WMSBU TOC Minutes Delay or WCSBU TOC Minutes Delay; or
- (c) the OP Target for T-3 so that such performance is within or better than the OP Target for T-3; or
- (d) the OP Target for T-15 so that such performance is within or

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better than the OP Target for T-15; or

(e) the OP Target for All Cancellations so that such performance is within or better than the OP Target for All Cancellations; or

(f) the SBU Action Plan Level for WMSBU Short Formations or WCSBU Short Formations (as the case may be) so that such performance is equal to or better than the applicable SBU Action Plan Level for WMSBU Short Formations or WCSBU Short Formations.

“SQR Stations”

means the Stations excluding Barlaston and Wedgwood;

“SQR Train”

means a train engaged in the provision of Passenger Services;

11.3 – Disputes under Schedule 8 (Payments) of this Agreement

Clause 11.3 shall be amended as follows

“11.3 Disputes under Schedule 8 (Payments) of this Agreement

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15 – Competition	N/A
16 – Entire Agreement	<p><i>The Parties shall comply with the terms of paragraph 4 (Disputes under Schedule 8) of Schedule 8. 1A (Franchise Payments) of this Agreement”.</i></p> <p>Clause 16.1 shall be amended as follows:</p> <p><i>“This Agreement and the Conditions Precedent Agreement contain the entire agreement between the Parties, <u>except as amended</u>, 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 the Secretary of State’s proposal to secure the provision of the Passenger Services under the Franchise Agreement”.</i></p>
Schedule 1: Passenger Service Obligations	
1.1 – Franchisee Services and Service Development	Schedule 1 shall be replaced with the new schedule 1 (<i>Amendments to the Franchise Agreement</i>) attached at Appendix 1 (<i>Schedule 1 (Passenger Service Obligations)</i>).
1.2 – Operating Obligations	
1.3 – NOT USED	
1.4 – Passenger Facing Obligations	
1.5 – Information about Passengers	
1.6 – The Rolling Stock	
1.7 – Stations	
Schedule 2: Assets, Leases, Other Franchisees and Schemes	
2.1 – Asset Vesting and Transfer	N/A

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2.2 – Security of Access Agreements, Rolling Stock Leases, Station and Depot Leases	<p>Paragraph 3.1 shall be deleted and replaced with the following new paragraph:</p> <p><u><i>“3.1 Without limiting paragraph 2.1 (Rolling Stock Related Contracts and Insurance Arrangements):</i></u></p> <p><u><i>3.1.1 each Rolling Stock Lease entered into on or after the ERMA Start Date must allow the Secretary of State to make a direction under paragraph 3.2(b) below, including allowing Cascaded Rolling Stock to be sub-leased to the Prior Train Operator; and</i></u></p> <p><u><i>3.1.2 if a Relevant Delay occurs, the Secretary of State may in the Secretary of State’s sole discretion direct 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, and the Franchisee shall comply with such direction. Any such direction may include the Secretary of State requiring the Franchisee to sublease the Cascaded Rolling Stock back to the Prior Train Operator and/or to delay the date on which the Cascaded Rolling Stock is required to be delivered to the Franchisee under such Rolling Stock Lease”.</i></u></p>
	<p>Paragraph 3.5(b)(ii) shall be amended as follows:</p> <p><i>(ii) the implications (if any) for the <u>Enforcement</u> Benchmarks;</i></p>
	<p>A new paragraph 4A shall be inserted as follows:</p> <p><u><i>“4A Where the Secretary of State requires the Franchisee to sub-let some of its Train Fleet to another Train Operator under the terms of paragraph 3.5 of Schedule 1.6 (The Rolling Stock), then the Franchisee shall:</i></u></p>

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	<p><u>(a) provide the sub-lessee with access to any applicable maintenance and mileage records;</u></p> <p><u>(b) give the sub-lessee reasonable access to the relevant rolling stock vehicles prior to the handover of such rolling stock vehicles to assist with the relevant handover in relation to both operation and maintenance;</u></p> <p><u>(c) use reasonable endeavours to offer the sub-lessee “knowledge transfer” sessions (including technical and operation support) to enable recipient engineers and operational personnel to learn from informed peers;</u></p> <p><u>(d) provide the sub-lessee all relevant information in relation to property arrangements at any Depot relevant to the sub-leased rolling stock vehicles (a “Relevant Depot”), including any stabling arrangements; and</u></p> <p><u>(e) procure such access to each Relevant Depot as the sub-lessee may reasonably require.</u></p>
2.3 – Other Franchisees	N/A
2.4 – Not Used	N/A
2.5 – Transport, Travel and Other Schemes	N/A
Schedule 3: Priced Options	
Part 1	N/A
Part 2	N/A

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Part 3	N/A
Schedule 4: Accessibility and Inclusivity	

A new paragraph 1.3 shall be inserted as follows:

"1.3

- (a) Subject to paragraph 1.3(c) below, it is acknowledged that the Franchisee is subject to obligations regarding accessibility under the terms of its Licences (including under the form of its Accessible Travel Policy as approved from time to time by the ORR in connection with the requirements of its Licences) (the "**Licence Accessibility Obligations**").
- (b) Where any matter included in this Schedule 4 is the subject of a Licence Accessibility Obligation, it is agreed that compliance with the Licence Accessibility Obligation shall take precedence over this Schedule 4 such that compliance with the Licence Accessibility Obligation shall be deemed to fulfil the obligation of the Franchisee in respect of that matter under this Schedule 4 and any failure by the Franchisee in respect of that matter shall be addressed under that Licence and no under this Franchise Agreement.
- (c) Paragraph 1.3(a) shall have no application to paragraph 3 (Dealing with Claims relating to Stations)."

Paragraph 2.7(b) shall be amended as follows:

"2.7

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	<p>(b) <i>as soon as reasonably practicable (and in any event within four (4) months) after the Start Date and thereafter before the start of each Franchisee Year:</i></p> <p>(i) <i>develop a Minor Works' Programme and consult with the Disabled Persons Transport Advisory Committee <u>Accessibility Panel</u> and relevant Passengers' Council in relation thereto;</i></p> <p>(ii) <i>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</i></p> <p>(iii) <i>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."</i></p>

Paragraph 4 shall be deleted and replaced as follows:

4. Specific Additional Obligations relating to Persons with Disabilities

4.1 To the extent the Franchisee did so prior to the ERMA Start Date, it shall continue to implement procedures necessary to:

(a) record the making of reservations for seating accommodation and for spaces for wheelchairs for and/or the provision of assistance to, persons with disabilities which are made through the Passenger Assistance (or whatever service may replace it from time to time for

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	<p><u>the purposes of ORR's most recent guidance on the Accessible Travel Policies);</u></p> <p><u>(b) record whether such seating accommodation and/or assistance is actually provided, whether there has been a delay in providing such assistance at either departing, arrival or any interchange stations, and whether the journeys planned using Passenger Assistance have been completed successfully (e.g. by surveying a representative sample of users); and</u></p> <p><u>(c) provide the results of such records to the Secretary of State, and publish a summary of the data in its Customer Report(s) and on the relevant section of the Franchisee's website.</u></p>
4.1A	<u>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</u>
4.2	<p><u>By no later than 30 November 2020, the Franchisee shall notify the Secretary of State of:</u></p> <p><u>a) the extent to which it recorded the matters described in paragraphs 4.1(a) and 4.1(b) above (collectively referred to as the "Seating and Assistance Provisions"), as at the date of the notification; and</u></p> <p><u>b) if and to the extent to which it did not previously record the Seating and Assistance Provisions, its assessment of the costs, practicalities and timescales involved in putting in place the necessary systems and processes to enable them to do so.</u></p>
4.3	<u>Following the notifications referred to in paragraph 4.2:</u>

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	<p><u>(a) if the Franchisee already records the Seating and Assistance Provisions, it shall continue to do so and shall provide the results of such records to the Secretary of State, and publish a summary of the data in its Customer Report(s) and on the relevant section of the Franchisee's website; and</u></p> <p><u>(b) if the Franchisee does not record the Seating and Assistance Provisions, then the Secretary of State may require them to establish and implement the necessary systems and processes by such date as the Secretary of State may reasonably specify (having regard to any assessment provided by the Franchisee pursuant to paragraph 4.1 above), and with effect from such date, it shall record Seating and Assistance Provisions and shall provide the results of such records to the Secretary of State and publish a summary of the data in its Customer Report(s) and on the relevant section of the Franchisee's website.</u></p> <p><u>4.4 The Franchisee shall promptly send to the Secretary of State a copy of:</u></p> <p><u>(a) each set of results of the surveys of Passenger Assistance users that the Franchisee undertakes pursuant to its Accessible Travel Policy; and</u></p> <p><u>(b) any reports that the Franchisee submits to ORR in connection with the effectiveness of, and satisfaction with, the Passenger Assistance service.</u></p> <p><u>4.5 The Franchisee shall comply with the requirements set out in Appendix 2 (Accessible Transport Arrangements) to this Schedule 4 in respect of the provision of accessible transport arrangements for persons with disabilities"</u></p>

A new paragraph 5 shall be inserted as follows:

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	<p><u>“5. Annual Accessibility Update</u></p> <p><u>5.1 The Parties acknowledge that the Franchisee, pursuant to its Licence Accessibility Obligations, is required to submit reports from time to time to ORR in respect of accessibility matters, including, in relation to:</u></p> <p><u>(a) the activities undertaken by the Franchisee to improve accessibility to the Franchise Services; and</u></p> <p><u>(b) the approach that the Franchisee has taken to assessing the accessibility requirements of passengers pursuant to the requirements of the EA for example when making decisions about operations, design and service improvements; and</u></p> <p><u>(c) the action(s) taken by the Franchisee to remedy any failure (whether identified by the Franchisee or ORR) to comply with the Franchisee's Accessible Travel Policy or any other accessibility related obligation arising pursuant to its Licence Accessibility Obligations.</u></p> <p><u>5.2 The Franchisee shall provide a copy of any report submitted to ORR pursuant to paragraph 5.1 to the Secretary of State within seven (7) days of it being submitted to ORR”.</u></p> <p>A new paragraph 6 shall be inserted as follows:</p> <p><u>“6. Accessibility Director and Accessibility Manager</u></p> <p><u>6.1 As soon as reasonably practicable and by no later than 31 January 2021, the Franchisee shall nominate (to the extent that the Franchisee has not already done so):</u></p> <p><u>(a) a director to the board of directors of the Franchisee; and</u></p> <p><u>(b) an operational manager.</u></p>

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each with specific responsibility of ensuring the Franchisee complies with its obligations in connection with accessibility, including pursuant to its Accessible Travel Policy requirements.

6.2 The Franchisee shall ensure that such roles referred to in paragraph 6.1 are filled as soon as reasonably practicable after such roles become vacant throughout the Franchise Term".

A new paragraph 7 shall be inserted as follows:

"7. Accessibility Panel

7.1 The Franchisee shall:

- (a) consult the Accessibility Panel on operational and policy decisions that may have an impact on the needs of passengers with accessibility requirements;
- (b) develop the design of the Enhanced Disability Awareness Training referred to in paragraph 8 below, and the co-design of physical assets, electronic services and applications, and other services and facilities relating to accessibility as appropriate, in each case, actively engaging with the Accessibility Panel as may be appropriate; and
- (c) provide the Accessibility Panel the opportunity to report to the board of directors of the Franchisee on a quarterly basis".

A new paragraph 8 shall be inserted as follows:

"8. Enhanced Disability Awareness Training

8.1 By no later than 31 July 2021 (or such later date as may be agreed by the Secretary of State and the Franchisee), the Franchisee shall deliver Enhanced Disability Awareness Training to all Franchise Employees. The Franchisee shall

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also ensure it delivers the Enhanced Disability Awareness Training to any Franchise Employees appointed following 31 July 2021 (excluding Franchise Employees appointed less than two months prior to the Expiry Date (as extended pursuant to clause 3.3 of the ERMA, if applicable) if it is not reasonably practicable to deliver Enhanced Disability Awareness Training to such Franchise Employees) as soon as is reasonably practicable after their appointment.

8.2 In developing the Enhanced Disability Awareness Training, the Franchisee shall:

(a) take into account of a wide range of disabilities (including non-visible disabilities); and

(b) ensure the content complies with the requirements of the ORR's Accessible Travel Policy guidance.

8.3 The Franchisee shall involve people with disabilities and/or groups representing people with disabilities (which may include the Accessibility Panel) in the delivery of the Enhanced Disability Awareness Training."

A new paragraph 10 shall be inserted as follows:

"9. Social Media Engagement with Passengers with Disabilities

9.1 By no later than 31 January 2021, the Franchisee shall develop and share with the Secretary of State a twelve (12) month plan describing how it shall (or if the Franchise Term expires earlier than 20 January 2022, its Successor Operator may) increase its use of social media for the purpose of:

(a) advising passengers with disabilities on matters, including:

(i) planned and/or unplanned disruptions to Passenger Services;

(ii) changes to Passenger Services in operation; and

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	<p><u>(iii) rail replacement bus services;</u></p> <p><u>(b) responding to queries and questions from passengers with disabilities and in a timely manner;</u></p> <p><u>(c) receiving feedback and comments from passengers with disabilities; and</u></p> <p><u>(d) promoting the Franchisee's additional services for passengers with disabilities, including Passenger Assistance.</u></p>
	<p><u>9.2 Subject to the Secretary of State's consent to the plan shared pursuant to paragraph 9.1 (such consent not unreasonably withheld or delayed), the Franchisee shall implement the plan referred to in paragraph 9.1 (the "Social Media Plan").</u></p>
	<p><u>9.3 By no later than one (1) month prior to the expiry of the Franchise Term (and in any event by no later than 31 January 2022), the Franchisee shall provide the Secretary of State with a report detailing the extent to which the Social Media Plan is achieving the purposes referred to in paragraph 9.1 and any proposed revisions to the Social Media Plan to help achieve those purposes.</u></p>
	<p><u>9.4 Any revision to the Social Media Plan proposed by the Franchisee pursuant to paragraph 9.3 shall be subject to the consent of the Secretary of State before implementation (such consent not unreasonably withheld or delayed)".</u></p>

A new paragraph 10 shall be inserted as follows:

"10. **Accessible Formats of Passenger Facing Information**

10.1 By no later than 31 January 2021 the Franchisee shall ensure (and continue to ensure throughout the Franchise Term) that, if and to the extent reasonably practicable, passenger facing information (in whatever form or media) is presented, or made available, in a range of accessible formats, taking into account the requirements of Disabled People in relation to

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communication (such as passengers who use British Sign Language or “easy read”).

10.2 The Parties acknowledge that:

(a) the ORR licensing regime requires the publication of certain documents (the “**Relevant Documents**”) in accessible formats; and

(b) insofar as the obligation in paragraph 10.1 above applies to the Relevant Documents, enforcement action is within the remit of the ORR and accordingly a failure to comply with paragraph 10.1 in respect of the Relevant Documents shall not be treated as a contravention of the Franchise Agreement (but the Franchisee nevertheless acknowledges that it will remedy any such failure, as soon as practicable and in accordance with any directions as may be given by the ORR).”.

A new paragraph 11 shall be inserted as follows:

“11. **Diversity Impact Assessments**

The Franchisee shall, from the ERMA Start Date and throughout the Franchise Term, ensure that it conducts a diversity impact assessment on all projects that will or may affect the interests of persons with protected characteristics (as defined under the Equalities Act 2010) carried out by the Franchisee (except where in the reasonable opinion of the Franchisee, the project is sufficiently completed such that a diversity impact assessment is not reasonably expected to materially influence the outcome of the project, in which case the requirement to conduct a diversity impact assessment in respect of that particular project shall not apply). The Franchisee shall take such steps as it considers appropriate (acting reasonably) in light of the conclusions of the diversity impact assessment to ensure that issues affecting

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people with protected characteristics (as defined under the Equalities Act 2010) are properly addressed in compliance with applicable Laws".

A new paragraph 12 shall be inserted as follows:

"12. The Franchisee shall comply with any reasonable request by the Secretary of State in connection with the development and implementation of a station accessibility data collection plan which may include (but shall not be limited to):

(a) supporting the Secretary of State in developing and designing the methodology for data collection;

(b) completing questionnaires and/or using reasonable endeavours to procure that the relevant station Facility Owner completes the relevant questionnaire;

(c) providing information in relation to Station accessibility and/or using reasonable endeavours to procure that the relevant station Facility Owner provides such information; and

(d) providing access to Stations to facilitate accessibility data collection and/or using reasonable endeavours to procure that the relevant station Facility Owner provides such access.

in each case, in a timely manner."

Schedule 5: Fares and Smart Ticketing	
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5.1 – Purpose, Structure and Construction	N/A
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5.2 – Franchisee's Obligations to Create Fares	N/A
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5.3 – Allocation of Fares to Fares Baskets	N/A
5.4 – Regulation of Fares Basket Values	N/A
5.5 – Regulation of Individual Fares	N/A
5.6 – Exceeding the Regulated Value or Regulated Price	N/A
5.7 – Changes to Fares and Fares Regulation	N/A
5.8 – Fares Regulation Information and Monitoring	N/A
5.9 – Smart Ticketing	<p>Paragraph 1.1(c) shall be amended as follows:</p> <p>(c) <i>fully and effectively co-operate with:</i></p> <p><u>(i) Tfl, other Train Operators and relevant Local Authorities in relation to proposals to apply Smart Ticketing Schemes to new or existing multi modal fares schemes including in the implementation of any smart card technology pursuant to any multi-modal fares schemes that it may participate in pursuant to its obligations under paragraph 2.1 of Schedule 2.5 (Transport, Travel and Other Schemes)-; and</u></p> <p><u>(ii) with the West Midlands Combined Authority on the development of Pay As You Go options on Swift.</u></p>
	<p>A new paragraph 1.6 shall be inserted as follows:</p>

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	<p><u>1.6 The Franchisee shall ensure that all Weekly Season Tickets, Monthly Season Tickets and Annual Season Tickets which are ordered through the Franchisee's online retail channels or at ticket offices are, as the default option offered to the customer on Smart Media.</u></p>
<p>5.10 – Fares, Ticketing and Retail Reform</p>	<p>A new Schedule 5.10 shall be inserted as follows:</p> <p><u>"1 Fares, Ticketing and Retail Reform</u></p> <p><u>1.1 The Franchisee shall:</u></p> <p><u>(a) co-operate with the Secretary of State as may be required from time to time in respect of the planning and/or development (as applicable) of industry reform with respect to Fares, ticketing and the retailing of tickets, including:</u></p> <p><u>(i) co-operating and collaborating with other Train Operators and rail industry parties and other organisations in respect of such reforms; and</u></p> <p><u>(ii) developing pilot schemes in respect of such reforms, in each case, as directed by the Secretary of State; and</u></p> <p><u>(b) co-operate and collaborate with the RDG, other Train Operators and other organisations as directed by the Secretary of State to develop Modernising Retail proposals to accelerate and facilitate a transition to online and pay-as-you-go retailing of tickets and the changes to industry retail operations enabled by such changes, including the ultimate withdrawal of "magstripe" paper tickets; and</u></p>

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	<p><u>(c) [REDACTED⁴]</u> <u>each a “FTR Co-operation Requirement”.</u></p> <p><u>1.2 If requested by the Secretary of State, the Franchisee shall also bring forward specific and suitable proposals to implement any plans and/or proposals developed pursuant to a FTR Co-operation Requirement (a “Proposed Reform Activity”) which may be contracted pursuant to and in accordance with Schedule 9.3 (Variations to the Franchise Agreement and Incentivising Beneficial Changes).</u></p> <p><u>1.3 When requested by the Secretary of State, the Franchisee shall provide the Secretary of State its assessment of:</u></p> <p><u>(a) any capital investment required to implement a Proposed Reform Activity;</u></p> <p><u>(b) the cost of implementing a Proposed Reform Activity;</u></p> <p><u>(c) any revenue impact associated with or caused by implementing a Proposed Reform Activity;</u></p> <p><u>(d) estimates of significant change to passenger demand and/or patterns of travel that could be caused by a Proposed Reform Activity; and</u></p> <p><u>(e) any material change to the Franchisee's assessment of any of the matters outlined in paragraphs (a) to (d) above.</u></p> <p><u>in each case promptly and in any event within seven (7) Weekdays of having calculated the same (unless the Secretary of State directs otherwise) and accompanied by all supporting evidence to substantiate each such calculation or change.</u></p>

⁴ December 2020 (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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	<p><u>1.4 The Franchisee shall:</u></p> <p><u>(a) continue undertaking any reform work related to a FTR Co-operation Requirement or other reform work requested or directed by the Secretary of State prior to the ERMA Start Date in accordance with any programme schedule agreed between the Franchisee and the Secretary of State (or in the absence of any such schedule, within such timescales as the Secretary of State may direct); and</u></p> <p><u>(b) commence undertaking and continue to undertake any FTR Co-operation Requirement requested or directed by the Secretary of State after the ERMA Start Date promptly and in any event in accordance with any schedule agreed between the Franchisee and the Secretary of State (or in the absence of any such schedule, within such timescales as the Secretary of State may direct).</u></p>
	<p><u>1.5 The Franchisee shall use all reasonable endeavours to:</u></p> <p><u>(a) bring forward new proposals for implementing; and/or</u></p> <p><u>(b) introduce and implement,</u></p> <p><u>such amendments to the Ticketing and Settlement Agreement, the Pay As You Go Agreement, the CPAY Agreement and any other applicable industry agreements (including any successor arrangements or any other agreement between the Franchisee and one or more other Train Operators, rail industry parties and other relevant organisations (including Transport for London) relating to ticketing, fares, fares settlement, the operation of discount schemes or any related matter) as may be directed by the Secretary of State from time to time.</u></p>
	<p><u>1.6 During the term of the ERMA, the Franchisee shall not enter into any new arrangements or material amendments to existing arrangements for the</u></p>

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	<p><u>delivery of Fares, ticketing or the retailing of tickets without the prior written consent of the Secretary of State.</u></p> <p><u>1.7 The Franchisee shall promptly (and in any event within any timeframes specified by the Secretary of State) provide to the Secretary of State such information and data in relation to Fares, ticketing and the retail of tickets as the Secretary of State may require from time to time.</u> ”</p>

Schedule 6: Franchise Specific Obligations

<p>6.1 – Franchise Specific Obligations</p>	<p>Paragraph 18 shall be amended as follows:</p> <p>18.5 For the purposes of this paragraph 18:</p> <p>“Infrastructure Projects” means any of</p> <p><u>(a) the infrastructure projects described or referred to in the document in agreed terms marked “IAD” ;</u></p> <p><u>(b) HS2 phase 1/2a – WCML South;</u></p> <p><u>(c) such other projects as the Secretary of State may designate as an Infrastructure Project from time to time.</u>”</p>
<p>6.2 – Committed Obligations</p>	<p>Paragraph 2.4 of Part 2 of Schedule 6.2 shall be deleted in its entirety and replaced as follows:</p> <p><u>“2.4 Underspent Amounts</u></p> <p><u>(a) The Franchisee shall notify the Secretary of State in accordance with paragraph 7A (Information relating to Committed Obligations and Franchise Specific Obligations) of Schedule 11.2 (Management Information) where, in relation to any Committed Obligation or Franchise Specific Obligation (as applicable) that is expressed in terms of a requirement to spend not less than a specified sum in fulfilling its stated objective, the Franchisee is able to achieve that stated objective without</u></p>

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	<p><u>incurring the full amount referred to in that Committed Obligation, whether because of cost savings or otherwise (an “Underspend”).</u></p> <p><u>(b) Having due regard to the statement provided by the Franchisee pursuant to paragraph 7A (Information relating to Committed Obligations and Franchise Specific Obligations) of Schedule 11.2 (Management information), and where applicable, the findings of any audit conducted pursuant to paragraph 9.9 (Access to financial information) of Schedule 11.2 (Management Information) together with any other relevant information available to the Secretary of State, the Secretary of State shall determine, for the period up to 1 March 2020, in relation to each Committed Obligation or Franchise Specific Obligation (as applicable) any Underspend and/or any other expenditure the Franchisee was obliged or otherwise projected to incur but which was not so incurred by the Franchisee, provided that the following amounts shall be excluded:</u></p> <p><u>(i) any expenditure incurred by the Franchisee which was inconsistent with acting in accordance with its obligations under the terms of the Franchise Agreement (as in effect at the time the relevant expenditure was incurred); and</u></p> <p><u>(ii) where a Termination Sum is payable by the Franchisee pursuant to paragraph 3 (Calculation of the Termination Sum) of schedule 2 (Termination of the Franchise Agreement) to the ERMA, any Underspend which has been assumed to be incurred as a cost for the purposes of the Non-COVID Trajectory Model,</u></p> <p><u>(the “Underspent Amount”).</u></p>

REFERENCE (CLAUSE/PARAGRAPH/SCHEDULE)	AMENDMENT
	<p><u>(c) For the purposes of this paragraph 2.4, references to amounts the Franchisee was projected to incur in delivery of any Committed Obligations or Franchise Specific Obligations shall be determined by assuming that the amount the Franchisee was budgeted to spend in each Reporting Year in accordance with the Record of Assumptions and, where applicable, the Financial Model, is incurred in equal amounts across each of the thirteen (13) Reporting Periods, unless otherwise determined by the Secretary of State, in the Secretary of State's sole discretion, based on information available to it, including pursuant to any audit conducted pursuant to paragraph 9.9 (Access to financial information) of Schedule 11.2 (Management Information).</u></p> <p><u>(d) In respect of any Underspent Amount, which has not been directed to be repaid by the Franchisee to the Secretary of State or otherwise agreed to be applied towards an alternative scheme as at the date of this ERMA), the Secretary of State may, in the Secretary of State's sole discretion:</u></p> <p><u>(i) seek to agree with the Franchisee, an alternative scheme or schemes which shall be funded (in whole or in part) using the Underspent Amount and, once agreed, the Franchisee shall apply such relevant Underspent Amount in the delivery of the agreed scheme(s);</u></p> <p><u>(ii) require the Franchisee to undertake an alternative scheme or schemes (chosen in the Secretary of State's sole discretion), which shall be funded (in whole or in part) using any Underspent Amount(s) and the Franchisee shall apply such relevant</u></p>

REFERENCE (CLAUSE/PARAGRAPH/SCHEDULE)	AMENDMENT
	<p><u>Underspent Amount(s) in the delivery of the required scheme(s); and/or</u></p> <p><u>(iii) require the Franchisee to repay the aggregate amount of any Underspent Amount which has not been applied to any alternative schemes in accordance with paragraph (d)(i) or (ii) to the Secretary of State, as soon as reasonably practicable. The Secretary of State shall have the right to implement such payment, without any double counting, by way of an adjustment to Franchise Payments and any such repayment shall not constitute Costs or Capital Expenditure."</u></p> <p>In paragraph 10.1 (<i>Designation of Assets comprised in COs as Primary Franchise Assets</i>) of Part 2, the words "<u>or a Franchise Specific Obligation</u>" shall be inserted after the words "<i>Committed Obligation</i>".</p> <p>In paragraph 10.2 (<i>Designation of Assets comprised in COs as Primary Franchise Assets</i>) of Part 2, the words "<i>shall (unless otherwise agreed by the Secretary of State) be nil</i>" shall be deleted and replaced by "<u>shall (unless otherwise agreed by the Secretary of State) be equivalent to the capital cost of the asset included in the Financial Model and Record of Assumptions after deducting the aggregate funding of such asset by way of Franchise Payments included in the Financial Model and Record of Assumptions during the Franchise Period immediately prior to the date of termination of the Franchise Agreement, except where the Franchise Agreement terminates following service of a Termination Notice by the Secretary of State pursuant to Schedule 10.2 (Events of Default and Termination Events), in which case the transfer value shall (unless otherwise agreed by the Secretary of State) be nil.</u>"</p>

REFERENCE (CLAUSE/PARAGRAPH/SCHEDULE)	AMENDMENT
6.3 –Not Used	N/A
6.4 – ERMA Specific Obligations	A new Schedule 6.4, attached at Appendix 2 (<i>Schedule 6.4 (ERMA Specific Obligations)</i>), shall be inserted.

Schedule 7: Performance Benchmarks

7.1 – Operational Performance	Schedule 7.1 shall be replaced with the new Schedule 7.1 attached at Appendix 3 (<i>Schedule 7.1 (Operational Performance)</i>).
7.2 – National Rail Passenger Surveys, Customer Report and CCIF Scheme	<p>Unless otherwise instructed by the Secretary of State, paragraph 2.3 shall not apply for the duration of the ERMA. If the Secretary of State elects that it shall apply during the term of the ERMA, paragraph 2.3 shall be amended as follows:</p> <p style="padding-left: 40px;"><i>"2.3 The Franchisee shall, as soon as reasonably practicable after such information is made available to the Franchisee in accordance with paragraph 2.2, publicise its performance against the NRPS Improvement Plan Levels Benchmarks by including such information in its Customer Report and displaying such information at all of the Stations and on its website."</i></p> <p>Unless otherwise instructed by the Secretary of State, paragraph 2.5 shall not apply for the duration of the ERMA. If the Secretary of State elects that it shall apply during the term of the ERMA, paragraph 2.5 shall be amended as follows:</p> <p style="padding-left: 40px;"><i>"2.5 If:</i></p> <ul style="list-style-type: none"> <li data-bbox="943 1129 1951 1276"><i>(a) at any time during the Franchise Term the methodology adopted in conducting any National Rail Passenger Survey is, in the reasonable opinion of the Secretary of State (acting reasonably), materially inconsistent with the Passenger Survey Methodology; and</i> <li data-bbox="943 1294 1951 1361"><i>(b) the Secretary of State reasonably determines that in consequence a revision to any of the NRPS Targets and/or any of the NRPS</i>

REFERENCE (CLAUSE/PARAGRAPH/SCHEDULE)	AMENDMENT
	<p><i><u>Improvement Plan Levels</u> the NRPS Benchmark is required in order to hold constant the risk of the Franchisee failing to satisfy the <u>applicable NRPS Target(s) and/or NRPS Improvement Plan Levels (as applicable)</u> NRPS Benchmark,</i></p> <p><i>then the Secretary of State shall make such revisions to such NRPS <u>Target(s) and/or NRPS Improvement Plan Levels (as applicable)</u> Benchmarks as the Secretary of State reasonably considers appropriate to hold constant such risk."</i></p>

Paragraph 2.6 shall be amended as follows:

*"2.6 If the Passengers' Council ceases to undertake National Rail Passenger Surveys then the relevant National Rail Passenger Survey for the purposes of this Schedule 7.2 and Schedule 8.1B (Performance Based Fee) 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 NRPS**"). The provisions of this Schedule 7.2 and Schedule 8.1B (Performance Based Fee) shall apply in respect of any Alternative NRPS and for these purposes the Passengers' Council shall be replaced with such other entity that is responsible for conducting such Alternative NRPS."*

Unless otherwise instructed by the Secretary of State, paragraph 3 shall **not** apply for the duration of the ERMA. If the Secretary of State elects that it shall apply during the term of the ERMA, paragraph 3 shall be amended as follows:

"3 NRPS Targets and NRPS Improvement Plan Levels Benchmarks

- 3.1 *It is agreed by the Secretary of State and the Franchisee that, subject to paragraph 2.6, the results of the National Rail Passenger Survey(s) published by the Passengers' Council in any PBF Assessment Period Franchisee Year should be used to determine the Franchisee's performance against the NRPS Targets and the NRPS Improvement Plan Levels Benchmarks for that PBF Assessment Period Franchisee Year. If in any PBF Assessment Period Franchisee Year the Passengers' Council has published:*
- (a) *only one (1) National Rail Passenger Survey in that PBF Assessment Period, Franchisee Year then the performance of the Franchisee against the NRPS Targets and the NRPS Improvement Plan Levels Benchmarks shall be measured against the results of such National Rail Passenger Survey; or*
 - (b) *more than one (1) National Rail Passenger Survey in that PBF Assessment Period, Franchisee Year then the performance of the Franchisee against the NRPS Targets and the NRPS Improvement Plan Levels Benchmarks shall be measured against the average of the results of all of the National Rail Passenger Surveys published by the Passengers' Council in that PBF Assessment Period Franchisee Year.*

Unless otherwise instructed by the Secretary of State, paragraph 4 shall **not** apply for the duration of the ERMA. If the Secretary of State elects that it shall apply during the term of the ERMA, paragraph 4 shall be amended as follows:

"4 Performance Review

- 4.1 *For each PBF Assessment Period Franchisee Year the Secretary of State shall calculate the Franchisee's Overall Performance Score for each NRPS Measure and shall determine the Franchisee's performance against each NRPS Target and NRPS Improvement Plan Level Benchmark by comparing:*

REFERENCE (CLAUSE/PARAGRAPH/SCHEDULE)	AMENDMENT
(a)	<p><i>if only one (1) National Rail Passenger Survey has been published by Passengers' Council in that <u>PBF Assessment Period Franchisee Year</u>:</i></p> <p><i><u>(i) the results of such National Rail Passenger Survey against the applicable Targets and NRPS Improvement Plan Levels NRPS Benchmarks; and</u></i></p> <p><i><u>(ii) the Overall Performance Score for each NRPS Measure against the applicable NRPS Target in respect of that PBF Assessment Period Franchisee Year; or</u></i></p>
(b)	<p><i>if more than one (1) National Rail Passenger Survey has been published by Passengers' Council in that <u>PBF Assessment Period Franchisee Year</u>:</i></p> <p><i><u>(i) the average of the results of all of the National Rail Passenger Surveys published by the Passengers' Council in that PBF Assessment Period against the applicable NRPS Improvement Plan Levels Franchisee Year; or</u></i></p> <p><i><u>(ii) the average of the Overall Performance Scores for each NRPS Measure achieved by the Franchisee in all of the National Rail Passenger Surveys published by the Passengers' Council in that PBF Assessment Period against the applicable NRPS Target in respect of that PBF Assessment Period Franchisee Year.</u></i></p>
4.2	<p><i>For the purposes of undertaking the comparisons pursuant to paragraph 4.1, the results referred to in paragraph 4.1(a) or paragraph 4.1(b) (as the case may be) shall be rounded up to one (1) decimal place with the midpoint (that is, 4.45) rounded upwards (that is, 4.5).</i></p>
4.3	<p><i>If, following the Secretary of State's determination pursuant to <u>either any</u> of paragraphs 4.1(a) <u>(i)</u> or 4.1(b) <u>(i)</u> (as the case may be), the results show that</i></p>

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	<p><i>the level of customer satisfaction in respect of any NRPS Measure <u>for any NRPS Service Group</u> is below the NRPS <u>Improvement Plan Level Benchmark</u> for such measure then the Franchisee shall, unless the Secretary of State shall <u>be entitled to request from the Franchisee a plan in order to secure an improvement in the level of customer satisfaction for the relevant NRPS Measure for the applicable NRPS Service Group as measured by a National Rail Passenger Survey so that such level is equal to or better than the related NRPS Improvement Plan Level</u> otherwise direct, incur Additional Expenditure in order to secure the Required Improvement.</i></p> <p><u>4.4</u> <i>Following the Secretary of State's determination pursuant to either of paragraphs 4.1(a)(ii) or 4.1(b)(ii) (as the case may be), the provisions set out in paragraph 3.5 (Calculation of CE(NRPS)) of Appendix 5 (Quantified Target Methodology) of Schedule 8.1B (Performance Based Fee) shall apply."</i></p>
	<p>Unless otherwise instructed by the Secretary of State, paragraph 5 shall not apply for the duration of the ERMA. If the Secretary of State elects that it shall apply during the term of the ERMA, the existing paragraph 5 shall be deleted and replaced with the following:</p>
	<p><u>5 NRPS Improvement Proposals</u></p> <p><u>5.1</u> <i>Within thirty (30) Weekdays of the Secretary of State's request (or such longer period as may be agreed by the Secretary of State) pursuant to paragraph 4.3, the Franchisee shall, at its own cost, prepare and deliver to the Secretary of State its proposal (the "NRPS Improvement Proposal") for achieving an improvement in the level of customer satisfaction for the relevant NRPS Measure for the applicable NRPS Service Group as measured by a National Rail Passenger Survey so that such level is not lower than the NRPS Improvement Plan Level, which shall:</i></p>

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	<p><u>(a) contain specific tangible action points and indicate in the case of each action point:</u></p> <p><u>(i) how that action will contribute to meeting the relevant NRPS Measure for the applicable NRPS Service Group;</u></p> <p><u>(ii) where the action is to be implemented;</u></p> <p><u>(iii) the proposed timescales for implementing such action and, where any action is expressed to be ongoing, proposed review dates; and</u></p> <p><u>(iv) how the Franchisee proposes to measure the performance of the action; and</u></p> <p><u>(b) the additional expenditure associated with each action.</u></p>
	<p><u>5.2 The Secretary of State shall be entitled to:</u></p> <p><u>(a) request further information from the Franchisee with respect to its NRPS Improvement Proposal, and the Franchisee shall submit such further information to the Secretary of State within the timescales as reasonably requested by the Secretary of State; and/or</u></p> <p><u>(b) propose amendments to the NRPS Improvement Proposal and the Parties shall agree or, in absence of agreement, the Secretary of State shall reasonably determine the amendments to the NRPS Improvement Proposal, in which case paragraph 5.3 shall apply; or</u></p> <p><u>(c) accept the NRPS Improvement Proposal, in which case paragraph 5.3 shall apply; or</u></p> <p><u>(d) not accept the NRPS Improvement Proposal, in which case the Franchisee shall not be obliged to undertake any further action with respect to its NRPS Improvement Proposal.</u></p>

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5.3 The NRPS Improvement Proposal as agreed, determined or accepted by the Secretary of State, (as the case may be) in accordance with paragraph 5.2 shall be referred to as the “NRPS Improvement Plan”. The Franchisee shall implement the NRPS Improvement Plan in accordance with its terms.”

Unless otherwise instructed by the Secretary of State, paragraphs 6 and 7 shall **not** apply for the duration of the ERMA.

Paragraph 8 shall be amended as follows:

“8. Consultations

The Franchisee shall undertake consultations from time to time as required with:

- (a) passengers, potential passengers, Stakeholders and other users of the rail network; and*
- (b) persons ~~who are protected by a Disabled People's Protection Policy~~ who are covered by an Accessible Travel Policy; and*
- (c) persons with other protected characteristics within the meaning of the EA,*
for the purposes of the Customer and Stakeholder Engagement Strategy, the Customer Report and the CCI Scheme.”

Paragraph 10.1 shall be amended as follows:

“10.1 The Franchisee shall, in accordance with the requirements of paragraph 10.2 and paragraph 10.3 below, publish a Customer Report in such readily

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accessible formats as the Secretary of State may reasonably require (including in booklet or other similar hard copy formats [\(if and to the extent that the Secretary of State instructs the Franchisee to re-commence the publication of hard copy formats during the term of the ERMA\)](#), in electronic formats (such as on the Franchisee's website, through social media channels and by email)), in each case in accordance with the Customer and Stakeholder Engagement Strategy and the provisions of paragraph 8 (Publication of Performance Data) and paragraph 9 (Publication of Complaints and Faults Handling Data) of Schedule 1.4 (Passenger Facing Obligations) and paragraph 16 (Environmental Impact Targets) of Schedule 11.2 (Management Information)."

Paragraph 11.1 shall be amended as follows:

- 11.1 *Unless otherwise agreed by the Secretary of State, no later than three (3) months prior to the start of each CCIF Period the Franchisee shall provide to the Secretary of State details of those initiatives, works or proposals (each a "CCIF Scheme") which the Franchisee proposes to undertake in that CCIF Period in order to resolve or mitigate issues raised with the Franchisee through the consultations as carried out pursuant to paragraph 8. The Franchisee shall use all reasonable endeavours to propose, in respect of each CCIF Period, CCIF Schemes with an aggregate projected CCIF Scheme Shortfall of not less than the aggregate of the CCIF Amount for each Franchisee Year in the relevant CCIF Period.*

A new paragraph 11.10 shall be inserted as follows:

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	<p><u>11.10 The Franchisee shall deliver each Approved CCIF Scheme by the completion date approved by the Secretary of State pursuant to paragraph 11.4 of Schedule 7.2, or by such later date as may otherwise be agreed by the Secretary of State.</u></p>
	<p>Paragraph 12.1(b) shall be amended as follows:</p> <p><i>"performance by reference to such benchmarks as may be agreed between the Franchisee and the ORR as part of the Franchisee's Disabled People's Protection Policy <u>an Accessible Travel Policy</u> in respect of the Passenger Assistance service operated by the Franchisee,"</i></p>
	<p>Unless otherwise instructed by the Secretary of State, paragraph 12.2(b) shall not apply for the duration of the ERMA. If the Secretary of State elects that it shall apply during the term of the ERMA, paragraph 12.2(b) shall be amended as follows:</p> <p><i>"(b) within twenty (20) Weekdays of the publication of the last National Rail Passenger Survey to be carried out by the Passengers' Council during any <u>PBF Assessment Period</u>, details of the scores achieved by the Franchisee in respect of each NRPS Measure Benchmark applicable to each NRPS Service Group, as calculated in accordance with paragraph of this Schedule 7.2, <u>in each case alongside the applicable NRPS Improvement Plan Level for such NRPS Service Group.</u>"</i></p>
	<p>Unless otherwise instructed by the Secretary of State, paragraph 12.3 shall not apply for the duration of the ERMA. If the Secretary of State elects that it shall apply during the term of the ERMA, paragraph 12.3 shall be amended as follows:</p> <p><i>"12.3 The Franchisee shall ensure that the scores achieved in relation to the NRPS Measures Benchmarks applicable to each NRPS Service Group, published by it</i></p>

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	<p>pursuant to paragraph 12.2, are also recorded in the subsequent Customer Report which relates to the Reporting Periods during which the applicable <u>scores Benchmarks</u> were achieved, along with:</p> <p>(a) Not used from the third (3rd) Customer Report onwards, a comparison with the scores that were achieved against the NRPS Benchmarks for the same Reporting Periods in the previous Franchisee Year, accompanied by a supporting narrative describing the outcomes and implications of the results of such comparison exercise;</p> <p>(b) details of any remedial work either:</p> <p>(i) planned by the Franchisee to occur in the period in relation to which the next Customer Report will report to improve the Franchisee's performance in relation to achieving and exceeding the NRPS <u>Improvement Plan Levels Benchmarks</u> (for instance, the planned application of Additional Expenditure); or</p> <p>(i) undertaken by the Franchisee during the Reporting Periods that have elapsed since the last Reporting Period reported on in the previous Customer Report or, in the case of the first (1st) Customer Report, since the Start Date, for the purposes of improving the Franchisee's performance in relation to achieving and exceeding the NRPS <u>Improvement Plan Levels Benchmarks</u> (for instance, the planned application of Additional Expenditure);</p> <p>and</p> <p>(c) details of any other initiatives planned to be implemented by the Franchisee to improve passenger experience."</p>

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Paragraph 12.4 shall be amended as follows:

"12.4 If the Secretary of State instructs the Franchisee to re-commence the publication of Customer Reports in hard copy formats during the term of the ERMA, the Franchisee shall ensure that a summary of the then current Customer Report is made available at all staffed Stations (in such format as the Secretary of State may reasonably require) and that such summary includes instructions to enable passengers to locate and obtain a full copy of the applicable Customer Report."

A new paragraph 13 shall be inserted as follows:

"13 Wavelength"

13.1 For the purpose of this paragraph 13, "Wavelength Programme" means the programme of work being developed by the rail industry which involves collecting a wide range of information about the customer experience by tracking, amongst other things, the Franchisee's performance against certain journey touchpoints (as specified in the Wavelength Survey) and certain key commitments based on core passenger priorities.

13.2 Unless otherwise directed by the Secretary of State, the Franchisee shall:

- (a) fully and effectively engage with the Wavelength Programme;
- (b) subject to the relevant information being made available to the Franchisee via the Wavelength portal, provide to the Secretary of State by no later than seven (7) Weekdays following the end of each Reporting Period, a report setting out the results of the Wavelength Survey undertaken during that Reporting Period, such results to be

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7.3 –West Midlands Franchise Service Quality Regime	<p><u>presented in such aggregated or disaggregated format as the Secretary of State may specify from time to time; and</u></p> <p><u>(c) subject to the relevant information being made available to the Franchisee via the Wavelength portal, provide to the Secretary of State by no later than fourteen (14) Weekdays following the end of each quarter, a report detailing:</u></p> <p><u>(i) how the Franchisee has used the full range of Wavelength Programme insights (including the analysis of data received through the Wavelength Survey) to implement and/or invest in:</u></p> <p><u>(A) customer-focused initiatives; and/or</u></p> <p><u>(B) tangible benefits or improvements for customers; and</u></p> <p><u>(ii) whether such initiatives, benefits or improvements referred to in paragraph 13.2(c)(i) of this Schedule 7.2 have:</u></p> <p><u>(A) resulted in any improvement in the Wavelength Survey scores collected to date; and/or</u></p> <p><u>(B) any other improvements or benefits to the Franchisee.</u></p> <p>Unless otherwise instructed by the Secretary of State, Schedule 7.3 shall not apply for the duration of the ERMA.</p> <p>If the Secretary of State instructs that Schedule 7.3 shall apply, in whole or in part, during the term of the ERMA, the Parties agree that the Secretary of State may instruct such amendments to Schedule 7.3 or any other provision of the Franchise Agreement as the Secretary of State (acting reasonably) considers necessary for the effective operation of the provisions set out in Schedule 7.3 or any other provision of the Franchise Agreement,</p>

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including such amendments as may be required (whether directly or indirectly) as a result of Covid-19.

If the Secretary of State instructs that all or part of Schedule 7.3 shall apply during the term of the ERMA:

- (a) all references to a "Franchisee Year" or "Franchisee Years" shall be deemed to be references to a "PBF Assessment Period" or "PBF Assessment Periods", respectively; and
- (b) all references to a "SQR Benchmark" or "SQR Benchmarks" shall be deemed to be references to a "SQR Improvement Plan Level" or "SQR Improvement Plan Levels", respectively.

If the Secretary of State elects that it shall apply during the term of the ERMA, the first paragraph of paragraph 1 shall be amended as follows:

"1 Introduction

This Schedule 7.3 relates to the West Midlands Separable Business Unit, ~~and~~ Branch Lines and the West Coast Separable Business Unit and provides for:"

If the Secretary of State elects that it shall apply during the term of the ERMA, paragraphs 3.2 (e)(i) and 3.2(f)(i) shall be amended as follows:

(e) (i) each SQR Station is the subject of a Station Service Quality Inspection at least ~~four~~ (4) times in each Franchisee Year two (2) in each PBF Assessment Period (provided that, to the extent that the Final PBF Assessment Period is longer or shorter duration than the immediately preceding PBF Assessment Period), the required number of Station Service Quality Inspections for the final PBF Assessment Period shall be adjusted on a pro rata

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basis in accordance with the proportion by which such Final PBF Assessment Period exceeds seven (7) or is less than six (6) Reporting Periods (as applicable) in duration).

(f)(i) each vehicle is the subject of a Train Service Quality Inspection at least ~~four (4)~~ times in each Franchisee Year two (2) in each PBF Assessment Period (provided that, to the extent that the Final PBF Assessment Period is longer or shorter duration than the immediately preceding PBF Assessment Period), the required number of Station Service Quality Inspections for the final PBF Assessment Period shall be adjusted on a pro rata basis in accordance with the proportion by which such Final PBF Assessment Period exceeds seven (7) or is less than six (6) Reporting Periods (as applicable) in duration).

If the Secretary of State elects that it shall apply during the term of the ERMA, paragraph 5.1 shall be amended as follows:

*"5.1 In respect of each ~~Service Quality Year~~ PBF Assessment Period during which Service Quality Inspections have been carried out, the Franchisee shall ~~(at its cost)~~ procure the carrying out of an independent audit ("**Independent Service Quality Audit**")."*

If the Secretary of State elects that it shall apply during the term of the ERMA, paragraph 5.5 shall be amended as follows:

"5.5 The Franchisee shall provide the report together with all data produced as a consequence of any Independent Service Quality Audit to the Secretary of State as soon as reasonably practicable after the completion of the Independent Service Quality Audit to which it relates and in any event by no later than the date that is ~~three (3) Reporting Periods~~ twenty-eight (28) days

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after the ~~completion last day~~ of the PBF Assessment Period to which the Independent Service Quality Audit relates."

Paragraphs 9.1(a) and 9.1(b) shall **not** apply for the duration of the ERMA.

If the Secretary of State elects that it shall apply during the term of the ERMA, paragraph 9.1(c) shall be amended as follows:

"9.1(c). On the later of receipt of:

- (i) the notification referred to in paragraph 9.1(b) by the Secretary of State in respect of a ~~Franchisee Year PBF Assessment Period~~; and
- (ii) the Franchisee's calculations pursuant to paragraph 3.6(b) of Appendix 5 (Quantified Target Methodology) of Schedule 8.1B (Performance Based Fee); and
- (iii) any audit report relating to any Independent Service Quality Audit or SoS Audit (as the case may be) undertaken in respect of that Service Quality Year PBF Assessment Period:
the Secretary of State shall:
 - (A) confirm to ~~the~~ Franchisee that the Secretary of State agrees with the calculation of SQA_{yr} ~~and the Service Quality Payment for that Service Quality Year, in which case, the Service Quality Payment for that Service Quality Year shall be paid in accordance with paragraph 9.2 (Payment of Service Quality Payments)~~; and
 - (B) where any Independent Service Quality Audit or SoS Audit (as the case may be) reveals that there were Material Discrepancies

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in the calculation of the Pass Rate ~~(and so the Service Quality Payment)~~ in favour of the Franchisee for that ~~Service Quality Year-PBF Assessment Period~~ (including where any such Independent Service Quality Audit or SoS Audit (as the case may be) fails to confirm or verify any of the matters specified in paragraph 5.1(a) or 5.2(a) (Independent Service Quality Audits), notify the Franchisee of that fact and the provisions of paragraph 5.9 (Material Discrepancies) shall apply."

Paragraph 9.2 shall **not** apply for the duration of the ERMA.

If the Secretary of State elects that it shall apply during the term of the ERMA, paragraph 5.8 shall be amended as follows:

"5.8 If any of the circumstances specified in paragraph 5.7 occur then:

- (a) the Secretary of State may, in the case of an SoS Audit, require the Franchisee to reimburse to the Secretary of State the reasonable and proper costs incurred in undertaking any such SoS Audit (and such reimbursement shall be a Disallowable Cost pursuant to Appendix 1 (Disallowable Costs) to Schedule 8.1A (Franchise Payments)); and*
- (b) the Secretary of State may in all cases:*
 - (i) require the Franchisee to carry out additional Service Quality Inspections at the Franchisee's cost (that is, in excess of those required pursuant to paragraph 3.2), which cost shall be a Disallowable Cost pursuant to Appendix 1 (Disallowable Costs) to Schedule 8.1A (Franchise Payments);*

REFERENCE (CLAUSE/PARAGRAPH/SCHEDULE)	AMENDMENT
	<p>(ii) <i>require the Franchisee to procure a further Independent Service Quality Audit (or the Secretary of State may carry out a further SoS Audit) for the purposes of verifying whether any deficiencies in the SQR Management System have led or contributed to the failure of any Independent Service Quality Audit or SoS Audit or to confirm or verify whether any of the matters referred to in paragraph 7 (Independent Service Quality Audits) have been subsequently rectified by the Franchisee <u>(the cost of which shall be a Disallowable Cost pursuant to Appendix 1 (Disallowable Costs) to Schedule 8.1A (Franchise Payments)</u>; or</i></p> <p>(iii) <i>elect to step in and carry out SoS Service Quality Inspections in place of the Service Quality Inspections for such period the remainder of the Franchise Term or such period as the Secretary of State may specify (the “SoS Service Quality Inspection Period”) and in these circumstances:</i></p> <p>(A) <i>the results of each SoS Service Quality Inspection shall be used for the purposes of calculating the Pass Rates and the Service Quality Payments in accordance with paragraphs 8.1(b), 8.2 and 9 (respectively);</i></p> <p>(B) <i>the Franchisee's obligations to undertake Service Quality Inspections and procure an Independent Service Quality Audit shall cease to apply for the duration of the SoS Service Quality Inspection Period; and</i></p> <p>(C) <i>the Secretary of State may require the Franchisee to reimburse to the Secretary of State the reasonable and proper costs incurred by the Secretary of State in</i></p>

REFERENCE (CLAUSE/PARAGRAPH/SCHEDULE)	AMENDMENT
	<p><i>undertaking any such SoS Service Quality Inspection during the SoS Service Quality Inspection Period <u>(and such reimbursement shall be a Disallowable Cost pursuant to Appendix 1 (Disallowable Costs) to Schedule 8.1A (Franchise Payments))</u>.</i></p>

If the Secretary of State elects that it shall apply during the term of the ERMA, the existing paragraph 5.9 shall be deleted and replaced as follows:

“5.9 If, in any PBF Assessment Period, an Independent Service Quality Audit or SoS Audit (as the case may be) reveals:

(a) any Material Discrepancies, the Overall Pass Rate(s) affected by the Material Discrepancies shall be deemed to be worse than the expected range for the purposes of calculating the element of the Performance Based Fee attributable to Customer Experience pursuant to paragraph 3 (Customer Experience) of Appendix 5 (Quantified Target Methodology) of Schedule 8.1B (Performance Based Fee) and the element of the Performance Based Fee attributable to the applicable SQR Component(s) shall be zero; and/or

(b) any Material Discrepancies which are so significant as to indicate in the reasonable opinion of the Secretary of State wilful misconduct by the Franchisee or a material or persistent disregard by the Franchisee of its obligations under this Schedule 7.3, the element of the Performance Based Fee attributable to CE(SQR) shall be zero.”

REFERENCE (CLAUSE/PARAGRAPH/SCHEDULE)	AMENDMENT
	<p>If the Secretary of State elects that it shall apply during the term of the ERMA, paragraph 10.2(a) shall be amended as follows:</p> <p><i>“10.2(a) If:</i></p> <ul style="list-style-type: none"> <li data-bbox="943 437 2011 584"><i>(i) the Pass Rate <u>in respect</u> of any individual Service Quality Area Indicator falls below the SQR Improvement Plan Level SQR Benchmark for the applicable Service Quality Area (“Affected Service Quality Area Indicator”) for:</i> <ul style="list-style-type: none"> <li data-bbox="1032 600 1765 632"><i>(i) any three (3) consecutive Reporting Periods; or</i> <li data-bbox="1032 647 2011 711"><i>(ii) any four (4) Reporting Periods within any period of thirteen (13) consecutive Reporting Periods; or</i> <li data-bbox="943 727 1182 759"><i>(ii) <u>NOT USED</u>,</i> <p><i>then the Franchisee shall immediately notify the Secretary of State of such fact and, if requested to do so by the Secretary of State, within twenty-eight (28) days (or such longer period as the Secretary of State may specify) of such request submit to the Secretary of State (for the Secretary of State's approval) the Franchisee's proposals (including proposed timescales for the implementation of any such proposals) for ensuring that the Affected <u>Service Quality</u> Area will, as soon as reasonably practicable, be provided at a level that is equal to or above the <u>SQR Improvement Plan Level Benchmark (the “Service Quality Improvement Proposals”).</u></i>”</p>
	<p>If the Secretary of State elects that it shall apply during the term of the ERMA, the existing paragraph 10.2(b) shall be deleted and replaced as follows:</p> <p><i>“<u>10.2(b) The Service Quality Improvement Proposals shall:</u></i></p>

REFERENCE (CLAUSE/PARAGRAPH/SCHEDULE)	AMENDMENT
	<p><u>(i) contain specific tangible action points and indicate in the case of each action point:</u></p> <p><u>(A) how that action will contribute to meeting or exceeding the relevant SQR Improvement Plan Level;</u></p> <p><u>(B) where the action is to be implemented;</u></p> <p><u>(C) the proposed timescales for implementing such action and, where any action is expressed to be ongoing, proposed review dates;</u></p> <p><u>(D) the date by which the Service Quality Improvement Proposal will be achieved; and</u></p> <p><u>(ii) the additional expenditure associated with each action."</u></p>

Schedule 8: Payments

8.1 – Franchise Payments	<p>Schedule 8.1 shall be replaced with (together):</p> <p>(a) the new Schedule 8.1A (Franchise Payments) attached at Appendix 4 (Schedule 8.1A (<i>Franchise Payments</i>)) to this Schedule 1; and</p> <p>(b) the new Schedule 8.1B attached at Appendix 5 (Schedule 8.1B (<i>Performance Based Fee</i>)) to this Schedule 1.</p>
8.2 – Profit Share Mechanism	<p>Unless otherwise instructed by the Secretary of State, Schedule 8.2 shall not apply for the duration of the ERMA.</p>
8.3 – Track Access Adjustments and Station Charge Adjustments	<p>Unless otherwise instructed by the Secretary of State, Schedule 8.3 shall not apply for the duration of the ERMA.</p>
8.4 – GDP Adjustment Payments	<p>Unless otherwise instructed by the Secretary of State, Schedule 8.4 shall not apply for the duration of the ERMA.</p>

REFERENCE (CLAUSE/PARAGRAPH/SCHEDULE)	AMENDMENT
8.5 – CLE Adjustment Payments	Unless otherwise instructed by the Secretary of State, Schedule 8.5 shall not apply for the duration of the ERMA.
Schedule 9: Changes and Variations	
9.1 – Financial and Other Consequences of Change	Unless otherwise instructed by the Secretary of State, Schedule 9.1 shall not apply for the duration of the ERMA.
9.2 – Identity of the Financial Model	N/A
9.3 – Variations to the Franchise Agreement and Incentivising Beneficial Changes	<p>Paragraph 1.1 shall be amended as follows:</p> <p><i>“The terms of the Franchise Agreement may be varied as follows but not otherwise:</i></p> <p>(a) <i>by the Secretary of State as contemplated where relevant in the Invitation to Tender in relation to:</i></p> <p><i>(i) any aspect of the Franchise Services; and/or</i></p> <p><i>(ii) any provision of the Franchise Agreement other than those provisions specified in paragraph 1.2,</i></p> <p><i>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</i></p> <p>(b) <i>in relation to any other provision of the Franchise Agreement, by agreement in writing between the Parties to that effect,</i></p> <p><i>(each a “Variation”).”</i></p> <p>Paragraph 2 shall be deleted and replaced with “Not used”.</p>
9.4 – Secretary of State Risk Assumptions	Unless otherwise instructed by the Secretary of State, Schedule 9.4 shall not apply for the duration of the ERMA.
9.5 – Specified Infrastructure Related Change	N/A

REFERENCE (CLAUSE/PARAGRAPH/SCHEDULE)	AMENDMENT
Schedule 10: Remedies, Events of Default and Termination Events	
10.1 – Procedure for remedying a Contravention of the Franchise Agreement	<p>Paragraph 2 shall be amended as follows:</p> <p>“2. Remedies for Contraventions of the Franchise Agreement</p> <p><i>If:</i></p> <p><u>(a) the Secretary of State is satisfied that the Franchisee is contravening or is likely to contravene any term of the Franchise Agreement; and/or</u></p> <p><u>(b) the:</u></p> <p><u>(i) Secretary of State is satisfied that the Franchisee is operating at a level that would, or would likely, be scored “1”; or</u></p> <p><u>(ii) Franchisee has received a score of “1”, and/or</u> <u>in relation to any of the Scorecard Criteria for a particular PBF Assessment Period, in accordance with the PBF Assessment Period Review process set out in Schedule 8.1B (Performance Based Fee);</u></p> <p><u>(c) the Franchisee has received a score of “1” in relation to any EMA Scorecard Criterion in accordance with the EMA Review process set out in appendix 1 (EMA Review) of Schedule 8.B (Performance Payment) of the Franchise Agreement as amended by the EMA;</u></p> <p><i>the Secretary of State may serve a notice on the Franchisee requiring it to:</i></p> <p><u>(c) propose such steps as the Franchisee considers appropriate for the purpose of securing or facilitating compliance with the term in question; and/or</u></p> <p><u>(d) address and overcome the shortfalls or failures that have led to the Franchisee receiving, or being likely to receive, a score of “1” with respect to the relevant Scorecard Criterion or EMA Scorecard Criterion (as applicable),</u></p> <p><i>as applicable, (each a “Remedial Plan Notice”).”</i></p>

**REFERENCE
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AMENDMENT

Paragraph 3 shall be amended as follows:

“3. Remedial Plan Notices

3.1. *Each Remedial Plan Notice shall specify the following:*

(a) *the:*

(i) 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/or

(ii) specific Scorecard Criterion under the PBF Assessment Period Scorecard that the Secretary of State is satisfied that the Franchisee is likely to score, or has scored, “1” in; and/or

(iii) specific EMA Scorecard Criterion under the EMA Review Scorecard in respect of which the Franchisee has scored “1”,

as applicable; and

(b) *the time period (“**Remedial Plan Period**”) within which the Secretary of State requires the Franchisee to provide an appropriate plan for the purpose of facilitating or securing compliance with such Relevant Term and/or addressing and overcoming the shortfalls or failures that have led to the Franchisee receiving, or being likely to receive, a score of “1” with respect to the relevant Scorecard Criterion or EMA Scorecard Criterion, as applicable (a “**Remedial Plan**”).”*

Paragraph 4.2 shall be amended as follows:

“4.2 Each Remedial Plan shall set out:

REFERENCE (CLAUSE/PARAGRAPH/SCHEDULE)	AMENDMENT
	<p>(a) <i>the:</i></p> <p><i><u>(i) Relevant Term which has caused such Remedial Plan to be required; and/or</u></i></p> <p><i><u>(ii) the Scorecard Criterion in respect of which the Franchisee has received, or is likely to receive, a score of "1"; and/or</u></i></p> <p><i><u>(iii) the EMA Scorecard Criterion in respect of which the Franchisee has received a score of "1",</u></i></p> <p><i><u>as applicable;</u></i></p> <p>(b) <i>an explanation of the reasons for:</i></p> <p><i><u>(i) the contravention or likely contravention of the Relevant Term; and/or</u></i></p> <p><i><u>(ii) the Franchisee receiving, or being likely to receive, a score of "1" with respect to the relevant Scorecard Criterion; and/or</u></i></p> <p><i><u>(iii) the Franchisee receiving a score of "1" with respect to the relevant EMA Scorecard Criterion,</u></i></p> <p><i><u>as applicable;</u></i></p> <p>(c) <i>the steps proposed for the purposes of:</i></p> <p><i><u>(i) securing or facilitating compliance with the Relevant Term; and/or</u></i></p> <p><i><u>(ii) addressing and overcoming the shortfalls or failures that have led to the Franchisee receiving, or being likely to receive, a score of "1" with respect to the relevant Scorecard Criterion and/or EMA Criterion (as applicable),</u></i></p> <p><i><u>as applicable; and</u></i></p>

REFERENCE (CLAUSE/PARAGRAPH/SCHEDULE)	AMENDMENT
	<p>(d) <i>the time period within which the Franchisee proposes to implement those steps.</i>"</p> <p>Paragraph 7 shall be amended as follows:</p> <p>7. Enhanced Monitoring by the Secretary of State</p> <p>7.1</p> <p><u>(i) Following the occurrence of a contravention of the Franchise Agreement; and/or</u></p> <p><u>(ii) where the Secretary of State is satisfied that the Franchisee is operating at a level that would, or would likely, be scored "1" or the Franchisee has received a score of "1" in relation to any of the Scorecard Criteria for a particular PBF Assessment Period, in accordance with the PBF Assessment Period Review process set out in Schedule 8.1B (Performance Based Fee); and/or</u></p> <p><u>(iii) where the Franchisee has received a score of "1" in relation to any of the EMA Scorecard Criteria in accordance with the EMA Review process set out in appendix 1 (EMA Review) of Schedule 8.B (Performance Payment) of the Franchise Agreement as amended by the EMA.</u></p> <p><i>the Secretary of State may at the Secretary of State's option (but shall not be obliged to) commence or increase the level and/or frequency of monitoring (whether by inspection, audit or otherwise) of the Franchisee's performance of any relevant obligations until such time as the Franchisee demonstrates, to the Secretary of State's reasonable satisfaction, that it is capable of performing and will perform such obligations as required by the Franchise Agreement.</i></p>

REFERENCE (CLAUSE/PARAGRAPH/SCHEDULE)	AMENDMENT
	<p>7.2 <i>The Franchisee shall co-operate fully with the Secretary of State in relation to the monitoring referred to in paragraph 7.1.</i></p> <p>7.3 <i>The results of such monitoring will be reviewed at each Franchise Performance Meeting held pursuant to Schedule 11.1 (Franchise Performance Meetings).</i></p> <p>7.4 <i>The Franchisee shall compensate the Secretary of State for all reasonable costs incurred by the Secretary of State in carrying out such monitoring. Any such compensation shall be a Disallowable Cost pursuant to Appendix 1 (Disallowable Costs) to Schedule 8.1A (Performance Payment).</i></p>
10.2 – Events of Default and Termination Events	<p>Unless otherwise instructed by the Secretary of State, paragraph 1.6 shall not apply during the term of the ERMA, provided that the Parties agree that paragraph 1.6 shall automatically apply if the Parties agree (or the Secretary of State determines, as applicable) that the Quantified Target Methodology shall apply to the Operational Performance Fee pursuant to and in accordance with the terms of Schedule 8.1B (<i>Performance Based Fee</i>).</p> <p>The text in paragraph 1.8 shall be deleted and replaced with "Not used".</p> <p>A new paragraph 1.16 shall be inserted as follows:</p> <p>1.16 Aggregated Costs and Revenue Liabilities The Franchisee's Aggregated Costs and Revenues Liabilities exceed the maximum value for Aggregated Costs and Revenues Liabilities as specified in paragraph 9.12 of Schedule 8.1A (Franchise Payments) to this Agreement.</p>
10.3 – Force Majeure and Business Continuity	<p>Paragraph 1(e)(iii) shall be amended by replacing the word "and" with "or".</p> <p>Paragraph 1(e) shall be amended by inserting a new paragraph as follows:</p>

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	<p><i><u>“(iv) for the duration of the ERMA, the occurrence and impact, whether direct or indirect, of COVID-19; and”</u></i></p> <p>Paragraph 1 shall be amended by inserting the following text at the end of the paragraph: <i><u>“The definition of “Force Majeure Event” shall for the duration of the ERMA exclude the occurrence and impact, whether direct or indirect, of COVID-19.”</u></i></p> <p>A new paragraph 3.3 shall be inserted as follows: <i><u>“3.3 Notwithstanding any other provision of this Agreement, and without prejudice to the Parties' positions as to whether the Force Majeure provisions would otherwise be engaged, the Franchisee agrees that it shall not for the duration of the ERMA be entitled to further relief from obligations pursuant to the Force Majeure provisions under this Schedule 10.3 as a direct or indirect impact of COVID-19.”</u></i></p>
10.4 – Liability	N/A
Schedule 11: Franchise Performance Meetings and Management Information	
11.1 – Franchise Performance Meetings	N/A
11.2 – Management Information	Schedule 11.2 shall be replaced with the new Schedule 11.2 attached at Appendix 6
<i>(Schedule 11.2 (Management Information))</i> to this Schedule 1.	
Schedule 12: Financial Covenants and Bonds	
Financial Covenants and Bonds	Paragraph 1(c) shall be amended by replacing the word “and” with “or”
Paragraph 1(d) shall be amended as follows:	
<i>“(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-; <u>or</u>”</i>	
Paragraph 1 shall be amended by inserting a new paragraph as follows:	

REFERENCE (CLAUSE/PARAGRAPH/SCHEDULE)	AMENDMENT
	<p><i><u>“(e) borrow any sum, or enter into any loan or lending agreement for the purpose of borrowing from any person.”</u></i></p> <p>Paragraph 2 shall be deleted and replaced with <u>“Not used”</u>.</p> <p>Paragraph 3.1 shall be amended as follows:</p> <p><i>“3.1 The Franchisee shall not during any Lock-up Period, do any of the following without the Secretary of State's consent:</i></p> <ul style="list-style-type: none"> <i>(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 <u>(in relation to a Permitted Dividend, such consent not to be unreasonably withheld or delayed and subject to paragraph 3.4)</u>;</i> <i>(b) pay management charges to any of its Affiliates in excess of those specified in the Initial Business Plan <u>without the prior written consent of the Secretary of State</u>; or</i> <i>(c) make payment under any intra-group borrowings,</i> <i>provided that, during the Lock-up Period, the Franchisee may repay any borrowing and/or make any payment in respect of interest accrued on such borrowing, in each case relating to the Agreed Funding Commitment in accordance with the AFC Plan (each as defined in the Funding Deed).”</i> <p>Paragraph 3.2 shall be deleted and replaced with the following:</p> <p><i><u>“3.2 “Lock-up Period” means the period commencing on the ERMA Start Date and expiring on the date which the Secretary of State confirms by notice in writing to the Franchisee that:</u></i></p>

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	<p><u>(a) the Secretary of State considers that all the obligations of the Parties to account to each other pursuant to Schedule 8.1A (Franchise Payments) have been fully performed and discharged (such confirmation not to be unreasonably withheld or delayed); and</u></p> <p><u>(b) by virtue of such notice, the Lock-Up Period has expired.</u></p> <p><u>No such notice shall constitute a waiver of any rights which the Secretary of State may have under or in respect of Schedule 8.1A (Franchise Payments)."</u></p>
	<p>Paragraph 3.3 shall be deleted and replaced with "<u>Not used</u>".</p>
	<p>A new paragraph 3.4 shall be inserted as follows:</p>
	<p><u>"3.4 Subject to the Franchisee fully performing and discharging all its obligations under Schedule 8.1A (Franchise Payments) and paragraph 9 (Financial Information) of Schedule 11.2 (Management Information) in relation to that Franchisee Year to the satisfaction of the Secretary of State, the consent of the Secretary of State pursuant to paragraph 3.1(a) and/or 3.1(b) may be sought annually or, in relation to a Franchisee Year of less than 13 Reporting Periods, on the expiry or termination of the relevant Franchisee Year. Any such consent shall be subject to the Parent or such other person acceptable to the Secretary of State entering into an agreement (in form and substance acceptable to the Secretary of State) to pay to the Franchisee, at the Secretary of State's request, the amount (if any) recoverable by the Secretary of State in respect of:</u></p>
	<p><u>(a) a fully liquidated Contingent SoS Claim; and/or</u></p>
	<p><u>(b) in respect of an adjustment to the Performance Based Fee and/or the Fixed Fee in accordance with paragraphs 9.13(a) and 15 (Fixed Fee and Performance Based Fee) of Schedule 8.1A (Franchise Payments).</u></p>

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provided in each case that such amount to be paid to the Franchisee by the Parent or other person acceptable to the Secretary of State shall be reduced by a percentage equivalent to the percentage rate of NTR which applied to the corresponding Permitted Dividend payment made in respect of the Performance Based Fee and/or the Fixed Fee."

A new paragraph 3.5 shall be inserted as follows:

"3.5 For the purposes of this paragraph 3, "**Permitted Dividend**" means:

(a) in relation to the Franchisee Year ending on 31 March 2021:

(i) in respect of the period from 1 April 2020 to 01:59 on 20 September 2020, an amount in respect of any Management Fee and Performance Payment paid to the Franchise pursuant to schedule 8.A (Franchise Payments) to the Franchise Agreement as such schedule 8.A (Franchise Payments) applied during the term of the EMA pursuant to the terms of the EMA; and

(ii) in respect of the period from the ERMA Start Date to 31 March 2021, an amount in respect of the Fixed Fee and/or a Performance Based Fee (if and to the extent that a Performance Based Fee has been included in a Franchise Payment paid in accordance with Schedule 8.1A (Franchise Payments)); and

(b) in relation to any subsequent Franchisee Year, an amount in respect of the Fixed Fee and/or a Performance Based Fee (if and to the extent that a Performance Based Fee has been included in a Franchise Payment paid in accordance with Schedule 8.1A (Franchise Payments)),

in each case calculated in accordance with the following formula:

$$\underline{\text{£PD}} = \underline{\text{FFPBF}} - (\underline{\text{FFPBF}} \times \underline{\text{NTR}})$$

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where:

EPD means the Permitted Dividend;

FFPBF means for the purposes of this paragraph 3.5 only:

- (a) in relation to the Franchisee Year ending on 31 March 2021, an amount equal to the sum of:
 - (i) the aggregate of any Management Fee and Performance Payment paid to the Franchisee pursuant to schedule 8.A (Franchise Payments) to the Franchise Agreement as such schedule 8.A (Franchise Payments) applied during the term of the EMA pursuant to the terms of the EMA; and
 - (ii) in respect of the period from the ERMA Start Date to 31 March 2021, the aggregate amount of the Fixed Fee and the Performance Based Fee (if any) that has been included in any Franchise Payment(s) paid in accordance with Schedule 8.1A (Franchise Payments); and
- (b) in relation to any subsequent Franchisee Year, the aggregate amount of the Fixed Fee and the Performance Based Fee (if any) that has been included in any Franchise Payment(s) paid in accordance with Schedule 8.1A (Franchise Payments)

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NTR means the rate of corporation tax (expressed as a percentage) applicable at the time at which the Secretary of State determines the value of the applicable Performance Based Fee (if any) and the Fixed Fee in accordance with Schedule 8.1A (Franchise Payments), provided that:

- (a) NTR shall not be adjusted, revalued or otherwise affected by the application of tax losses or any other reliefs to which the Franchisee may be entitled; and
- (b) if a Permitted Dividend has been made in accordance with this paragraph 3 and there is a subsequent variation in the rate of corporation tax in the relevant tax year, the Permitted Dividend shall not be recalculated to take account of such variation."

A new paragraph 3A shall be added as follows:

"3.A The Franchisee shall use reasonable endeavours to plan its business activities and working capital position such that the Forecast Closing Cash Position does not fall below the Floor Cash Position."

Paragraph 4.3(c) shall be amended as follows:

"(c) If at any time the Secretary of State reasonably considers the Bond Provider under the then current Performance Bond to be unacceptable, the Secretary of State may require the Franchisee within twenty (2) Weekdays to procure the

REFERENCE (CLAUSE/PARAGRAPH/SCHEDULE)	AMENDMENT
	<p><i>execution and delivery of a new Performance Bond by a Bond Provider acceptable to the Secretary of state. <u>The Parties acknowledge and agree that the Franchisee shall under no circumstances be entitled to reimbursement, pursuant to Schedule 8.1A (Franchise Payments) or otherwise, in respect of any additional costs or expenses incurred by the Franchisee in procuring any new Performance Bond where required to do so pursuant to this paragraph 4.3(c)</u></i></p>
Paragraph 4.5(a)(i)(A)	<p>shall be amended as follows:</p> <p><i>“(A) either terminated or expired and, in either case, in circumstances where there are liabilities or obligations outstanding from the Franchisee to the Secretary of State, <u>including where the Franchise Period has terminated or expired but provisions of the Franchise Agreement remain in operation and effect (including Schedule 8.1A (Franchise Payments))</u>; and/or</i></p>
Paragraph 4.5(b)(ii)	<p>shall be amended as follows:</p> <p><i>“(i) early termination of the Franchise Agreement; and/or</i></p> <p><i>(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,</i></p> <p><i>and which are not otherwise recovered by the Secretary of State (including pursuant to clause 7.3 of the Funding Deed); and/or</i></p> <p><i>(iii) <u>without prejudice to the generality of paragraph 4.5(b)(i), any of the following amounts which (a), in respect of any Performance Period (as defined in paragraph 1 (Definitions) of schedule 8.A (Franchise Payments) to the Franchise Agreement as amended by the EMA), the Secretary of State has not offset against MFPP in accordance with paragraph 11 (Management Fee and Performance Payment) of schedule 8.A (Franchise Payments) to the Franchise</u></i></p>

REFERENCE (CLAUSE/PARAGRAPH/SCHEDULE)	AMENDMENT
	<p><u>Agreement as amended by the EMA, (b) in respect of any Franchisee Year, the Secretary of State has not offset against FFPBF in accordance with paragraph 15 (Fixed Fee and Performance Based Fee) of Schedule 8.1A (Franchise Payments); or (c) are not taken into account in any payment received by the Secretary of State pursuant to the Funding Deed:</u></p> <p><u>(A) EMA SoS Claims, Disallowable Costs, Non-Recoverable Costs and Revenue Foregone;</u></p> <p><u>(B) PPADC (as defined in paragraph 11.1 of Schedule 8.A (Franchise Payments) to the Franchise Agreement as amended by the EMA; and</u></p> <p><u>(C) any other sums which the Secretary of State has the right in accordance with Schedule 8.1A (Franchise Payments) to offset against FFPBF; and/or</u></p> <p><u>(iv) any amount of the Final Working Capital Adjustment not paid to the Secretary of State in accordance with paragraph 10.4 of Schedule 8.1A (Franchise Payments)."</u></p>

In paragraph 4.5(b), the reference to "Schedule 8" shall be deleted and replaced with "Schedule 8.1A (Franchise Payments)".

A new paragraph 4.5(d) shall be added as follows:

"The Parties acknowledge and agree that the Franchisee shall under no circumstances be entitled to reimbursement, pursuant to Schedule 8.1A (Franchise Payments) or otherwise, of any losses, liabilities, costs or expenses incurred by the Franchisee arising out of or in connection with any lawful demand made by the Secretary of State under the Performance Bond pursuant to this paragraph 4."

Paragraph 5.7 shall be amended as follows:

REFERENCE (CLAUSE/PARAGRAPH/SCHEDULE)	AMENDMENT
	<p><u><i>"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, and the Secretary of State may direct the Franchisee to amend the amount covered or required to be covered under a Season Ticket Bond when, in the Secretary of State's sole discretion, the STBA calculated pursuant to paragraph 5.3 above may not accurately represent the value of the Season Ticket suspense liabilities held by the Franchisee."</i></u></p> <p>A new paragraph 7 shall be inserted as follows:</p> <p><u><i>"7 Survival</i></u> <i>This Schedule 12 and any other provisions of the Franchise Agreement reasonably required for the purpose of giving this Schedule 12 full effect shall survive the termination or expiry of the Franchise Term (however arising) and continue in full force and effect in accordance with its terms."</i></p>

Schedule 13: Rail Industry Initiatives

<p>13.1 – Rail Industry Initiatives</p>	<p>Paragraph 6.2 shall be deleted and replaced as follows:</p> <p>6.2 <u><i>Sharing on-train data with Network Rail</i></u> <i>The Franchisee shall, if so requested by Network Rail, provide advice to Network Rail on the feasibility, costs and associated practicalities of providing Network Rail with access to real-time (or near-real-time) footage from on-train forward-facing CCTV systems.</i></p> <p>A new paragraph 9A shall be inserted as follows:</p> <p><u><i>"9A Diversity and Inclusion</i></u> <u><i>9A.1 Diversity and Inclusion Strategy</i></u></p>
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REFERENCE (CLAUSE/PARAGRAPH/SCHEDULE)	AMENDMENT
	<p><u>(a) Within 12 weeks after the ERMA Start Date, the Franchisee shall prepare a draft of its D&I Strategy and submit it to the Secretary of State. The draft shall include details of:</u></p> <p><u>(i) the diversity and inclusion principles that the Franchisee maintains and/or will establish within its organisation, including but not limited to, in relation to recruitment practices, working environments and procedures;</u></p> <p><u>(ii) the activities, policies and procedures that the Franchisee will employ (for example, including in relation to targeted recruitment policies, promotion of flexible working, mentoring programmes, school visits and annual staff diversity and inclusion surveys) that will demonstrate that it is an inclusive employer;</u></p> <p><u>(iii) how the Franchisee will evidence compliance with its diversity principles, policies and procedures against the Diversity KPIs (as defined in paragraph 9A.3);</u></p> <p><u>(iv) how it will achieve and/or maintain diversity accreditation in accordance with a Recognised Accreditation Scheme in accordance with paragraph 9A.2; and</u></p> <p><u>(v) how the Franchisee will comply with its Recruitment Objectives.</u></p> <p><u>(b) The Secretary of State may provide comments on the draft D&I strategy to the Franchisee and the Parties shall use all reasonable endeavours to agree the form of D&I Strategy within four (4) months of the date on which it was provided to the Secretary of State pursuant to paragraph 9A.1(a).</u></p>

REFERENCE (CLAUSE/PARAGRAPH/SCHEDULE)	AMENDMENT
	<p><u>(c) If the Parties are unable to agree a D&I Strategy within the period set out in paragraph 9A.1(b) the Secretary of State may reasonably determine the D&I Strategy.</u></p> <p><u>(d) The Secretary of State may, from time to time, recommend such changes to the Approved D&I Strategy as it considers reasonable.</u></p> <p><u>(e) The Franchisee shall use all reasonable endeavours to implement and comply with the Approved D&I Strategy.</u></p> <p><u>(f) In respect of any new contract or arrangements it enters into with third parties during the Franchise Term, the Franchisee shall use all reasonable endeavours to ensure it obliges its counterparty to comply with and implement suitable diversity and inclusion policies.</u></p> <p><u>(g) To the extent the Franchisee is entering into any material amendments to any existing contracts or arrangements with third parties, it shall use all reasonable endeavours to ensure that the contract or arrangement (as amended) does not materially adversely affect the Franchisee's ability to comply with its D&I Strategy.</u></p> <p><u>9A.2 Diversity Accreditation</u></p> <p><u>The Franchisee shall use all reasonable endeavours to attain and/or maintain at least one diversity accreditation from a Recognised Accreditation Scheme within such timeframe as may be set out in its D&I Strategy which shall comply with the timescales set by the relevant Recognised Accreditation Scheme or as otherwise agreed between the Parties.</u></p> <p><u>9A.3 Performance reporting</u></p> <p><u>(a) The Franchisee shall develop D&I Initiatives KPIs and D&I Characteristics KPIs (together, the "Diversity KPIs").</u></p>

REFERENCE (CLAUSE/PARAGRAPH/SCHEDULE)	AMENDMENT
	<p><u>(b) The Franchisee shall design its Diversity KPIs with a focus on such areas as the Secretary of State may notify to it and in accordance with any guidance as the Secretary of State may provide.</u></p>
	<p><u>(c) The Franchisee shall collect suitable data to evidence its performance against the Diversity KPIs of which it shall:</u></p> <ul style="list-style-type: none"><u>(i) provide details on as part of the D&I Annual Report; and</u><u>(ii) make available, in an orderly fashion, to any Successor Operator.</u>
	<p><u>(d) The Franchisee shall submit a D&I Annual Report to the Secretary of State on the D&I Annual Reporting Date.</u></p>
	<p><u>(e) The Parties acknowledge and agree that the Franchisee's D&I Annual Report shall be provided substantially in the same form as the Secretary of State may request and shall include:</u></p> <ul style="list-style-type: none"><u>(i) evidence of the Franchisee's performance against, and impact of implementing, its D&I Strategy;</u><u>(ii) evidence of the Franchisee's performance against the Diversity KPIs;</u><u>(iii) evidence of the Franchisee working towards achieving and maintaining diversity accreditation in accordance with paragraph 9A.2;</u><u>(iv) evidence of the Franchisee establishing diversity in its procurement process and using a diverse supply chain;</u><u>(v) evidence of the Franchisee's performance against its Recruitment Objectives;</u>

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	<p><u>(vi) a record of any other diversity data collected by the Franchisee in respect of its workforce; and</u></p> <p><u>(vii) such other information and data as the Secretary of State may reasonably request at least three (3) months prior to the D&I Annual Reporting Date.</u></p>
	<p><u>9A.4 Diversity and Inclusion Champion</u></p> <p><u>(a) As soon as reasonably practicable and by no later than 31 October 2020, the Franchisee shall (to the extent that the Franchisee has not already done so) nominate a board director of the Franchisee or a member of the senior executive team of the Franchisee to act as D&I Champion.</u></p> <p><u>(b) The Franchisee shall ensure that the D&I Champion role is filled as soon as reasonably practicable after such role becomes vacant throughout the term of this Franchise Agreement.</u></p>
	<p><u>9A.5 Recruitment Targets and Objectives</u></p> <p><u>(a) The Franchisee shall set out suitable recruitment targets and associated timeframes from time to time in respect of all new recruits across all grades, jobs, positions and roles (the “Recruitment Targets”) in its D&I Strategy which, amongst other things, shall include:</u></p> <p><u>(i) gender equality targets, including a target of 50% female new recruits across all grades, jobs, positions and roles; and</u></p> <p><u>(ii) targets specifying the percentage of new recruits across all grades, jobs, positions and roles which will be ethnic minorities.</u></p>

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- (b) The Secretary of State shall consider the proportionality of the Recruitment Targets by reference to:
- (i) the demographics of the workforce in each region as indicated by the most recent Labour Force Survey produced by the Office for National Statistics;
 - (ii) the individual circumstances of the Franchisee; and
 - (iii) any other information the Secretary of State reasonably determines to be relevant.
- (c) The Franchisee shall provide to the Secretary of State all evidence to allow the Secretary of State to reasonably determine whether any Recruitment Target is proportionate, as reasonably requested by the Secretary of State.
- (d) The Franchisee shall use all reasonable and lawful endeavours to:
- (i) be objective, transparent and fair in its recruitment processes;
 - (ii) meet Recruitment Targets; and
 - (iii) improve retention rates of underrepresented groups, (together, the “**Recruitment Objectives**”).
- (e) The Franchisee shall report on its performance against its Recruitment Objectives as part of its D&I Annual Report, together with relevant supporting evidence. Such supporting evidence may include details of Franchisee policies and procedures such as: advertising across a variety of channels to reach a broad range of candidates; blind sifting applications; engaging in CV blind interviewing; engaging in outreach programmes; establishing a returners policy; and/or establishing mentoring schemes.

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	<p><u>(f) The Secretary of State shall review the Franchisee's performance against the Franchisee's Recruitment Objectives as part of the Franchisee's D&I Annual Report.</u></p> <p><u>(g) The Secretary of State shall keep the Recruitment Targets under review and may adjust and/or suspend any Recruitment Target the Secretary of State reasonably determines to no longer be proportionate.</u></p> <p><u>(h) Nothing in this paragraph 9A.5 or this Schedule 13.1 is intended to impose or require any quota.</u></p>
	<p><u>9A.6 Data – collecting, monitoring and reporting</u></p> <p><u>(a) During the Franchise Term, the Franchisee shall monitor the diversity profile of its workforce and collect Workforce Diversity Data.</u></p> <p><u>(b) Within six (6) weeks of the date of the ERMA, the Secretary of State may notify the Franchisee of any further data requirements it may have, including:</u></p> <p style="padding-left: 40px;"><u>(i) any additions to the scope of the Workforce Diversity Data the Franchisee is required to monitor and collect;</u></p> <p style="padding-left: 40px;"><u>(ii) the frequency in which it shall be measured or collected; and</u></p> <p style="padding-left: 40px;"><u>(iii) the form in which the Franchisee is required to deliver this to the Secretary of State via such data hub as the Secretary of State may direct.</u></p> <p><u>(c) The Franchisee shall use reasonable endeavours to collect and submit this data in accordance with the Secretary of State's data requirements.</u></p> <p><u>(d) The Franchisee acknowledges and agrees that the Secretary of State may use any data provided to it by the Franchisee pursuant to this Schedule 13.1 for analytical and policy development purposes.</u></p>

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	<p><u>(e) The Franchisee shall provide a summary report to the Secretary of State of its Workforce Diversity Data by no later than the date which is six (6) months after date of the ERMA.</u></p> <p><u>(f) The Franchisee shall provide a detailed report to the Secretary of State of its Workforce Diversity Data by no later than the date which is twelve (12) months after the date of this ERMA and on each anniversary of this date thereafter.</u></p> <p><u>(g) The Franchisee shall organise the detailed report in accordance with the characteristics listed in the definition of Workforce Diversity Data.</u></p>
	<p><u>9A.7 Improvement and Remedial Plans</u></p> <p><u>(a) If and to the extent that the Secretary of State considers that the Franchisee has not adequately:</u></p> <p><u>(i) delivered its D&I Strategy;</u></p> <p><u>(ii) achieved accreditation in accordance with its D&I Strategy or has otherwise lost its accreditation;</u></p> <p><u>(iii) used all reasonable and lawful endeavours to deliver against its Recruitment Objectives; or</u></p> <p><u>(iv) collected, monitored and reported on data pursuant to paragraph 9A.6.</u></p> <p><u>it may notify the Franchisee that it requires it to deliver a plan for how it will improve its performance in the relevant area (a "D&I Improvement Plan") for its approval. The D&I Improvement Plan shall include the Franchisee's proposed timeline for implementing any changes or actions.</u></p>

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(b) If the Parties cannot agree the D&I Improvement Plan within twenty (20) Weekdays from the Secretary of State's notification pursuant to paragraph 9A.7(a), the Secretary of State may impose such D&I Improvement Plan as it considers reasonable.

(c) If the Franchisee fails to implement the D&I Improvement Plan, then the Secretary of State may serve a Remedial Plan Notice on the Franchisee in accordance with paragraph 2 of Schedule 10.1."

A new paragraph 11A shall be inserted as follows:

"11A European Train Control System

11A.1 The Franchisee shall co-operate in good faith acting reasonably and with each of the Department for Transport, Network Rail, any relevant ROSCO and any other third party in connection with the development, implementation and operational introduction on the routes of any system which is intended to provide ETCS.

11A.2 In accordance with paragraph 11A.1, the Franchisee shall provide reasonable assistance to the Secretary of State, Network Rail, any relevant ROSCO and any other relevant third party, which may, amongst other things, include:

(i) providing advice to the Secretary of State in respect of any ETCS proposals and plans;

(ii) supporting planning activities alongside other key stakeholders;

(iii) ensuring that suitable equipment is fitted to rolling stock;

(iv) developing driver training programmes and procuring that drivers are suitably trained; and

(v) other associated amendments or variations."

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13.2 – Innovation Obligations	<p>A new Appendix 2 shall be inserted in the form attached at Appendix 7 (Appendix 2 (D&I Strategy) to Schedule 13.1 (Rail Industry Initiatives)) to this Schedule 1.</p>
Schedule 14: Preservation of Assets	
14.1 – Maintenance of Franchisee	N/A
14.2 – Maintenance of Operating Assets	N/A
14.3 – Key Contracts	N/A
14.4 – Designation of Franchise Assets	<p>Paragraph 2.1(h) (<i>Primary Franchise Assets</i>) shall be amended to insert the words "or, where applicable, a Partially Completed RV Asset on the date on which the Secretary of State issues a Certificate of Partial Completion in respect of such RV Asset." at the end.</p> <p>A new paragraph 2.1(j) (<i>Primary Franchise Assets</i>) shall be inserted as follows:</p> <p>“(j) any property and rights comprised in Committed Obligations or Franchise Specific Obligations and designated by the Secretary of State as Primary Franchise Assets pursuant to paragraph 10.1 (Designation of Assets comprised in COs as Primary Franchise Assets) of Part 2 of Schedule 6.2 (Special Terms related to the Committed Obligations), on the date of such designation.”</p>
14.5 – Dealing with Franchise Assets	N/A
14.6 – Residual Value Mechanism	<p>Paragraph (a) of paragraph 1.2 shall be deleted and replaced with the following:</p> <p>“(a) such RV Asset is lost, destroyed or otherwise beyond repair after the date upon which it is designated as a Primary Franchise Asset pursuant to paragraph 2.1(h) of Schedule 14.4 (Designation of Franchise Assets) and such RV Asset is</p>

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	<p><u><i>not replaced or such RV Asset is not or has ceased to be vested in the Franchisee; or</i></u></p> <p>Paragraph 1.3(a) shall be amended by inserting the words "<u><i>(which is not a Partially Complete RV Asset)</i></u>" after the words "Within twenty (20) days of the date upon which an RV Asset".</p> <p>Paragraph 1.3(a)(v) shall be amended by inserting the words "<u><i>or Franchise Specific Obligations</i></u>" after the words "Committed Obligations".</p> <p>The following paragraph shall be inserted as a new paragraph 1.3A after the existing paragraph 1.3 (<i>Process for issue of a Certificate of Completion for Completed RV Assets</i>)</p> <p><u><i>1.3A Process for issue of a Certificate of Partial Completion for Partially Completed RV Assets</i></u></p> <p>(a) <u><i>In respect of any RV Assets listed in Column 1 of the table set out in Appendix 1 (List of the RV Assets) to Schedule 14.6 (Residual Value Mechanism), which are not Completed RV Assets as at 1 March 2020, the Franchisee shall, within fourteen (14) days of the date of the ERMA, provide to the Secretary of State such information as is required by the Secretary of State, and in the detail needed to demonstrate and evidence the degree to which such RV Asset could potentially be a Partially Complete RV Asset and the actual capital cost incurred by the Franchisee in respect of such RV Asset up to 1 March 2020, including the following:</i></u></p> <p>(i) <u><i>the information described in paragraph 9 of Schedule 14.4 (Designation of Franchise Assets), including such information as the Secretary of State may require pursuant to paragraph 9.2 of Schedule 14.4 (Designation of Franchise Assets);</i></u></p>

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	<p>(ii) <u>information evidencing the actual capital cost incurred in respect of such RV Asset up to 1 March 2020 (including receipts and other supporting evidence) or where all information required to evidence the actual capital cost incurred in respect of such RV Asset is not yet available, the Franchisee's reasonable estimate of such actual capital cost with a commentary explaining how the estimate has been arrived at;</u></p> <p>(iii) <u>information which shows that, taking into account the works that would be required for that RV Asset to become a Completed RV Asset, such RV Asset satisfies the requirements of the Committed Obligations or Franchise Specific Obligations to which it relates;</u></p> <p>(iv) <u>details of any work completed up to 1 March 2020 and any work which remains outstanding before such RV Asset can be put into operational use; and</u></p> <p>(v) <u>such other information as the Secretary of State may reasonably require in order to determine whether such RV Asset shall qualify for a Partial Completion Certificate.</u></p> <p><u>Where the Franchisee is only able to provide an estimate of the capital cost of procuring a Potential Partially Complete RV Asset pursuant to paragraph 1.3A(a) above, it shall notify the Secretary of State of the actual capital cost (incurred by the Franchisee up to 1 March 2020) of procuring such asset (with receipts and other supporting evidence) as soon as reasonably practicable and in any event within twenty eight (28) days of the date of the ERMA. The Franchisee shall provide the Secretary of State with such further information as reasonably requested for the purposes of verifying the actual capital costs incurred by the Franchisee up to 1 March 2020 in respect of such asset.</u></p>

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	<p><u>The Secretary of State may, prior to the issue of a Certificate of Partial Completion in respect of a Potential Partially Complete RV Asset, exercise the Secretary of State's rights under paragraph 6 (Right to Inspect) of Schedule 11.2 (Management Information) to inspect such asset for the purposes of determining whether the Secretary of State considers it appropriate to issue a Certificate of Partial Completion in respect of that asset and for the purposes of determining its 1 March RV Asset Transfer Value.</u></p> <p><u>The Secretary of State shall, for the purposes of issuing any Certificate of Partial Completion, determine (acting reasonably) the 1 March RV Asset Transfer Value of the relevant RV Asset and, in doing so, shall take into account the:</u></p> <ul style="list-style-type: none"><u>(i) actual capital cost incurred in respect of that asset up to 1 March 2020, which has been evidenced to the Secretary of State's satisfaction;</u><u>(ii) state of completion of the asset as compared to what would be expected from such asset were it to have become a Completed RV Asset; and</u><u>(iii) capital costs that would be expected to have been incurred by an operator acting in accordance with the Franchisee's obligations under the terms of the Franchise Agreement (as in effect at the time such costs were incurred) in achieving such state of completion.</u> <p><u>provided that, in respect of each relevant RV Asset, the 1 March RV Asset Transfer Value shall not in any event be greater than the capital cost set out in Column 5 of the table in Appendix 1 (List of the RV Assets) to this Schedule 14.6 (List of the RV Assets).</u></p> <p><u>Subject to the Secretary of State being satisfied with the information provided pursuant to this paragraph 1.3A in respect of a Potential Partially Complete RV</u></p>

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	<p><u>Asset, having regard to any information available to the Secretary of State, the Secretary of State shall issue to the Franchisee a certificate of partial completion in respect of such Potential Partially Complete RV Assets specifying for the purposes of this Agreement the state of completeness as compared to what would be expected from such RV Asset when it became a Completed RV Asset and the 1 March RV Asset Transfer Value (determined in accordance with paragraph 1.3A(d)) of the relevant RV Asset ("Certificate of Partial Completion").</u></p> <p><u>Notwithstanding any other provision of this Schedule 14.6, if a Certificate of Partial Completion is issued in respect of an RV Asset listed in Column 1 of the table in Appendix 1 (List of the RV Assets) to this Schedule 14.6, then no Certificate of Completion shall subsequently be issued in respect of that RV Asset."</u></p>
Paragraph 1.4(c)	shall be deleted and replaced with " <u>Not used</u> ".
The following new paragraphs shall be added after paragraph 1.4 of Schedule 14.6.	
	<p><u>"1.5 Adjustments to the Transfer Value of RV Assets following entry into the ERMA</u></p>
(a)	<p><u>In respect of each Partially Complete RV Asset:</u></p>
	<p>(i) <u>the Secretary of State shall adjust the RV Asset Transfer Value applicable to such Partially Complete RV Asset using the same principles as were specified in the Financial Model and Record of Assumption for the calculation of the initial RV Asset Transfer Value except that the 1 March RV Asset Transfer Value of such Partially Complete RV Asset shall replace the capital cost specified for such Partially Complete</u></p>

REFERENCE (CLAUSE/PARAGRAPH/SCHEDULE)	AMENDMENT
	<p><u>RV Asset in Column 5 of the table in Appendix 1 (List of the RV Assets) to this Schedule 14.6 (List of the RV Assets) in order to calculate the Revised RV Asset Transfer Value and such adjustment shall be deemed to take effect from the date upon which the relevant Certificate of Partial Completion is issued; and</u></p> <p>(ii) <u>Column 2 of the table in Appendix 1 (List of the RV Assets) to this Schedule 14.6 (List of the RV Assets) shall be restated using the amounts of the Revised RV Asset Transfer Value and such restatement shall be deemed to be effective from the date of issue of a Certificate of Partial Completion.</u></p> <p>(b) <u>The Parties acknowledge that:</u></p> <p>(i) <u>the RV Asset Transfer Values set out in Column 2 of the table in Appendix 1 (List of the RV Assets) to this Schedule 14.6 (List of the RV Assets) were calculated on the basis that the Franchise Term would end on 1 April 2026; and</u></p> <p>(ii) <u>upon entry into the ERMA, the Franchise Term was amended so that it ends on the Expiry Date.</u></p> <p>(c) <u>In order to reflect the amendment to the Term, the Parties agree that the Secretary of State shall adjust the RV Asset Transfer Value for each Completed RV Asset and each Partially Complete RV Asset (after applying any adjustments to the values in the table in Appendix 1 to this Schedule 14.6 (List of the RV Assets) in accordance with paragraph 1.5(a) above) by depreciating the value of each RV Asset on a straight line basis from the delivery date specified for such RV Asset in Column 3 of the table in Appendix 1 (List of the RV Assets) to</u></p>

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	<p><u>this Schedule 14.6 (“Planned Delivery Date”) until the end of the Franchise Term (as amended) so that:</u></p> <p>(i) <u>the Revised RV Asset Transfer Value will be the residual value of the RV Asset following such depreciation as at the end of the Franchise Period (as amended) or, if the RV Asset has been fully depreciated on that basis at that time, nil; and</u></p> <p>(ii) <u>Column 2 of the table in Appendix 1 (List of the RV Assets) to this Schedule 14.6 (List of the RV Assets) shall be restated using the Revised RV Asset Transfer Value.</u></p> <p>(d) <u>The adjustments to Appendix 1 of this Schedule 14.6 contemplated in paragraph 1.5(a) in relation to each Completed RV Asset are without prejudice to any other adjustments that may be made in accordance with paragraph 1.4 (Adjustments to the Transfer Value), provided that the adjustments set out in this paragraph 1.5 shall only be applied after any adjustments pursuant to paragraph 1.4 (Adjustments to the Transfer Value) are first applied.”</u></p> <p><u>1.6 Transfer Value of RV Assets commenced after 1 March 2020 or which do not become Partially Complete RV Assets</u></p> <p>(a) <u>If the Franchisee had not incurred any capital costs in respect of an RV Asset prior to 1 March 2020, the capital cost under Column 5 and the RV Asset Transfer Value under Column 2 of the table in Appendix 1 (List of the RV Assets) to this Schedule 14.6 (Residual Value Mechanism), in respect of such RV Asset shall both be deemed to be nil and Column 2 of the table in Appendix 1 (List of the RV Assets) to this Schedule 14.6 (List of the RV Assets) shall be deemed to be restated with effect from 1 March 2020 and the Secretary of State shall not</u></p>

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	<p><i><u>be obliged to issue a Certificate of Completion or a Certificate of Partial Completion in respect of any such RV Asset.</u></i></p> <p>(b) <i><u>Without limiting paragraph 1.6(a) above, for any RV Asset listed in Column 1 of the table in Appendix 1 (List of the RV Assets) to this Schedule 14.6 (Residual Value Mechanism) in respect of which a Certificate of Completion or a Certificate of Partial Completion has not been issued by the end of the Franchise Period, the capital cost under Column 5 and the RV Asset Transfer Value under Column 2 of the table in Appendix 1 (List of the RV Assets) to this Schedule 14.6 (Residual Value Mechanism), in respect of such RV Asset shall both be deemed to be nil and Column 2 of the table in Appendix 1 to this Schedule 14.6 (List of the RV Assets) shall be deemed to be restated accordingly.</u></i></p>
	<p>Paragraph 2 of Schedule 14.6 shall be deleted and replaced with the following:</p>
	<p><u>“2 Maintenance Requirements for Completed RV Assets</u></p> <p><u>2.1</u> <i><u>At the same time as the Franchisee provides the information required pursuant to paragraph 1.3(a), the Franchisee shall submit to the Secretary of State a schedule of condition specifying the condition of such Completed RV Asset as at the date upon which such Completed RV Asset was brought into operational use as specified in the applicable Certificate of Completion. Such schedule of condition must be approved by the Secretary of State and shall be in respect of such aspects of a Completed RV Asset as the Secretary of State may reasonably require. The Franchisee shall ensure that each Completed RV Asset is maintained, preserved and protected in at least the same condition, subject to fair wear and tear, as specified in the applicable schedule of condition as approved by the Secretary of State in respect of such Completed RV Asset pursuant to this paragraph 2.1. In respect of any Completed RV Asset that is a</u></i></p>

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Network Rail Fixture Asset the Franchisee shall ensure that any schedule of condition prepared as required by this paragraph 2.1 shall comply with the Franchisee's maintenance obligations relating to such Network Rail Fixture Asset under the applicable Station Access Conditions and/or Depot Access Conditions (as the case may be).

2.2 Subject to paragraph 2.3, where the Franchisee has failed to demonstrate to the reasonable satisfaction of the Secretary of State that it has complied with its maintenance obligations in paragraph 2.1 in respect of any Completed RV Asset then the Secretary of State may, by notice in writing to the Franchisee, require that the RV Asset Transfer Value payable by a Successor Operator required pursuant to the Supplemental Agreement to pay to the Franchisee the RV Asset Transfer Value for such Completed RV Asset (the "**Relevant Successor Operator**") is adjusted downwards by an amount that is equal to the amount that is agreed by the Franchisee and the Relevant Successor Operator (or on failure to agree, as reasonably determined by the Secretary of State) as being the amount reasonably expected to be incurred by the Relevant Successor Operator for putting such Completed RV Asset in the condition required pursuant to paragraph 2.1.

2.3 The provisions of paragraph 2.2 shall not apply in circumstances where the Franchisee and the Relevant Successor Operator agree that the Franchisee shall either:

(a) rectify any relevant non-compliance with the requirements of paragraph 2.1; or

(b) indemnify the Relevant Successor Operator (the form of such indemnity to be in a form that is acceptable to the Relevant Successor Operator)

against the reasonable costs of putting the relevant Completed RV Asset in the condition required by paragraph 2.1.”

The following paragraph shall be inserted as a new paragraph 2A after the existing paragraph 2 (Maintenance Requirements for Completed RV Assets)

“2A Maintenance Requirements for Partially Complete RV Assets

2A.1 At the same time as the Franchisee provides the information required pursuant to paragraph 1.3A(a), the Franchisee shall submit to the Secretary of State a statement of condition specifying the condition of the relevant Potential Partially Complete RV Asset. Such statement of condition must be approved by the Secretary of State. The Franchisee shall ensure that each Partially Complete RV Asset is maintained, preserved and protected in at least the same condition, subject to any further works undertaken in relation to such Partially Complete RV Asset (in which case, the Franchisee shall ensure that each further developed Partially Complete RV Asset is maintained, preserved and protected in the manner that would be expected of a Good and Efficient Operator).

2A.2 Subject to paragraph 2A.3, where the Franchisee has failed to demonstrate to the reasonable satisfaction of the Secretary of State that it has complied with its maintenance obligations in paragraph 2A.1 in respect of any Partially Completed RV Asset then the Secretary of State may by notice in writing to the Franchisee require that the RV Asset Transfer Value payable by a Successor Operator required pursuant to the Supplemental Agreement to pay to the Franchisee the RV Asset Transfer Value for such Partially Complete RV Asset (“**Relevant Successor Operator**”) is adjusted downwards by an amount that is equal to the amount that is agreed by the Franchisee and the Relevant Successor Operator (or on failure to agree, as reasonably determined by the Secretary of State) as being the amount reasonably expected to be incurred by

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	<p><u><i>the Relevant Successor Operator for putting such Partially Complete RV Asset (as relevant) in the condition required pursuant to paragraph 2A.1.</i></u></p> <p><u><i>2A.3 The provisions of paragraph 2A.2 shall not apply in circumstances where the Franchisee and the Relevant Successor Operator agree that the Franchisee shall either:</i></u></p> <p><u><i>(a) rectify any relevant non-compliance with the requirements of paragraph 2A.1; or</i></u></p> <p><u><i>(b) indemnify the Relevant Successor Operator (the form of such indemnity to be in a form that is acceptable to the Relevant Successor Operator) against the reasonable costs of putting the relevant Partially Complete RV Asset in the condition required by paragraph 2A.1."</i></u></p>
14.7 –Incentivising Long Term Investment	N/A
Schedule 15: Obligations Associated with Termination	
15.1 – Reletting Provisions	N/A
15.2 – Last Twelve (12) or Thirteen (13) months of Franchise Period and Other Conduct of Business Provisions	<p>Paragraphs 2, 3 and 4 shall be deleted and replaced with "<u><i>Not used</i></u>".</p> <p>The reference in paragraph 4 to "in the last twelve (12) months of the Franchise Period" shall be deleted and replaced with "<u><i>during the ERMA Term</i></u>" and the words "during such period of twelve (12) months provided that where the last twelve (12) or thirteen (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 4 lasts longer than twelve</p>

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	<p>(12) months such restriction shall apply in respect of the longer period" shall be deleted and replaced by ""compared to the previous period of twelve (12) months"".</p> <p>Paragraph 5.1(a) shall be amended as follows:</p> <p><i>"(a) During the term of the ERMA or the last thirteen (13) months of the Franchise Period (whichever is the longer) the Franchisee shall not, without the prior written consent of the Secretary of State (not to be unreasonably withheld), set the Price or Child Price of or sell (except to the extent required to do so under the terms of the Ticketing and Settlement Agreement as a result of the Price or Child Price of a Fare being set by another person) any Fare which would entitle the purchaser of such Fare to travel on all or any of the Passenger Services after the term of the ERMA or the Franchise Period (as applicable) for an amount which is less than the Price or the Child Price of that Fare immediately before the the ERMA Start Date or of such thirteen (13) month period (as applicable) or, in the case of a new Fare, the Price of its nearest equivalent immediately before the commencement of such period."</i></p> <p>Paragraph 5.1(b)(i) shall be amended as follows:</p> <p><i>"(i) presenting a Discount Card (or any equivalent replacement thereof) issued by the Franchisee before the ERMA Start Date or the commencement of such thirteen (13) month period and to which the purchaser would have been entitled before the commencement of such period;"</i></p> <p>Paragraphs 5.2(a) and (b) shall be amended by inserting the words "during the term of the ERMA or," before the words "in the last thirteen (13) Reporting Periods" and adding the words "(whichever is the longer)" after the words "in the last thirteen (13) Reporting Periods".</p> <p>Paragraph 6 shall be amended as follows:</p>

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15.3 – Handover Package	<p data-bbox="848 304 1308 331">"6. Voting on Scheme Councils</p> <p data-bbox="848 352 1980 456">6.1 Subject to paragraph 7.4, during <u>During</u> the last twelve (12) months term of the Franchise Period <u>ERMA</u>, the Franchisee shall give the Secretary of State reasonable notice of:</p> <ul style="list-style-type: none"> <li data-bbox="943 477 1245 504">(a) any meeting of: <ul style="list-style-type: none"> <li data-bbox="1032 525 1935 592">(i) a scheme council of an Inter-Operator Scheme on which the Franchisee is represented; or <li data-bbox="1032 612 1951 735">(ii) a scheme management group of any Inter-Operator Scheme: <ul style="list-style-type: none"> <li data-bbox="1122 660 1935 687">(A) in which the Franchisee has a permanent position; or <li data-bbox="1122 708 1973 735">(B) where the Franchisee employs a member of such group; <li data-bbox="943 756 1827 783">(b) the resolutions to be voted upon at any such meeting; and <li data-bbox="943 804 1973 871">(c) the Franchisee's voting intentions-recommendations, together with its reasons. <p data-bbox="848 892 1603 919">6.2 Subject to paragraph 7, the <u>The</u> Franchisee shall:</p> <ul style="list-style-type: none"> <li data-bbox="943 940 1935 1007"><u>(a) vote at any such meeting in the manner required by the Secretary of State; and</u> <li data-bbox="943 1027 1995 1094"><u>(b) present any documents or other information which the Secretary of State may request at any such meeting".</u> <p data-bbox="757 1155 1547 1182">Paragraph 7 shall be deleted and replaced with "<u>Not used</u>".</p> <p data-bbox="757 1211 815 1238">N/A</p>

REFERENCE (CLAUSE/PARAGRAPH/SCHEDULE)	AMENDMENT
15.4 – Provisions Applying on and After Termination	<p>Paragraph 2.2 shall be amended by inserting the words <u>“or sub-lessee and/or any”</u> after the words “any rolling stock lessor” and by deleting the words “and/or and” before “other relevant third party”.</p> <p>Paragraph 4.2 shall be amended by inserting the words <u>“(or, in relation to the rolling stock vehicles, use all reasonable endeavours to) procure that any sub-lessee shall provide)”</u> after the words “On the expiry of the Franchise Period, the Franchisee shall grant”.</p> <p>Paragraph 6.1 shall be amended by inserting the words <u>“(or in relation to rolling stock vehicles use all reasonable endeavours to) procure that any sub-lessee shall provide”</u> after the words “The Franchisee shall immediately on expiry of the Franchise Period provide to the Secretary of State”.</p>
Schedule 16: Pensions	
16 – Pensions	<p>N/A</p> <p>Paragraph 6.4 shall be amended as shown below:</p> <p>“If the Trustee does not certify under paragraph 6.3 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; <u>then, without prejudice to the other duties and obligations of the Franchisee and to any other rights</u> the Secretary of State may adjust <u>have, it is acknowledged that the provisions in Schedule 8.1A (Franchise Payments) will operate to adjust the Franchise Payments payable under Schedule 8.1A (Franchise Payments) by an amount which is, in his opinion, no greater than the amount to take account of any contribution or payment that the Franchisee has <u>thereby</u> failed to make or avoided making.”</u></p>

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In paragraph 6.5, the reference to "Schedule 8 (*Payments*)" shall be deleted and replaced with "[Schedule 8.1A \(*Franchise Payments*\)](#)".

In paragraph 6.5, the text shall be deleted and replaced with "[Not used](#)".

New paragraphs 8, 9 and 10 shall be added as follows:

[8. Franchisee obligations to participate in any Investigation and reform](#)

[8.1 In this Schedule:](#)

[\(a\) "Investigation"](#) *means any investigation, threatened use, or use of any statutory powers by the Pensions Regulator in relation to a section of the Railways Pension Scheme which has or had as its designated employer the Franchisee or another Train Operator (including a Successor Operator). For the avoidance of doubt, this includes any powers under section 231 of the Pensions Act 2004 or any other power which could affect the contributions payable by the employer or the liabilities of any other person in respect of that section; and*

[\(b\) "Reasonable Commercial Manner"](#) *means:*

(i) acting in the long-term interests of the Franchise taking into account the long-term affordability, sustainability and financial robustness of the Franchise Section(s) as if the Franchisee and its employees (as appropriate) were solely responsible for the funding of the Franchise Section(s) and, at all times, disregarding the actual

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	<p><u>allocation of cost risk as between the Franchisee and the Secretary of State in this Franchise Agreement;</u></p> <p><u>(ii) or (at the option of the Secretary of State) acting in such other manner as the Secretary of State directs.</u></p> <p><u>8.2 The Franchisee shall:</u></p> <p><u>(a) act in good faith and in a Reasonable Commercial Manner at all times; and</u></p> <p><u>(b) engage appropriately with the RDG, the Pensions Regulator and the relevant trade unions,</u></p> <p><u>in discharging its obligations under paragraph 8.3 of this Schedule 16.</u></p> <p><u>8.3 The Franchisee shall take all reasonable steps to participate in:</u></p> <p><u>(a) the development and implementation of the RDG's response to the current and any future Investigation and the associated concerns raised by the Pensions Regulator regarding those sections of the Railways Pension Scheme for which a Train Operator is the designated employer;</u></p> <p><u>(b) any Investigation concerning one or more of the Franchise Sections, in which case the Franchisee shall use all reasonable endeavours to achieve an outcome from that Investigation with which a reasonable franchisee, who was in the position of the Franchisee and acting in a Reasonable Commercial Manner, would be satisfied; and</u></p> <p><u>(c) any industry wide efforts to reform the pension arrangements or benefits payable under the Railways Pension Scheme or offered to employees of Train Operators, recognising the need for the British</u></p>

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passenger rail industry to be affordable and offer value for money in the interests of relevant stakeholders including taxpayers.

9. Information Powers

Where required by the Secretary of State, the Franchisee agrees to allow the Secretary of State or the Secretary of State's representatives to attend any meeting between the Franchisee and the Trustee and/or the Pensions Regulator where the meeting in whole or part relates to matters to which paragraph 8 or 10 of this Schedule 16 applies.

10. Pension Directions by the Secretary of State

10.1 The Secretary of State may, at any time, by written notice to the Franchisee, direct that the Franchisee take such action in relation to pensions for employees and workers of the Franchisee as the Secretary of State may in the Secretary of State's sole discretion determine. The Secretary of State may consult with the Franchisee before issuing any such direction under this paragraph. The Secretary of State may issue more than one direction to the Franchisee under this paragraph.

10.2 Without limiting the generality of paragraph 10.1, such directions may include:

- (a) directing the Franchisee to propose a schedule of contributions or recovery plan to the Trustee of the Railways Pension Scheme incorporating such employer and employee contributions and over such period as the Secretary of State may determine;
- (b) directing the Franchisee to offer such alternative pension arrangements to employees or workers of the Franchisee as the Secretary of State may determine; and

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	<i><u>(c) directing the Franchisee to make proposals to the Trustee of the Railways Pension Scheme in relation to benefits, contributions or investments.</u></i>
10.3	<i><u>Where the Franchisee receives a direction under paragraph 10.1, the Franchisee will use all reasonable endeavours to implement the direction and to work in good faith and act in a Reasonable Commercial Manner with other parties to give effect to the direction.</u></i>
10.4	<i><u>To the extent that the terms of any direction given under paragraph 10.1 conflict with any of the other terms of this Schedule 16.1, the terms of the direction shall prevail to the extent of that inconsistency.</u></i>
10.5	<i><u>The Franchisee will provide the Secretary of State with any documents or information which it may reasonably request in connection with any matter which is relevant to the subject of any direction given under paragraph 10.1 or its implementation.</u></i>
10.6	<i><u>Nothing in this paragraph 10 shall require the Franchisee to breach any legal obligation to which it is subject. Where the Franchisee reasonably considers that the implementation of any aspect of the direction will cause it to breach any legal obligation of the Franchisee the Secretary of State shall work in co-operation with the Franchisee with a view to agreeing an approach to discuss changes to avoid or otherwise mitigate the risk of such breach."</u></i>

Schedule 17: Confidentiality and Freedom of Information

Confidentiality and Freedom of Information

Paragraph 1 shall be amended as follows:

"Subject to the provisions of the Act, the Environmental Information Regulations, the Freedom of Information Act (and any code of practice or other guidance related to the same) and paragraphs 2 to 8 and 10 inclusive of this Schedule 17, each Party shall hold in confidence the Franchise Documents and all documents, materials and

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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."

Paragraph 2.2 shall be amended by:

deleting the word "or" after paragraph (f)

amending paragraph (g) as follows:

"(g) on a confidential basis to a proposed successor, transferee or assignee of the Secretary of State in connection with any assignment, novation or disposal of any of its rights, obligations or liabilities under this Agreement; ~~;~~ or " and

inserting the following as new paragraph (h):

"(h) on a confidential basis to any Devolved Transport Body for any proper purpose of the Secretary of State or of the relevant Devolved Transport Body,"

The word "and" at the end of clause 3.1(l) shall be deleted.

The wording "." at the end of clause 3.1(m) shall be deleted and replaced with the word "and"

Paragraph 3.1 shall be amended by:

as follows:

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	<p data-bbox="853 304 1984 528"><i>“Notwithstanding the provisions of paragraph 1, the Secretary of State may publish (for purposes including section 73 of the Act and 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 the Secretary of State sees fit, the following (irrespective of whether the same was provided to the Secretary of State by the Franchisee or a third party):”; and</i></p> <p data-bbox="757 544 1357 576">By inserting a new paragraph (n) as follows:</p> <p data-bbox="853 592 1984 740"><i>“(n) any information provided to the Secretary of State pursuant to any provision of the Franchise Agreement including pursuant to a Request for Data where in the opinion of the Secretary of State publication is appropriate for the purposes of properly carrying out its duties.”</i></p>

Appendix 1 to Schedule 1
Schedule 1 (*Passenger Service Obligations*)

Passenger Service Obligations

Schedule 1.1:	Franchise Services and Service Development
	Part 1 – Franchise Services
	Part 2 – 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:	The Rolling Stock
	Appendix 1: The Composition of the Train Fleet
Schedule 1.7:	Stations
	Appendix 1: List of Stations and Car Parks with accreditation
	Appendix 2: Information about Station Improvement Measures
	Appendix 3: NOT USED
	Appendix 4: NOT USED

Schedule 1.1

Franchise Services and Service Development**Part 1 – Franchise Services****1. Franchise Services**

- 1.1 The Franchisee may at all times during the Franchise Term provide and operate the Franchise Services specified in this Schedule 1.1. The Franchisee is required to provide the Passenger Services that comply with the Train Service Requirement and (without prejudice to the other provisions of the Franchise Agreement) is permitted to provide other Franchise Services subject to the provisions of Part 1 of this Schedule 1.1.
- 1.2 The Franchisee shall not, directly or indirectly, without the prior written consent of the Secretary of State, carry on any business or activity other than the provision and operation of the Franchise Services.
- 1.3 Nothing in this Schedule 1.1 shall restrict any Affiliate of the Franchisee from having an interest in or participating in any business or activity.
- 1.4 The Franchisee shall not engage any Franchise Employee in any activity or business which it may not conduct or engage in under this Schedule 1.1.

2. Station Services**2.1 The Station Services shall comprise:**

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

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

3. Light Maintenance Services**3.1 Light Maintenance Services shall comprise:**

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

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

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

4. **Ancillary Services**

4.1 The Franchisee may carry out the following Ancillary Services

- (a) the selling, lending or hiring of any goods or rights and the provision of any services (whether for a charge or not) on any train used in the provision of the Passenger Services where such goods or services are sold or provided principally for consumption or use on the relevant train, including the sale of any Fares, meals, light refreshments, newspapers, magazines, books, entertainment materials information or materials targeted at tourists and other leisure passengers (such as maps) or phone cards;
- (b) the provision of any service at any station which, if provided on a train used in the provision of the Passenger Services, would fall within paragraph 7.1(a) or which, if provided at a Station, would fall within paragraph 5 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) NOT USED;
- (d) NOT USED;
- (e) NOT USED;
- (f) the selling at any location of any Fare which is valid, in whole or in part, on the Passenger Services and the selling of any other Fare at any location

where such Fares may be purchased from the Franchisee on or before the date of the Franchise Agreement or at any other location, provided that the majority of Fares sold at any such other location shall be Fares which are valid, in whole or in part, on the Passenger Services;

- (g) the selling, in conjunction with any Fare, of any other rights which entitle the purchaser thereof to:
 - (i) travel on any other train or light rail service;
 - (ii) travel on any aircraft;
 - (iii) travel on any shipping or ferry service;
 - (iv) travel on any bus; or
 - (v) attend any event or attraction or enter any location;
- (h) the lending, seconding, hiring or contracting out of Franchise Employees to other Train Operators in order to enable such Train Operators to provide services at the Stations to passengers travelling on any such operator's trains;
- (i) the provision of information relating to railway passenger services within Great Britain to passengers through telephone, internet, mobile data services or other appropriate means;
- (j) the supervision, management and training of train crew of other Train Operators provided such activity is necessarily incidental to the provision of the Passenger Services and could not reasonably be carried out by or through an Affiliate of the Franchisee;
- (k) NOT USED;
- (l) the licensing or permitting of any other person (including an Affiliate of the Franchisee) to carry out any activity or business, in connection with the provision of the Franchise Services, or otherwise, on any rolling stock vehicle operated by the Franchisee, at any station served by the Passenger Services, at any Depot, or otherwise (including the letting, leasing or licensing (on an exclusive basis or otherwise) of any part or all of a Station or Depot to such other person);
- (m) such other activity or business as may be reasonably necessary for the purpose of providing any other Franchise Services or complying with the Franchise Agreement, provided that it could not reasonably be carried out by or through an Affiliate of the Franchisee;
- (n) the subleasing to any other person of the following property which is not comprised in a Station or Depot;
- (o) the provision or operation of Charter Services, subject to the Planned Train Mileage of such Charter Services not exceeding in any Reporting Period two per cent (2%) of the Planned Train Mileage of Passenger Services provided by the Franchisee in such Reporting Period;
- (p) the provision of consultancy services reasonably ancillary to the provision of the other Franchise Services; and

- (q) any services or activity not falling within paragraphs 2, 3, 4.1(a) to 4.1(p) above, subject to the gross value of any such services or activity (excluding any attribution of costs) not exceeding twenty five thousand pounds (£25,000) per annum in each Franchisee Year, per item and in aggregate, two hundred and fifty thousand pounds (£250,000) per annum in each Franchisee Year provided that in the second and each subsequent Franchisee Year, these amounts will be increased by RPI.
- 4.2 Subject to obtaining the Secretary of State's prior written consent (such consent not to be unreasonably withheld or delayed) save in respect of paragraph 4.2(d), for which no such consent shall be required, the Franchisee may, and (to the extent required in order to best serve the needs of passengers on railway passenger services within Great Britain from time to time) shall use all reasonable endeavours to, carry out the following Ancillary Services:
- (a) in any Reporting Period, the subleasing, hiring or licensing of the rolling stock vehicles used in the provision of the Passenger Services;
 - (b) the lending, seconding, hiring or contracting out during any Reporting Period to another person or persons (whether for a charge or not) of Franchisee Employees;
 - (c) 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): and(d) 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.
5. **Royal Train**
- 5.1 The Franchisee shall, if and to the extent requested by any person (including DB Cargo UK Limited its successor and assigns) and subject to the payment by such person of any reasonable costs of the Franchisee, co-operate in the provision by such person of railway passenger services for Her Majesty Queen Elizabeth II or any successor head of state or members of the royal family or representatives of either of them.
- 5.2 The provision of railway services for Her Majesty Queen Elizabeth II or any successor head of state or members of the royal family or representatives of either of them may include:
- (a) running a "**sweeper**" train in front of the royal train;
 - (b) having spare locomotives or other rolling stock on standby as rescue traction; and/or
 - (c) carrying out security requirements or co-operating with other persons in ensuring that security requirements are carried out prior to calling at any station on the Routes.
6. **Restrictions relating to Franchise Services**

- 6.1 The Franchisee shall not without the prior written consent of the Secretary of State operate Passenger Services other than on the following routes (and, in the event of disruption, any reasonable diversionary route):
- (a) Leamington Spa – Birmingham Snow Hill via Dorridge;
 - (b) Stratford-upon-Avon – Birmingham Snow Hill via Dorridge or via Shirley;
 - (c) Birmingham Snow Hill – Worcester Foregate Street and Worcester Shrub Hill via Kidderminster;
 - (d) Coventry – Leamington Spa;
 - (e) Coventry - Nuneaton;
 - (f) Northampton – Birmingham New Street;
 - (g) Birmingham New Street – Shrewsbury via Sandwell & Dudley;
 - (h) Birmingham New Street – Shrewsbury via Tame Bridge Parkway
 - (i) Birmingham New Street – Stafford;
 - (j) Birmingham New Street – Lichfield Trent Valley;
 - (k) Birmingham New Street – Walsall and Rugeley Trent Valley via Aston;
 - (l) Birmingham New Street - Walsall and Rugeley Trent Valley via Soho junctions
 - (m) Birmingham New Street – Worcester Foregate Street and Worcester Shrub Hill via University and Bromsgrove;
 - (n) Birmingham New Street – Worcester Foregate Street and Worcester Shrub Hill via St Andrews Junction and Bromsgrove;
 - (o) Birmingham New Street – Worcester Foregate Street and Worcester Shrub Hill via Galton Junction;
 - (p) Barnt Green – Redditch;
 - (q) Worcester Shrub Hill and Worcester Foregate Street – Hereford;
 - (r) Stourbridge Junction – Stourbridge Town;
 - (s) Euston – Northampton via Milton Keynes Central;
 - (t) Euston – Crewe via Weedon and Tamworth;
 - (u) Euston – Crewe via Northampton and Tamworth;
 - (v) Crewe – Liverpool Lime Street via Runcorn;
 - (w) Stafford – Crewe via Stoke-on-Trent;
 - (x) Watford Junction – St. Albans Abbey;

- (y) Bletchley – Bedford;
 - (z) Walsall – Wolverhampton via Darlaston Junction and Pleck Junction;
 - (aa) Stratford-upon-Avon to Leamington Spa;
 - (bb) Stone – Barlaston – Wedgwood – Stoke-on-Trent (Rail Replacement Bus Service);
 - (cc) Stafford – Norton Bridge – Stone (Rail Replacement Bus Service);
 - (dd) Worcester Foregate Street – Gloucester;
 - (ee) Gloucester – Cardiff Central;
 - (ff) Birmingham New Street – Nuneaton – Leicester;
 - (gg) Crewe – Manchester Airport;
 - (hh) Stourbridge Junction – Round Oak (Canal Street); and
 - (ii) Kidderminster – Bewdley (via Severn Valley Railway).
- 6.2 It is acknowledged that a Passenger Service to be operated by the Franchisee on the routes specified in paragraph 6.1 may be operated throughout the route, on part of the route or any combination of the whole or part of any two or more of the routes specified above.
- 6.3 The Secretary of State may impose such conditions to the Secretary of State's consent as the Secretary of State considers appropriate for the purpose of securing the continuity of the provision of the Franchise Services at the end of the Franchise Term.
- 6.4 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.

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

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

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

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

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

8. Subcontracting any Passenger Services

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

8.2 The Franchisee may subcontract or delegate the provision of the Passenger Services, provided that:

- (a) the Secretary of State receives prior written notice of any such subcontracting or delegation;
- (b) the Franchisee continues to be party to all Access Agreements and Property Leases necessary to provide such Passenger Services and to enjoy all relevant access and operational rights thereunder;
- (c) the Franchisee continues to specify and control the terms and conditions (subject to the requirements of the Inter-Operator Schemes) on which such Passenger Services are to be provided, including the determination of the Price or Child Price (as the case may be) of any Fares;
- (d) the Planned Train Mileage of the Passenger Services so delegated or subcontracted does not exceed five per cent (5%) of the Planned Train Mileage of the Franchisee in any Reporting Period (provided that, if as a result of the impact of COVID-19 it is not reasonably practicable to obtain the prior written consent of the Secretary of State to a higher percentage of the Planned Train Mileage being delegated or subcontracted in advance of subcontracting or delegating the provision of such Passenger Services, the Franchisee may subcontract or delegate the provision of such Passenger Services provided that the Secretary of State receives notification of, and has not objected to, any such subcontracting or delegation); and
- (e) the Franchisee continues to perform its obligations under this Schedule 1.1 in respect of any subcontracted or delegated services.

- 8.3 Any such subcontracting or delegation shall not relieve the Franchisee from any of its obligations under the Franchise Agreement, including its obligations under this paragraph 8 and Schedule 14 (Preservation of Assets).

Part 2 – Service Development

9. Train Service Requirement - Purpose and Responsibility

- 9.2 The Train Service Requirement is the minimum specification of the Passenger Services and capacity to be provided by the Franchisee during the Franchise Term.
- 9.3 The Train Service Requirement as at the date of the Franchise Agreement is in the in the agreed terms marked TSR.
- 9.4 For the purposes of this Schedule 1.1, the Train Service Requirement shall remain in force unless and until amended or replaced pursuant to this Schedule 1.1.
- 9.5 The Train Service Requirement does not in any way limit the Franchisee's obligations pursuant to paragraph 14 of this Schedule 1.1.
- 9.6 The Franchisee is required to seek Train Slots from Network Rail in accordance with the Train Service Requirement with the intention that the working timetable issued by Network Rail is consistent with such Train Service Requirement. With regard to capacity, the Franchisee is required to include in the Train Plan the minimum capacity specified in the Train Service Requirements.
- 9.7 The Train Service Requirement may be expressed in whole or in part at any level of generality or to any level of detail the Secretary of State considers appropriate.

10. Train Plan

- 10.1 For the purposes of this Agreement, the "**Train Plan**" shall be the plan or diagram (including sub-plans or sub-diagrams) prepared by the Franchisee for the operation of trains and train formations under the Timetable that best matches available capacity to Forecast Passenger Demand as amended from time to time during the Franchise Period in accordance with this Agreement.
- 10.2 For the purposes of Schedule 7 (*Performance Benchmarks*), references to "**Train Plan**" shall be construed as the latest version of the Train Plan which includes any amendments thereto pursuant to paragraphs 3, 4 and/or 5 of Schedule 1.2 (*Operating Obligations*):
- (a) where such amendments are required as a consequence of Network Rail exercising its rights pursuant to the Track Access Agreement;
 - (b) where such amendments proposed by the Franchisee have prior approval from the Secretary of State; or
 - (c) where such amendments are requested by the Secretary of State.
- 10.3 The Franchisee shall submit to the Secretary of State a Train Plan in respect of each Timetable in accordance with this Schedule 1.1.
- 10.4 In preparing any Train Plan, the Franchisee shall do so by reference to the Timetable that it envisages operating in order to comply with the Train Service Requirement and paragraph 14 of this Schedule 1.1.
- 10.5 Each Train Plan shall set out for each railway passenger service in the Timetable to which it relates:
- (a) its start point and departure time;

- (b) its terminating point and arrival time;
 - (c) the number and class of rolling stock vehicles allocated to each such railway passenger service;
 - (d) the Passenger Carrying Capacity that each such railway passenger service, as formed, is to have; and
 - (e) its Forecast Passenger Demand and, where this has been requested by the Secretary of State and is capable of calculation, Actual Passenger Demand.
- 10.6 A Train Plan shall be in any format that the Secretary of State may reasonably specify for this purpose.
- 10.7 At the Start Date, Network Rail will have issued the applicable working timetable on which the Timetable is to be based. Accordingly the Franchisee shall confirm to the Secretary of State that it intends:
- (a) to adopt, from the Start Date until the next Passenger Change Date, the Train Plan prepared by the Train Operator under the Previous Franchise Agreement; or
 - (b) to prepare its own Train Plan in accordance with this Schedule 1.1,

such Train Plan shall become the document in the agreed terms marked **TP** as at the Start Date. It is acknowledged that the Train Plan in the agreed terms marked **TP** shall be replaced from time to time during the Franchise Period in accordance with the provisions of paragraph 14.4.

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

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

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

- 11.2 The first Timetable to which these provisions apply is the Timetable with effect from the Passenger Change Date on May 2021.

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

12. **Timetable Development Rights**

- 12.1 The Franchisee shall use all reasonable endeavours to amend and/or enter into such Access Agreements as may be necessary or desirable from time to time to obtain the Timetable Development Rights that it requires to secure a Timetable that enables it to operate railway passenger services that comply with the Train Service Requirement and otherwise comply with its obligations under the Franchise Agreement (including under paragraph 14 and paragraph 16 of this Schedule 1.1).
- 12.2 Prior to exercising any Timetable Development Rights to secure a Timetable the Franchisee shall make an informed estimate of Forecast Passenger Demand and in doing so shall make reasonable assumptions based on available evidence (making proper use of recognised railway industry systems and forecasting tools as these may develop over the Franchise Period) with the estimate being in such format and to such level of disaggregation as the Secretary of State may reasonably require.
- 12.3 Subject to the remaining provisions of this paragraph 12, the Franchisee shall exercise its Timetable Development Rights so as to secure a Timetable that enables

it to operate railway passenger services that comply with the Train Service Requirement and paragraph 14 of this Schedule 1.1 in accordance with its obligations under paragraph 17 of this Schedule 1.1.

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

- (a) paragraph 14.1(b); and
- (b) paragraph 14.1(c),

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

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

- 12.5 Unless the Secretary of State otherwise directs, the Franchisee shall, for the purposes of securing a Timetable that complies with the Train Service Requirement and paragraph 14 of this Schedule 1.1, exercise its rights under the 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.

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

- (a) disputing any actual or proposed act or omission by Network Rail in respect of any Timetable Development Rights; and
- (b) submitting such dispute to any relevant dispute resolution arrangements or procedures and appealing against any award or determination under such arrangements or procedures, including to the ORR.

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

- (a) the Franchisee's Timetable Development Rights being inadequate to enable it to secure the requisite Train Slots, provided that the Franchisee has exercised and, unless otherwise agreed by the Secretary of State, is continuing to exercise all reasonable endeavours to obtain the requisite Timetable Development Rights in accordance with paragraph 12.1;
- (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.

12.8 TDR Amendments

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

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

12.10 Any TDR Amendment issued pursuant to paragraph 12.8 shall:

- (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 to secure a Timetable that enables it to operate railway passenger services that comply with the Train Service Requirement without any such TDR Amendment; and

- (b) amount to a Change but only to the extent that the Franchisee makes a saving as a consequence of such TDR Amendment and provided that if such TDR Amendment has been issued in consequence of Network Rail exercising the rights referred to in paragraphs 12.7(b) or 12.7(c) there shall be no Change.

12.11 Intervals and Journey times

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.

12.12 With effect from the date on which any TDR Amendment ceases to have effect in accordance with paragraph 12.10:

- (a) the Train Service Requirement without such TDR Amendment shall thereafter apply; and
- (b) where there has been a Change which is a Qualifying Change pursuant to paragraph 12.10(b) there shall be a further Change (which shall be deemed to be a Qualifying Change) to the extent necessary so as, with effect from such date, to disapply the effect of any such Qualifying Change pursuant to paragraph 12.10(b) to take into account the fact that the Franchisee will have ceased to make a saving.

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

13.1 Before exercising any Timetable Development Right to bid for Train Slots, the Franchisee shall provide a certificate addressed to the Secretary of State and signed by a statutory director of the Franchisee confirming that its proposed exercise of that Timetable Development Right will be compliant with its obligation specified in paragraph 12.3.

13.2 If requested by the Secretary of State, the Franchisee agrees to demonstrate to the reasonable satisfaction of the Secretary of State that the Franchisee's certificate referred to in paragraph 13.1 is a true and accurate confirmation of compliance with its obligation specified in paragraph 12.3.

13.3 The Franchisee shall:

- (a) keep the Secretary of State fully informed of any discussions with 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 impact on the ability of the Franchisee to deliver the Train Service Requirement or meet the requirements of paragraph 14 of this Schedule 1.1 through the

Timetable and shall, if required to do so by the Secretary of State, supply copies of any related correspondence to the Secretary of State; and

- (b) update any notification under this paragraph 13.3 and/or certification under paragraph 13.1 as soon as reasonably practicable, if at any time it elects or is required to modify any aspect of its exercise of its Timetable Development Rights following Network Rail's proposed or actual rejection or modification of its bid or any part of it or for any other reason.

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

14.1 **Capacity and Timetable Planning**

- (a) The Franchisee shall, in preparing its Timetable and Train Plan, unless the Secretary of State otherwise agrees, provide for at least the capacity specified in the Train Service Requirement.
- (b) The Franchisee shall use all reasonable endeavours to provide for Passenger Carrying Capacity on each Passenger Service that meets as a minimum the Target Passenger Demand for that Passenger Service.
- (c) The Franchisee shall use all reasonable endeavours to provide passengers with a reasonable expectation of a seat:
 - (i) on boarding any Off-Peak Passenger Service; and
 - (ii) twenty (20) minutes after boarding (or such other time period as the Secretary of State may stipulate) on any Peak Passenger Service.

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

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

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

14.3 Preparation of Timetable and Train Plan

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

14.4 Finalising the Train Plan

- (a) The Franchisee shall submit its proposed Train Plan to the Secretary of State as soon as reasonably practicable after Network Rail has issued the Timetable on which the Train Plan is to be based.
- (b) The Franchisee shall submit its final Train Plan to the Secretary of State prior to the commencement of the Timetable to which it relates.
- (c) The Train Plan shall be certified by a statutory director of the Franchisee as being true and accurate and including the minimum capacity specified in the Train Service Requirement.
- (d) The Franchisee shall provide to the Secretary of State in a timely manner such rolling stock diagrams as the Secretary of State may reasonably request from time to time.

15. Capacity Mitigation Proposal

15.1 Without prejudice to the obligation of the Franchisee to include in the Train Plan the capacity specified in the Train Service Requirement, if at any time the Franchisee is unable to prepare a Timetable and/or a Train Plan which meets the requirements of paragraph 14.1 (regardless of whether the Franchisee has used all reasonable endeavours to do so), the Secretary of State may serve a notice on the Franchisee requiring it to produce a proposal to a reasonable specification provided with the notice to remedy or mitigate such inability ("**Capacity Mitigation Proposal**").

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

- (a) remedy the circumstances leading to the Franchisee being unable to prepare a Timetable and/or a Train Plan which meets the requirements of paragraph 14.1; and/or

- (b) minimise, so far as is possible, the amount by which Target Passenger Demand exceeds the provision of Passenger Carrying Capacity on the affected Passenger Services;
 - (c) ensure, so far as is possible, that such excess is not unduly concentrated on any particular Route or Passenger Service; and
 - (d) minimise, so far as is possible, the extent to which passengers are required to stand:
 - (i) on boarding any Off-Peak Passenger Service; and
 - (ii) twenty (20) minutes after boarding (or such other time period as the Secretary of State may stipulate) on 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.
- 15.3 Where the Secretary of State reasonably believes that future circumstances may lead to the Franchisee being unable to prepare a Timetable and/or a Train Plan which meets the requirements of paragraph 14.1 at any time within the next four (4) years (including after the end of the Franchise Term) the Secretary of State shall have the right to serve notice on the Franchisee specifying those future circumstances and the date that the Franchisee should assume that they will arise from and requiring it to produce a Capacity Mitigation Proposal to remedy or mitigate such future circumstances on the basis of assumptions provided by the Secretary of State.
- 15.4 The Capacity Mitigation Proposal shall (unless the Secretary of State specifies to the contrary) include the Franchisee's informed estimate of Forecast Passenger Demand, in such format and to such level of disaggregation as the Secretary of State may reasonably require. Without limitation such specification may require the Franchisee to present options to address relevant issues through:
- (a) alterations to the Train Service Requirement;
 - (b) modification of rolling stock or the acquisition of additional or replacement rolling stock;
 - (c) alterations to Fares; and/or
 - (d) alterations or enhancements to any track, signalling, station, depot or other relevant railway infrastructure.
- 15.5 The Capacity Mitigation Proposal shall provide a comprehensive analysis backed by relevant data and assumptions of:
- (a) all cost and revenue and other financial implications of options contained within it including the potential implications for Franchise Payments;
 - (b) the implications (if any) for the Benchmarks and/or the Annual Benchmarks; and
 - (c) the likely impact of options within it for existing and future passenger journeys and journey opportunities.

- 15.6 The Franchisee shall meet with the Secretary of State to discuss the Capacity Mitigation Proposal and provide such further information or analysis and further iterations of the Capacity Mitigation Proposal as the Secretary of State shall reasonably require. If the Secretary of State decides that the Secretary of State wishes to implement any Capacity Mitigation Proposal (or any part thereof) this shall be by way of a Variation.
16. **New or amended Train Service Requirement by the Secretary of State and Franchisee Informed Opinion**
- 16.1 As and when required, whether for the purposes of considering alterations to the Train Service Requirement or otherwise, the Franchisee shall provide to the Secretary of State:
- (a) its informed estimate of Forecast Passenger Demand, in such format and to such level of disaggregation as the Secretary of State may reasonably require in order to assist the Secretary of State's decision making on future train service requirements, infrastructure, station and rolling stock vehicle investment, the best use of the network and the alleviation of overcrowding;
 - (b) its informed opinion as to any changes to the current Train Service Requirement which:
 - (i) should be made in order to deliver an optimal range of railway passenger services relative to Target Passenger Demand; and
 - (ii) could be implemented and operated without additional resources or an adjustment to the Franchise Payments;
 - (c) its informed opinion as to any changes to the current Train Service Requirement which:
 - (i) would deliver an optimal range of railway passenger services relative to Target Passenger Demand; and
 - (ii) could only be implemented and operated with additional resources and/or an adjustment to the Franchise Payments, together with an explanation as to:
 - (A) what additional resources and/or adjustments are necessary to make such changes; and
 - (B) why such additional resources and/or adjustments are necessary;
 - (d) a draft of the Train Plan that the Franchisee considers that each set of proposed changes would require.
- 16.2 Prior to issuing any amended or new Train Service Requirement the Secretary of State shall provide to the Franchisee the Secretary of State's draft of any proposed amended or new Train Service Requirement stating the date upon which the Secretary of State proposes that such amended or new Train Service Requirement should take effect along with the Secretary of State's views as to the changes (if any) that the Secretary of State proposes to make to the Benchmarks and/or the Annual Benchmarks.

- 16.3 On receipt of any such draft of a proposed amended or new Train Service Requirement the Franchisee shall provide to the Secretary of State (if so requested) its informed opinion:
- (a) with supporting reasons as to the impact of the proposed amended or new Train Service Requirement on the delivery of an optimal range of railway passenger services patterns relative to Target Passenger Demand and compliance with paragraph 14.1 of this Schedule 1.1;
 - (b) with supporting reasons as to the changes to resources and adjustment to Franchise Payments (if any) which would be required in consequence of the proposed amended or new Train Service Requirement;
 - (c) with supporting reasons as to changes (if any) to the Benchmarks and/or the 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 17 of this Schedule 1.1; and
 - (e) with supporting reasons of the likely impact of the proposed amended or new Train Service Requirement on existing and future passenger journeys and journey opportunities.
- together with a draft of the Train Plan that it considers that the proposed amended or new Train Service Requirement would require.
- 16.4 There may be iterations of drafts of the proposed amended or new Train Service Requirement and the Franchisee shall to the extent required by the Secretary of State have the obligations described in this paragraph 16 in respect of all such iterations.
- 16.5 Processes contained in this paragraph 16 shall take place in accordance with procedural arrangements and timescales stipulated by the Secretary of State pursuant to paragraph 17.2 of this Schedule 1.1.
- 16.6 The Secretary of State may, in accordance with any stipulation made under paragraph 17.2, issue to the Franchisee any amended or new Train Service Requirement that the Secretary of State requires the Franchisee to operate and notice of the amendments (if any) to the Benchmarks and/or 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.
- 16.7 In the absence of the Secretary of State issuing any amended or new Train Service Requirement the existing Train Service Requirement will remain in full force and effect. The degree of variation from any Train Service Requirement specified at the date of the Franchise Agreement was entered into in respect of any particular period and brought about by any amended or new Train Service Requirement issued pursuant to this paragraph 16 shall (where relevant) be of a magnitude no greater than that contemplated in the Invitation to Tender.

- 16.8 At the same time as the Secretary of State provides the Franchisee with a draft of any proposed amended or new Train Service Requirement pursuant to paragraph 16.1, the Secretary of State shall also provide to the Franchisee the Secretary of State's opinion of any amendments (if any) that are required to the Benchmarks and/or the Annual Benchmarks.
- 16.9 The Secretary of State shall be permitted to carry out indicative Runs of the Financial Model for the purposes of considering the effects of the Secretary of State's proposed amended or new Train Service Requirement.
- 17. Procedural Arrangements and Timescales**
- 17.1 The Franchisee agrees that the effective operation of the provisions of this Schedule 1.1 (and of provisions addressing the same or similar matters in other franchise agreements) will require certain procedural arrangements and timescales to be followed to a common timescale by the Secretary of State, the Franchisee, Network Rail and others.
- 17.2 The Franchisee agrees that the Secretary of State may stipulate any reasonable procedural arrangements and timescales that are to be followed by the Secretary of State and the Franchisee for these purposes (which shall be consistent with any relevant standard railway industry processes for the development of the Timetable and the resultant Train Plan) and that the Secretary of State may amend any such stipulation from time to time.
- 17.3 The Secretary of State agrees to consult the Franchisee as far as reasonably practicable prior to stipulating or amending any such procedural arrangements and timescales in accordance with paragraph 17.2.
- 17.4 Any stipulation by the Secretary of State pursuant to paragraph 17.2:
- (a) shall be at the reasonable discretion of the Secretary of State;
 - (b) may contain procedural arrangements and timescales to be followed by the Franchisee in relation to other changes to the Franchise Services (pursuant to paragraph 1 of Schedule 9.3 (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 and for indicative Runs of the Financial Model in relation thereto.
- 17.5 Any procedural arrangements and timescales stipulated by the Secretary of State pursuant to paragraph 17.2 shall have contractual effect between the Franchisee and the Secretary of State in accordance with the terms of such stipulation.
- 18. Obligations in relation to other Train Operators**
- 18.1 Subject to the terms of the Licences and any applicable Law, the Franchisee shall co-operate with other Train Operators in respect of their timetable development rights where such other Train Operators provide railway passenger services meeting common or displaced passenger demand, with a view to ensuring that:

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

19. Provisions relating to Access Agreements and Property Leases

- 19.1 Where the Secretary of State considers it requisite for the purposes of better securing the delivery of railway passenger services under the Franchise Agreement, or any other franchise agreement, or for the better achievement by the Secretary of State of any of the Secretary of State's duties, functions and powers in relation to railways, the Secretary of State may require the Franchisee:
- (a) to exercise or refrain from exercising any or all of its rights under any Access Agreement or any Property Lease, or any related rights under such other agreements as the Secretary of State may specify; and/or
 - (b) subject to the consent of the counterparty thereto, to assign, novate or surrender its rights under any Access Agreement or Property Lease.
- 19.2 Except to the extent that the Secretary of State otherwise indicates from time to time, the Franchisee shall notify the Secretary of State of its intention to enter into or amend any Access Agreement:
- (a) where the approval of the ORR is required under the Act, not less than ten (10) Weekdays before the submission to the ORR; and
 - (b) where no such approval is required, not less than ten (10) Weekdays prior to entering into such amendment or Access Agreement.
- 19.3 The Franchisee shall comply with its obligations under any Access Agreement or any Property Lease to which it is a party from time to time:
- (a) to notify or consult with the Secretary of State on any matter or proposal relating to that Access Agreement or Property Lease; and
 - (b) which are contingent on a particular course of action being taken by the Secretary of State or which are otherwise expressly included in that Access Agreement or Property Lease for the benefit of the Secretary of State.
- 19.4 If and to the extent that:
- (a) the Secretary of State exercises the Secretary of State's rights pursuant to paragraph 19.1;

(b) the Franchisee's compliance with the Secretary of State's requirements pursuant to paragraph 19.1 would lead to the unavoidable consequence of the Franchisee contravening any other terms of the Franchise Agreement or the occurrence of an Event of Default; and

(c) the Franchisee duly complies with such requirements,

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

20. The Timetable and Network Rail's Working Timetable

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

20.2 The Franchisee shall ensure, for each period between two (2) 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.

21 NOT USED.

Schedule 1.2

Operating Obligations

1. Daily Operating Obligations

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.

2. Timetabling and Train Planning Compliance Investigation

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

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

- (a) provide such information as the Secretary of State may reasonably require for the purposes of determining if the Franchisee has complied with its obligations under paragraphs 12.1, 12.3, 12.4, 12.5, 14.1, 14.2 or 14.3 of Schedule 1.1 (*Franchise Services and Service Development*) and/or paragraph 1 of this Schedule 1.2 including evidence of:
 - (i) the steps taken by the Franchisee to amend and/or enter into Access Agreements, exercise Timetable Development Rights and exercise its rights under the 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) the extent to which the Franchisee has operated on each day of the relevant Reporting Period each of its Passenger Services as are set out in the Plan of the Day for that day and with at least the Passenger Carrying Capacity specified in the Train Plan for that Passenger Service;
 - (iii) Forecast Passenger Demand and the way that it was calculated including all evidence taken into account and assumptions used

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

2.3 **Contravention of the Franchise Agreement**

- (a) The Franchisee shall be in contravention of the Franchise Agreement if following the completion by the Secretary of State of the Timetabling and Train Planning Compliance Investigation the Secretary of State concludes that the Franchisee breached any of its obligations under any of paragraphs 12.1, 12.3, 12.4, 12.5, 14.1, 14.2 or 14.3 of Schedule 1.1 (*Franchise Services and Service Development*) and/or paragraph 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 2.3(a) that the Franchisee has breached any relevant obligation the Franchisee shall pay to the Secretary of State the costs incurred by the Secretary of State in undertaking any Timetabling and Train Planning Compliance Investigation (including any audit pursuant to paragraph 2.2(b)).
- (c) The Secretary of State shall notify the Franchisee if the Secretary of State concludes pursuant to paragraph 2.3(a) that the Franchisee is in contravention of the Franchise Agreement and the Secretary of State may at the Secretary of State's discretion, and entirely without prejudice to the Secretary of State's other rights consequent upon the relevant contravention, serve a Remedial Plan Notice pursuant to paragraph 2 of Schedule 10.1 (*Procedure for remedying a Contravention of the Franchise Agreement*).

3. **Timetable changes proposed by 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 shall promptly notify the Secretary of State and the Franchisee agrees to co-operate with Network Rail in relation to such proposal, unless and until: (i) the Franchisee reasonably believes that such proposal is likely to be materially detrimental to the interests of passengers on railway passenger services in Great Britain; or (ii) the Secretary of State specifically instructs the Franchisee otherwise, in which case the Franchisee shall 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 such actual or proposed omission or rescheduling of Passenger Services by Network Rail.
- 3.5 **NOT USED.**
- 3.6 **NOT USED.**

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

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

4.1 The Franchisee agrees, subject to paragraph 4.4, 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.

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

4.3 Not used

4.4 Subject to paragraph 4.4D, if, in the opinion of the Franchisee (acting reasonably), it would not be reasonably practicable to obtain the Secretary of State's consent prior to proposing any of the items referred to in paragraphs 4.1(a), 4.1(b) or 4.1(c) to Network Rail, the Franchisee shall be entitled to propose such items to Network Rail without the Secretary of State's prior consent provided that, the Franchisee shall inform the Secretary of State of such proposals as soon as is reasonably practicable.

4.4A Subject to paragraph 4.4D, the Franchisee shall ensure that any proposals to Network Rail submitted pursuant to paragraphs 4.1 or 4.4:

- (a) take full and proper account of the likely passenger demand (including a reasonable assessment of key workers) considering any known or anticipated impacts of COVID-19 (including without limitation any guidance published by Public Health England, and any Legislation, direction or instruction issued by any relevant local, governmental or other competent authority in the United Kingdom from time to time);
- (b) utilise an appropriate number of Franchise Employees to support the likely passenger demand (as determined having taking into consideration the matters referred to in paragraph 4.4A(a)); and
- (c) ensure that the Train Fleet is deployed in an optimal manner taking account of all relevant circumstances, including the latest available official guidance relating to social distancing.

4.4B The Franchisee shall use all reasonable endeavours to co-operate with other Train Operators in respect of the Franchisee's proposals to Network Rail pursuant to paragraphs 4.1 and 4.4 or any emergency timetables proposed by other Train Operators to ensure that 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 first

trains or last trains are involved, taking account of the likely fluctuations in passenger demand as a result of COVID-19 and the time needed to make any such Connection).

- 4.4C The Franchisee shall use reasonable endeavours to take into account the requirements of operators of rail freight services in respect of the Franchisee's proposals to Network Rail pursuant to paragraphs 4.1 and 4.4.
- 4.4D The Franchisee acknowledges and agrees that the Secretary of State may, at any time, direct that all or any part of paragraphs 4.4 and/or 4.4A shall cease to apply. Any such direction by the Secretary of State shall have effect from such date as may be reasonably specified by the Secretary of State and, in such circumstances, the relevant parts of paragraph 4.4 and/or paragraph 4.4A and, where applicable, any references to the provisions of those provisions shall be deemed to be deleted.

4A **Special Events**

- 4A.1 The Franchisee shall use all reasonable endeavours to operate adequate railway passenger services to or from any special events which are not already provided for in the Plan of the Day to meet the passenger demand that is reasonably likely to arise from such special events and to ensure that the railway passenger services provided have an appropriate amount of passenger carrying capacity. The Franchisee shall in meeting its obligations pursuant to this paragraph 4A.1:

- (a) consider amending the Plan of the Day through the omission, addition or rescheduling of Passenger Services; and
- (b) seek to optimise the effective delivery of the Passenger Services as a whole with the provision of appropriate capacity in the context of the additional demand consequent upon a relevant special event.

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

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

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

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

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

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

- (a) without prejudice to any other provision of this Schedule 1.2, notify the Secretary of State promptly where such disruption would materially (having regard to both duration and scale) prejudice the Franchisee's ability to deliver the Timetable or deliver the Timetable in accordance with the Train Plan;
 - (b) co-operate with 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” under this Schedule 1.2**
- 7.1 Any obligation in this Schedule 1.2 on the part of the Franchisee to use **“all reasonable endeavours”** shall (with the exception of paragraph 5 of this Schedule 1.2) include an obligation to:
- (a) ensure (so far as it is able to do so) the provision of the Passenger Services as set out in the Plan of the Day in accordance with the Train Plan in ordinary operating conditions;
 - (b) take reasonable measures to avoid and/or reduce the impact of any disruption to the Franchise Services having regard to all the circumstances, including the reasonably foreseeable risks arising from the matters referred to in paragraph 7.2; and
 - (c) actively manage the performance by 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;
 - (g) failures of rolling stock vehicles in service and contingency arrangements (including Hot Standbys and rescue traction); and
 - (h) the impact, and emerging projections relating to the likely or potential impact, from time to time, of COVID-19 on the Franchisee's ability to provide the Passenger Services and/or the level of passenger demand or reasonably expected passenger demand for the Passenger Services.
- 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) a five (5) year (rolling) Performance Strategy Plan; and
 - (ii) recovery plans in response to failures to achieve the performance levels specified in any Performance Strategy Plan;
- (b) co-operating with 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 regular reviews of:
 - (i) the most common and most detrimental causes of delay to the Passenger Services; and
 - (ii) the causes of the ten (10) delays to the Passenger Services with the longest duration (to the extent not already reviewed in accordance with paragraph 7.4(c) (i)),

which have occurred during a defined review period (e.g. weekly/four (4) weekly/quarterly) and which have been caused by the Franchisee, any other Train Operator, any other train operator licensed under the Act or 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 in the Performance Strategy Plan and derived delivery plans and using reasonable endeavours to specify and develop such delivery plans;
- (g) as and when required by Network Rail, co-operating with Network Rail in improving the accuracy of future timetables by providing access to trains (and data collected from train systems), other facilities and/or information;
- (h) co-operating with Network Rail in other delay management initiatives and ongoing quarterly reviews of the Performance Strategy Plan;
- (i) regularly reviewing (at least every Reporting Period) the imposition and clearance of temporary speed restrictions;

- (j) regularly reviewing (at least every Reporting Period) the timely and efficient handover and hand-back of possessions; and
 - (k) where appropriate and where Network Rail fails to perform its obligations under the Track Access Agreement, enforcing the Franchisee's rights under the 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.
- 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 the Franchisee 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:

- (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 1.1(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

Subject to paragraph 2A.2 of this Schedule 1.4, the Franchisee shall publish updates or replacements to the Timetable at the locations specified in paragraph 1.1 to the extent necessary to reflect any changes which come into effect on a Passenger Change Date:

- (a) in the case of booklets, at least four (4) weeks before the changes come into effect;
- (b) in the case of information displays, no later than the day before the changes come into effect;
- (c) in the case of information provided to the operators of Franchisee Access Stations, in sufficient time for such information to be published by such operators within the time limits provided for in this paragraph 1.2; and
- (d) in the case of the Franchisee's website, at least four (4) weeks before the changes come into effect.

1.3 In addition, subject to paragraph 2A.2 of this Schedule 1.4, the Franchisee shall:

- (a) subject to paragraph 1.4, display posters at each Station advising passengers of all Significant Alterations between any two (2) Passenger Change Dates to railway passenger services calling at that Station, no later than four (4) weeks in advance of the date on which the alterations come into effect; and

- (b) provide posters to the operators of Franchisee Access Stations, advising passengers of all Significant Alterations between any two (2) Passenger Change Dates to the Passenger Services which call at such Franchisee Access Stations, in sufficient time for such information to be published by such operators within the time limit provided for in paragraph 1.3 (a).

1.4 **Other Train Operators' Timetables**

Subject to paragraph 2A.2 of this Schedule 1.4, the Franchisee shall also comply with the requirements of paragraphs 1.1 to 1.3 inclusive by making available booklets and displaying information in information displays and otherwise displaying posters in respect of any other Train Operator's timetable at each Station where the railway passenger services of such other Train Operator are scheduled to call or in respect of which Connections to such other Train Operators railway passenger services can be made from that Station:

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

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

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

- 1.6 Subject to paragraph 2A.2 of this Schedule 1.4, the Franchisee shall use all reasonable endeavours to procure that information in relation to:

- (a) the Timetable; and
- (b) any Significant Alterations, to the Timetable to take effect between any two (2) Passenger Change Dates,

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

2. **Communicating Late Timetable Changes**

- 2.1 Subject to paragraph 2A.2 of this Schedule 1.4, and save in respect of Significant Alterations, for which the provisions of paragraphs 1.3 and 1.6 shall apply, the Franchisee shall inform passengers, so far as possible on not less than seven (7) days' prior notice, if it will be unable to operate its trains in accordance with the Timetable. Such information shall include any revised Timetable or travelling arrangements.

- 2.2 Such information shall be provided by:

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

- (b) notifying the operators of the Franchisee Access Stations, as appropriate, including by providing such operators with revised posters; and
 - (c) updating the Franchisee's website.
- 2.3 The Franchisee shall revise or add to the information displays at the Stations promptly on receipt of any equivalent information relating to the railway passenger services of other Train Operators whose services call at the Stations.
- 2.4 Where the Franchisee is unable to provide the information specified in paragraph 2.1 because the relevant revisions are made on an emergency basis, the Franchisee shall notify passengers and publish the relevant revisions by way of the means contemplated by paragraph 2.2 as soon as reasonably practicable.
- 2.5 The Franchisee shall ensure that, so far as reasonably practicable (including by communication of the relevant information to persons likely to receive enquiries), passengers making enquiries regarding the Passenger Services are informed of the revised Timetable and any revised travel arrangements of the Franchisee as far in advance as is reasonably practicable.

2A Communicating Emergency Timetables

2A.1 Subject to paragraph 2A.3, the Franchisee shall publish:

- (a) any amendments to the Timetable made pursuant to paragraphs 3, 4, 5 or 6 of Schedule 1.2 as soon as reasonably practicable:
 - (i) at each Station, by displaying the relevant information on information displays;
 - (ii) 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 paragraph (i);
 - (iii) on the Franchisee's website;
 - (iv) via the Franchisee's social media accounts (through which the Franchisee shall in any event publish any such amendments to the Timetable no later than two (2) hours following agreement of such amendments); and
 - (v) via any other direct means of communication with passengers available to the Franchisee, including but not limited to email and/or text messaging services; and
- (b) as far and as soon as is reasonably practicable, any emergency timetables of other Train Operator's where the railway passenger services of such other Train Operator are scheduled to call or in respect of which Connections to such other Train Operators railway passenger services can be made from that Station:
 - (i) at each Station, by displaying the relevant information on information displays; and
 - (ii) on the Franchisee's website.

- 2A.2 To the extent that this paragraph 2A requires the Franchisee to undertake activities that it would otherwise be obliged to perform pursuant to paragraphs 1.2, 1.3, 1.4, 1.6 and 2, and there are any discrepancies between the timescales or other requirements relating to such activities between this paragraph 2A and paragraphs 1.2, 1.3, 1.4, 1.6 or 2, the relevant requirements of this paragraph 2A shall take precedence over those in paragraphs 1.2, 1.3, 1.4, 1.6 or 2 (as applicable).
- 2A.3 The Secretary of State may, at any time, direct that this paragraph 2A shall cease to apply and/or shall no longer take precedence over the timescales and/or the other requirements set out in paragraphs 1.2, 1.3, 1.4, 1.6 or 2 above. Any such direction shall have effect from such date as may be reasonably specified by the Secretary of State and, in such circumstances, the entirety of this paragraph 2A and any references to the provisions of this paragraph 2A shall be deemed to be deleted.

3. **Fares Selling Restrictions**

3.1 ***Restrictions on Sales***

The Franchisee shall ensure that the purchaser of any London Commuter Fare, West Midlands 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 of such London Commuter Fare, West Midlands 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 London Commuter Fare, West Midlands Commuter Fare or Protected Fare (as the case may be) on a Passenger Service.

3.2 The Franchisee shall procure that for any:

- (a) Protected Return Fare, Single Fare which is a London Commuter Fare or West Midlands Commuter Fare (as the case may be) or Return Fare which is a London Commuter Fare or West Midlands Commuter Fare (as the case may be), 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 London Commuter Fare or West Midlands Commuter Fare (as the case may be), 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 the Franchisee or its agents (except persons acting in such capacity by virtue of having been appointed under Parts II to VI of Chapter 9 of the Ticketing and Settlement Agreement or by being party to the Ticketing and Settlement Agreement).

- 3.3 Where the Franchisee sets a limit on the number of London Commuter Fares, West Midlands 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 Appendix 1 to Schedule 1.6 (*The Rolling Stock*).
- 3.4 The Franchisee shall not sell or offer to sell:
- (a) any Fare in respect of which the:
 - (i) Prices are regulated under Schedule 5.4 (*Regulation of Fares Basket Values*) and Schedule 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 Schedule 5.4 and Schedule 5.5; and
 - (ii) Child Prices are regulated under paragraph 1.3 of Schedule 5.5 (*Regulation of Individual Fares*) at prices that are greater than fifty per cent (50%) of the Price of the relevant Fare;
 - (b) any Fare or Discount Card which has a validity of thirteen (13) or more months, except to the extent required to do so under the terms of the Ticketing and Settlement Agreement.

3.5 **Agents of the Franchisee**

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

- (a) for Fares in respect of which the:
 - (i) Prices are regulated under 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 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 5.2 (*Franchisee's Obligations to Create Fares*) at prices no greater than the Child Prices set for such Fares from time to time in accordance with Schedule 5.2 (*Franchisee's Obligations to Create 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 fifty per cent (50%) of the Price of the relevant Fare; and

- (c) for all Fares:
 - (i) do not sell or offer to sell any Fare or Discount Card with a validity of thirteen (13) or more months without the consent of the Secretary of State (such consent not to be unreasonably withheld); and
 - (ii) comply with the provisions of paragraph 5 of Schedule 15.2 (*Last Twelve (12) or Thirteen (13) Months of Franchise Period and Other Conduct of Business Provisions*) to the extent they apply to the selling of Fares by the Franchisee.

3.6 **Additional Ancillary Services**

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

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

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

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

3.8 **NOT USED.**

4. **Passenger's Charter**

4.1 **Content**

The Franchisee shall:

- (a) publish its Passenger's Charter:
 - (i) in substantially the same form as the document in the agreed terms marked **PC**; and
 - (ii) in accordance with the requirements specified in paragraph 4.3;
- (b) review the need for changes to the Passenger's Charters at least every three (3) years, in consultation with the Passengers' Council, and shall submit a draft of any revisions to the Passenger's Charters that it wishes to propose, together with proof of such consultation, to the Secretary of State; and
- (c) state the date of publication clearly on the front cover of the Passenger's Charter.

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

4.3 ***Publishing the Passenger's Charter***

The Franchisee shall publicise its Passenger's Charter by:

- (a) providing copies to the Secretary of State and the Passengers' Council at least seven (7) days before it comes into effect;
- (b) providing copies to passengers, free of charge, at each staffed Station and in the case of any revision thereto, providing such copies at least seven (7) days before such revision comes into effect;
- (c) sending a copy, free of charge, to any person who requests it; and
- (d) displaying it on its website at all times and, in the case of any revision thereto, at least seven (7) days before such revision comes into effect,

save in respect of the Passenger's Charter which is effective on the Start Date, in which case the Franchisee shall publicise such Passenger's Charter in the manner contemplated by this paragraph 4.3 on and from the Start Date.

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

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

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

The Franchisee shall:

- (a) make all payments which passengers may reasonably expect to be made or provided from time to time under the terms of the Passenger's Charter (whether or not the Franchisee is legally obliged to do so);
- (b) use all reasonable endeavours to make passengers aware of their right to claim compensation pursuant to the Passenger's Charter including by:
 - (i) displaying the relevant information on trains and at Stations;
 - (ii) making appropriate announcements to passengers on trains and at Stations when the circumstances giving rise to that right occur;
 - (iii) making compensation claim forms readily available to passengers at Stations and on the Franchisee's website; and
 - (iv) any other reasonable means to reflect future advancements in technology proposed in writing either by the Franchisee or the Secretary of State and agreed by both Parties (acting reasonably); and
- (c) use all reasonable endeavours:
 - (i) to comply with any other obligations, statements and representations; and
 - (ii) to meet any other standards or targets of performance,

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

5. **End to End Journeys and Cycles**

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

6. **Statutory Notices**

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

7. **Train and Station Cleaning**

The Franchisee shall:

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

8. **Publication of Performance Data**

- 8.1 The Franchisee shall in accordance with paragraph 8.2 of this Schedule 1.4 (and in such format as the Secretary of State may reasonably require, including without limitation those requirements set out in paragraph 4.8 of Schedule 6.1) publish on the Franchisee's website in relation to each Reporting Period during the Franchise Term the performance of the Franchisee by reference to:

- (a) Cancellations Figures;
- (b) **PPM Figures**;
- (c) **Right Time Figures**;
- (d) **CaSL Figures**; and
- (e) Short Formation Figures.

- (f) Time to three (3) Minutes Figures;
- (g) Time to fifteen (15) Minutes Figures;
- (h) All Cancellations Figures; and
- (i) On Time Figures.

Such data shall be published by the Franchisee within ten (10) Weekdays of it becoming available to the Franchisee.

8.2 The Franchisee shall ensure that the data published by it pursuant to paragraph 8.1 shall in each case be shown:

- (a) in relation to all Passenger Services;
- (b) disaggregated by reference to Service Groups;
- (c) on a periodic and/or on an average basis (as applicable); and
- (d) include details of:
 - (i) the number of Passenger Services operated by the Franchisee during each relevant Reporting Period which are late in arriving at their final scheduled destination in the Plan of the Day:
 - (A) by between thirty (30) minutes and fifty nine (59) minutes;
 - (B) by between sixty (60) minutes and one hundred and nineteen (119) minutes; and
 - (C) by one hundred and twenty (120) minutes or more,and the percentage that each such category of delayed Passenger Services represents of the total number of Passenger Services scheduled to be provided in the Plan of the Day during such Reporting Period; and
 - (ii) the number of Passenger Services formed with *less Passenger Carrying Capacity than* specified in the Train Plan during such Reporting Period and the percentage that this represents of all Passenger Services scheduled in the Train Plan to be operated in that Reporting Period.

8.3 As part of each Customer Report (excluding the first (1st) Customer Report) to be provided by the Franchisee pursuant to paragraph 10.1 of Schedule 7.2 (*National Rail Passenger Surveys, Customer Report and CCIF Scheme*), the Franchisee shall publish (in such format as the Secretary of State may reasonably require):

- (a) the mean average of each of the Cancellations Figures *and the Short Formation Figures* for the Reporting Periods that have elapsed since the last Reporting Period reported on in the previous Customer Report (or, in the case of the second (2nd) Customer Report, since the Start Date);
- (b) the latest PPM Figures, CasL Figures, All Cancellation Figures and Right Time Figures for the last Reporting Period before publication of the relevant Customer Report;

- (c) from the third (3rd) Customer Report onwards, a summary comparison of the statistics produced pursuant to paragraphs 8.3 (a) and 8.3 (b) as against the equivalent statistics provided for the same Reporting Period(s) in the previous Franchisee Year;
- (d) an update on the key activities undertaken by the Franchisee to improve its performance in relation to the measures referred to in paragraphs 8.3 (a) and 8.3 (b); and
- (e) a summary of the key activities planned to be undertaken by the Franchisee in the period in relation to which the next Customer Report will report to improve its performance in relation to the measures referred to in paragraphs 8.3 (a) and 8.3 (b).

9. Publication of Complaints and Faults Handling Data

9.1 As part of each Customer Report (excluding the first (1st) Customer Report) to be provided by the Franchisee pursuant to paragraph 10.1 of Schedule 7.2 (National Rail Passenger Surveys, Customer Report and CCIF Scheme), the Franchisee shall publish (in such format as the Secretary of State may reasonably require, including without limitation those requirements set out in paragraph 4.8 of Schedule 6.1) in relation to the Reporting Periods that have elapsed since the last Reporting Period reported on in the previous Customer Report or, in the case of the second (2nd) Customer Report, since the Start Date):

- (a) a summary of the data published by the ORR from time to time in relation to the handling of passenger complaints regarding the Franchisee's operation of the Passenger Services;
- (b) details of the number of faults notified to the Franchisee by passengers or station users through specified channels including the website of the Franchisee (each a "**Notified Fault**") in each case identifying the total numbers of Notified Faults (by reference to whether such Notified Faults relate to rolling stock or stations), with such numbers further disaggregated by Service Group and broken down into relevant sub-categories of Notified Fault;
- (c) the mean average time taken by the Franchisee:
 - (i) to resolve Notified Faults; and
 - (ii) where Notified Faults are not resolved within twenty (20) Weekdays, to provide feedback to applicable passengers and/or station users on its progress in seeking resolution of such Notified Faults; and
- (d) from the third (3rd) Customer Report onwards a summary comparison of:
 - (i) the mean average number of Notified Faults notified to the Franchisee;
 - (ii) the mean average time taken by the Franchisee to resolve Notified Faults; and
 - (iii) the mean average time taken by the Franchisee, where Notified Faults have not been resolved within twenty (20) Weekdays to

provide feedback to applicable passengers and/or station users on its progress in seeking resolution of such Notified Faults,

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

10. **NOT USED.**

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

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

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

1.2 The Franchisee shall obtain and collate the information specified in paragraph 1.1 by using the technology specified in paragraph 3. The Franchisee shall ensure that any technology for determining the number of passengers travelling in each class of accommodation that is fitted on the Train Fleet remains operational and in good working order from the date that it is fitted throughout the Franchise Period. The Franchisee shall also ensure that, if such technology is not fitted to one hundred per cent (100%) of the Train Fleet, the individual rolling stock vehicles that have been fitted with such technology shall be rotated around the Routes as necessary to satisfy such request for data as is made by the Secretary of State pursuant to paragraph 1.1. The Secretary of State acting reasonably shall have the right to obtain such other information that the Franchisee has, ought properly to have or could reasonably obtain which may provide a more detailed or accurate view of the extent of use by passengers of the Passenger Services including information about ingress and egress of passengers at ticket gates at Stations.

1.3 The Franchisee shall provide to the Secretary of State all of the information generated by the technology specified in paragraph 3 and/or by using manual counts pursuant to paragraph 2 including the information specified in paragraph 1.1:

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

- (ii) in the case of data collected automatically by the Count Equipment but not capable of direct and automatic transmission to the RPC Database or the Preliminary Database (as appropriate), within one (1) calendar month of its collation; and
 - (iii) in the case of data collected by manual count, within one (1) calendar month of its collation;
- (b) using such systems, in such a format and to such level of disaggregation as the Secretary of State may reasonably require, and in a format which is capable of being read by the RPC Database or the Preliminary Database (as appropriate) (which shall include providing data which is not encrypted);
 - (c) either by transmitting such data directly to the RPC Database or the Preliminary Database (as appropriate) or by ensuring that the database provider can pull and transmit such data to the RPC Database or the Preliminary Database (as appropriate), as appropriate according to the nature of the Franchisee's Count Equipment from time to time or by providing such data to the Secretary of State by such other means as the Secretary of State notifies to the Franchisee from time to time; and
 - (d) to the extent required by the Secretary of State, by providing the Secretary of State with direct remote access to the system used by the Franchisee to collect such information such that the Secretary of State is able to download such information,

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

1.4 The Franchisee shall use any flagging system contained within the RPC Database to highlight such events and occurrences as the Secretary of State may reasonably specify in writing from time to time.

1.5 **NOT USED.**

2. **Manual Passenger Counts**

2.1 The Secretary of State shall have the right to require the Franchisee to carry out manual counts in relation to some or all of the Passenger Services at such times as may be required and in such manner (including as to levels of accuracy and the number of days) as may be specified from time to time by the Secretary of State including if, exceptionally, the Franchisee is unable to comply with its obligations to provide data generated by the technology specified in paragraph 3.

2.2 The Secretary of State shall be entitled to audit such counts (whether by specimen checks at the time of such counts, verification of proper compliance with the manner approved by the Secretary of State or otherwise). In the event that such audit reveals, in the reasonable opinion of the Secretary of State, a material error, or a reasonable likelihood of material error, in such counts, the Secretary of State may require the counts to be repeated or the results adjusted as the Secretary of State considers appropriate, and in these circumstances the Franchisee shall pay to the Secretary of State the costs of any such audits.

3. **Technology for Obtaining the Information referred to in paragraph 1.2**
- 3.1 The technology to be used for the purpose of paragraph 1.2 shall be stereoscopic counting technology.
- 3.2 The technology to be used for the purposes of paragraph 1.2 shall be fitted to:
 - (a) in the case of any brand new rolling stock which is admitted to the Train Fleet, one hundred per cent (100%) of it from the date that such rolling stock is properly admitted; and
 - (b) in the case of all other rolling stock, by:
 - (i) by 1 January 2020 to every vehicle comprised within no less than thirty five (35%) of such rolling stock units included in the Train Fleet from time to time in aggregate; and
 - (ii) by 1 May 2021, to every vehicle comprised within no less than 100% of such rolling stock units included in the Train Fleet from time to time in aggregate.
- 3.3 Without limiting the Secretary of State's rights under paragraph 1.1 of this Schedule 1.5, the technology specified in paragraph 3.1 above shall be used to provide counts in respect of, in any period of not less than twelve (12) weeks, at least two (2) of each of the Timetabled Services, and each count shall be carried out on each rolling stock unit comprising a particular train. The Franchisee may only use a method of extrapolation and use extrapolated data to provide a reliable estimate of a full train's count with the Secretary of State's prior written approval of the use of extrapolated data and the method of extrapolation (such approval not to be unreasonably withheld or delayed). The Franchisee shall comply with its obligation under this paragraph 3 from the date(s) such rolling stock is incorporated into the Train Fleet.
- 3.4 The Parties acknowledge that the information supplied under paragraph 1.1 above, and any product of it created by the RPC Database or the Preliminary Database (as appropriate), may constitute Confidential Information to which Schedule 17 (*Confidentiality and Freedom of Information*) applies.
4. **Customer Relationship Management (CRM) Data**
- 4.1 The Franchisee shall ensure that any CRM System is the property of the Franchisee or is licensed to the Franchisee on terms which have been approved by the Secretary of State (such approval not to be unreasonably withheld or delayed) and that any CRM Data obtained by or on behalf of the Franchisee shall be:
 - (a) obtained on terms such that the Franchisee shall be the Data Controller of such data; and
 - (b) the property of the Franchisee.
- 4.2 In relation to any CRM Data obtained by or on behalf of the Franchisee, the Franchisee shall:
 - (a) ensure that the CRM Data is collected and processed by or on behalf of the Franchisee in accordance with the Data Protection Legislation;

- (b) without prejudice to paragraph 4.2(a) ensure that the fairness principle of the Data Protection Legislation is satisfied including by issuing all relevant privacy notices in relation to its collection and processing of the CRM Data;
 - (c) without prejudice to paragraph 4.2(a) ensure that there is a lawful basis for its collection and processing of the CRM Data;
 - (d) without prejudice to paragraph 4.2(a) ensure that the principles of fairness and lawfulness are satisfied in particular in respect of the disclosure of the CRM Data to any Successor Operator and/or the Secretary of State such that the CRM Data may be processed by any Successor Operator for the same purposes as are relevant to the processing of the CRM Data by the Franchisee; and
 - (e) without prejudice to paragraph 4.2(a) ensure that where consents are required under the Data Protection Legislation for the processing of the CRM Data by the Franchisee and any Successor Operator (including in relation to marketing, sign up for notifications or general alerts, sign up for newsletters, and (as relevant) processing of Special Categories of Personal Data) all such consents are sought in such a way as to enable any Successor Operator to process the CRM Data for the same purposes as are relevant to the processing of it by the Franchisee.
- 4.3 The consents referred to in paragraph 4.2(e) 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 Data Protection Legislation:
- (a) the Franchisee to disclose such CRM Data to any Successor Operator and/or the Secretary of State; and
 - (b) any such Successor Operator to process such CRM Data in the manner contemplated by paragraph 4.2.
- 4.4 The Franchisee shall:
- (a) disclose, publish, share, provide and otherwise make available the CRM Data to any person (including a Successor Operator or any participant involved with the re-letting of the Franchise); and
 - (b) provide access to any CRM System,
- in each case pursuant to the terms of the Franchise Agreement (together, the "**CRM Data Obligations**") to the extent that compliance with the CRM Data Obligations is in accordance with the Data Protection Legislation.
5. **Yield Management Data**
- 5.1 The Franchisee shall ensure that any Yield Management Data and Yield Management System are the property of the Franchisee or are licensed to the Franchisee on terms which have been approved by the Secretary of State (such approval not to be unreasonably withheld or delayed).
- 5.2 If and to the extent that the collection, use and/or processing of any Yield Management Data is subject to the Data Protection Act then paragraphs 4.1(a),

4.2, 4.3, 4.4 and 6 of this Schedule 1.5 shall apply in respect of Yield Management Data in the same way as they apply to CRM Data.

- 5.3 The Franchisee shall notify the Secretary of State in writing of the full names and registered office addresses of the entities which from time to time are hosting or storing any of the Yield Management Data, or which are otherwise holding within their possession or control any of the Yield Management Data, together with the location(s) in which the Yield Management Data is hosted, stored or otherwise held. In cases where the hosting, storage or holding of the Yield Management Data occurs in location(s) which are outside of the United Kingdom the notification shall include details of the relevant country(ies) or territory(ies).
- 5.4 The Franchisee hereby acknowledges that the Secretary of State legitimately wishes to have knowledge of the locations in which the Yield Management Data is hosted, stored or otherwise held from time to time (whether inside or outside of the United Kingdom) given that all such information would be relevant in the event of any transfer of the Franchise to a Successor Operator.

6. PERSONAL DATA – GENERAL PROVISIONS

- 6.1 In respect of any Personal Data processed by the Franchisee, including CRM Data, the Franchisee agrees that it shall (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 to the extent that such legislation applies to any of them.
- 6.2 Pursuant to paragraph 6.1, the Franchisee agrees to comply with the Personal Data Legislation in respect of its processing of CRM Data and in particular, but without limitation, the Franchisee shall:
- (a) ensure that CRM Data is processed fairly and lawfully (in accordance with Part 1 of Schedule 1 of the Data Protection Act);
 - (b) ensure that CRM Data is obtained only for one or more specified and lawful purposes, and shall not be further processed in any manner incompatible with that purpose or those purposes (in accordance with Part 2 of Schedule 1 of the Data Protection Act); and
 - (c) obtain and maintain all appropriate notifications as required under the Data Protection Act.
- 6.3 In accordance with its capacity as Data Controller of CRM Data and in accordance with the ensuing obligations under the Data Protection Act:
- (a) the Franchisee shall procure that any CRM Data Processor which it appoints shall:
 - (i) prior to any disclosure of CRM Data to the CRM Data Processor, enter into written terms between itself and the Franchisee which are equivalent to those contained in this paragraph 6.3; and
 - (ii) process CRM Data only on behalf of the Franchisee, only for the purpose(s) as defined by the Franchisee and only in accordance with instructions received from the Franchisee from time to time;

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

consent without the prior written permission of the Secretary of State;

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

7. Rail Passenger Counts Database

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

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

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

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

7.3

- (a) The Secretary of State is not liable for:
 - (i) any inaccuracy, incompleteness or other error in Actual Passenger Demand information, Network Rail Data, Third Party Data or product of the above provided to the Secretary of State by the Franchisee, NR or a third party; or
 - (ii) any failure of the RPC Database to achieve any particular business result for the Franchisee. For the avoidance of doubt, it is the responsibility of the Franchisee to decide the appropriateness of using the RPC Database to achieve its own business results; or

- (iii) any loss, destruction, corruption, degradation, inaccuracy or damage of or to the Actual Passenger Demand information following its submission to the RPC Database; or
 - (iv) any loss or damage to the property or assets of the Franchisee (tangible or intangible) as a result of a contravention of paragraph 7.1 of this Schedule 1.5; or
 - (v) any indirect, special or consequential loss or damage.
 - (b) The Secretary of State's total liability for the duration of the Franchise Agreement in respect of a contravention of its obligations under paragraph 7.1 of this Schedule 1.5 for all other heads of loss or damage which can lawfully be limited shall be limited to the extent to which the Secretary of State is successful in recovering the equivalent loss from such entity to whom the Secretary of State subcontracts its obligations under paragraph 7.1 of this Schedule 1.5 (the "**Subcontractor**"), subject to the following provisions:
 - (i) if reasonably requested by the Franchisee within three (3) months of incurring such loss or damage, the Secretary of State shall use reasonable endeavours to recover the equivalent losses from the Subcontractor;
 - (ii) it shall not be reasonable for the Franchisee to make a request pursuant to paragraph 7.3(b)(i) above if the value of the Franchisee's losses does not exceed ten thousand pounds sterling (**£10,000**) x **RPI**;
 - (iii) prior to accounting to the Franchisee for any sums recovered from the Subcontractor pursuant to this paragraph 7.3(b), the Secretary of State shall be entitled to deduct and retain any reasonable costs and expenses incurred in pursuing such a claim which the Secretary of State does not successfully recover from the Subcontractor; and
 - (iv) the Secretary of State shall be entitled to deduct from any sums recovered from the Subcontractor pursuant to this paragraph 7.3(b) such sum as the Secretary of State reasonably deems appropriate to take account of the Secretary of State's actual or potential liability to other train operating companies pursuant to equivalent arrangements with them, with a view to distributing any sums received from the Subcontractor fairly between the various operators.
 - (c) The Franchisee shall use all reasonable endeavours to mitigate any losses incurred by the Franchisee as a result of a contravention by the Secretary of State of the Secretary of State's obligations contained in paragraph 7.1 of this Schedule 1.5.
- 7.4 The Parties acknowledge that it is intended that the RPC Database will also contain actual passenger demand information relating to franchisees other than the Franchisee but a franchisee shall have access only to information relating to its own franchise (in the case of the Franchisee, via the log on details provided pursuant to paragraph 7.1(c)). For the avoidance of doubt, the licence granted at paragraph 8.6 shall only permit the usage of the RPC Database, Derivative Output and Intellectual Property Rights related to the Actual Passenger Demand information supplied by the Franchisee.

- 7.5 Without prejudice to Schedule 14.4 (Designation of Franchise Assets), paragraphs 2.1 and 3 of Schedule 15.1 (Reletting Provisions), Schedule 15.4 (Provisions Applying on and after Termination) or any other rights of the Secretary of State, the Franchisee agrees that, following the expiry or termination by whatever means of the Franchise Agreement and any Continuation Document, the Secretary of State shall be entitled to allow access to the Franchisee's Actual Passenger Demand information by way of granting access to that area of the RPC Database or otherwise to any future operator of the Passenger Services (whether or not in direct succession to the Franchisee) or to such part of the Actual Passenger Demand information as relates to the part of the franchise which is being taken over by such future operator.
- 8. Intellectual Property Rights and General Provisions**
- 8.1 All Intellectual Property Rights in the RPC Database and Derivative Output shall at all times remain owned by the Secretary of State and to the extent that any rights in the RPC Database vest in the Franchisee by operation of law, the Franchisee hereby assigns such rights to the Secretary of State.
- 8.2 Subject to Schedule 14.4 (Designation of Franchise Assets) and Schedule 15.4 (Provisions Applying on and after Termination), all Intellectual Property Rights in the Actual Passenger Demand information will at all times remain owned by the Franchisee and (subject as previously stated) to the extent that any rights in the Actual Passenger Demand information vest in the Secretary of State by operation of law, the Secretary of State hereby assigns such rights to the Franchisee.
- 8.3 All Intellectual Property Rights in the Network Rail Data will at all times remain owned by the relevant NR entity and to the extent that any rights in the Network Rail Data vest in the Secretary of State or the Franchisee by operation of law, the Secretary of State and/or the Franchisee (as applicable) will enter into a separate agreement with the relevant Network Rail entity to assign such rights to it.
- 8.4 All Intellectual Property Rights in the Third Party Data will at all times remain owned by the third party from whom they have been obtained and to the extent that any rights in the Third Party Data vest in the Secretary of State or the Franchisee by operation of law, the Secretary of State and/or the Franchisee (as applicable) will enter into a separate agreement with the relevant Third Party to assign such rights to it.
- 8.5 Subject to Schedule 14.4 (Designation of Franchise Assets) and Schedule 15.4 (Provisions Applying on and after Termination), each Party:
- (a) acknowledges and agrees that it shall not acquire or claim any title to any of the other Party's Intellectual Property Rights (or those of the other Party's licensors) by virtue of the rights granted to it under this Agreement or through its use of such Intellectual Property Rights; and
 - (b) agrees that it will not, at any time, do, or omit to do, anything which is likely to prejudice the other Party's ownership (or the other Party's licensors' ownership) of such Intellectual Property Rights.
- 8.6 The Secretary of State hereby grants, for the duration of the Franchise Period, the Franchisee a non-exclusive, non-transferable licence to use:
- (a) the RPC Database;
 - (b) any Derivative Output; and

(c) all Intellectual Property Rights in the same,
in the United Kingdom for the purposes of accessing the Actual Passenger Demand information by using the functionality of the RPC Database.

8.7 Without limiting any other rights the Secretary of State may have, the Franchisee hereby grants the Secretary of State a perpetual, non-terminable, non-exclusive licence (which is transferable and/or capable of being sub-licensed in the circumstances set out in this paragraph 8.7) to use the Actual Passenger Demand information and all Intellectual Property Rights in the same:

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

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

8.8 Paragraphs 7.2, 7.3, 8.1, 8.2 and 8.7 of this Schedule 1.5 shall continue in force after expiry or termination of the Franchise Agreement or any Continuation Document, together with any other provisions which expressly or impliedly continue in force after the expiry or termination of the Franchise Agreement or any Continuation Document.

8.9 The Parties intend that the provisions of The Contract (Rights of Third Parties) Act 1999 will apply to allow the relevant NR entity to rely on and enforce against a third party the provisions of paragraph 8.3 of this Schedule 1.5.

Schedule 1.6

The Rolling Stock**1. Purpose**

- 1.1 The Original Rolling Stock is set out in Table 1 of Appendix 1 to this Schedule 1.6
- 1.2 The Specified Additional Rolling Stock is set out in Table 2 of Appendix 1 to this Schedule 1.6.
- 1.3 The Unspecified Additional Rolling Stock is set out in Table 3 of Appendix 1 to this Schedule 1.6.

2. The Composition of the Train Fleet**2.1 The Train Fleet consists of:**

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

2.2 NOT USED.**2.3 The Franchisee shall by no later than:**

- (a) the date which is twenty four (24) months prior to each such date specified in Column 1 of Table 3 in Appendix 1 to this Schedule 1.6, enter into Rolling Stock Leases (subject to compliance with all other relevant provisions of this Agreement including in relation to Rolling Stock Related Contracts) in respect of; and
- (b) each date specified in Column 1 of Table 3 in Appendix 1 to this Schedule 1.6, introduce into revenue earning passenger service,

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

- 2.4 The Passenger Carrying Capacity of any rolling stock vehicles shall be as set out in Tables 1 or 2 or 3 in Appendix 1 to this Schedule 1.6 or as determined by the Secretary of State in accordance with paragraph 3.4 of this Schedule 1.6 (as applicable).
3. **Changes to the Train Fleet**
- 3.1 The Franchisee shall maintain the composition of the Train Fleet during the Franchise Period, unless the Secretary of State otherwise agrees, such that there are no changes to the Train Fleet, including changes:
- (a) to the classes or types;
 - (b) to the interior configurations; or
 - (c) which may reduce the journey time capabilities,
- of any rolling stock vehicles specified in the Train Fleet.
- 3.2 The Franchisee shall procure that the rolling stock vehicles described in the Tables 1 or 2 or 3 in Appendix 1 to this Schedule 1.6, with the capacity and other characteristics referred to there, are available for deployment in the provision of the Passenger Services to the extent required by the Timetable and Train Plan during the periods referred to therein.
- 3.3 During the Franchise Period, the Franchisee shall advise the Secretary of State of any rolling stock vehicles damaged beyond economic repair or likely to be unavailable for service for a period of three (3) consecutive Reporting Periods or more.
- 3.4 If any change is made to the Train Fleet in accordance with this Schedule 1.6, the Secretary of State may, after consulting the Franchisee, determine the Passenger Carrying Capacity of any rolling stock vehicles or class of rolling stock vehicles comprising the Train Fleet following such change. The Secretary of State shall notify the Franchisee of the Secretary of State's determination of any such Passenger Carrying Capacity.
- 3.5 The Secretary of State may request the Franchisee to:
- (a) change the composition of the Train Fleet during the term of the ERMA;
 - (b) sub-let some of its Train Fleet to another Train Operator or to sub-lease a Train Fleet from another Train Operator;
 - (c) procure modifications to the Train Fleet and to manage any such modification programme, subject to payment of the Franchisee's reasonable costs by the Secretary of State or a relevant third party; and
 - (d) work in collaboration with the Secretary of State to identify and secure additional or replacement rolling stock vehicles during the term of the ERMA, in which case the Secretary of State may require the Franchisee to set the specification for such rolling stock vehicles, subject to the Secretary of State's prior written consent.

4. **Rolling Stock Testing and Commissioning**

- 4.1 The Franchisee shall, to the extent reasonably requested by the Secretary of State and subject to payment of the Franchisee's reasonable costs by the relevant third party, co-operate with any third party which the Secretary of State may specify (including a Successor Operator, a rolling stock vehicle manufacturer or 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).
- 4.2 The co-operation referred to in paragraph 4.1 shall not unreasonably disrupt the provision and operation of the Franchise Services and may include:
- (a) the movement of test trains within and around depots;
 - (b) making available suitably qualified personnel to operate test trains along the Routes and provide information on the Routes;
 - (c) making Train Slots available for such purposes;
 - (d) granting or procuring the grant of access to the third party and its representatives to any relevant facilities; and
 - (e) the delivery of rolling stock vehicles to specific locations.

5. **Controlled Emission Toilets**

- 5.1 From 1 January 2021, the Franchisee shall ensure that each on board toilet facility on each Rolling Stock Vehicle comprised in the Train Fleet (whether such rolling stock vehicle is comprised in the Train Fleet on such date or is introduced into the Train Fleet following such date) is a Controlled Emission Toilet.
- 5.2 The Franchisee shall ensure that the contents of the toilet retention tanks relating to each Controlled Emission Toilet fitted on rolling stock vehicles in accordance with the requirements of paragraph 5.1 are disposed of in a safe and hygienic manner at suitable facilities designed for these purposes including at Depots and stabling points.
- 5.3 Pending installation of the Controlled Emission Toilets, the Franchisee shall use reasonable endeavours to stop toilets fitted to existing rolling stock units emptying whilst the rolling stock unit is stationary within a station.

5.4 **NOT USED.**

6. **Baby Changing Facilities**

- 6.1 For Rolling Stock Units that have on board toilet facilities a baby changing facility shall be provided by the Franchisee which shall be compliant with the requirements of the PRM TSI by 30 September 2020.

7. **Measurement of Traction Energy Usage**

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

- 7.2 The Franchisee shall become a Metered Train Operator as soon as reasonably practicable but in any event by no later than 31 December 2022.

APPENDIX 1 TO SCHEDULE 1.6

The Composition of the Train Fleet

1. Original Rolling Stock

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

Table 1 (Original Rolling Stock)								
Column 1	Column 2	Column 3				Column 4	Column 5	Column 6
Class of vehicle/unit	Number of vehicles in fleet and unit configuration	Standard Class Passenger Carrying Capacity per unit				Total Wheel-chair(s) per unit	Owner/Lessor	Lease expiry date(s) (See Explanatory Note A above)
		Seats	Standing	Total	First Class			Scheduled Lease Expiry Date
Class 139	2 x 1-car	25	35	60	0	1	Porterbrook Leasing Company Limited	31 March 2026
Class 150	3 x 2-car	147	50	197	0	0	Angel Trains Limited	1 May 2019
Class 153	8 x 1-car	73	25	98	0	1	Porterbrook Leasing	31 December 2019

Table 1 (Original Rolling Stock)									
Column 1	Column 2	Column 3				Column 4	Column 5	Column 6	
Class of vehicle/unit	Number of vehicles in fleet and unit configuration	Standard Class Passenger Carrying Capacity per unit				Total Wheel-chair(s) per unit	Owner/Lessor	Lease expiry date(s) (See Explanatory Note A above)	
		Seats	Standing	Total	First Class			Scheduled Lease Expiry Date	
							Company Limited		
Class 170/5 DMU	17 x 2-car	122	88	210	0	2	Porterbrook Leasing Company	31 December 2020	
Class 170/6 DMU	6 x 3-car	196	129	325	0	2	Porterbrook Leasing Company Limited	30 September 2020	
Class 172/2 DMU	12 x 2-car	139	84	223	0	2	Porterbrook Leasing Company Limited	31 March 2026	
Class 172/3 DMU	15 x 3-car	219	132	351	0	2	Porterbrook Leasing Company Limited	31 March 2026	
Class 319 EMU	10 x 4-car	254	67	356	0	2	Porterbrook Leasing	28 February 2021	

Table 1 (Original Rolling Stock)									
Column 1	Column 2	Column 3				Column 4	Column 5	Column 6	
Class of vehicle/unit	Number of vehicles in fleet and unit configuration	Standard Class Passenger Carrying Capacity per unit				Total Wheel-chair(s) per unit	Owner/Lessor	Lease expiry date(s) (See Explanatory Note A above)	
		Seats	Standing	Total	First Class			Scheduled Lease Expiry Date	
Note A							Company Limited		
Class 323 EMU Note B	26 x 3-car	289	67	356	0	2	Porterbrook Leasing Company Limited	28 February 2021	
Class 350/1 EMU	30 x 4-car	206	154	360	24	2	Angel Trains Limited	31 March 2026	
Class 350/2 EMU Note C	37 x 4-car	246	117	363	24	2	Porterbrook Leasing Company Limited	31 March 2021	
Class 350/3 EMU	10 x 4-car	214	149	363	24	2	Angel Trains Limited	31 March 2026	

Note A

- (a) The intention of the Franchisee (subject to paragraph (b) below) is that rolling stock will be returned to the lessor on the basis set out below.
- (b) The Franchisee shall not return any rolling stock unit to the lessor or sub lease or hire it or otherwise take steps that render it unable to be used in the delivery of the Passenger Services until a date after any rolling stock unit that can reasonably be regarded as replacing it has been introduced into unrestricted use delivering the Passenger Services.

Class 319 release profile

8 vehicles released 29/02/2020
32 vehicles released 31/03/2021

Total vehicles released: 40

Note B

- (a) The intention of the Franchisee (subject to paragraph (b) below) is that rolling stock will be returned to the lessor on the basis set out below.
- (b) The Franchisee shall not return any rolling stock unit to the lessor or sub lease or hire it or otherwise take steps that render it unable to be used in the delivery of the Passenger Services until a date after any rolling stock unit that can reasonably be regarded as replacing it has been introduced into unrestricted use delivering the Passenger Services.

Class 323 release profile

12 vehicles released 19/09/2020
18 vehicles released 17/10/2020
12 vehicles released 14/11/2020
18 vehicles released 12/12/2020
6 vehicles released 09/01/2021
6 vehicles released 06/02/2021
6 vehicles released 06/03/2021

Total vehicles released: 78

Note C

(a) The intention of the Franchisee (subject to paragraph (b) below) is that rolling stock will be returned to the lessor on the basis set out below.

(b) The Franchisee shall not return any rolling stock unit to the lessor or sub lease or hire it or otherwise take steps that render it unable to be used in the delivery of the Passenger Services until a date after any rolling stock unit that can reasonably be regarded as replacing it has been introduced into unrestricted use delivering the Passenger Services.

Class 350/2 release profile

20 vehicles released
06/02/2021 24 vehicles
released 06/03/2021 24
vehicles released 31/03/2021
40 vehicles released
01/05/2021 40 vehicles
released 29/05/2021

Total vehicles released: 148

2. Specified Additional Rolling Stock

Table 2 (Specified Additional Rolling Stock)									
Column 1	Column 2	Column 3				Column 4	Column 5	Column 6	Column 7
Class of vehicle /unit	Number of vehicles in fleet and unit configuration	Passenger Carrying Capacity per				Total Wheel-chair(s) per unit	Owner/ Lessor	Lease start date(s)	Lease expiry date(s)
		Standard Class (Std)			First Class Seats				
		Seats	Standing	Total					
Class 319 EMU	5 x 4-car	254	89	343	12	2	Porterbrook Leasing Company Limited	14 October 2018	29 February 2020
Class 172/0 DMU Note A	8 x 2-car	124	100	224	0	2	Angel Trains Limited	01 July 2018	31 March 2026
Class 350/4 EMU Note B	10 x 4-car	214	149	363	24	2	Angel Trains Limited	01 June 2019	31 March 2026

Note A

The intention of the Franchisee is that rolling stock shall be available for unrestricted use delivering Passenger Services on the basis set out below.

Class 170/0 vehicles in Passenger Service profile

- A total of 4 vehicles from 29/08/2018
- A total of 8 vehicles from 27/09/2018
- A total of 12 vehicles from 24/10/2018
- A total of 16 vehicles from 22/11/2018

Note B

The intention of the Franchisee is that rolling stock shall be available for unrestricted use delivering Passenger Services on the basis set out below.

Class 350/4 vehicles in Passenger Service profile

A total of 20 vehicles from 28/08/2019

A total of 40 vehicles from 26/10/2019

3. Unspecified Additional Rolling Stock

Table 3 (Unspecified Additional Rolling Stock)							
Column 1	Column 2	Column 3				Column 4	Column 5
Date of introduction into revenue earning passenger service	Number of vehicles in fleet and unit configuration	Passenger Carrying Capacity per unit				Total Wheel-chair(s) per unit	Characteristics (e.g. minimum reliability, capability and quality such as CET, automated passenger counts or other characteristics of the rolling stock specified in the Franchisee's proposal)
		Standard Class (Std)			First Class Seats		
		Seats	Standing	Total			
10 Dec 2017 Note A	1 x 3-car	136	161	297	0	2	3-car DMU High quality and safe passenger environment
22 Jul 2018 Note B	3 x 2-car	103	90	193	0	2	2-car DMU High quality and safe passenger environment Full specification to be consistent with paragraph 31 (Additional 2-car DMUs) of Part 1 (Committed Obligations) of Schedule 6.2
5 Jan 2020 Note C	14 x 4-car	323	185	508	0	2	4-car DMU 100mph capable High quality and safe passenger environment Full specification to be consistent with paragraph 34 (New DMUs) of Part 1 (Committed Obligations) of Schedule

Table 3 (Unspecified Additional Rolling Stock)							
Column 1	Column 2	Column 3				Column 4	Column 5
Date of introduction into revenue earning passenger service	Number of vehicles in fleet and unit configuration	Passenger Carrying Capacity per unit				Total Wheel-chair(s) per unit	Characteristics (e.g. minimum reliability, capability and quality such as CET, automated passenger counts or other characteristics of the rolling stock specified in the Franchisee's proposal)
		Standard Class (Std)			First Class Seats		
		Seats	Standing	Total			
3 May 2020 Note D	12 x 2-car	139	93	232	0	2	2-car DMU 100mph capable High quality and safe passenger environment Full specification to be consistent with paragraph 34 (New DMUs) of Part 1 (Committed Obligations) of Schedule 6.2
3 May 2020 Note E	36 x 3-car	193	293	486	0	2	3-car EMU 90mph capable Regenerative braking High quality and safe passenger environment Full specification to be consistent with paragraph 33 (New 3-Car EMUs) of Part 1 (Committed Obligations) of Schedule 6.2
18 Oct 2020 Note F	16 x 5-car	368	201	569	39	2	5-car EMU 110mph capable Regenerative braking High quality and safe passenger environment Full specification to be consistent with paragraph 32 (New 5-Car EMUs) of Part 1 (Committed Obligations) of

Table 3 (Unspecified Additional Rolling Stock)							
Column 1	Column 2	Column 3				Column 4	Column 5
Date of introduction into revenue earning passenger service	Number of vehicles in fleet and unit configuration	Passenger Carrying Capacity per unit				Total Wheel-chair(s) per unit	Characteristics (e.g. minimum reliability, capability and quality such as CET, automated passenger counts or other characteristics of the rolling stock specified in the Franchisee's proposal)
		Standard Class (Std)			First Class Seats		
		Seats	Standing	Total			
18 Oct 2020 Note G	29 x 5-car	426	215	641	36	2	5-car EMU 110mph capable Regenerative braking High quality and safe passenger environment Full specification to be consistent with paragraph 32 (New 5-Car EMUs) of Part 1 (Committed Obligations) of

Note A

- (a) The intention of the Franchisee (subject to paragraph (b) below) is that rolling stock will be returned to the lessor on the basis set out below.
- (b) The Franchisee shall not return any rolling stock unit to the lessor or sub lease or hire it or otherwise take steps that render it unable to be used in the delivery of the Passenger Services until a date after any rolling stock unit that can reasonably be regarded as replacing it has been introduced into unrestricted use delivering the Passenger Services.

Vehicle release profile

3 vehicles released 04/01/2020

Total vehicles released: 3

Note B

The intention of the Franchisee is that rolling stock shall be available for unrestricted use delivering Passenger Services on the basis set out below.

Vehicles in Passenger Service profile

A total of 2 vehicles from 22/07/2018
A total of 4 vehicles from 19/08/2018
A total of 6 vehicles from 16/09/2018

Note C

The intention of the Franchisee is that rolling stock shall be available for unrestricted use delivering Passenger Services on the basis set out below.

Vehicles in Passenger Service profile

A total of 8 vehicles from 05/01/2020
A total of 12 vehicles from 02/02/2020
A total of 20

vehicles from 01/03/2020 A total of 28 vehicles from 01/04/2020 A total of 44 vehicles from 03/05/2020 A total of 48 vehicles from 31/05/2020 A total of 56 vehicles from 28/06/2020

Note D

The intention of the Franchisee is that rolling stock shall be available for unrestricted use delivering Passenger Services on the basis set out below.

Vehicles in Passenger Service profile

A total of 2 vehicles from 03/05/2020
A total of 6 vehicles from 31/05/2020
A total of 14 vehicles from 28/06/2020
A total of 18 vehicles from 26/07/2020
A total of 24 vehicles from 23/08/2020

Note E

The intention of the Franchisee is that rolling stock shall be available for unrestricted use delivering Passenger Services on the basis set out below.

Vehicles in Passenger Service profile

A total of 6 vehicles from 03/05/2020 A total of 18 vehicles from 31/05/2020 A total of 33 vehicles from 28/06/2020 A total of 45 vehicles from 26/07/2020 A total of 57 vehicles from 23/08/2020 A total of 69 vehicles from 20/09/2020

A total of 81 vehicles from
18/10/2020 A total of 93 vehicles
from 15/11/2020 A total of 105
vehicles from 13/12/2020
A total of 108 vehicles from 10/01/2021

Note F

The intention of the Franchisee is that rolling stock shall be available for unrestricted use delivering Passenger Services on the basis set out below.

Vehicles in Passenger Service profile

A total of 10 vehicles from 18/10/2020

A total of 20 vehicles from
15/11/2020 A total of 30 vehicles
from 13/12/2020 A total of 40
vehicles from 10/01/2021 A total of
50 vehicles from 07/02/2021 A
total of 60 vehicles from
07/03/2021 A total of 70 vehicles
from 01/04/2021 A total of 80
vehicles from 02/05/2021

Note G

The intention of the Franchisee is that rolling stock shall be available for unrestricted use delivering Passenger Services on the basis set out below.

Vehicles in Passenger Service profile

A total of 10 vehicles from 18/10/2020 A total of 30 vehicles from 15/11/2020 A total of 50 vehicles from 13/12/2020 A total of 70 vehicles from 10/01/2021 A total of 90 vehicles from 07/02/2021 A total of 110 vehicles from 07/03/2021 A total of 145 vehicles from 01/04/2021

Schedule 1.7

Stations**1. Station Asset Management****1.1 NOT USED.**

1.2 By no later than the end of the first Franchisee Year (or such later date as the Secretary of State may reasonably determine) the Franchisee shall prepare and provide to the Secretary of State for approval (such approval not to be unreasonably withheld or delayed) the Station Asset Management Plan.

1.3 Where the Secretary of State does not approve the draft Station Asset Management Plan submitted to it, the Franchisee shall make:

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

1.4 From the date of approval, the Franchisee shall implement and comply with the Station Asset Management Plan.

1.5 The Station Asset Management Plan shall:

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

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

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

- (a) the details of all maintenance, repair and renewal activity undertaken by the Franchisee since the Start Date;
- (b) the details of any maintenance, repair and renewal activity which the Franchisee has not completed or not completed within the specified time frame set out in any Station Asset Management Plan (or the Previous Franchisee's Station Asset Management Plan, as the case may be) together with reasons;
- (c) the details of the maintenance, repair and renewal activity undertaken since the Start Date or planned by Network Rail, any Local Authority, any Community Rail Partnership and any other relevant stakeholder, which the Franchisee is aware of;
- (d) the assumptions that the Franchisee has made about the current state and future degradation of assets at the Station at the Start Date or, if an asset becomes an asset at the Station on a later date, the assumptions of the Franchisee about the current state and future degradation of each relevant asset on the date that it becomes such an asset at the Station;

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

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

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

- 1.8 Any amendments to the Station Asset Management Plan must be agreed by the Secretary of State (such consent not to be unreasonably withheld or delayed).
- 1.9 The Franchisee shall ensure that all renewal, enhancement and other building works at Stations are implemented in accordance with the Principles of Inclusive Design.
- 1.10 **Updating the Station Asset Management Plan**
- (a) By the end of the second (2nd) Franchisee Year and on each subsequent anniversary of such date the Franchisee shall have reviewed the Station Asset Management Plan and shall submit to the Secretary of State for approval (such approval not to be unreasonably withheld or delayed) a draft updated version of the Station Asset Management Plan.
- (b) The updated draft Station Asset Management Plan shall include and reflect the following:
- (i) a schedule of any revisions to the current Station Asset Management Plan and a brief summary of the rationale supporting any change for review and approval by the Secretary of State;
- (ii) any changed and developing circumstances and the requirements of the Station Asset Management Plan Accreditation;
- (iii) where relevant, the outcomes of, and the Franchisee's responses to the stakeholder consultation process described in paragraph 4; and
- (iv) the information required in accordance with paragraphs 1.6 and 1.7 of this Schedule 1.7 save that the reference to the "**Start Date**" in paragraph 1.6(a) shall be read as the date on which the Station Asset Management Plan is reviewed and updated by the Franchisee in accordance with this paragraph 1.10 of this Schedule 1.7.
- (c) If:
- (i) the Secretary of State approves an updated draft Station Asset Management Plan submitted to it pursuant to paragraph 1.10 (a), such document shall become the then current Station Asset Management Plan; or
- (ii) the Secretary of State does not approve an updated draft Station Asset Management Plan submitted to it pursuant to paragraph 1.10 (a), then the Franchisee shall make:
- (A) such amendments to it as the Secretary of State shall reasonably direct; and
- (B) provide such additional information as the Secretary of State may reasonably require.
- (d) The Franchisee shall put in place such arrangements as are necessary (to the reasonable satisfaction of the Secretary of State) to ensure that the Station Asset Management Plan is (and continues to be maintained) in a format

acceptable to the Secretary of State which is capable of being transferred to a Successor Operator as part of the Handover Package so that the Successor Operator is able to access, use and amend the Station Asset Management Plan using the same format.

1.11 Station Asset Management Plan Accreditation Certificate

- (a) The Franchisee shall:
 - (i) ensure that it applies for and obtains the Station Asset Management Plan Accreditation by no later than the end of the second (2nd) Franchisee Year;
 - (ii) promptly upon receipt by the Franchisee, provide to the Secretary of State a certificate of accreditation issued by an organisation accredited by the United Kingdom Accreditation System (UKAS) which has been signed by a director of the Franchisee and which confirms that the Station Asset Management Plan Accreditation has been obtained (the "**Station Asset Management Plan Accreditation Certificate**"); and
 - (iii) maintain the Station Asset Management Plan Accreditation from the date that it is required to be achieved in accordance with paragraph 1.11 (a) (i) for the remainder of the Franchise Period.
- (b) If the Station Asset Management Plan Accreditation is at any time lost or the Franchisee fails to secure such then the Franchisee shall report that fact to the Secretary of State as soon as reasonably practicable and in any event within ten (10) Weekdays of the Franchisee becoming aware of such fact.
- (c) From the date upon which the Franchisee notified the Secretary of State pursuant to paragraph 1.11 (b) (or should have notified the Secretary of State having complied with the provisions of this Agreement), the Franchisee shall:
 - (i) re-secure such accreditation as soon as reasonably practicable and in any case within three (3) months; and
 - (ii) report to the Secretary of State every Reporting Period on the measures it is proposing to take, and is taking, to achieve such restoration of the Station Asset Management Plan Accreditation.
- (d) Where the Franchisee fails to secure the Station Asset Management Plan Accreditation pursuant to paragraph 1.11 (c) within three (3) months of the date of such accreditation being lost or failed to be secured (as the case may be) such failure shall constitute a contravention of the Franchise Agreement and the Secretary of State may issue a Remedial Plan Notice pursuant to Schedule 10.1 (*Procedure for remedying a Contravention of the Franchise Agreement*) and the provisions of Schedule 10 (*Remedies, Events of Default and Termination Events*) shall apply.

- 2.1 The Franchisee shall act reasonably in considering which assets potentially fall within the definition of Grey Assets and shall use all reasonable endeavours to

- agree with Network Rail by no later than a date one (1) year after the Start Date a list of all Grey Assets.
- 2.2 Following agreement of a list of Grey Assets pursuant to paragraph 2.1 above the Franchisee shall:
- (a) consult with Network Rail and, where reasonably necessary and agreed by Network Rail, carry out a joint inspection of each such Grey Asset; and
 - (b) use all reasonable endeavours to agree with Network Rail the proper allocation of responsibility in relation to each such Grey Asset (including whether such Grey Asset falls within or outside the boundary of an area subject to a Station Lease) on a reasonable basis and in any event within two years of the Start Date.
- 2.3 Where the Franchisee is unable to agree with Network Rail the allocation of responsibility under the relevant Station Lease of any Grey Asset pursuant to paragraph 2.2(b) (including whether such Grey Asset falls within or outside the boundary of an area subject to a Station Lease), the Franchisee shall refer such matter to the dispute resolution process under the terms of the relevant Station Lease.
- 2.4 The Franchisee shall ensure updates of the Station Asset Management Plan pursuant to paragraph 1.10 shall take into account any allocation of responsibility for Grey Assets pursuant to this paragraph 2.
3. **Station Social and Commercial Development Plan**
- 3.1 From the Start Date, the Franchisee shall implement, resource and comply with the Station Social and Commercial Development Plan for the Franchise Period that as a minimum must set out how the Franchisee will:
- (a) identify schemes to develop currently redundant or under-utilised station buildings and facilities for use by the community, social enterprise and for commercial development including schemes which sustain and enhance the viability, and introduce new, franchise and sub-leased facilities;
 - (b) consult with customers and the community on the concerns, issues, opportunities and risks relating to the Stations and the priorities for investment;
 - (c) effectively evaluate, prioritise and develop such schemes taking account of customer and community views;
 - (d) implement the schemes in accordance with their allocated priority; and
 - (e) be for a period of 10 years and be reviewed on a rolling annual basis.
- 3.2 Any amendments to the Station Social and Commercial Development Plan must be agreed by the Secretary of State in accordance with this paragraph 3.
- 3.3 The Franchisee shall revise the Station Social and Commercial Development Plan by no later than the end of the first Franchisee Year (and on each subsequent anniversary of this date) by submitting it to the Secretary of State an updated version of the Station Social and Commercial Development Plan for approval

- 3.4 Subsequent updated versions of the Station Social and Commercial Development Plan shall:
- (a) incorporate a schedule of any revisions to the Station Social and Commercial Development Plan and a brief summary of the rationale supporting any change for review and approval by the Secretary of State;
 - (b) reflect changed and developing circumstances where relevant ; and
 - (c) reflect the outcome of, and the Franchisee's responses to, the stakeholder consultation process described in paragraph 4.
- 3.5 The Franchisee shall ensure that the Station Social and Commercial Development Plan shall be updated so that following each update it continues to cover at least a period of ten (10) years from the date of the update.
- 3.6 If:
- (a) the Secretary of State approves an updated draft Station Social and Commercial Development Plan submitted to it pursuant to paragraph 3.3, such document shall become the then current Station Social and Commercial Development Plan; or
 - (b) the Secretary of State does not approve an updated draft Station Social and Commercial Development Plan submitted to it pursuant to paragraph 3.3, then the Franchisee shall:
 - (i) make such amendments to it as the Secretary of State shall reasonably direct; and
 - (ii) provide such additional information as the Secretary of State may reasonably require,it being agreed that it will be unreasonable for the Secretary of State to make amendments that increase cost and risk to the Franchisee beyond parameters specified in the Record of Assumptions.
4. **Consultations**
- 4.1 On or before the annual submission of the Station Asset Management Plan or the Station Social and Commercial Development Plan pursuant to the provisions of this Schedule 1.7, the Franchisee shall conduct consultations with relevant Stakeholders (including ACoRP, passengers, users of Stations and members of relevant local communities) in relation to the potential risks, opportunities and priorities for investment and operational efficiencies in relation to Stations. The Franchisee shall act reasonably in determining the scope of the specification of such consultations including the Stations to be considered.
5. **NOT USED.**
6. **Security at Stations**
- 6.1 The Franchisee shall during the Franchise Period, monitor and record all reported and observed incidents of:
- (a) anti-social behaviour; and

- (b) criminality (including assaults on passengers and Franchise Employees, theft, criminal damage to railway property and graffiti vandalism),

which occur at Stations, and shall use all reasonable endeavours to address, minimise and avoid future instances of anti-social behaviour and criminality at Stations taking account of such data. The Franchisee may comply with its obligations to monitor and record incidents under this paragraph 6 by providing copies of relevant information provided by the Franchisee to the British Transport Police where such information is relevant.

- 6.2 The Franchisee shall provide to the Secretary of State upon request such information as the Secretary of State may reasonably require from time to time in respect of the Franchisee's compliance with the requirements of paragraph 6.1.
- 6.3 The Franchisee shall maintain for the duration of the Franchise Period the Secure Stations Accreditation for the Stations already achieved by the Train operator under the Previous Franchise Agreement as set out in Appendix 1 to this Schedule 1.7 or, where any such Secure Stations Accreditation as set out in Appendix 1 to this Schedule 1.7 has lapsed during the Previous Franchise Agreement, obtain the same as soon as reasonably practicable.
- 6.4 The Franchise shall maintain for the duration of the Franchise Period the Secure Car Parks Accreditation for the Stations already achieved by the Train Operator under the Previous Franchise Agreement as set out in Appendix 1 to this Schedule 1.7 or, where any such Secure Car Parks Accreditation as set out in Appendix 1 to this Schedule 1.7 has lapsed during the Previous Franchise Agreement, obtain the same as soon as reasonably practicable.
- 6.4A During the Franchise Term, where in any calendar year the British Transport Police has recorded crime levels of reater than 0.0004% per passenger at any Station (each a **Priority Station**) then the Franchisee shall achieve Secure Stations Accreditation for that Priority Station as soon as practicably possible and in any event within a reasonable time of that Station qualifying as a Priority Station.
- 6.4B During the Franchise Term, where the Franchisee receives revenue in respect of a Station car park and in any calendar year the British Transport Police has recorded crime levels of greater than 1% per parking space within that Station's car park (each a **Priority Station Car Park**) then the Franchisee shall achieve Secure Car Parks Accreditation for that Priority Station Car Park as soon as practicably possible and in any event within a reasonable time of that Station car park qualifying as a Priority Station Car Park.
- 6.5 **NOT USED.**
- 6.6 In this paragraph 6:
 - (a) **"Secure Car Parks Accreditation"** and means car parks at Stations which have achieved accreditation under the Secure Car Parks Scheme;
 - (b) **"Secure Car Parks Scheme"** means the certification scheme which is managed by the Department for Transport and British Transport Police and sets car park design and management safety standards for crime reduction at railway station car parks;
 - (c) **"Secure Stations Accreditation"** and means Stations which have achieved accreditation under the Secure Stations Scheme; and

- (d) **“Secure Stations Scheme”** means the certification scheme which is managed by the Department for Transport and British Transport Police and sets station design and management safety standards for crime reduction at railway stations.

7. **Information about Station Improvement Measures**

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

8. **NOT USED**

9. **Station Investment**

- 9.1 The Franchisee shall at all times during the 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.
- 9.2 In co-operating with the Secretary of State and/or any nominated third party in developing any such financing opportunities, the Franchisee shall:
 - (a) attend meetings with the Secretary of State and/or such third party to discuss such opportunities;
 - (b) provide the Franchisee's opinion on those opportunities;
 - (c) review and comment on implementation timetables and programmes for any such opportunities; and
 - (d) where requested by the Secretary of State to do so use all reasonable endeavours to engage with Network Rail for the purposes of ascertaining the feasibility and costs of making amendments to any Station Leases in order to facilitate the implementation of those opportunities.

10. **Station Toilet Access**

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

List of Stations and Car Parks with accreditation

1. Stations

APSLEY
HEMEL HEMPSTEAD
ST ALBANS ABBEY
WATFORD JUNCTION
DROITWICH SPA
GREAT MALVERN
LEDBURY
MALVERN LINK
WORCESTER FOREGATE ST
WORCESTER SHRUB HILL
ACOCKS GREEN
ASTON
BERKHAMSTED
BERKSWELL
BESCOT
BLAKE STREET
BLETCHLEY
BLOXWICH
BLOXWICH NORTH
BOURNVILLE
BROMSGROVE
BUTLERS LANE
CANLEY
CANNOCK
CHEDDINGTON
CHESTER ROAD
COLESHILL PARKWAY
COSELEY
CRADLEY HEATH
DUDLEY PORT
EARLSWOOD
ERDINGTON
FIVE WAYS

FOUR OAKS
GRAVELLY HILL
HALL GREEN
HAMPTON IN ARDEN
HEDNESFORD
JEWELLERY QUARTER
KIDDERMINSTER
KINGS NORTON
LANDYWOOD
LANGLEY GREEN
LEA HALL
LEIGHTON BUZZARD
LICHFIELD CITY
LICHFIELD TRENT VALLEY
LONGBRIDGE
LYE
MARSTON GREEN
MILTON KEYNES
NORTHAMPTON
NORTHFIELD
NUNEATON
OLD HILL
OLTON
REDDITCH
ROWLEY REGIS
RUGELEY TOWN
RUGELEY TRENT VALLEY
SANDWELL & DUDLEY
SELLY OAK
SHIRLEY
SMETHWICK GALTON BRIDGE
SNOW HILL
SPRING ROAD
STECHFORD
STOURBRIDGE JUNCTION
STOURBRIDGE TOWN
STRATFORD-UPON-AVON
SUTTON COLDFIELD

TAME BRIDGE PARKWAY
TELFORD CENTRAL
THE HAWTHORNS
TILE HILL
TIPTON
TRING
UNIVERSITY
WALSALL
WHITLOCKS END
WIDNEY MANOR
WOLVERTON
WYLDE GREEN
WYTHALL
YARDLEY WOOD

2. Car Parks

HEMEL HEMPSTEAD
WATFORD JUNCTION
BERKHAMSTED
BARNT GREEN
COLESHILL PARKWAY
KIDDERMINSTER
LICHFIELD CITY
LICHFIELD TRENT VALLEY
NUNEATON
REDDITCH
STRATFORD-UPON-AVON
WORCESTER SHRUB HILL ELGAR
HOUSE
WORCESTER SHRUB HILL HORSE
SHOE
WORCESTER SHRUB HILL STATION
MAIN

APPENDIX 2 TO SCHEDULE 1.7

Information about Station Improvement Measures

Table A		
Column 1	Column 2	Column 3
Information to be provided	Information (format)	When information to be provided
The cost for the provision of services (maintenance costs (£))	Annual Report to be provided by business unit, group of stations or station via the dashboard.	As per paragraph 7.2.
Disaggregated levels of passenger satisfaction and service quality: NRPS % by station topic and Station SQR scores	Annual Report to be provided by business unit, group of stations or station via the station dashboard.	As per paragraph 7.2.
Levels of inclusivity & accessibility: percentage step free platforms, number of secure cycle facilities, number of multimodal customer information systems, number of new station travel plans	Annual Report to be provided by business unit, group of stations or station via the station dashboard.	As per paragraph 7.2.
Meeting the community's needs: number of stations which have community use and CCIF scheme cumulative spend	Annual Report to be provided by business unit, group of stations or station via the station dashboard.	As per paragraph 7.2.
Environmental performance: Energy, water; waste (additionally by depot): KWH consumption reduction from baseline net of new assets; water consumption and waste to landfill	Annual Report to be provided by business unit, group of stations or station via the station dashboard.	As per paragraph 7.2.
Retail activity (Revenue income (£))	Annual Report to be provided by business unit, group of stations or station via the station dashboard.	As per paragraph 7.2.
Facilities improvements: Number of waiting room improvements, shelters, seats,	Annual Report to be provided by business unit, group of stations or	As per paragraph 7.2.

APPENDIX 3 TO SCHEDULE 1.7

NOT USED

APPENDIX 4 TO SCHEDULE 1.7

NOT USED

Appendix 2 to Schedule 1
Schedule 6.4 (*ERMA Specific Obligations*)

Schedule 6.4

ERMA Specific Obligations

Part 1 <i>(Cooperation)</i>	Paragraph 1: Development, Design and Implementation of Future Initiatives
	Paragraph 2: Incentive Regimes
	Paragraph 3: Improvement Initiatives
	Paragraph 4: One Team Stations Initiative
	Paragraph 5: Integrated Control Centres Initiative
	Paragraph 5A: Operational Performance
	Paragraph 6: Co-operation
	Paragraph 7: Operational Planning
	Paragraph 8: Infrastructure Projects
	Paragraph 9: Sharing Data with Network Rail
	Paragraph 10: NOT USED
	Paragraph 11: Station Accessibility Data Collection
	Paragraph 12: Compensation
Paragraph 13: TD Academy	
Part 2 (Pay and Industrial Relations and Dispute Handling)	Paragraph 1: Notification of the Secretary of State
	Paragraph 2: Reward and People Principles
	Paragraph 3: Terms of Employment
	Paragraph 4: In-Scope Matters
	Paragraph 5: Industrial Action
	Paragraph 6: Reform
	Paragraph 7: Duties of the Franchisee
	Paragraph 8: Cooperation
	Paragraph 9: Disallowable Costs
	Paragraph 10: Workers
Part 3 <i>(Miscellaneous)</i>	Paragraph 1: NOT USED

	Paragraph 2: NOT USED
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PART 1 – CO-OPERATION**1. Development, Design and Implementation of Future Initiatives**

1.1 The Franchisee shall, at the request of the Secretary of State, fully and effectively co-operate with the Secretary of State in connection with the development, design, and implementation of future initiatives which, in the opinion of the Secretary of State (acting reasonably) are likely to:

- (a) improve outcomes for passengers on any or all parts of the railway network;
 - (b) improve cost-efficiency and/or reduce costs in relation to any or all parts of the railway network;
 - (c) generate additional revenue for all or part of the railway network; or
 - (d) deliver any other benefits or support any government policy objective,
- (each a “**Future Initiative**”).

1.2 The Secretary of State may from time to time (and at all times acting reasonably) issue a notice to the Franchisee specifying any assistance that the Secretary of State requires from the Franchisee in relation to the development, design and/or implementation of a Future Initiative and the date by when any deliverable required pursuant to this paragraph 1.2 must be undertaken or delivered (a “**Future Initiative Notice**” or “**FIN**”). Without limiting the foregoing, a Future Initiative Notice may, but shall not be required to, request the Franchisee to, among other things:

- (a) prepare and submit to the Secretary of State a proposal or proposals in relation to achieving any of the outcomes described in paragraphs 1.1(a) to 1.1(d) of this Part 1 of this Schedule 6.4;
- (b) prepare and submit to the Secretary of State an implementation plan and cost and revenue forecasts in relation to the relevant Future Initiative;
- (c) prepare and submit to the Secretary of State any relevant data, reports, feasibility studies, business cases or other information that is held by the Franchisee or which the Franchisee can reasonably be expected to obtain (including any such documents or information prepared or procured pursuant to paragraph (d) of this Part 1 of this Schedule 6.4);
- (d) identify, develop, design, assess and/or advise on options or proposals for delivering specified outputs or outcomes in connection with a Future Initiative, including undertaking or commissioning feasibility studies; developing implementation plans; analysing financial, operational, practical and other impacts and risks; developing business cases; reviewing and commenting on documents; and participating in meetings or other discussions; and
- (e) collaborate and co-operate with the Secretary of State, Network Rail, other Train Operators, industry bodies and other relevant third parties

to undertake any of the above activities jointly.

- 1.3 The Secretary of State may (acting reasonably) issue to the Franchisee:
 - (a) any number of FINs in relation to a Future Initiative; and
 - (b) FINs in relation of any number of Future Initiatives at any given time.
- 1.4 The Secretary of State may at any time, by proposing a Variation pursuant to paragraph 1.1(a) of Schedule 9.3 (*Variations to the Franchise Agreement and Incentivising Beneficial Changes*), require the Franchisee to develop, design and/or implement any changes to the Franchise Services or any provision of the Franchise Agreement in connection with a Future Initiative.
- 1.5 In consultation with the Secretary of State, the Franchisee shall assign a Franchise Employee with appropriate seniority to oversee and facilitate the Franchisee's compliance with its obligations pursuant to this paragraph 1 (a "Franchisee FI Contact"). The Franchisee shall confirm the identity of such Franchisee FI Contact to the Secretary of State by no later than as soon as reasonably practicable after the ERMA Start Date, and in any event by 16 October 2020.
- 1.6 The Franchisee FI Contact shall act as the Franchisee's primary point of contact with the Secretary of State in relation to all matters contemplated by this paragraph 1.
- 1.7 The Franchisee shall procure that the Franchisee FI Contact shall be supported from time to time by such other Franchisee Employees as shall be reasonably required to ensure the Franchisee's compliance with this paragraph 1.
- 1.8 This paragraph 1 is subject to the Secretary of State's rights pursuant to clause 7 (*Additional Services*) of the ERMA.
2. **Incentive Regimes**
 - 2.1 The Franchisee shall, as required by the Secretary of State, fully and effectively co-operate with the Secretary of State to design, develop and (as applicable) implement and provide to the Secretary of State such data as the Secretary of State may require in relation to potential new incentive regimes (which may be used in future contracts with Train Operators and/or may be introduced into the Franchise Agreement by means of a Variation, provided that no such new incentive regime may be introduced into the calculation of the Performance Based Fee pursuant to Schedule 8.1B (*Performance Based Fee*) without the prior written agreement of the Parties), including designing:
 - (a) new models for assessing customer satisfaction and sentiment;
 - (b) new measures of Operational Performance;
 - (c) alternative cost or other financial incentive mechanisms;
 - (d) a new regime for assessing service quality standards delivered by the Franchisee; and/or

- (e) a new regime for assessing the Franchisee's performance in relation to deterring and preventing ticketless travel.
- 2.2 The Franchisee's obligations pursuant to paragraph 2.1 above may include:
- (a) developing, reviewing and/or commenting on proposals in relation to such new incentive regimes;
 - (b) providing advice on the feasibility, costs and other implications of any such proposals made by the Secretary of State;
 - (c) attending meetings to discuss such proposals and any related matters; and
 - (d) supporting the Secretary of State in preparing to implement such new incentive mechanisms, including by collecting and providing relevant data to the Secretary of State in accordance with any requirements specified by the Secretary of State from time to time.
- 2.3 The Franchisee shall, when notified by the Secretary of State and by no later than the last day of the Reporting Period which commences two Reporting Periods after the Reporting Period in which the Secretary of State provides such notification, revise the SQR Register and the SQR Management System so as to include and take account of, in addition to the WMSBU Stations, the WMSBU Trains and the Branch Lines Trains, the facilities and services which exist at each Station or on each train comprised in the Train Fleet such that the SQR Register complies with the requirements of paragraphs (i) to (v) of paragraph 2.4 of Schedule 7.3 (*West Midlands Franchise Service Quality Regime*) and the SQR Management System complies with the requirements of paragraph 2.1 of Schedule 7.3.
- 2.4 The Parties acknowledge and agree that the extension of the service quality regime set out in Schedule 7.3 to include Managed Stations as SQR Stations shall constitute a Future Initiative for the purposes of paragraph 1 of this Schedule 7.3.

3. **Improvement Initiatives**

3.1 In this paragraph 3:

"Franchisee Initiatives" means any Improvement Initiatives which are identified by the Franchisee and which relate specifically to the Franchise Services.

"Further Industry Initiatives" means any Improvement Initiatives (other than Specified Industry Initiatives) which are intended to secure improvements on a railway industry wide basis.

"Improvement Initiatives" means any measures or initiatives which may apply to any aspect of the railway industry which are intended to secure improvements in relation to passenger outcomes, cost-efficiency and/or environmental outcomes or otherwise support the achievement of government policy objectives, including any Franchisee Initiatives, Specified Industry Initiatives and Further Industry Initiatives.

"Specified Industry Initiatives" means such Improvement Initiatives which are intended to secure improvements on a railway industry wide basis as the Secretary of State and/ or Network Rail may, from time to time, notify the Franchisee, which may include (but shall not be limited to) measures or initiatives in relation to:

- (a) improving level crossing safety and risk mitigation;
- (b) prevention of suicide, trespass and vandalism on the railway;
- (c) improving track worker safety;
- (d) promoting decarbonisation and other environmental improvements;
- (e) improving passenger information including during perturbation;
- (f) the reopening of disused or freight-only railway routes to passenger services;
- (g) Network Rail's long-term strategy and planning activities;
- (h) reforming the manner in which train service requirements are specified by funders and procurers;
- (i) the WCML (South) Capacity study;
- (j) the West Midlands Recovery Plan;
- (k) the West Midlands Grand Rail Collaboration;
- (l) the West Midlands Stations Alliance; and
- (m) planning of rail provision and infrastructure relating to the 2022 Commonwealth Games.

"WCML (South) Capacity study" means Network Rail's appraisal of West Coast Main Line capacity south of Crewe.

"West Midlands Recovery Plan" means collaboration with Network Rail, other Train Operators and other relevant stakeholders to improve performance and capacity allocation in the West Midlands area.

"West Midlands Stations Alliance" means a formal partnership of the Franchisee, Network Rail and WMRE intended to deliver long-term strategic planning and investment for WMSBU Stations and a WMSBU Stations improvement framework, improve work planning, co-ordination and funding cohesion, and deliver WMSBU Station commercial development to benefit WMSBU Station improvements.

"WMGRC" means the West Midlands Grand Rail Collaboration, a partnership of Network Rail, train service operators and the WMR, providing collegiate responsibility for the delivery of rail services to customers in the West Midlands travel to work area, intended to enable operators to meet shared objectives and rigorous new standards on key issues.

3.2 Subject to paragraph 3.4, the Franchisee shall:

- (a) proactively identify, develop, assess the business case for and implement Franchisee Initiatives;
 - (b) co-operate and collaborate with, any or all of, the Secretary of State, Network Rail, Train Operators, freight operators, railway industry bodies and any other relevant third parties (as may be applicable), to jointly plan, develop and fully participate in the implementation of Specified Industry Initiatives; and
 - (c) proactively co-operate and collaborate with, any or all of, the Secretary of State, Network Rail, Train Operators, freight operators, railway industry bodies and any other relevant third parties (as may be applicable), to jointly identify, plan, develop and fully participate in the implementation of Further Industry Initiatives.
- 3.3 For the purposes of paragraphs 3.2(b) and 3.2(c), the Franchisee's obligation to co-operate and collaborate may require the Franchisee to use all reasonable endeavours to support the planning, development and implementation of the relevant Improvement Initiative in a manner satisfactory to the Secretary of State. In particular, this may require the Franchisee to:
- (a) provide advice to, or otherwise share its expertise with, the Secretary of State or Network Rail, including inputting into the business case for the relevant Improvement Initiative;
 - (b) collect, analyse, share and/or report on certain information and data as may be necessary to inform the relevant Improvement Initiative;
 - (c) attend and participate in relevant meetings or workshops in relation to the relevant Improvement Initiative;
 - (d) implement such actions as may be agreed with relevant stakeholders in respect of the relevant Improvement Initiative, unless such actions cannot reasonably be expected to be implemented by the Franchisee taking account of the resources available to it and what could reasonably be expected of a competent and efficient operator; and
 - (e) collaborate with, and respond to requests from, relevant stakeholders in respect of the relevant Improvement Initiative, unless such collaboration or responses (as the case may be) cannot reasonably be expected of the Franchisee taking account of the resources available to it and what could reasonably be expected of a competent and efficient operator.
- 3.4 Notwithstanding any other provision of this paragraph 3, if the Franchisee reasonably considers that pursuing the implementation of any Improvement Initiative or otherwise actioning any requests in connection with the planning, development or implementation of any Improvement Initiative would, or is reasonably likely to, result in:
- (a) it incurring additional costs, over and above those a Good and Efficient Operator would incur; or
 - (b) in the case of Specified Industry Initiatives or Further Industry Initiatives, it being required to increase its staffing resources,

it shall notify the Secretary of State of the same and shall not proceed unless (i) the Secretary of State so directs or gives consent for it to do so or (ii) such additional staffing resources or costs were contemplated when the Secretary of State agreed or reasonably determined the Franchisee's most recent business plan and cost budget in accordance with the terms of Schedule 8.1A (*Franchise Payments*), and Schedule 11.2 (*Management Information*). If the Secretary of State directs or gives consent in relation to an Improvement Initiative pursuant to this paragraph 3.4, the Franchisee shall plan, develop or implement (as applicable) such Improvement Initiative in accordance with the Secretary of State's instructions.

- 3.5 Any notice issued pursuant to paragraph 3.4 shall include:
- (a) details of the proposed Improvement Initiative;
 - (b) the Franchisee's assessment of the wider benefits for passengers, the wider economy, the environment and others;
 - (c) the Franchisee's assessment of any financial or other benefits to Network Rail or other industry parties; and
 - (d) the Franchisee's reasonable estimate of the associated cost or staffing requirements (as applicable).
- 3.6 From the Start Date and throughout the Franchise Term, the Franchisee shall be a member of the WMGRC and cooperate in good faith with the other members of the WMGRC in the development and implementation of initiatives relating to its participation.
- 3.7 In addition to complying with its obligations in relation to Special Events, the Franchisee shall, from the Start Date until (and including) the closing of the 2022 Commonwealth Games to be held in the West Midlands, fully and effectively co-operate and engage constructively with all relevant stakeholders responsible for the delivery of the 2022 Commonwealth Games with the intention of assisting in ensuring the delivery of the additional passenger services and/or capacity required to meet passenger demand in relation to the 2022 Commonwealth Games.

4. **One Team Stations Initiative**

- 4.1 In this paragraph 4:

"Control Centres" means each integrated control centre, signalling centre, rail operating centre and other equivalent operational locations.

"Integrated Control Centres Implementation Plan" means a detailed plan jointly produced between the Franchisee, Network Rail and any other Train Operators setting out how and when they will implement the Integrated Control Centres Initiative.

"Integrated Control Centres Initiative" means measures and initiatives to improve performance outcomes between Network Rail and the Franchisee through collaboration, co-location and unified policies such that an integrated and cost-efficient approach to operations is adopted at specified Control Centres.

“NR Managed Stations” means each station which is served by Passenger Services and where Network Rail is the Station Facility Owner.

“One Team Stations Implementation Plan” means a detailed plan jointly produced between Network Rail and the Franchisee setting out how and when they will implement the One Team Stations Initiative.

“One Team Stations Initiative” means measures and initiatives to promote a ‘one team’ culture and approach between Network Rail and the Franchisee through collaborative working, unified policies and organisational delivery models such that customers are not able to distinguish between Network Rail and Franchisee employees at NR Managed Stations, resulting in improved passenger and cost efficiency outcomes.

- 4.2 During the Franchise Term, the Franchisee shall, including as may be requested by the Secretary of State or Network Rail, consult, co-ordinate and co-operate with Network Rail and other Train Operators (as applicable) in respect of the planning, development and implementation of the One Team Stations Initiative.
- 4.3 Subject always to paragraph 4.7, the Franchisee shall use all reasonable endeavours to agree a One Team Stations Implementation Plan with Network Rail by 28 February 2021 and shall update this as necessary for consistency with the One Team Stations Initiative from time to time.
- 4.4 If the Franchisee and Network Rail fail to agree a One Team Stations Implementation Plan in accordance with paragraph 4.3, the Franchisee shall promptly notify the Secretary of State and the Franchisee agrees that it shall accept such One Team Stations Implementation Plan as the Secretary of State may specify (acting reasonably and having due regard to the information provided by the Franchisee in its notice). In any notice issued to the Secretary of State pursuant to this paragraph 4.4, the Franchisee shall include reasonable details of the points of difference between the Franchisee and Network Rail, together with its reasons for not accepting any proposal made by Network Rail.
- 4.5 In developing the One Team Stations Initiative pursuant to paragraph 4.2, the Franchisee shall collaborate and cooperate with Network Rail and, where applicable, any other Train Operators to identify and assess the business case for any alternative operational delivery models, including joint management structures designed to improve customer service, operations and cost efficiency.
- 4.6 As soon as practicable following agreement of any One Team Stations Implementation Plan under paragraph 4.3 or otherwise following any instructions from the Secretary of State in accordance with paragraph 4.4, the Franchisee shall take such action as may be necessary to discharge its obligations under this plan and shall promptly notify the Secretary of State of any material failure to discharge such obligations.
- 4.7 If the Franchisee reasonably considers that any provision of this paragraph 4 requires, or is likely to require, it do anything inconsistent with acting as a Good and Efficient Operator, it shall notify and consult with the Secretary of State as soon as reasonably practicable following becoming aware of the same and proceed in accordance with any guidance or directions that the Secretary of State may reasonably provide or direct (which may include a direction or guidance to agree and implement a proposal on such terms as the Secretary of State may reasonably specify).

5. **Integrated Control Centres Initiative**

- 5.1 During the Franchise Term, the Franchisee shall, where required to do so in accordance with this Franchise Agreement or where requested to do so by the Secretary of State or Network Rail, consult, co-ordinate and co-operate with Network Rail and other Train Operators (as applicable) in respect of the planning, development and/or implementation (as applicable) of the Integrated Control Centres Initiative at such Control Centres as the Secretary of State or Network Rail may specify.
- 5.2 If required to do so in accordance with paragraph 5.1, and subject always to paragraph 5.6, the Franchisee shall use all reasonable endeavours to agree an Integrated Control Centres Implementation Plan with Network Rail within such timescale as the Secretary of State or Network Rail may reasonably specify and shall update this as necessary for consistency with the Integrated Control Centres Initiative from time to time.
- 5.3 If the Franchisee and Network Rail fail to agree an Integrated Control Centres Implementation Plan in accordance with paragraph 5.2, the Franchisee shall promptly notify the Secretary of State and the Franchisee agrees that it shall accept such Integrated Control Centres Implementation Plan as the Secretary of State may specify (acting reasonably and having due regard to the information provided by the Franchisee in its notice). In any notice issued to the Secretary of State pursuant to this paragraph 5.3, the Franchisee shall include reasonable details of the points of difference between the Franchisee and Network Rail, together with its reasons for not accepting any proposal made by Network Rail.
- 5.4 If required to do so in accordance with paragraph 5.1, the Franchisee shall collaborate and cooperate with Network Rail and, where applicable, any other Train Operators to:
- (a) identify any alternative operational delivery models which could be developed and implemented to promote an integrated approach to joint control at any Control Centres; and
 - (b) assess the business case for the industry (as a whole) for implementing any such proposals.
- 5.5 As soon as practicable following agreement of any Integrated Control Centres Implementation Plan under paragraph 5.2 or otherwise following any instructions from the Secretary of State in accordance with paragraph 5.3, the Franchisee shall take such action as may be necessary to discharge its obligations under this plan and shall promptly notify the Secretary of State of any material failure to discharge such obligations.
- 5.6 If the Franchisee reasonably considers that any provision of this paragraph 5 requires, or is likely to require, it do anything inconsistent with acting as a Good and Efficient Operator, it shall notify and consult with the Secretary of State as soon as reasonably practicable following becoming aware of the same and proceed in accordance with any guidance or directions that the Secretary of State may reasonably provide or direct (which may include a direction or guidance to agree and implement a proposal on such terms as the Secretary of State may reasonably specify).

5A **Operational Performance**

5A.1 In this paragraph 5A **“NR-Franchisee Operational Performance Framework”** means the framework to be developed in accordance with paragraph 5A.2.

5A.2 During the Franchise Term, the Franchisee shall consult, co-ordinate and co-operate with Network Rail (or as may be required by the Secretary of State) from time to time in respect of the planning, development and implementation of a structured framework for continuous improvement in train service performance and customer experience. As a minimum, this framework shall:

- (a) set out a sustainable and collaborative, multi-party management process which incorporates the use of both leading indicators and output measures to identify relevant issues and risks and to monitor and manage the implementation of relevant actions;
- (b) provide for the use of maturity models as a qualitative assessment of the processes, structures and behaviours that support the delivery of train service performance and customer experience, and use these assessments to identify risk management issues and areas to deliver continuous improvement for the organisation or the issue being investigated as a Part of the process identified in paragraph 5A.2(a) above;
- (c) include details of the actions or other measures intended to address the issues that are identified using the maturity models assessments created pursuant to paragraph 5A.2(b) above;
- (d) include an obligation to report to the Secretary of State on a quarterly basis on the maturity model assessments and the actions or other measures implemented to demonstrate the changes delivered under this process; and
- (e) specify agreed processes to provide feedback to the Secretary of State on the application of this continuous improvement process, and a framework to notify the Secretary of State of any potential changes or amendments to existing agreements or in respect of future arrangements which may need to be implemented.

5A.3 The Franchisee shall use all reasonable endeavours to agree the NR-Franchisee Operational Performance Framework with Network Rail by no later than 31 January 2021 and thereafter to implement it in accordance with its terms.

5A.4 If and to the extent that Franchisee and Network Rail cannot reach agreement in accordance with paragraph 5A.3, the Secretary of State may determine (acting reasonably) the terms of the NR-Franchisee Operational Performance Framework and the Franchisee shall implement it in accordance with its terms.

6. **Co-operation**

6.1 In this paragraph 6:

“Delay Attribution Principles and Rules” means the version of the document known as the Delay Attribution Principles and Rules referenced in the Network Code;

“Performance Improvement Management System” means the rail industry framework for the management of performance risks;

“Reactionary Minutes Delay” means the minutes of delay to the Passenger Services that are attributed as ‘Reactionary Delay’ in accordance with the Delay Attribution Principles and Rules, disregarding any minutes of delay that are imputed to Passenger Services that were cancelled; and

“RM3P” means the ‘Risk Management Maturity Model for Performance’ system to monitor and manage operational performance within the rail industry.

6.2 The Franchisee shall work fully and effectively with Network Rail as required to:

- (a) analyse Reactionary Minutes Delay and develop and deliver performance improvement plans to address areas of underperformance, focusing on improving Timetable robustness and contingency planning;
- (b) record, monitor and reduce sub-threshold delay;
- (c) implement industry best practice approaches to improving performance, including, if requested by the Secretary of State, the deployment of the RM3P and the Performance Improvement Management System; and
- (d) review ‘TRUST Delay Codes’ (as set out in the Delay Attribution Principles and Rules) and identify opportunities to improve the delay attribution process set out in the Delay Attribution Principles and Rules.

7. Operational Planning

7.1 In this paragraph 7:

“Event Steering Groups” has the meaning given to it in the Network Code.

“Required Establishment” means the number of train crew required in order to operate the Passenger Services, which in the case of drivers shall be calculated in accordance with the Rail Delivery Group’s “Guidance Note on Driver Establishment Calculation (December 2013)” and otherwise in accordance with an equivalent methodology.

“Train Crew Numbers Data” has the meaning given to it in paragraph 7.3(a).

7.2 The Franchisee shall consult, co-ordinate and co-operate with Network Rail and any relevant Train Operators in respect of the planning, development and implementation of proposals to support the continuous improvement of train timetabling and train planning functions. Amongst other things, this shall include developing improvements to:

- (a) the quality of the Franchisee’s and Network Rail’s timetable planning activities, through, amongst other things:
 - (i) adequate resourcing of train planning and diagramming activities for both rolling stock and traincrew;
 - (ii) collaborative working between the Franchisee’s and Network Rail or other Train Operators’ planning teams;

- (iii) the timely sharing of plans for rolling stock and traincrew, including ancillary moves;
 - (iv) timely sharing of rolling stock characteristics required to support timetable simulation and performance modelling; and
 - (v) an increased focus on the advance development of major timetable changes, including through Event Steering Groups;
 - (b) the robustness and resilience of the Franchisee's and Network Rail's train plans through collaborative working, to ensure jointly developed train regulation policies, contingency and service recovery plans including but not limited to data in relation to, and plans for:
 - (i) diversionary route availability (including traincrew knowledge and rolling stock clearance); and
 - (ii) traincrew flexibility (including route and traction knowledge, and spare cover).
- 7.3 The Franchisee shall, as soon as reasonably practicable following any request, provide Network Rail with such information as it may reasonably request, including:
- (a) information in relation to current and projected future numbers of train crew employed, in aggregate and in respect of each individual train crew depot or link, and distinguishing in each case between different types of train crew and between fully qualified individuals and trainees (the "**Train Crew Numbers Data**"); and
 - (b) a comparison of the Train Crew Numbers Data against the Franchisee's most recent assessment of the current and expected future Required Establishment in each case.

8. **Infrastructure Projects**

The Franchisee shall, throughout the Franchise Term, consult, co-ordinate and co-operate with Network Rail and any relevant Train Operators in respect of the planning, development and/or implementation (as applicable) of such renewals, enhancements and associated possessions as Network Rail may notify to the Franchisee. In particular, the parties shall work collaboratively to:

- (a) identify opportunities to coordinate and combine the delivery of infrastructure enhancements and planned renewals; and
- (b) plan possessions,

in each case, in such manner as achieves the optimum compromise between outcomes for passengers and cost-efficiency for the railway industry as a whole.

9. **Sharing Data with Network Rail**

- 9.1 In this paragraph 9:

“Financial and Commercial Data” means financial and commercial data and information in respect of:

- (a) the number of passengers using the Passenger Services, including as may be sourced from MOIRA, Lennon, passenger counts, yield management data and gate line data; and
- (b) operating costs.

“NR Data Sharing Objectives” means the aims and objectives of data sharing as may be agreed between the Franchisee and Network Rail and documented in the NR Data Sharing Strategy, including for the purposes of improving the planning and delivery of the day to day operational activities, supporting business planning, supporting train planning, informing service change and timetabling proposals, planning access and possessions, assessing the railway industry business case for specified proposals and to support strategic planning.

“NR Data Sharing Strategy” means the data sharing strategy to be developed in accordance with paragraph 9.3, as may be updated from time to time.

“Operational Data” means data and information in relation to the day to day operation of the passenger services including in relation to traincrew diversionary route and traction knowledge, train plan, rolling stock configuration, stock and crew diagrams and fleet reliability data.

9.2 By no later than 31 January 2021, the Franchisee shall, jointly with Network Rail, develop and use all reasonable endeavours to agree a strategy, which sets out the basis on which the Franchisee will, subject to any guidance or instructions that the Secretary of State may provide or issue from time to time, share specified operational, financial and commercial data and information with Network Rail. As a minimum, the strategy will include:

- (a) the agreed NR Data Sharing Objectives;
- (b) the types of data to be shared by the Franchisee and Network Rail (including Operational Data and Financial and Commercial Data);
- (c) the format and frequency of the data sharing;
- (d) how the Franchisee and Network Rail intend to receive, use and safely store the data;
- (e) the approach to cost-sharing and apportionment in respect of the data sharing; and
- (f) the approach to overcoming any confidentiality or other restrictions in respect of data sharing or storage which may arise (including as matter of law).

9.3 If the Franchisee:

- (a) is unable to agree the NR Data Sharing Strategy with Network Rail by 31 January 2021; or

- (b) reasonably considers that any proposal pursuant to this paragraph 9 requires, or is likely to require, it to do anything inconsistent with acting as a Good and Efficient Operator,

it shall notify and consult with the Secretary of State as soon as reasonably practicable following becoming aware of the same and proceed in accordance with such guidance or directions as the Secretary of State may reasonably provide or direct (which may include a direction or guidance to agree and implement a proposal on such terms as the Secretary of State may reasonably specify).

- 9.4 The Franchisee shall use all reasonable endeavours to implement the NR Data Sharing Strategy in accordance with its terms, and shall continue to consult, collaborate and co-operate with Network Rail to agree any reasonable amendments or updates to the NR Data Sharing Strategy from time to time.
- 9.5 The Franchisee shall propose and use all reasonable endeavours to agree with Network Rail suitable amendments to the NR Data Sharing Strategy to ensure compliance with any guidance or instructions issued or provided by the Secretary of State from time to time.
- 9.6 The Franchisee shall not unreasonably withhold or delay its consent to any amendments which Network Rail may reasonably propose to the NR Data Sharing Strategy, provided that the Franchisee shall not agree to any amendments which would not be in compliance with any guidance the Secretary of State may provide or issue from time to time.
- 9.7 Notwithstanding any other term of this paragraph 9, the Franchisee shall not be required to do anything which would put it in breach of any obligation on the Franchisee arising under applicable Law or the terms of its Licences.

10. **NOT USED**

11. **Station Accessibility Data Collection**

The Franchisee shall comply with any reasonable request by the Secretary of State in connection with the development and implementation of a station accessibility data collection which may include (but shall not be limited to):

- (a) supporting the Secretary of State in developing and designing the methodology for data collection;
- (b) completing questionnaires and/or using reasonable endeavours to procure that the relevant station Facility Owner completes the relevant questionnaire;
- (c) providing information in relation to Station accessibility and/or using reasonable endeavours to procure that the relevant station Facility Owner provides such information; and
- (d) providing access to Stations to facilitate accessibility data collection and/or using reasonable endeavours to procure that the relevant station Facility Owner provides such access,

in each case, in a timely manner.

12. **Compensation**

Save with the prior written consent (such consent not to be unreasonably withheld or delayed) of the Secretary of State, the Franchisee shall not:

- (a) enter into any new agreement, contract or other arrangement which relates to the receipt, review, response to, or processing of passengers' compensation claims;
- (b) materially amend, vary or waive the terms of any existing agreement, contract or other arrangement which relates to the receipt, review, response to, or processing of passengers' compensation claims;
- (c) extend the term of any agreement, contract or other arrangement which relates to the receipt, review, response to, or processing of passengers' compensation claims; or
- (d) make any material change to the Franchisee's system(s) relating to the receipt or processing of passengers' compensation claims.

13. **TD Academy**

13.1 In this paragraph 13 of Part 1 of Schedule 6.4:

"**TD Academy Board**" means the board of the TD Academy.

"**TD Academy Objectives**" means:

- (i) improving the consistency and quality of driver training;
- (ii) improving and increasing driver training throughout with the objective of eliminating the shortage of drivers;
- (iii) improving driver skills and qualifications, including through increased uptake of the Train Driver Apprenticeship (Level 3) (as supported by the Institute for Apprenticeships and Technical Education);
- (iv) improving, increasing and promoting diversity of drivers in the industry in accordance with the Approved D&I Strategy;
- (v) providing information to the TD Academy Board for assurance on training quality to stakeholders; and
- (vi) promoting synergies, efficiencies and consistency through collaboration between TD Academy Stakeholders on driver training programmes and initiatives,

(each, a "**TD Academy Objective**").

"**TD Academy Plan**" has the meaning given to it in paragraph 13.3(b), including as updated from time to time.

"**TD Academy Stakeholders**" means the Franchisee, the Secretary of State, Train Operators, the RDG, any other relevant rail industry bodies and any other stakeholders which the Secretary of State may notify the Franchisee of from time to time.

"**Train Driver Academy**" or "**TD Academy**" means the scheme to promote driver training programmes (including through online learning platforms) which was originally established by the RDG in 2019, including as it may be amended, supplemented or replaced from time to time.

- 13.2 During the term of the ERMA, the Franchisee shall consult, co-ordinate and co-operate with the TD Academy Stakeholders as appropriate (or as may be required by the Secretary of State) from time to time in respect of the planning, development and/or implementation (as applicable) of the Train Driver Academy and/or in connection with promoting the TD Academy Objectives.
- 13.3 By no later than 30 November 2020, the Franchisee shall provide the Secretary of State with a report:
- (a) setting out how it is currently engaging with the TD Academy and/or promoting the TD Academy Objectives; and
 - (b) how it intends to engage with the TD Academy and/or promote the TD Academy Objectives during the term of the ERMA, including its proposed timing for achieving any key milestones (the "**TD Academy Plan**"), together with an assessment of the costs and practicalities involved in implementing the TD Academy Plan.
- 13.4 Following the report referred to in paragraph 13.3, the Franchisee shall implement its TD Academy Plan and shall promptly notify the Secretary of State of any material departures or failure to do so.
- 13.5 The Secretary of State may, from time to time:
- (a) recommend specified changes to the Franchisee's TD Academy Plan as it considers reasonable to promote the achievement of the TD Academy Objectives; and
 - (b) direct the Franchisee to comply with and or implement instructions which the Secretary of State considers necessary to promote the achievement of the TD Academy Objectives.
- 13.6 The Franchisee shall:
- (a) take account of, and update its TD Academy Plan in respect of, any Secretary of State recommendations pursuant to paragraph 13.5(a) and implement its TD Academy Plan (as amended); and
 - (b) implement and or comply with any Secretary of State instructions pursuant to paragraph 13.5(b) and update its TD Academy Plan accordingly.
- 13.7 During the term of the ERMA, the Franchisee shall not enter into any new contracts or other arrangements which may materially adversely affect the Franchisee's ability to comply with this paragraph 13, without the prior written consent of the Secretary of State.

PART 2 – PAY AND INDUSTRIAL RELATIONS AND DISPUTE HANDLING**1. Notification of the Secretary of State**1.1 In this Part 2 of Schedule 6.4 (*ERMA Specific Obligations*):

“Collective Agreement” has the meaning given to it in the Trade Union and Labour Relations (Consolidation) Act 1992.

“Dispute Handling Policy” means the policy issued by the Secretary of State with the same name on or about the ERMA Start Date, as may be amended, supplemented or replaced from time to time.

“Employment Agreement” means the terms and conditions of employment of any Franchise Employee whether contained in or otherwise incorporated or implied, including by way of custom or practice, into any Collective Agreement, individual contract of employment, employee handbook or otherwise, in each case whether or not in writing.

“Employment Policy Framework” has the meaning given in paragraph 2.1(a) of this Part 2 of Schedule 6.4.

“In-Scope Matters” means any of the following matters in relation to any Franchise Employees:

- (i) pay negotiation strategies;
- (ii) changes to any remuneration, strategy, pension arrangements or staff benefits;
- (iii) any proposed restructuring or redundancy plans;
- (iv) any proposed changes affecting Franchise Employees (including proposed changes to the terms of any Employment Agreement, any proposed changes to working practices or procedures, howsoever these are recorded or have become established, and whether these apply nationally or locally) which either party reasonably believes (a) is likely to give rise to material industrial relations risks (including a risk of Industrial Action); and/or (b) could have a material negative impact on productivity; and/or (c) would not be in train passengers' interests;
- (v) any other matter notified to the Franchisee by the Secretary of State from time to time; and/or
- (vi) any negotiation or consultation strategies regarding any of the matters at (i) to (v) above,

(each, an **“In-Scope Matter”**).

“Mandate” means in relation to any In-Scope Matter any mandate formally agreed from time to time in writing (other than through email or other informal correspondence unless the email in question includes express confirmation from the Secretary of State that its content (or stipulated Part of it) is to form a Mandate) between the Franchisee and the Secretary of State regarding: (i) the

objective or objectives of negotiations or consultation; (ii) any parameters or constraints on such objective(s), or the substance of such negotiations or consultation; and/or (iii) how such negotiations or consultation are to be approached, structured or handled.

"Relevant Employer" means any of the Franchisee's Affiliates 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, which employs Franchise Employees performing or in support of or ancillary to the Franchise Services.

"Reward and People Principles" means any policy or policies, high level objectives, principles, instructions or guidance issued to the Franchisee or any Relevant Employer by the Secretary of State (a) with the title "Reward and People Policy", "Reward Policy" and/or "People Policy"; and/or (b) which relates to remuneration, pensions, benefits, working arrangements, working practices or terms and conditions of employment in respect of any Franchise Employee, in each case (a) and (b) as may be amended, supplemented or replaced by the Secretary of State from time to time.

"Trade Union" means any trade union(s) recognised by the Franchisee or any Relevant Employer in respect of Franchise Employees.

"Unrepresented Employees" has the meaning given to it in paragraph 1.7(a).

"Workers" has the meaning given to it in paragraph 10.

1.2 The Franchisee shall, and shall procure that each other Relevant Employer, shall:

- (a) as soon as reasonably practicable and in any event prior to engaging with any Trade Union or other employee representative body in relation to any In-Scope Matter; or
- (b) promptly and in any event three (3) Weekdays following any communication from any Trade Union or other employee representative body to the Franchisee (or the Relevant Employer, as applicable) in relation to any potential In-Scope Matter, which is not covered by an existing Mandate,

and where reasonably practicable in each case in good time to allow for proper engagement with the Secretary of State, inform the Secretary of State of all relevant information relating to any such matters and any other information the Secretary of State may request from time to time in relation to such matters. Where there is any doubt as to whether a matter requires notification in accordance with this paragraph 1.2, the Franchisee shall, and shall procure that each other Relevant Employer shall, make a notification in any event. In determining whether to make a notification and/or what information must be provided to the Secretary of State by the Franchisee, the Franchisee shall have regard to its obligations under paragraph 7.1 of this Part 2 of Schedule 6.4.

1.3 Following notification to the Secretary of State pursuant to paragraph 1.2 above, the Franchisee shall, and shall procure that each Relevant Employer shall, prior to any further communication with any Trade Union or other employee representative body in relation to the applicable In-Scope Matter, consult with

the Secretary of State with a view to reaching agreement with the Secretary of State on a Mandate.

1.4 If:

- (a) a Mandate cannot be agreed and the Franchisee or a Relevant Employer acts or omits to act in respect of a relevant In-Scope Matter without a Mandate;
- (b) the Secretary of State determines that the Franchisee or a Relevant Employer has incorrectly treated a matter as not being an In-Scope Matter and the Franchisee or Relevant Employer acts or omits to act in respect of that matter without a Mandate; or
- (c) the Franchisee or Relevant Employer breaches a Mandate or acts outside the scope of a Mandate in relation to the relevant In-Scope Matter,

and, in any such case, in doing so incurs costs, or loses revenue, then the Secretary of State may in the Secretary of State's sole discretion direct that:

- (i) any loss of revenue shall be treated as Revenue Foregone; and
- (ii) any increase in costs shall be treated as a Disallowable Cost,

in each case where the Secretary of State in the Secretary of State's sole discretion determines that such loss of revenue or increased costs (as the case may be) arises in connection with actions taken (or omitted to be taken) by the Franchisee or Relevant Employer in relation to the relevant In-Scope Matter.

1.5 Once a Mandate has been agreed, the Franchisee shall and shall procure that each Relevant Employer shall:

- (a) act in accordance with the Mandate; and
- (b) act in accordance with paragraph 2 below,

in relation to the In-Scope Matter to which that Mandate relates.

1.6 For the purposes of this paragraph 1, communications shall include any verbal discussions or written communications, in each case of a formal or informal nature.

1.7 Where any Franchise Employees are not subject to collective representation (whether by a Trade Union or any other employee representative body):

- (a) any issue which would require notification in paragraphs 1.2(a) and 1.2(b) in relation to an In-Scope Matter shall require notification if the issue arises in respect of any group of more than one such unrepresented Franchise Employees ("**Unrepresented Employees**"); and
- (b) when paragraph 1.7(a) applies, once a Mandate is required, the provisions of this Part 2 of Schedule 6.4 shall apply in full in respect of the relevant Unrepresented Employees.

2. Reward and People Principles

2.1 In relation to any In-Scope Matter (and whether or not a Mandate has been agreed in respect of that matter) the applicable principles for reward and working arrangements will be set out in Reward and People Principles and the Parties intend that these shall take precedence over other arrangements between the Secretary of State and the Franchisee which are in place immediately prior to the ERMA Start Date, subject to the remainder of this paragraph 2.1. Specifically:

(a) the Franchisee agrees that the Reward and People Principles and any other policies, high level instructions or guidance that the Secretary of State may reasonably introduce or direct from time to time (including in accordance with the provisions of paragraph 6 below) (together, the "**Employment Policy Framework**"), shall, in the case of any conflict or inconsistency, take precedence over any arrangements which form the substance of an In-Scope Matter between the Secretary of State and the Franchisee which are in place immediately prior to the ERMA Start Date, including:

- (i) any multi-year pay awards;
- (ii) staffing budgets (whether pre-approved or otherwise, and including where any assumptions relating to pay growth may have been made); and
- (iii) any other agreement or arrangement relating to any In-Scope Matters,

in each case which may take effect following the ERMA Start Date; however

(b) without prejudice to paragraph 2.2, the Employment Policy Framework shall not take precedence over any such In-Scope Matters which, prior to the ERMA Start Date, have become legally binding on the Franchisee or Relevant Employer (whether by reason of individual contract of employment, collective agreement or by custom and practice) and, for the avoidance of doubt, including agreements made which have not yet taken effect at the ERMA Start Date or any changes which the Franchisee or Relevant Employer is required to make by law.

2.2 Nothing in this Part 2 of Schedule 6.4 shall prevent the Franchisee or Relevant Employer from seeking to reach agreement with any Trade Union, other employee representative body or Relevant Employees or taking such other steps as are appropriate or necessary regarding new or revised terms and conditions of employment in order to implement the Employment Policy Framework or any Mandate.

2.3 The Franchisee shall, and shall procure that each Relevant Employer shall, unless otherwise directed by the Secretary of State, conduct any negotiations or consultation with any Trade Union, other employee representative body or group of employees (within paragraph 1.7(a)) regarding the subject of a Mandate in accordance with the Employment Policy Framework.

2.4 Subject to paragraph 2.3, the Franchisee shall, or shall procure that the Relevant Employer shall, lead and have full day to day conduct of the relevant negotiations or consultation and implementation of any Mandate.

3. **Terms of Employment**

3.1 In addition to the obligations set out in paragraph 1 above but subject to the provisions of paragraph 3.2 below, the Franchisee shall not, and shall procure that each other Relevant Employer shall not, without the Secretary of State's consent (which shall not be unreasonably withheld) effect, or purport or promise to effect, or otherwise implement any In-Scope Matter other than in accordance with the relevant Mandate.

3.2 Without limiting paragraph 3.1, subject to paragraph 3.4, the Franchisee shall not, and shall procure that each Relevant Employer shall not, without the prior consent of the Secretary of State (which shall not be unreasonably withheld or delayed), vary, or purport or promise to vary, the terms or conditions of employment with any Franchise Employee (in particular, the Franchisee shall not, and shall procure that each Relevant Employer 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 the revised terms of employment of any existing Franchise Employee may take effect on or after the ERMA Start Date if and to the extent that such terms or conditions are more favourable than the standard terms or conditions of employment of the equivalent or nearest equivalent Franchise Employee role at the date on which such revised terms and conditions are scheduled to take effect.

3.3 Without limiting paragraph 3.1, subject to paragraph 3.4, the Franchisee shall not, and shall procure that each other Relevant Employer shall not, without the prior consent of the Secretary of State (which shall not be unreasonably withheld or delayed), create or grant, or promise to create or grant, terms or conditions of employment for any prospective Franchise Employee where the employment of such prospective Franchise Employee by the Franchisee or such other Relevant Employer may commence on or after the ERMA Start Date if and to the extent that:

- (a) such terms or conditions are more favourable than the standard terms or conditions of employment of the equivalent or nearest equivalent Franchise Employee role at the date on which such employment is scheduled to commence; and
- (b) if such terms or conditions were granted to such equivalent Franchise Employee already employed by the Franchisee by way of variation to their terms or conditions of employment, the Franchisee would be in contravention of paragraph 3.2.

3.4 For the purposes of matters falling within paragraphs 3.2 and 3.3, no consent will be required from the Secretary of State in respect of any changes or proposed changes made or proposed in the ordinary course of business in accordance with human resources policies (in relation to the day to day management of the Franchisee's or Relevant Employer's business) which exist prior to the ERMA Start Date which:

- (a) are not likely to give rise to material industrial relations risks (including a risk of Industrial Action); and/or

- (b) will not have a material negative impact on productivity; and/or
- (c) are not contrary to train passengers' interests.

4. **In-Scope Matters**

- 4.1 The Secretary of State may at any time, in the Secretary of State's sole discretion, determine that a matter is, or is not, an In-Scope Matter. Save where either paragraph 4.4 or 4.5 applies, a determination that a matter is an In-Scope Matter will be final and conclusive but will not prevent the Parties agreeing that a matter is no longer an In-Scope Matter.
- 4.2 Without prejudice to paragraphs 3.2 and 3.3, if a matter is not an In-Scope Matter, no Mandate is required. For these purposes, matters in respect of which a Mandate is not required will include changes to working practices made in the ordinary course of business in accordance with human resources policies (in relation to the day to day management of the Franchisee's or Relevant Employer's business) which exist prior to the ERMA Start Date which:
- (a) are not likely to give rise to material industrial relations risks (including a risk of Industrial Action); and/or
 - (b) will not have a material negative impact on productivity; and/or
 - (c) are not contrary to train passengers' interests.
- 4.3 Where a Franchisee (or a Relevant Employer) is in any doubt as to whether any matter is an In-Scope Matter requiring a Mandate, it must, or must procure that the Relevant Employer shall, inform the Secretary of State in good time prior to steps being taken to implement such matter or change and the Franchisee must, or must procure that the Relevant Employer shall, if requested by the Secretary of State, provide an explanation of why it believes the proposed matter or change is not an In-Scope Matter requiring a Mandate. Thereafter, the Secretary of State may make a determination in accordance with paragraph 4.1. Provided the Secretary of State, acting reasonably, is satisfied that the Franchisee complied with its obligations under this paragraph 4.3 and paragraph 7.1, the Secretary of State's determination shall, subject to paragraph 4.5, be final and conclusive. Where the Secretary of State has determined that a matter is an In-Scope Matter, nothing will prevent the Parties subsequently agreeing that the matter is no longer an In-Scope Matter.
- 4.4 Where a matter is not an In-Scope Matter, the Parties acknowledge and agree that further developments in relation to, and/or escalation of, that matter may be such that it could result in (a) material industrial relations risks (including a risk of Industrial Action); and/or (b) a material negative impact on productivity; and/or (c) be contrary to train passengers' interests. In any such event, the Franchisee will make a notification to the Secretary of State in accordance with paragraph 4.3 with a view to seeking a determination from the Secretary of State as to whether the matter has become an In-Scope Matter.
- 4.5 Any determination by the Secretary of State that any matter is an In-Scope Matter is conditional on the Secretary of State, acting reasonably, being and remaining satisfied that the Franchisee and, where relevant, the Relevant Employer have disclosed all relevant information relating to such matter and complying and continuing to comply with the duty in paragraph 7.1. If, in the Secretary of State's opinion, acting reasonably, there is or has been any material

non-disclosure of relevant information or a material breach of paragraph 7.1 by the Franchisee or Relevant Employer, the Secretary of State may determine that the Mandate is void, in which case for the purposes of this Part 2 of Schedule 6.4, costs, losses and revenues shall be treated as if that Mandate had never been agreed and paragraph 1.4(a) of this Part 2 of Schedule 6.4 shall apply in respect of any acts or omissions of the Franchisee, or the Relevant Employer, in relation to that matter. The Parties acknowledge and agree that where this paragraph 4.5 applies, the Secretary of State may take such action and/or instruct such changes as it considers reasonably necessary to correct the apportionment of costs, losses and revenues between the Parties.

5. Industrial Action

5.1 The Franchisee shall, and shall procure that each Relevant Employer shall, comply with the Dispute Handling Policy. Without prejudice to any obligations under the Dispute Handling Policy, to the extent the Franchisee, acting reasonably, believes that Industrial Action is likely to occur as a result of its (or any Relevant Employer's) compliance with any aspect of this Part 2 of Schedule 6.4 (including any Mandate agreed pursuant to it), or for any other reason, it shall promptly notify the Secretary of State of its reason for that belief and the effect, or the anticipated effect, of such event on the performance of the Franchise Services and provide the Secretary of State with such further information as the Secretary of State may request.

5.2 As soon as reasonably practicable following a notification set out in paragraph 5.1 above, and in any event within three (3) Weekdays following such notification, the Franchisee shall propose a process it intends to adopt to deal with the relevant Industrial Action in accordance with and subject to the Dispute Handling Policy. The Franchisee and the Secretary of State shall use reasonable endeavours to agree how the relevant Industrial Action shall be handled, bearing in mind the Dispute Handling Policy, provided however that the Franchisee's handling of such Industrial Action will be subject always to the Secretary of State's direction, such agreement and/or direction being the "**Dispute Handling Plan**". The Franchisee shall, and shall procure that each Relevant Employer shall, act in accordance with the Dispute Handling Plan.

5.3 If:

- (a) agreement is not reached regarding how relevant Industrial Action is to be handled; or
- (b) in the event that Industrial Action occurs which, the Secretary of State determines (at the Secretary of State's sole discretion, acting reasonably), has arisen as a result of the Franchisee or any Relevant Employer not complying with its or their obligations under Part 2 of this Schedule 6.4 (including any Mandate agreed pursuant to it, any failure to act in accordance with the Dispute Handling Plan, to make a notification required by paragraph 1.2 or to provide all relevant information in relation to such notification and/or to comply with paragraphs 7.1 and 7.3,

either of which has resulted in a loss of revenue, an increase or decrease in costs, or a combination of the foregoing, as a consequence (direct or otherwise) of the disruption to Passenger Services (however so related), the Secretary of State may in the Secretary of State's sole discretion:

- (i) if the Cost Target Methodology or the Profit Target Methodology applies in relation to the Financial Performance Fee during the PBF Assessment Period in which such event occurs, designate such event as a Category A Target Amendment Trigger Event;
- (ii) direct that any such increase in costs shall be treated as Disallowable Costs and the Franchisee shall not, in any circumstances, be entitled to claim back such costs from the Secretary of State whether pursuant to Schedule 8.1A (*Franchise Payments*) or otherwise; and/or
- (iii) direct that any such lost revenue shall be treated as Revenue Foregone.

5.4 To the extent that the Franchisee:

- (a) has complied with this Part 2 of Schedule 6.4 (including any applicable Mandate); and
- (b) has complied with the Dispute Handling Plan,

then

- (i) the Secretary of State, will not treat any increase in costs or loss of revenue of the Franchisee arising from the relevant Industrial Action (however caused and of whatever nature) as a Disallowable Cost or Revenue Foregone (respectively); and
- (ii) if the Cost Target Methodology or the Profit Target Methodology applies in relation to the Financial Performance Fee during the PBF Assessment Period in which relevant Industrial Action occurs, the occurrence of such Industrial Action shall constitute a Category A Target Amendment Trigger Event,

in circumstances where the Secretary of State is satisfied that the Franchisee has acted reasonably in taking all reasonable steps (and procuring that any Relevant Employer has taken all reasonable steps) to avoid the Industrial Action and that, Industrial Action having nevertheless occurred, the Franchisee has taken all reasonable steps (and has procured that any Relevant Employer has taken all reasonable steps) to mitigate its effects.

6. Reform

6.1 The Franchisee shall, and shall procure that each Relevant Employer shall:

- (a) co-operate with the Secretary of State as may be required by the Secretary of State from time to time in respect of the planning, development and/or implementation (as applicable) of industry reform with respect to the Employment Policy Framework and the Dispute Handling Policy, including co-operating and collaborating with other Train Operators and other organisations in respect of planning, developing and implementing such reforms to the extent permitted by applicable laws; and
- (b) provide to the Secretary of State, such information and data in relation to the Employment Policy Framework and/or the Dispute Handling Policy

(or any aspect of it/them) as the Secretary of State may require from time to time.

- 6.2 The Franchisee shall, and shall procure that each Relevant Employer shall, use all reasonable endeavours to introduce, implement and comply with such amendments to the Dispute Handling Policy, the Employment Policy Framework generally and any other applicable industry agreements (including any successor arrangements or any other agreement between the Franchisee and one or more third parties relating to the sustainability of the Franchisee's staffing model, people practices, engagement with related industry stakeholders or any related matter) as may be directed by the Secretary of State from time to time.
- 6.3 During the term of this ERMA, the Franchisee shall not, and shall procure that each Relevant Employer shall not, enter into any new Employment Agreements otherwise than in accordance with the terms of this Part 2 of Schedule 6.4 (including any applicable Mandate) and the Employment Policy Framework without the prior written consent of the Secretary of State.

7. **Duties of the Franchisee**

- 7.1 In relation to any matters dealt with in this Part 2 of Schedule 6.4, the Franchisee shall, and shall procure that each Relevant Employer shall, deal with the Secretary of State in an open and cooperative way, and must disclose to the Secretary of State on an ongoing basis anything relating to the Franchisee Employees (and any Trade Union or other employee representative body representing any such employees) of which the Secretary of State would reasonably expect notice in respect of anything which might reasonably be expected to be relevant to an In-Scope Matter.
- 7.2 The Franchisee shall (and shall procure that each Relevant Employer shall) act within the spirit of this Part 2 of Schedule 6.4 in its communications and dealings with any Trade Union, employee representative body or any Franchisee Employee, both locally and nationally.
- 7.3 The Franchisee's duty to act as a Good and Efficient Operator shall apply to the discharge of its obligations under this Part 2 of Schedule 6.4.

8. **Cooperation**

Where the Franchisee or Relevant Employer reasonably considers that complying with any aspect of this Schedule 6.4, including any aspect of the Employment Policy Framework or any Mandate, will cause it to breach any legal obligation of the Franchisee or Relevant Employer in their capacity as employer (whether arising under legislation or at common law) including breaches of legislation relating to unlawful discrimination or equal pay, the Secretary of State and Franchisee shall work in cooperation (and/or, as appropriate, the Secretary of State shall, and the Franchisee shall use reasonable endeavours to procure that the Relevant Employer shall, work in cooperation) with a view to agreeing an approach to, as the case may be, compliance with such obligations under this Part 2 of Schedule 6.4 or avoidance or mitigation of the risk of such breach by the Franchisee or Relevant Employer. Once such an approach is agreed, the Franchisee shall, and will procure that the Relevant Employer shall, implement it on its terms.

9. **Disallowable Costs**

Save as provided in this Part 2 of Schedule 6.4 or as expressly agreed with the Secretary of State, any losses and liabilities (including costs, charges, penalties, compensation or similar payments) incurred as result of termination of a contract of employment of, or reaching any settlement or compromise with, a Franchisee Employee shall be Disallowable Costs.

10. **Workers**

To the extent that the Franchisee or any Relevant Employer engages individuals to work on the Franchise Services as workers (howsoever "workers" is defined in relevant English employment legislation from time to time but excluding "agency workers" as defined in the Agency Worker Regulations 2010, as amended from time to time) ("**Workers**") rather than employees, the provisions in Part 2 of this Schedule 6.4 shall be deemed to cover such Workers. In such circumstances, the engaging party shall be the Franchisee or the Relevant Employer, as applicable, and references to terms and conditions of employment shall be construed as references to terms and conditions of engagement and references to Franchise Employees shall include such workers.

PART 3 – MISCELLANEOUS

1. **NOT USED**
2. **NOT USED**

Appendix 3 to Schedule 1
Schedule 7.1 (*Operational Performance*)

SCHEDULE 7.1**OPERATIONAL PERFORMANCE****1 Definitions and Track Access Agreement**

- 1.1** For the purposes of this Schedule 7.1 only, the following words and expressions shall have the following meanings unless otherwise set out in clause 3 (*Definitions*):

"Cancellations Re-Calculation"	has the meaning given to it in paragraph 3.5(b) of this Schedule 7.1;
"Draft Action Plan"	has the meaning given to it in paragraph 9.1(b)(i) of this Schedule 7.1;
"Initial Cancellations Calculation"	has the meaning given to it in paragraph 3.5(a) of this Schedule 7.1;
"Initial TOC Minutes Delay Calculation"	has the meaning given to it in paragraph 4.6(a) of this Schedule 7.1;
"Route-Specific Required Performance Improvement"	has the meaning given to it in paragraph 9.1(a)(ix) of this Schedule 7.1;
"TOC Minutes Delay Re-Calculation"	has the meaning given to it in paragraph 4.6(b) of this Schedule 7.1;
"Undisputed Cancellation"	means a Cancellation that is not a Disputed Cancellation;
"Undisputed Network Rail Cancellation"	means a Network Rail Cancellation that is not a Disputed Cancellation;
"Undisputed Network Rail Partial Cancellation"	means a Network Rail Partial Cancellation that is not a Disputed Partial Cancellation; and
"Undisputed Partial Cancellation"	means a Partial Cancellation that is not a Disputed Partial Cancellation.
"WCSBU Cancellations Re-Calculation"	has the meaning given to it in paragraph 3.1(b) of this Schedule 7.1;
"WCSBU Initial Cancellations Calculation"	has the meaning given to it in paragraph 3.1(a) of this Schedule 7.1;
"WCSBU Initial TOC Minutes Delay Calculation"	has the meaning given to it in paragraph 4.1(a) of this Schedule 7.1;
"WCSBU TOC Minutes Delay Re-Calculation"	has the meaning given to it in paragraph 4.1(b) of this Schedule 7.1;

"WMSBU Cancellations Re-Calculation"	has the meaning given to it in paragraph 3.1(b) of this Schedule 7.1;
"WMSBU Initial Cancellations Calculation"	has the meaning given to it in paragraph 3.1(a) of this Schedule 7.1;
"WMSBU Initial TOC Minutes Delay Calculation"	has the meaning given to it in paragraph 4.1(a) of this Schedule 7.1; and
"WMSBU TOC Minutes Delay Re-Calculation"	has the meaning given to it in paragraph 4.1(b) of this Schedule 7.1.

1.2 Not used.

1.3 Not used.

1.4 Not used.

1.5 Not used.

1.6 Not used.

1.7 Not used.

1.8 Not used.

1.9 Not used.

1.10 Not used.

1.11 Not used.

1.12 Track Access Agreement

The Franchisee agrees with the Secretary of State to comply with the requirements of the Track Access Agreement in respect of cancellations attribution (Cancellations, Partial Cancellations, Network Rail Cancellations and Network Rail Partial Cancellations) and Minutes Delay attribution.

1.13 Not used.

1.14 Notice of Performance Results

As soon as reasonably practicable after the end of each Reporting Period and each PBF Assessment Period, the Secretary of State shall notify the Franchisee of the results of the calculations performed pursuant to this Schedule 7.1.

2 Reporting Requirements

The Franchisee shall at the end of each Reporting Period and in accordance with the relevant requirements of Appendix 2 (*Operational Performance Information*) of Schedule 11.2 (*Management Information*) report to the Secretary of State the operational information as specified in Appendix 2 (*Operational Performance Information*) of Schedule 11.2 (*Management Information*) and such further information as may be required for the purposes of the Secretary of State

undertaking any of the calculations required to be performed by the Secretary of State pursuant to this Schedule 7.1.

3 Cancellation Calculation

3.1 West Coast Separable Business Unit Cancellation Calculation

For each Reporting Period during the term of the ERMA the Secretary of State shall:

- (a) calculate the Franchisee's performance in respect of WCSBU Cancellations (and if applicable calculate the Franchisee's performance in respect of WCSBU Cancellations against the SBU Action Plan Level for WCSBU Cancellations) in accordance with the formula set out in Table 1 below (each a "**WCSBU Initial Cancellations Calculation**"); and
- (b) other than for the first and second Reporting Periods following the ERMA Start Date, re-calculate the Franchisee's performance in respect of WCSBU Cancellations against the SBU Action Plan Level for WCSBU Cancellations for the two (2) Reporting Periods immediately preceding the relevant Reporting Period using the formula set out in Table 1 below (each a "**WCSBU Cancellations Re-Calculation**").

3.2 In the event that a WCSBU Cancellations Re-Calculation demonstrates that the WCSBU Initial Cancellations Calculation or an earlier WCSBU Cancellations Re-Calculation was incorrect, the WCSBU Initial Cancellations Calculation and/or the relevant earlier WCSBU Cancellations Re-Calculation shall, for the relevant Reporting Period, be replaced with the latest WCSBU Cancellations Re-Calculation.

Table 1	
A	= $\frac{B}{C} \times 100$
where:	
B	is the total number of WCSBU Cancellations or WCSBU Partial Cancellations scheduled to be operated in the Enforcement Plan of the Day for that Reporting Period, on the basis that: <ul style="list-style-type: none"> (a) a WCSBU Cancellation shall count as one (1); (b) a WCSBU Partial Cancellation shall count as zero point five (0.5); and (c) any WCSBU Cancellations or WCSBU Partial Cancellations during that Reporting Period which were caused by: <ul style="list-style-type: none"> <u>(i)</u> the Franchisee's implementation of a Service Recovery Plan during that Reporting Period; or <u>(ii)</u> the occurrence or continuing effect of a Force Majeure Event,

	shall, if the Franchisee has complied with paragraph 7.1 of this Schedule 7.1, be disregarded in determining such total number of WCSBU Cancellations and WCSBU Partial Cancellations;
C	is the total number of West Coast Separable Business Unit Passenger Services scheduled to be operated in the Enforcement Plan of the Day for that Reporting Period, disregarding, if the Franchisee has complied with paragraph 7.1 of this Schedule 7.1, any WCSBU Cancellations or WCSBU Partial Cancellations during that Reporting Period which were caused by: <ul style="list-style-type: none"> (a) the Franchisee's implementation of a Service Recovery Plan during that Reporting Period; or (b) the occurrence or continuing effect of a Force Majeure Event.

3.3 West Midlands Separable Business Unit Cancellation Calculation

For each Reporting Period during the term of the ERMA the Secretary of State shall:

- (a) calculate the Franchisee's performance in respect of WMSBU Cancellations (and if applicable calculate the Franchisee's performance in respect of WMSBU Cancellations against the SBU Action Plan Level for WMSBU Cancellations) in accordance with the formula set out in Table 1A below (each a "**WMSBU Initial Cancellations Calculation**"); and
- (b) other than for the first and second Reporting Periods following the ERMA Start Date, re-calculate the Franchisee's performance in respect of WMSBU Cancellations against the SBU Action Plan Level for WMSBU Cancellations for the two (2) Reporting Periods immediately preceding the relevant Reporting Period using the formula set out in Table 1A below (each a "**WMSBU Cancellations Re-Calculation**").

3.4 In the event that a WMSBU Cancellations Re-Calculation demonstrates that the WMSBU Initial Cancellations Calculation or an earlier WMSBU Cancellations Re-Calculation was incorrect, the WMSBU Initial Cancellations Calculation and/or the relevant earlier WMSBU Cancellations Re-Calculation shall, for the relevant Reporting Period, be replaced with the latest WMSBU Cancellations Re-Calculation.

Table 1A	
A	= $\frac{B}{C} \times 100$
where:	
B	is the total number of WMSBU Cancellations or WMSBU Partial Cancellations scheduled to be operated in the Enforcement Plan of the Day for that Reporting Period, on the basis that:

	<p>(a) a WMSBU Cancellation shall count as one (1) (except in relation to a Cancellation for a West Midlands Separable Business Unit Passenger Service on the Stourbridge Town Branch which shall count as zero point two five 0.25);</p> <p>(b) a WMSBU Partial Cancellation shall count as zero point five (0.5); and</p> <p>(c) any WMSBU Cancellations or WMSBU Partial Cancellations during that Reporting Period which were caused by:</p> <p style="padding-left: 40px;"><u>(i)</u> the Franchisee's implementation of a Service Recovery Plan during that Reporting Period; or</p> <p style="padding-left: 40px;"><u>(ii)</u> the occurrence or continuing effect of a Force Majeure Event,</p> <p>shall, if the Franchisee has complied with paragraph 7.1 of this Schedule 7.1, be disregarded in determining such total number of WMSBU Cancellations and WMSBU Partial Cancellations;</p>
<p>C</p>	<p>is the total number of West Midlands Separable Business Unit Passenger Services scheduled to be operated in the Enforcement Plan of the Day for that Reporting Period, disregarding, if the Franchisee has complied with paragraph 7.1 of this Schedule 7.1, any WMSBU Cancellations or WMSBU Partial Cancellations during that Reporting Period which were caused by:</p> <p>(a) the Franchisee's implementation of a Service Recovery Plan during that Reporting Period; or</p> <p>(b) the occurrence or continuing effect of a Force Majeure Event.</p>

3.5 Cancellation Calculation

For each Reporting Period during the term of the ERMA the Secretary of State shall:

- (a) calculate the Franchisee's performance in respect of Cancellations (and, if applicable, calculate the Franchisee's performance in respect of Cancellations against the OP Target for Cancellations) in accordance with the formula set out in Table 1B below (each an "**Initial Cancellations Calculation**"); and
- (b) other than for the first and second Reporting Periods following the ERMA Start Date, re-calculate the Franchisee's performance in respect of Cancellations (and, if applicable, re-calculate the Franchisee's performance in respect of Cancellations against the OP Target for Cancellations) for the two (2) Reporting Periods immediately preceding the relevant Reporting Period using the formula set out in Table 1B below (each a "**Cancellations Re-Calculation**").

3.6 In the event that a Cancellations Re-Calculation demonstrates that the Initial Cancellations Calculation or an earlier Cancellations Re-Calculation was

incorrect, the Initial Cancellations Calculation and/or the relevant earlier Cancellations Re-Calculation shall, for the relevant Reporting Period, be replaced with the latest Cancellations Re-Calculation.

3.7 If the Performance Based Fee attributable to the Cancellations Operational Performance Component for the relevant PBF Assessment Period is calculated using the Quantified Target Methodology, the Franchisee shall not be entitled to receive payment of such element of the Performance Based Fee for the relevant PBF Assessment Period until the Secretary of State has undertaken all Cancellations Re-Calculations required pursuant to paragraph 3.5(b)(a) in relation to that PBF Assessment Period.

Table 1B	
A	= $\frac{B}{C} \times 100$
where:	
B	<p>is the total number of Cancellations or Partial Cancellations of Passenger Services scheduled to be operated in the Enforcement Plan of the Day for that Reporting Period, on the basis that:</p> <ul style="list-style-type: none"> (a) a Cancellation shall count as one (1) (except in relation to a Cancellation for a West Midlands Separable Business Unit Passenger Service on the Stourbridge Branch Line which shall count as zero point two five (0.25)); (b) a Partial Cancellation shall count as zero point five (0.5); and (c) any Cancellations or Partial Cancellations during that Reporting Period which were caused by: <ul style="list-style-type: none"> <u>(i)</u> the Franchisee's implementation of a Service Recovery Plan during that Reporting Period; or <u>(ii)</u> the occurrence or continuing effect of a Force Majeure Event, <p>shall, if the Franchisee has complied with paragraph 7.1 of this Schedule 7.1, be disregarded in determining such total number of Cancellations and Partial Cancellations;</p>
C	<p>is the total number of Passenger Services scheduled to be operated in the Enforcement Plan of the Day for that Reporting Period, disregarding, if the Franchisee has complied with paragraph 7.1 of this Schedule 7.1, any Cancellations or Partial Cancellations during that Reporting Period which were caused by:</p> <ul style="list-style-type: none"> (a) the Franchisee's implementation of a Service Recovery Plan during that Reporting Period; or (b) the occurrence or continuing effect of a Force Majeure Event.

4 TOC Minutes Delay Calculations

4.1 West Midlands Separable Business Unit TOC Minutes Delay Calculation

For each Reporting Period during the term of the ERMA the Secretary of State shall:

- (a) calculate the Franchisee's performance in respect of WMSBU TOC Minutes Delay (and if applicable calculate the Franchisee's performance in respect of WMSBU TOC Minutes Delay against the SBU Action Plan Level for WMSBU TOC Minutes Delay) in accordance with the formula set out in Table 2 below (each a "**WMSBU Initial TOC Minutes Delay Calculation**"); and
- (b) other than for the first and second Reporting Periods following the ERMA Start Date, re-calculate the Franchisee's performance in respect of WMSBU TOC Minutes Delay against the SBU Action Plan Level for WMSBU TOC Minutes Delay for the two (2) Reporting Periods immediately preceding the relevant Reporting Period using the formula set out in Table 2 below (each a "**WMSBU TOC Minutes Delay Re-Calculation**").

4.2 In the event that a WMSBU TOC Minutes Delay Re-Calculation demonstrates that the WMSBU Initial TOC Minutes Delay Calculation or an earlier WMSBU TOC Minutes Delay Re-Calculation was incorrect, the WMSBU Initial TOC Minutes Delay Calculation and/or the relevant earlier WMSBU TOC Minutes Delay Re-Calculation shall, for the relevant Reporting Period, be replaced with the latest WMSBU TOC Minutes Delay Re-Calculation.

Table 2	
$\frac{MD_{SRP}}{H_{SRP}}$	
where:	
MD_{SRP}	is the sum of Minutes Delay that are attributable to the Franchisee in that Reporting Period in respect of West Midlands Separable Business Unit Passenger Services.
H_{SRP}	is ascertained as follows: $\frac{V}{1000}$
	(i) where:
V	is the sum of Actual Train Mileage in respect of West Midlands Separable Business Unit Passenger Services in that Reporting Period.

4.3 West Coast Separable Business Unit TOC Minutes Delay Calculation

4.4 For each Reporting Period during the term of the ERMA the Secretary of State shall:

- (a) calculate the Franchisee's performance in respect of WCSBU TOC Minutes Delay (and if applicable calculate the Franchisee's performance in respect of WCSBU TOC Minutes Delay against the SBU Action Plan Level for WCSBU TOC Minutes Delay) in accordance with the formula set out in Table 2A below (each a "**WCSBU Initial TOC Minutes Delay Calculation**"); and
- (b) other than for the first and second Reporting Periods following the ERMA Start Date, re-calculate the Franchisee's performance in respect of WCSBU TOC Minutes Delay against the SBU Action Plan Level for WCSBU TOC Minutes Delay for the two (2) Reporting Periods immediately preceding the relevant Reporting Period using the formula set out in Table 2A below (each a "**WCSBU TOC Minutes Delay Re-Calculation**").

4.5 In the event that a WCSBU TOC Minutes Delay Re-Calculation demonstrates that the WCSBU Initial TOC Minutes Delay Calculation or an earlier WCSBU TOC Minutes Delay Re-Calculation was incorrect, the WCSBU Initial TOC Minutes Delay Calculation and/or the relevant earlier WCSBU TOC Minutes Delay Re-Calculation shall, for the relevant Reporting Period, be replaced with the latest WCSBU TOC Minutes Delay Re-Calculation.

Table 2A	
$\frac{MD_{SRP}}{H_{SRP}}$	
where:	
MD_{SRP}	is the sum of Minutes Delay that are attributable to the Franchisee in that Reporting Period in respect of West Coast Separable Business Unit Passenger Services.
H_{SRP}	is ascertained as follows:
	$\frac{V}{1000}$
	where:
V	is the sum of Actual Train Mileage in respect of West Coast Separable Business Unit Passenger Services in that Reporting Period.

4.6 TOC Minutes Delay Calculation

For each Reporting Period during the term of the ERMA the Secretary of State shall:

- (a) calculate the Franchisee's performance in respect of TOC Minutes Delay (and, if applicable, calculate the Franchisee's performance in respect of TOC Minutes Delay against the OP Target for TOC Minutes Delay) in accordance with the formula set out in Table 2B below (each an "**Initial TOC Minutes Delay Calculation**"); and
- (b) other than for the first and second Reporting Periods following the ERMA Start Date, re-calculate the Franchisee's performance in respect of TOC Minutes Delay (and, if applicable, re-calculate the Franchisee's performance in respect of TOC Minutes Delay against the OP Target for TOC Minutes Delay) for the two (2) Reporting Periods immediately preceding the relevant Reporting Period using the formula set out in Table 2B below (each a "**TOC Minutes Delay Re-Calculation**").

4.7 In the event that a TOC Minutes Delay Re-Calculation demonstrates that the Initial TOC Minutes Delay Calculation or an earlier TOC Minutes Delay Re-Calculation was incorrect, the Initial TOC Minutes Delay Calculation and/or the relevant earlier TOC Minutes Delay Re-Calculation shall, for the relevant Reporting Period, be replaced with the latest TOC Minutes Delay Re-Calculation.

4.8 If the Performance Based Fee attributable to the TOC Minutes Delay Operational Performance Component for the relevant PBF Assessment Period is calculated using the Quantified Target Methodology, the Franchisee shall not be entitled to receive payment of such element of the Performance Based Fee for the relevant PBF Assessment Period until the Secretary of State has undertaken all TOC Minutes Delay Re-Calculations required pursuant to paragraph 4.6(b) in relation to that PBF Assessment Period.

Table 2B	
$\frac{MD_{SRP}}{H_{SRP}}$	
where:	
MD_{SRP}	is the sum of Minutes Delay that are attributable to the Franchisee in that Reporting Period.
H_{SRP}	is ascertained as follows: $\frac{V}{1000}$
where:	
V	is the sum of Actual Train Mileage in that Reporting Period.

5 Short Formations

5.1 West Coast Separable Business Unit Short Formation Calculation

For each Reporting Period during the Franchise Term the Secretary of State shall calculate the Franchisee's performance in respect of WCSBU Short Formations (and if applicable calculate the Franchisee's performance in respect of WCSBU Short Formations against the SBU Action Plan Level for WCSBU Short Formations) in accordance with the following formula:

Table 3		
A^{SF}	=	$\frac{B_{SF}}{C_{SF}} \times 100$
where:		
B_{SF}	is the total number of West Coast Separable Business Unit Passenger Services in that Reporting Period operated with less Passenger Carrying Capacity than that specified for each such West Coast Separable Business Unit Passenger Service in the Train Plan disregarding, if the Franchisee has complied with paragraph 7.1 of this Schedule 7.1, any such West Coast Separable Business Unit Passenger Services which were operated in that way as a result of: <ul style="list-style-type: none"> (a) the Franchisee's implementation of a Service Recovery Plan during that Reporting Period; or (b) the occurrence or continuing effect of a Force Majeure Event; and 	
C_{SF}	is the total number of West Coast Separable Business Unit Passenger Services scheduled to be operated in that Reporting Period disregarding, if the Franchisee has complied with paragraph 7.1 of this Schedule 7.1, any such West Coast Separable Business Unit Passenger Service operated with less Passenger Carrying Capacity than that specified for each such West Coast Separable Business Unit Passenger Service in the Train Plan as a result of: <ul style="list-style-type: none"> (a) the Franchisee's implementation of a Service Recovery Plan during that Reporting Period; or (b) the occurrence or continuing effect of a Force Majeure Event. 	

5.2 For the purposes of the calculation to be undertaken by the Secretary of State pursuant to paragraph 5.1 above:

- (a) if and to the extent that any West Coast Separable Business Unit Passenger Service is operated with Passenger Carrying Capacity in excess of the Passenger Carrying Capacity specified for that West Coast

Separable Business Unit Passenger Service in the Train Plan, the excess capacity shall be disregarded; and

- (b) any West Coast Separable Business Unit Passenger Service that is the subject of a Cancellation or a Partial Cancellation shall be disregarded.

5.3 West Midlands Separable Business Unit Short Formation Calculation

For each Reporting Period during the Franchise Term the Secretary of State shall calculate the Franchisee's performance in respect of WMSBU Short Formations (and if applicable calculate the Franchisee's performance in respect of WMSBU Short Formations against the SBU Action Plan Level for WMSBU Short Formations) in accordance with the following formula:

Table 3A		
A^{SF}	=	$\frac{B_{SF}}{C_{SF}} \times 100$
where:		
B_{SF}	is the total number of West Midlands Separable Business Unit Passenger Services in that Reporting Period operated with less Passenger Carrying Capacity than that specified for each such West Midlands Separable Business Unit Passenger Service in the Train Plan disregarding, if the Franchisee has complied with paragraph 7.1 of this Schedule 7.1, any such West Midlands Separable Business Unit Passenger Services which were operated in that way as a result of: <ul style="list-style-type: none"> (a) the Franchisee's implementation of a Service Recovery Plan during that Reporting Period; or (b) the occurrence or continuing effect of a Force Majeure Event; and 	
C_{SF}	is the total number of West Midlands Separable Business Unit Passenger Services scheduled to be operated in that Reporting Period disregarding, if the Franchisee has complied with paragraph 7.1 of this Schedule 7.1, any such West Midlands Separable Business Unit Passenger Service operated with less Passenger Carrying Capacity than that specified for each such West Midlands Separable Business Unit Passenger Service in the Train Plan as a result of: <ul style="list-style-type: none"> (a) the Franchisee's implementation of a Service Recovery Plan during that Reporting Period; or (b) the occurrence or continuing effect of a Force Majeure Event. 	

5.4 For the purposes of the calculation to be undertaken by the Secretary of State pursuant to paragraph 5.3 above:

- (a) if and to the extent that any West Midlands Separable Business Unit Passenger Service is operated with Passenger Carrying Capacity in excess of the Passenger Carrying Capacity specified for that West Midlands Separable Business Unit Passenger Service in the Train Plan, the excess capacity shall be disregarded; and
- (b) any West Midlands Separable Business Unit Passenger Service that is the subject of a Cancellation or a Partial Cancellation shall be disregarded.

5.5 Short Formation Calculation

For each Reporting Period during the Franchise Term the Secretary of State shall calculate the Franchisee's performance in respect of Short Formations (and, if applicable, calculate the Franchisee's performance in respect of Short Formations against the OP Target for Short Formations) in accordance with the following formula:

Table 3B		
A^{SF}	=	$\frac{B_{SF}}{C_{SF}} \times 100$
where:		
B_{SF}	is the total number of Passenger Services in that Reporting Period operated with less Passenger Carrying Capacity than that specified for each such Passenger Service in the Train Plan disregarding, if the Franchisee has complied with paragraph 7.1 of this Schedule 7.1, any such Passenger Services which were operated in that way as a result of: <ul style="list-style-type: none"> (a) the Franchisee's implementation of a Service Recovery Plan during that Reporting Period; or (b) the occurrence or continuing effect of a Force Majeure Event; and 	
C_{SF}	is the total number of Passenger Services scheduled to be operated in that Reporting Period disregarding, if the Franchisee has complied with paragraph 7.1 of this Schedule 7.1, any such Passenger Service operated with less Passenger Carrying Capacity than that specified for each such Passenger Service in the Train Plan as a result of: <ul style="list-style-type: none"> (a) the Franchisee's implementation of a Service Recovery Plan during that Reporting Period; or (b) the occurrence or continuing effect of a Force Majeure Event. 	

5.6 For the purposes of the calculation to be undertaken by the Secretary of State pursuant to paragraph 5.5 above:

- (a) if and to the extent that any Passenger Service is operated in excess of the Passenger Carrying Capacity specified for that Passenger Service in the Train Plan, the excess capacity shall be disregarded; and
- (b) any Passenger Service that is the subject of a Cancellation or a Partial Cancellation shall be disregarded.

6 Calculations

The Secretary of State shall perform the calculations referred to in paragraphs 3, 4 and 5 of this Schedule 7.1 rounded to two (2) decimal places with the midpoint (that is, 11.115) rounded upwards (that is, 11.12).

7 Service Recovery Plans and Force Majeure

7.1 The Franchisee shall, within eight (8) weeks of the end of each Reporting Period for which a Service Recovery Plan has been implemented (or such other period as may be agreed by the Secretary of State), submit to the Secretary of State all the comprehensive records (as more particularly described in the ATOC "*Approved Code of Practice 2013*" or any document of a similar equivalent nature) which relate to the implementation of such Service Recovery Plan during that Reporting Period.

7.2 In performing the calculations pursuant to paragraph 4 of this Schedule 7.1 the Secretary of State shall disregard any Minutes Delay that are caused by the occurrence or continuing effect of a Force Majeure Event.

8 Consequences for Poor Performance – Benchmarks

8.1 The Franchisee shall ensure that its performance in each Reporting Period as calculated by the Secretary of State in accordance with the requirements of this Schedule 7.1, **is not equal to or worse than** each Breach Performance Level in respect of the relevant PBF Assessment Period.

8.2 Without limiting the provisions of paragraph 8.4 below, if in any Reporting Period the Franchisee's performance, as calculated by the Secretary of State in accordance with the requirements of this Schedule 7.1, is **equal to or worse than** any Breach Performance Level relating to an Enforcement Benchmark in respect of the relevant Reporting Period, then a contravention of the Franchise Agreement shall occur and the Secretary of State may serve a Remedial Plan Notice in accordance with the provisions of paragraph 2 (*Remedies for Contraventions of the Franchise Agreement*) of Schedule 10.1 (Procedure for Remedying a Contravention of the Franchise Agreement).

8.3 For the purposes of paragraph 4.2(c) (*Remedial Plans*) of Schedule 10.1 (*Procedure for remedying a Contravention of the Franchise 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 Enforcement

Benchmark will be **better than** the Breach Performance Level relating to such Enforcement Benchmark.

8.4 Certain consequences of the Franchisee's performance being **equal to or worse than** the Breach Performance Levels and Default Performance Levels relating to each Enforcement Benchmark are set out in Schedule 10 (*Remedies, Events of Default and Termination Events*).

8.5 This paragraph 8 shall only apply if the Parties have agreed (or the Secretary of State has determined, if applicable) that the Quantified Target Methodology shall apply to the Operational Performance Fee pursuant to paragraph 4 (*Calculation of the Performance Based Fee for each Subsequent PBF Assessment Period*) of Schedule 8.1B (*Performance Based Fee*).

9 Consequences for Poor Performance

9.1 Action Plans

- (a) If in any three (3) consecutive Reporting Periods the:
- (i) Franchisee's performance against the SBU Action Plan Level for WMSBU Cancellations or WCSBU Cancellations (as the case may be) is worse than the applicable SBU Action Plan Level for WMSBU Cancellations or WCSBU Cancellations; and/or
 - (ii) Franchisee's performance against the SBU Action Plan Level for WMSBU TOC Minutes Delay or WCSBU TOC Minutes Delay (as the case may be) is worse than the applicable SBU Action Plan Level for WMSBU TOC Minutes Delay or WCSBU TOC Minutes Delay; and/or
 - (iii) Franchisee's performance against the SBU Action Plan Level for WMSBU Short Formations or WCSBU Short Formations (as the case may be) is worse than the applicable SBU Action Plan Level for WMSBU Short Formations or WCSBU Short Formations; and/or
 - (iv) Actual T-3 Performance Level is worse than the OP Target for T-3; and/or
 - (v) Actual T-15 Performance Level is worse than the OP Target for T-15; and/or
 - (vi) Actual All Cancellations Performance Level is worse than the OP Target for All Cancellations, and/or
 - (vii) Secretary of State considers the Franchisee's performance on a Route or group of Routes (as applicable) to be unacceptably poor notwithstanding the fact that the Franchisee's overall performance in respect of any applicable target or level measured pursuant to this Schedule 7.1 meets the relevant target or threshold,

then the Secretary of State shall be entitled to request from the Franchisee a plan in order to secure:

- (i) in respect of paragraphs 9.1(a)(i) to (vi) above, a Required Performance Improvement;
 - (ii) in respect of paragraph 9.1(a)(vii) above, an improvement of the Franchisee's performance level on a Route or group of Routes (as applicable) to the satisfaction of the Secretary of State (acting reasonably) (a "**Route-Specific Required Performance Improvement**")
- (b) Within one (1) month of the Secretary of State's request pursuant to paragraph 9.1(a) above, the Franchisee shall:
- (i) produce, at its own cost (which cost shall be a Disallowable Cost pursuant to Appendix 1 (*Disallowable Costs*) to Schedule 8.1A (*Franchise Payments*)), and deliver to the Secretary of State its draft plan for securing a Required Performance Improvement and/or Route-Specific Required Performance Improvement (as applicable) (the "**Draft Action Plan**"); and
 - (ii) subject to paragraph 9.1(d)(iv) below:
 - A.** obtain the Secretary of State's approval of the Draft Action Plan in accordance with paragraph 9.1(d) below; and
 - B.** commence the implementation of a resulting Action Plan.
- (c) The Draft Action Plan shall contain specific tangible action points and indicate in the case of each action point:
- (i) how that action will contribute to achieving the Required Performance Improvement and/or Route-Specific Required Performance Improvement (as applicable);
 - (ii) where the action is to be implemented;
 - (iii) when the action is to be commenced and by when it is to be implemented provided always that where any action is expressed to be ongoing the Draft Action Plan shall include specific review dates;
 - (iv) how performance of the action is to be measured; and
 - (v) set out the additional expenditure associated with each action.
- (d) The Secretary of State shall be entitled to:
- (i) request further information from the Franchisee with respect to its Draft Action Plan and the Franchisee shall submit such further information to the Secretary of State within the timescales as reasonably requested by the Secretary of State; and/or
 - (ii) propose amendments to the Draft Action Plan and the Parties shall agree and, in the absence of agreement, the Secretary of State

shall reasonably determine the amendments to the Draft Action Plan, in which case paragraph 9.1(e) below shall apply; or

- (iii) accept the Draft Action Plan, in which case paragraph 9.1(e) below shall apply; or
 - (iv) not accept the Draft Action Plan, in which case the Franchisee shall not be obliged to undertake any further action with respect to its Draft Action Plan.
- (e) The Draft Action Plan as agreed, determined or accepted by the Secretary of State (as the case may be) in accordance with paragraph 9.1(d) above, shall be referred to as the "**Action Plan**". The Franchisee shall implement the Action Plan in accordance with its terms.
- (f) The Franchisee acknowledges and agrees that the approval or lack of approval by the Secretary of State of each Draft Action Plan as contemplated in this paragraph 9.1 shall not relieve the Franchisee of its obligations under this Schedule 7.1 or any other provisions of the Franchise Agreement.

9.2 Except where an Action Plan is required and implemented pursuant to paragraph 9.1(a)(vii), this paragraph 9 shall only apply if the Parties have agreed (or the Secretary of State has determined, if applicable) that the Quantified Target Methodology shall apply to the Operational Performance Fee pursuant to paragraph 4 (*Calculation of the Performance Based Fee for each Subsequent PBF Assessment Period*) of Schedule 8.1B (*Performance Based Fee*).

10 Allocation of Disputed Cancellations/Disputed Partial Cancellations

10.1 For the purpose of performing each of the calculations referred to in paragraph 3 of this Schedule 7.1 and/or paragraph 2 (*Operational Performance*) of Appendix 5 (*Quantified Target Methodology*) of Schedule 8.1B (*Performance Based Fee*) the Secretary of State shall allocate any Disputed Cancellations and/or Disputed Partial Cancellations between the Franchisee and Network Rail at the end of a Reporting Period in the following ratio of:

Table 4	
F: G	
where:	
F	is the total number of Undisputed Cancellations and/or Undisputed Partial Cancellations from the twelve (12) preceding Reporting Periods including any Disputed Cancellations or Disputed Partial Cancellations which were resolved or determined (and attributed to the Franchisee) during such twelve (12) preceding Reporting Periods; and

G	is the total number of Undisputed Network Rail Cancellations and/or Undisputed Network Rail Partial Cancellations from the twelve (12) preceding Reporting Periods including any Disputed Cancellations or Disputed Partial Cancellations which were resolved or determined (and attributed to Network Rail) during such twelve (12) preceding Reporting Periods.
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11 Allocation of Disputed Minutes Delay

11.1 Where the attribution of any Minutes Delay is in dispute between Network Rail and the Franchisee at the end of a Reporting Period the Secretary of State shall for the purpose of performing each of the calculations referred to in paragraph 44.1 of this Schedule 7.1 and/or paragraph 2 (*Operational Performance*) of Appendix 5 (*Quantified Target Methodology*) of Schedule 8.1B (*Performance Based Fee*), allocate any disputed Minutes Delay between the Franchisee and Network Rail in the ratio of:

Table 5	
FF: GG	
where:	
FF	is the total number of undisputed Minutes Delay, in each case, from the twelve (12) preceding Reporting Periods that are attributable to the Franchisee including any disputed attributions which were resolved or determined (and attributed to the Franchisee) during such twelve (12) preceding Reporting Periods; and
GG	is the total number of undisputed Minutes Delay, in each case from the twelve (12) preceding Reporting Periods that are attributable to Network Rail including any disputed attributions which were resolved or determined (and attributed to Network Rail) during such twelve (12) preceding Reporting Periods.

Appendix 4 to Schedule 1
Schedule 8.1A (*Franchise Payments*)

Schedule 8.1A
Franchise Payments

1A Definitions

For the purposes of this Schedule 8.1A only, the following words and expressions shall have the following meanings unless otherwise set out in clause 3 (*Definitions*):

"Accrued Claims"	has the meaning given in paragraph 9.10 of this Schedule 8.1A;
"Accrued Disallowable Costs"	has the meaning given in paragraph 9.10 of this Schedule 8.1A;
"Accrued Revenue Foregone"	has the meaning given in paragraph 9.10 of this Schedule 8.1A;
"Actual EMA Capex"	has the meaning given to "Actual Capex" in schedule 8.A (<i>Franchise Payments</i>) of the EMA (and, for the purposes of this definition and the definition of "Actual Capex" in schedule 8.A (<i>Franchise Payments</i>) of the EMA, " Capital Expenditure " shall have the meaning given to that term in schedule 8.A (<i>Franchise Payments</i>) of the EMA);
"Actual EMA Costs"	has the meaning given to "Actual Costs" in schedule 8.A (<i>Franchise Payments</i>) of the EMA (and, for the purposes of this definition and the definition of "Actual Costs" in schedule 8.A (<i>Franchise Payments</i>) of the EMA, " Costs " shall have the meaning given to that term in schedule 8.A (<i>Franchise Payments</i>) of the EMA);
"Actual EMA Revenue"	has the meaning given to "Actual Revenue" in schedule 8.A (<i>Franchise Payments</i>) of the EMA (and, for the purposes of this definition and the definition of "Actual Revenue" in schedule 8.A (<i>Franchise Payments</i>) of the EMA, " Revenue " shall have the meaning given to that term in schedule 8.A (<i>Franchise Payments</i>) of the EMA);
"Aggregated Costs and Revenues Liabilities"	has the meaning given in paragraph 9.11 of this Schedule 8.1A;
"Annual Adjustment" or "AADJ"	means an adjustment determined in accordance with paragraph 11 (<i>Annual Adjustments</i>) of this Schedule 8.1A;

- "Base Cash Position"** means [REDACTED⁵] (excluding the value of Season Ticket Fare suspense liabilities) or such other value as the Secretary of State may determine in accordance with paragraph 12.8 of this Schedule 8.1A;
- "Budget"** means together:
- (a) the periodic cost and revenues budget; and
 - (b) the periodic capex budget,
- in relation to the period from the beginning of the seventh Reporting Period during Franchisee Year 2020/21 to the end of the thirteenth Reporting Period during Franchisee Year 2021/22 or the end of the Extended Term (if applicable), as agreed between the Secretary of State and the Franchisee on or around the ERMA Start Date or (if the Parties have not been able to agree the Budget by the ERMA Start Date) as reasonably determined by the Secretary of State, as such Budget may be updated and/or extended from time to time in accordance with paragraph 8 (*Revisions to the Budget*) of this Schedule 8.1A;
- "Budgeted EMA Capex"** has the meaning given to "Budgeted Capex" in schedule 8.A (*Franchise Payments*) of the EMA (and, for the purposes of this definition and the definition of "**Budgeted Capex**" in schedule 8.A (*Franchise Payments*) of the EMA, "**Capital Expenditure**" and "**Budget**" shall have the meanings given to those terms in schedule 8.A (*Franchise Payments*) of the EMA);
- "Budgeted EMA Costs"** has the meaning given to "Budgeted Costs" in schedule 8.A (*Franchise Payments*) of the EMA (and, for the purposes of this definition and the definition of "Budgeted Costs" in schedule 8.A (*Franchise Payments*) of the EMA, "**Costs**" and "**Budget**" shall have the meaning given to those term in schedule 8.A (*Franchise Payments*) of the EMA);

⁵ December 2020 (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.

"Ceiling Cash Position"	means [REDACTED⁶] (excluding the value of Season Ticket Fare suspense liabilities) or such other value as the Secretary of State may determine in accordance with paragraph 12.8 of this Schedule 8.1A;
"EMA Budget"	has the meaning given to the term "Budget" in schedule 8.A (<i>Franchise Payments</i>) of the EMA;
"EMA Disallowable Costs"	has the meaning given to the term "Disallowable Costs" in schedule 8.A (<i>Franchise Payments</i>) of the EMA and for the purposes of this definition and the definition of term "Disallowable Costs" in schedule 8.A (<i>Franchise Payments</i>) of the EMA, " Costs " and " Capital Expenditure " shall have the meanings given to those terms in schedule 8.A (<i>Franchise Payments</i>) of the EMA);
"EMA Emergency Working Capital Payments"	has the meaning given to the term "Emergency Working Capital Payments" in schedule 8.A (<i>Franchise Payments</i>) of the EMA;
"EMA Estimated Revenue" or "EER"	has the meaning given to the term "Estimated Revenue" in schedule 8.A (<i>Franchise Payments</i>) of the EMA (and, for the purposes of this definition and the definition of "Estimated Revenue" in schedule 8.A (<i>Franchise Payments</i>) of the EMA, " Revenue " shall have the meaning given to that term in schedule 8.A (<i>Franchise Payments</i>) of the EMA);
"EMA Final Adjustment"	has the meaning given to the term "Final Adjustment" in schedule 8.A (<i>Franchise Payments</i>) of the EMA;
"EMA Final Reviewed Accounts"	has the meaning given to the term "Final Reviewed Accounts" in schedule 8.A (<i>Franchise Payments</i>) of the EMA;
"EMA Periodic Adjustment Payment"	means, in relation to the Franchise Payment payable in respect of the second and third Reporting Periods during the term of the ERMA, a sum calculated in accordance with

⁶ December 2020 (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 (<i>EMA Periodic Adjustment Payment</i>) payable to either the Secretary of State or the Franchisee, as applicable;
"EMA Revenue Foregone"	has the meaning given to "Revenue Foregone" in schedule 8.A (<i>Franchise Payments</i>) of the EMA (and, for the purposes of this definition and the definition of "Revenue Foregone" in schedule 8.A (<i>Franchise Payments</i>) of the EMA, "Revenue" and "Good and Efficient Operator" shall have the meaning given to those terms in schedule 8.A (<i>Franchise Payments</i>) of the EMA);
"EMA Working Capital Payments"	has the meaning given to the term "Working Capital Payments" in schedule 8.A (<i>Franchise Payments</i>) of the EMA and, for the purposes of this definition and the definition of "Working Capital Repayment" in schedule 8.A (<i>Franchise Payments</i>) of the EMA, "Franchise Payment Component" and any related definitions shall each have the meanings given to those terms in schedule 8.A (<i>Franchise Payments</i>) of the EMA;
"EMA Working Capital Repayments"	has the meaning given to the term "Working Capital Repayment" in schedule 8.A (<i>Franchise Payments</i>) of the EMA and, for the purposes of this definition and the definition of "Working Capital Repayment" in schedule 8.A (<i>Franchise Payments</i>) of the EMA, "Franchise Payment Component" and any related definitions shall each have the meanings given to those terms in schedule 8.A (<i>Franchise Payments</i>) of the EMA;
"Emergency Working Capital Payment"	has the meaning given to it in paragraph 12.5 of this Schedule 8.1A;
"Estimated Capital Expenditure"	means the Capital Expenditure estimated by the Secretary of State using available resources as is practicable at the time of the estimation;
"Estimated Costs"	means the Costs reasonably estimated by the Secretary of State using available resources as is practicable at the time of the estimation;

"EWCR"	has the meaning given to "WCR" in schedule 8.A (<i>Franchise Payments</i>) of the EMA;
"Final Working Capital Adjustment" or "FWCA"	means the adjustment determined in accordance with paragraph 14.1 of this Schedule 8.1A;
"First Franchise Payment" or "FFP"	has the meaning given to that term in paragraph 1.2 of this Schedule 8.1A;
"First Reporting Period"	means the first Reporting Period during the term of the ERMA;
"Fixed Fee"	means [REDACTED⁷] exclusive of VAT in respect of each Reporting Period in the relevant period;
"Fixed Fee and Performance Based Fee" or "FFPBF"	means the Franchise Payment Component calculated in accordance with paragraph 15 (<i>Fixed Fee and Performance Based Fee</i>) of this Schedule 8.1A;
"Franchise Payment Component"	means: <ul style="list-style-type: none"> (a) each of the components of "£FFP" as described in paragraph 1.2 of this Schedule 8.1A; (b) each of the components of "£FP" as described in paragraph 1.3 of this Schedule 8.1A; and (c) any component or element, described in the relevant provisions of this Schedule 8.1A and Schedule 8.1B (<i>Performance Based Fee</i>), as the case may be, which is used in determining or calculating the value of those components described in paragraph (a) above;
"Periodic Adjustment"	has the meaning given in paragraph 10.2 of this Schedule 8.1A;
"Periodic Budgeted Capex Payment" or "PBCP"	means the Franchise Payment Component calculated in accordance with paragraph 1.3 of this Schedule 8.1A;
"Periodic Franchise Payment" or "PFP"	means the Franchise Payment Component calculated in accordance with paragraph 1.3 of this Schedule 8.1A;

⁷ December 2020 (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.

"Periodic Finance Review Meeting"	has the meaning given in paragraph 9.1 of this Schedule 8.1A;
"Quarter"	means: <ul style="list-style-type: none"> (a) a period of three consecutive Reporting Periods, in each case ending at the end of the third, sixth and ninth Reporting Periods in a Franchisee Year; or (b) a period of four consecutive Reporting Periods ending at the end of the 13th Reporting Period of a Franchisee Year, (and "Quarterly" shall be construed accordingly);
"Quarterly Budget Forecast Review Meeting"	has the meaning given in paragraph 8.1 of this Schedule 8.1A;
"Reporting Period 13"	means 1 March 2020 to 31 March 2020 (inclusive);
"Residual Components"	means the net value of the components of the Franchise Payments under Schedule 8.1A (<i>Franchise Payments</i>) which: <ul style="list-style-type: none"> (a) relate to any periods prior to Reporting Period 13; and (b) become payable during the relevant Reporting Period. <p>For the purposes of this Schedule 8.1A (<i>Franchise Payments</i>), such net value shall be:</p> <ul style="list-style-type: none"> (a) if payable by the Secretary of the State to the Franchisee, a positive number; or (b) if payable by the Franchisee to the Secretary of State, a negative number;
"Revenue"	means the gross total revenue of the Franchisee received or receivable and properly accrued during the term of the ERMA and relating to the Franchisee's performance of the Franchise Agreement as stated in the Franchisee's profit and loss account but excluding: <ul style="list-style-type: none"> (a) Franchise Payments (which shall include the value of any Performance

Based Fee and/or Fixed Fee (if applicable)); and

- (b) any accounting transaction included in the Management Accounts, Annual Management Accounts or Annual Audited Accounts but which does not result in the Franchisee receiving a cash payment, including notional pensions accounting adjustments and the accounting impact of financial instruments revaluations;

"Revenue Foregone"

means an amount equal to the amount of revenue or other value which was not received or receivable by the Franchisee, including:

- (a) the:
- (i) debts or other receivables waived, not collected or written off; and/or
 - (ii) value of any other asset not realised in whole or in part,

but which would have been receivable and received or otherwise realised by the Franchisee if it had acted as a Good and Efficient Operator; and

- (b) subject always to paragraph 6.1 (*No Double Recovery*) of this Schedule 8.1A, the amount by which the Purchase Price (as defined in clause 2.1 of the Supplemental Agreement) receivable by the Franchisee is lower than it would have been but for the Franchisee:
- (i) incurring Disallowable Costs; and/or
 - (ii) otherwise acting other than as Good and Efficient Operator;

save where, in respect of both paragraphs (a) and (b) above, such Revenue or other value is not received or receivable as a result of the Franchisee acting in accordance with the instructions of the Secretary of State;

"SoS Claim"

means all losses, liabilities, costs, damages and expenses that the Secretary of State

does or will incur or suffer (including any such losses, liabilities, costs, damages and expenses that are unliquidated or which are contingent):

- (a) as a consequence of any breach, negligence or other default of the Franchisee under or in connection with the Franchise Agreement and/or any agreement ancillary to this Franchise Agreement, the ERMA and/or the EMA, including the Supplemental Agreement; and/or
- (b) in respect of any matter for which the Franchisee is to indemnify the Secretary of State pursuant to this Franchise Agreement, the ERMA and/or the EMA or any agreement ancillary to this Franchise Agreement, the ERMA and/or the EMA, including the Supplemental Agreement;

"Supporting Materials" means any materials explaining or supporting the Budget which have been produced by the Franchisee;

"Working Capital Payment" or "WCP" means the Franchise Payment Component calculated in accordance with paragraph 12.3 of this Schedule 8.1A; and

"Working Capital Repayment" or "WCR" means the Franchise Payment Component calculated in accordance with paragraph 13.2 of this Schedule 8.1A.

1 Franchise Payments

1.1 The Parties acknowledge and agree that:

- (a) the provisions of Schedule 8.1A (*Franchise Payments*) of the Franchise Agreement were suspended during the term of the EMA and shall continue to be suspended during the term of the ERMA;
- (b) the EMA FWCA shall not be payable at any time;
- (c) any Residual Components shall be addressed in accordance with paragraphs 1.2 and 1.3 of this Schedule 8.1A;
- (d) for the purposes of paragraph 1.3 of this Schedule 8.1A and paragraph 11 of Schedule 8.A of the EMA, limb (a) of the PPADC element of the EMA MFPP in paragraph 11.1 of Schedule 8.A of the EMA shall be calculated on the basis of the relevant Audited Accounts Reconciliation and other relevant financial information provided to the Secretary of State, including

in accordance with paragraph 9.4 of Schedule 11.2 in relation to the period from 1 March 2020 to the end of the EMA Term or otherwise, rather than the EMA Final Reviewed Accounts; and

- (e) the EMA MFPP shall be payable following:
 - (i) the receipt by the Secretary of State of the Audited Accounts Reconciliation and other relevant financial information provided to the Secretary of State in accordance with paragraph 9.4 of Schedule 11.2 in relation to the period from 1 March 2020 to the end of the EMA Term; and
 - (ii) the determination of the Management Fee and Performance Payment in accordance with Paragraph 11 of Schedule 8.A (Franchise Payments) of the EMA.

1.2 The Franchise Payment for the First Reporting Period (the "First Franchise Payment") shall be an amount equal to:

£FFP =	$FPFP + FPBCP + FWCP + RCP$
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where:

FPFP (First Periodic Franchise Payment)	means an amount equal to: $FPFP = BC - EER$ where:	
	BC	means the Budgeted Costs for the First Reporting Period. BC may only be a positive number; and
	EER	means an amount equal to the EMA Estimated Revenue for the Reporting Period that ends on the day immediately before the ERMA Start Date. EER may only be a positive number.
FPBCP	means an amount equal to the Budgeted Capex for the First Reporting Period. FPBCP may only be a positive number.	
FWCP	means an amount equal to: $FWCP = BCP - FCCP$ (and FWCP may be a positive or negative number) where:	
	BCP	means an amount equal to the Base Cash Position; and
	FCCP	means an amount equal to the Forecast Closing Cash Position for the final Reporting Period of the term of the EMA.

RCP	means an amount equal to the Residual Components for the Reporting Period that ends on the day immediately before the ERMA Start Date. RCP may be a positive or negative number.
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1.3 The Franchise Payment for any Reporting Period in relation to the term of the ERMA other than the First Reporting Period shall be an amount equal to:

£FP =	$PFP + PBCP + PADJ + WCP - WCR + AADJ + FFPBF - FWCA + RCP + EMA MFPP$
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where:

PFP	means an amount equal to: $PFP_n = BC_n - ER_{n-1}$ Where:	
	PFP_n	means the Periodic Franchise Payment for the current Reporting Period.
	BC_n	means the Budgeted Costs for the current Reporting Period (if any). BC_n may only be a positive number.
	ER_{n-1}	means the Estimated Revenue for the preceding Reporting Period("n-1") (if any), provided such Reporting Period occurs after the ERMA Start Date. ER_{n-1} may only be a positive number.
PFP may be a positive or negative number.		
PBCP	means an amount equal to the Budgeted Capex for the current Reporting Period (if any). PBCP may only be a positive number.	
PADJ	means: (a) in relation to the second and third Reporting Periods during the term of the ERMA, an EMA Periodic Adjustment Payment; or (b) in relation to all other Reporting Periods during the term of the ERMA, any Periodic Adjustment, to be made on that Reporting Period's Payment Date. PADJ may be a positive or negative number.	
WCP	means any Working Capital Payment to be made on that Reporting Period's Payment Date. WCP may only be a positive number.	
WCR	means any Working Capital Repayment to be made on that Reporting Period's Payment Date. WCR may only be a positive number.	

AADJ	means any Annual Adjustment to be made on that Reporting Period's Payment Date. AADJ may be a positive or negative number.
FFPBF	<p>means:</p> <p>(a) the Fixed Fee for the first Franchisee Year during the term of the ERMA, determined in accordance with paragraph 15.1 of this Schedule 8.1A and the Performance Based Fee for the relevant Franchisee Year calculated in accordance with Schedule 8.1B (<i>Performance Based Fee</i>) to be paid on the first Payment Date following the determination of the Fixed Fee and Performance Based Fee in accordance with paragraph 15 (<i>Fixed Fee and Performance Based Fee</i>) of this Schedule 8.1A; and</p> <p>(b) the Fixed Fee for the second Franchisee Year during the term of the ERMA including any relevant Extended Term determined in accordance with paragraph 15.1 of this Schedule 8.1A and the Performance Based Fee for the relevant Franchisee Year calculated in accordance with Schedule 8.1B (<i>Performance Based Fee</i>) to be paid on the first Payment Date following the determination of the Fixed Fee for the second Franchisee Year including any relevant Extended Term and the Performance Based Fee for the relevant Franchisee Year in accordance with paragraph 15 (<i>Fixed Fee and Performance Based Fee</i>) of this Schedule 8.1A which the Parties acknowledge shall be no earlier than the release of the Annual Audited Accounts for Franchisee Year 2021-2022 unless the Secretary of State decides (in the Secretary of State's sole discretion) that Final Accounts shall also be used for the determination, and in each instance, may be after the expiry of the term of the ERMA;</p> <p>(c) in relation to any other Payment Date, zero.</p> <p>Subject to paragraph 15.2 of this Schedule 8.1A, for the purposes of paragraph (a) above FFPBF may only be a positive number.</p>
FWCA	means the Final Working Capital Adjustment to be made in the Reporting Period immediately following the expiry of the term of the ERMA. FWCA may be a positive or negative number.
RCP	means an amount equal to the Residual Components for the preceding Reporting Period. RCP may be a positive or negative number.

EMA MFPP	<p>means:</p> <p>a) in relation to the first Payment Date following:</p> <p>(i) the receipt by the Secretary of State of the relevant Audited Accounts Reconciliation and other relevant financial information provided in accordance with paragraph 9.4 of Schedule 11.2 covering the period 1 March 2020 to the end of the EMA Term; and</p> <p>(ii) the determination of the Management Fee and Performance Payment in accordance with Paragraph 11 of Schedule 8.1A (<i>Franchise Payments</i>).</p> <p>the Management Fee and Performance Payment, determined in accordance with paragraph 11.1 of Schedule 8.A (Franchise Payments) of the EMA (and, subject to paragraph 11.2 of schedule 8.A of the EMA, EMA MFPP may only be a positive number); or</p> <p>b) in relation to any other Payment Date, zero.</p>
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1.4 The Parties agree that:

- (a) where £FP or £FFP is a positive number, the Secretary of State shall pay that amount to the Franchisee on the Payment Date for that Reporting Period (or, in the case of the first Reporting Period following the ERMA Start Date, as soon as reasonably practicable);
- (b) where £FP or £FFP 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 (or, in the case of the first Reporting Period following the ERMA Start Date, as soon as reasonably practicable); and
- (c) where £FP or £FFP is zero, neither Party shall make a payment to the other Party 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 start of each Reporting Period (or, in the case of the first Reporting Period following the ERMA Start Date, as soon as reasonably practicable), 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 first Weekday of that Reporting Period (or, in the case of the first Reporting Period following the ERMA Start Date, as soon as reasonably practicable).
- 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 of this Schedule 8.1A on the Payment Date of the Reporting Period to which it relates (or, in the case of the first Reporting Period following the ERMA Start Date, as soon as reasonably practicable).

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.

3 Interest

If:

- (a) the Franchisee fails to pay any amount to the Secretary of State on its due date; or
- (b) the Secretary of State fails to pay to the Franchisee the Franchise Payment on its due date,

that Party which has failed to pay 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.

4 Disputes under Schedule 8

If either the Franchisee or the Secretary of State disputes the amount of a Franchise Payment, the dispute shall, unless the Franchisee and the Secretary of State otherwise agree, be resolved in accordance with the provisions of Clause 17 (*Governing Law and Jurisdiction*) of the Franchise Agreement. Any such dispute shall not affect the obligation of either Party to pay a Franchise Payment notified in accordance with this Schedule 8.1A.

5 Not Used

6 No Double Recovery

6.1 Neither Party shall be entitled to recover (by way of an adjustment to Franchise Payments or otherwise) more than once in respect of the same amount. In particular:

- (a) no amount shall be categorised as both Capital Expenditure and as a Cost for the purpose of this Schedule 8.1A, or inconsistently with the accounting treatment assumed for the same capital expenditure in calculating the Franchise Payments under the Franchise Agreement prior to and after the implementation of the EMA and the ERMA; and
- (b) neither Party shall be entitled to recover pursuant to the terms of the ERMA a sum that has already been recovered pursuant to the terms of the EMA and *vice versa*.

6.2 In the event that the Franchisee is successful in obtaining any governmental support or support from any local authority or other such body that is offered in

relation to the impact of and/or recovery from the impacts of COVID-19, this shall be taken into account in relation to the relevant payment and adjustments in this Schedule 8.1A such that the Franchisee does not benefit from double recovery or double counting.

7 Force Majeure and Payments

Following the occurrence of a Force Majeure Event, the payment of Franchise Payments shall continue to be calculated in accordance with this Schedule 8.1A and the payment of such Franchise Payments shall continue unaffected.

8 Revisions to the Budget

8.1 Without limiting the requirement for any other meeting, the Parties shall, subject to paragraph 9.14 of this Schedule 8.1A, hold a forecast Budget review meeting at least once in each Quarter (a "**Quarterly Budget Forecast Review Meeting**") at a time and location notified to the Franchisee by the Secretary of State following provision of the information referred to in paragraph 8.2 of this Schedule 8.1A. The purpose of the meeting shall be to review and seek to agree:

- (a) revisions (if any) to the Budget for the remaining Reporting Periods of the Budget, including inserting such additional information as may be required in relation to the period of any possible Extended Term;
- (b) the content of any necessary or desirable corresponding addendum to the Supporting Materials;
- (c) whether and (if applicable) the extent to which the provisions of Schedule 9.1 (*Financial and Other Consequences of Change*) apply to any such revisions agreed in accordance with this paragraph 8.1 of this Schedule 8.1A;
- (d) any new contracts with an Affiliate which the Franchisee proposes to enter into or renew, any existing contracts with an Affiliate which the Franchisee proposes to amend or extend and details of any contract procurement process (pursuant to which the Franchisee proposes to enter into a contract with the successful bidder) in which the Franchisee reasonably expects an Affiliate to participate; and
- (e) whether any adjustment to the value(s) of Base Cash Position, Ceiling Cash Position and/or Floor Cash Position is necessary.

The Franchisee shall ensure that the representatives of the Franchisee at the Quarterly Budget Forecast Review Meeting shall include the Finance Director of the Franchisee or a suitable representative of the Finance Director as may reasonably be approved for this purpose by the Secretary of State.

8.2 The Franchisee shall, prior to the date of each Quarterly Budget Forecast Review Meeting provide to the Secretary of State the relevant information required pursuant to paragraph 9.3 (*Quarterly Financial Information*) of Schedule 11.2 (*Management Information*), together with a draft periodic budget prepared using the cost and revenue categories within (and to the same level of disaggregation at) the "P&L2" tab of the Financial Model, updated to reflect Actual Costs, Actual

Capex and Actual Revenues as reflected in the latest Management Accounts and revised Budgeted Costs and Budgeted Capex and Estimated Revenue (or EMA Estimated Revenue, as applicable) for the period to which such forecast relates, in accordance with the timescales set out therein, and shall provide the Secretary of State with all further information as the Secretary of State may request from time to time for the purposes of the operation of this paragraph 8.2, within such time as the Secretary of State may reasonably specify for that purpose (and this paragraph 8 shall continue to apply such that the number of requests which the Secretary of State may make is not limited).

- 8.3** If the Parties fail to agree the matters referred to in paragraphs 8.1(a) to 8.1(e) of this Schedule 8.1A at the relevant Quarterly Budget Forecast Review Meeting, the Secretary of State shall reasonably determine such matters.
- 8.4** Such revisions to the Budget and addenda to the Supporting Materials as agreed or determined shall take effect from the first day of the Reporting Period immediately following the date on which the Quarterly Budget Forecast Review Meeting (at which such matters were discussed) took place, provided that, if such revisions or addenda are not agreed by the first day of that Reporting Period, the relevant revisions and addenda shall take effect from the first day of the Reporting Period which falls at least ten (10) Weekdays after those revisions and addenda are agreed or determined.
- 8.5** Each revision to the Budget and/or addendum to the Supporting Materials shall (unless the Parties otherwise agree):
- (a) adopt the same format and structure as the original version in agreed terms (or where the preceding version has included any changes from that format and structure expressly agreed by the Parties for this purpose) from the preceding version;
 - (b) make no assumptions or include any costs, revenue or other adjustments which are not consistent with the definitions of Costs, Capital Expenditure and Revenue or which represent Disallowable Costs or Revenue Foregone or liabilities in respect of SoS Claims (except as may be otherwise expressly agreed by the Parties for that purpose);
 - (c) adopt the same accounting principles and standards as the original version (as these may be expressly varied by agreement between the Parties for this purpose or, in the case of accounting standards, as these may be reasonably revised by the Secretary of State to take account of changes to GAAP in the United Kingdom); and
 - (d) otherwise facilitate easy comparison with the definitions of Costs, Capital Expenditure, Revenue, Disallowable Costs and Revenue Foregone and with the information reported in the Management Accounts, Annual Management Accounts, the Annual Audited Accounts and the Final Accounts.
- 8.6** Each time it is agreed or determined that the Budget is to be revised and/or an addendum is to be added to the Supporting Materials, the Secretary of State shall be entitled to:

- (a) make the agreed or determined revisions to the Budget and/or Supporting Materials (or procure this is done on the Secretary of State's behalf) and provide copies of those revised documents to the Franchisee; or
 - (b) require the Franchisee to provide the agreed or determined revisions to the Budget and/or Supporting Materials for approval by the Secretary of State, which the Franchisee shall do and provide revised versions to the Secretary of State within such time as the Secretary of State shall specify for this purpose.
- 8.7** The Franchisee shall not enter into any contract or arrangement with an Affiliate (including entering into a new contract or arrangement and/or renewing or amending an existing contract or arrangement) unless:
- (a) the Secretary of State has, in the Secretary of State's sole discretion (and for this purpose Clause 6.4 of the Franchise Agreement shall not apply) first consented to the terms of such contract and to it being entered into on those terms (which shall be at least as favourable to the Franchisee as terms on an arm's length basis), whether at or following a Quarterly Budget Forecast Review Meeting (where such contract forms part of the agenda for that meeting) or otherwise; and
 - (b) the Franchisee has procured that any such contract or arrangement which has a term that is longer than seven Reporting Periods and/or which may extend beyond the ERMA Term or Extended Term is capable of being terminated in accordance with its terms upon the expiry of the ERMA Term or Extended Term such that the Franchisee shall not incur any liability or be required to make any termination payment to the relevant Affiliate if the Franchisee elects or is directed by the Secretary of State to exercise any such termination right in accordance with the terms of the relevant contract.
- 8.8** The Secretary of State may direct the Franchisee to re-procure (in accordance with the terms of such contract or arrangement) any:
- (a) contract or arrangement with an Affiliate that was entered into on or after the ERMA Start Date that has been entered into in breach of paragraph 8.7 above of this Schedule 8.1A;
 - (b) contract or arrangement with an Affiliate that was entered into on or after the ERMA Start Date where the Secretary of State has directed the Franchisee to exercise the termination right outlined in paragraph 8.7(b) above of this Schedule 8.1A; or
 - (c) contract or arrangement with an Affiliate that was entered into prior to the ERMA Start Date which has a remaining term that is longer than seven Reporting Periods as at the ERMA Start Date and/or which may extend beyond the ERMA Term or Extended Term, provided that the relevant contract is capable of being terminated by the Franchisee in accordance with its terms to allow the Franchisee to undertake such re-procurement without the Franchisee being in breach of the terms of such contract or

incurring any liability or being required to make any termination payment to the relevant Affiliate.

- 8.9** For the purpose of this paragraph 8, the Secretary of State shall be entitled to consider any information provided to the Secretary of State by the Franchisee and any other sources of information which the Secretary of State considers to be relevant and the Secretary of State shall be entitled to request such information from the Franchisee as the Secretary of State requires in connection with the matters referred to in this paragraph 8. Without prejudice to the generality of the foregoing, in considering any revisions to the Budget, regard shall be had to the definitions of Costs, Revenue, Capital Expenditure, Good and Efficient Operator, Disallowable Costs and Revenue Foregone, so as to ensure that the revisions to the Budget are consistent with those definitions.
- 8.10** Subject to the Secretary of State's rights set out in paragraph 8.7 of this Schedule 8.1A, the Parties shall at all times act in good faith, reasonably and in a timely manner in the interpretation and application of the provisions for agreeing revisions to the Budget and any addendum to the Supporting Materials.

9 Review of Franchisee's performance against Budget

Finance Review Meeting

- 9.1** Without limiting the requirement for any other meeting, the Parties shall, subject to paragraph 9.14 of this Schedule 8.1A, hold a finance review meeting in every Reporting Period ("**Periodic Finance Review Meeting**") at such time(s) and location(s) notified to the Franchisee by the Secretary of State following the provision of the information referred to in paragraph 9.2 of this Schedule 8.1A and:
- (a) the purpose of the Periodic Finance Review Meeting shall be to review the financial performance of the Franchisee. This shall include:
 - (i) a review and discussion of variances arising in the preceding Reporting Period between Actual Costs, Actual Capex and Actual Revenue, and Budgeted Costs, Budgeted Capex and Estimated Revenue respectively, Actual Revenues to be received by the Franchisee and potential Revenue Foregone, and confirmation of the value of the Periodic Adjustment to be applied to the Franchise Payment to be paid in the Reporting Period following the Reporting Period in which the Periodic Finance Review Meeting is taking place (or, in relation to the second and third Reporting Periods during the term of the ERMA, the EMA Periodic Adjustment Payment);
 - (ii) a review and discussion regarding any Actual Costs with respect to all payments made by the Franchisee under contracts or other arrangements with Affiliates (and any payments, costs or liabilities in connection with such contracts or arrangements which are not consistent with the Franchisee acting as a Good and Efficient Operator shall be Disallowable Costs);

- (iii) a review of fees and payments (including bonuses) actually paid by the Franchisee to its directors and officers during the preceding Reporting Period as against the Budgeted Costs for such fees and payments as stated in the then current Budget;
 - (iv) a review and discussion of the Franchisee's management of its working capital and the Franchisee's Forecast Closing Cash Position for that Reporting Period in which the Periodic Finance Review Meeting is taking place and any Working Capital Payment or Working Capital Repayment to be applied to the Franchise Payment to be paid in the Reporting Period following the Reporting Period in which the Periodic Finance Review Meeting is taking place;
 - (v) actions to be taken in respect of the Franchisee's financial performance;
 - (vi) identification of any potential Non-Recoverable Costs, Disallowable Costs, Unreimbursed Disallowable Costs, Revenue Foregone and SoS Claims that may have been incurred within the preceding or current Reporting Period; and
 - (vii) confirmation and valuation of any Disallowable Costs, Unreimbursed Disallowable Costs, Revenue Foregone and SoS Claims (and/or in accordance with paragraph 9.13 of this Schedule 8.1A, relevant Initial SoS Claim Amounts, as applicable) which have been identified pursuant to sub-paragraph (vi) above in previous Periodic Finance Review Meetings;
- (b) the Franchisee shall ensure that the representatives of the Franchisee at the meeting shall include the Finance Director of the Franchisee or a suitable representative of the Finance Director as may reasonably be approved for this purpose by the Secretary of State; and
 - (c) the Secretary of State shall ensure that the representatives of the Secretary of State shall include a senior civil servant where the confirmation and valuation of any Disallowable Costs, Unreimbursed Disallowable Costs, Revenue Foregone and/or SoS Claims (and/or in accordance with paragraph 9.13 of this Schedule 8.1A, relevant Initial SoS Claim Amounts, as applicable) are to be considered as part of any Periodic Finance Review Meeting,

and the purpose of the Periodic Finance Review Meeting held in the first Reporting Period of the term of the ERMA (the "**EMA Finance Review Meeting**") shall be to discuss the financial performance of the Franchisee during the final Reporting Period during the term of the EMA and for the purposes of the EMA Finance Review Meeting, references in paragraph 9.1(a) to "Actual Costs", "Actual Capex", "Actual Revenue", "Budgeted Costs", "Budgeted Capex", "Estimated Revenue", "Disallowable Costs", "Revenue Foregone" and "SoS Claims" shall be construed to be references to Actual EMA Costs, Actual EMA Capex, Actual EMA Revenue, Budgeted EMA Costs, Budgeted EMA Capex, EMA Estimated Revenue,

EMA Disallowable Costs, EMA Revenue Foregone and EMA SoS Claims (respectively).

- 9.2** The Franchisee shall, prior to the date of each Periodic Finance Review Meeting, provide to the Secretary of State the relevant information required pursuant to paragraph 9.2 of Schedule 11.2 (*Management Information*) (or, in relation to the EMA Finance Review Meeting, the relevant information required pursuant to paragraph 9.2 of schedule 11.2 (*Management Information*) of the EMA) in relation to the previous Reporting Period together with a statement of the Franchisee's Forecast Closing Cash Position applicable to that Reporting Period, in accordance with the timescales set out therein, and shall provide the Secretary of State with all further information as the Secretary of State may request from time to time for the purposes of the operation of paragraph 9.1 of this Schedule 8.1A, within such time as the Secretary of State may reasonably specify for that purpose (and this paragraph 9 shall continue to apply such that the number of requests which the Secretary of State may make is not limited).
- 9.3** The Secretary of State shall be entitled to consider any information provided to the Secretary of State by the Franchisee and any other sources of information which the Secretary of State considers to be relevant and the Secretary of State shall be entitled to request such information from the Franchisee as the Secretary of State requires for the purposes of the operation of this paragraph 9. The Franchisee shall provide the information within such time as the Secretary of State may reasonably specify for the purpose (and this paragraph 9 shall continue to apply such that the number of requests which the Secretary of State may make is not limited).
- 9.4** If, within ten (10) Weekdays following the relevant Periodic Finance Review Meeting:
- (a) the Parties have failed to agree the matters referred to in paragraph 9.1(a)(vii) of this Schedule 8.1A; and
 - (b) such matters either individually or in the aggregate exceed **[REDACTED⁸]**,

then each Party shall respectively procure that such matter or matters (as the case may be) shall be escalated to any senior civil servant within the Department for Transport's Rail Group (excluding the Passenger Services Group) on behalf of the Secretary of State and any statutory director of any Affiliate of the Franchisee on behalf of the Franchisee. Those representatives shall meet at the earliest convenient time and in any event within 20 Weekdays of the date of the relevant Periodic Finance Review Meeting and negotiate in good faith and attempt to agree the relevant matters.

⁸ December 2020 (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.

9.5 If:

- (a) the Parties fail to agree the matters referred to in paragraph 9.1(a) of this Schedule 8.1A at the relevant Periodic Finance Review Meeting, in circumstances where paragraph 9.4 of this Schedule 8.1A does not apply;
- (b) the representatives of the Parties fail to agree the matters referred to in paragraph 9.1(a) (vi) of this Schedule 8.1A within ten (10) Weekdays of first meeting to agree such matters in accordance with paragraph 9.4 of this Schedule 8.1A, in circumstances where that paragraph applies; or
- (c) the Franchisee fails to provide the relevant information required pursuant to Schedule 11.2 (*Management Information*) (or, in relation to the EMA Finance Review Meeting, the relevant information required pursuant to paragraph 9.2 of schedule 11.2 (*Management Information*) of the EMA), in accordance with the timescales set out therein, or otherwise in accordance with this paragraph 9,

the Secretary of State shall (without prejudice to the Secretary of State's other rights) be entitled (but not obliged) to determine the relevant matters in accordance with this paragraph 9 and all other applicable provisions of this Schedule 8.1A but by reference to the relevant information available to the Secretary of State at the time of such determination.

Accrued Disallowable Costs, Accrued Revenue Foregone and SoS Claims

9.6 Without prejudice to paragraphs 9.3 to 9.5 of this Schedule 8.1A, if subsequent to any Periodic Finance Review Meeting, the Secretary of State later identifies any item (applicable to that period to which the relevant Periodic Finance Review Meeting relates) which the Secretary of State considers is or may be a Disallowable Cost or an instance of Revenue Foregone or any SoS Claims (whether following a review of the Franchisee's Annual Audited Accounts, Final Accounts or otherwise) the Secretary of State shall within 28 days of identifying such item be entitled to:

- (a) notify the Franchisee in writing, identifying the item concerned; and
- (b) request further information from the Franchisee in connection with the item for the purposes of the operation of this paragraph 9.6 and paragraphs 9.7 to 9.9 of this Schedule 8.1A. The Franchisee shall provide the information within such time as the Secretary of State may reasonably specify for the purpose.

9.7 The Parties shall seek to agree the value of any Disallowable Costs and/or Revenue Foregone and/or any SoS Claims (and/or in accordance with paragraph 9.13 of this Schedule 8.1A, relevant Initial SoS Claim Amounts, as applicable) identified by the Secretary of State pursuant to paragraph 9.6 of this Schedule 8.1A within 20 Weekdays of the later of the Secretary of State's notice referred to in paragraph 9.6(a) of this Schedule 8.1A and the date specified by the Secretary of State for the delivery of further information in accordance with paragraph 9.6(b) (the "**Escalation Trigger Date**").

9.8 If:

- (a) the Parties fail to agree the matters referred to in paragraph 9.7 of this Schedule 8.1A; and
- (b) such matters either individually or in the aggregate exceed **[REDACTED⁹]**; then

each Party shall respectively procure that such matter or matters (as the case may be) shall be escalated to any senior civil servant within the Department for Transport's Rail Group (excluding the Passenger Services Group) on behalf of the Secretary of State and any statutory director of the Parent on behalf of the Franchisee. Those representatives shall meet at the earliest convenient time and in any event within 20 Weekdays of the Escalation Trigger Date, negotiate in good faith and attempt to agree the relevant matters.

9.9 If:

- (a) the Parties fail to agree the matters referred to in paragraph 9.7 in circumstances where paragraph 9.8 does not apply;
- (b) the representatives of the Parties fail to agree the matters referred to in paragraph 9.7 within ten (10) Weekdays of first meeting to agree such matters in accordance with paragraph 9.8 or the Parties fail to meet to attempt to agree the relevant matters, in circumstances where that paragraph applies; or
- (c) the Franchisee fails to provide the relevant information required pursuant to paragraph 9.6(b) in accordance with the specified timescales, then

the Secretary of State shall reasonably determine the value of any Disallowable Costs and/or Revenue Foregone and/or any SoS Claims (and/or in accordance with paragraph 9.13, relevant Initial SoS Claim Amounts, as applicable).

9.10 The value of any Disallowable Costs and/or Revenue Foregone and/or any SoS Claims (and/or in accordance with paragraph 9.13, relevant Initial SoS Claim Amounts as applicable) as agreed or determined whether pursuant to paragraph 9.4, paragraph 9.5, paragraph 9.8, paragraph 9.9 or paragraph 9.13 shall be referred to as "**Accrued Disallowable Costs**" and "**Accrued Revenue Foregone**" and "**Accrued Claims**" (as applicable).

9.11 Subject to paragraph 9.12, the value of any Accrued Disallowable Costs and/or Accrued Revenue Foregone and/or Accrued Claims on each occasion accumulated pursuant to paragraph 9.10 shall be aggregated with the total of all Disallowable Costs, Revenue Foregone and SoS Claims which have been previously accumulated, such aggregated value from time to time being the "**Aggregated Costs and Revenues Liabilities**".

9.12 The value of the Aggregated Costs and Revenues Liabilities shall be limited to:

- (a) in the event that there has been no extension to the term of the ERMA, the sum of:

⁹ December 2020 (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) the Fixed Fee payable for the Reporting Periods in that Franchisee Year (which shall take account of any early expiry or termination of the ERMA) calculated pursuant to paragraph 15.1;
 - (ii) the maximum potential Performance Based Fees for the PBF Assessment Periods in that Franchise Year calculated in accordance with Schedule 8.1B (*Performance Based Fee*); and
 - (iii) any remaining amounts as a debt from the Franchisee which the Secretary of State shall be entitled to claim in accordance with the Funding Deed or the Performance Bond on expiry or termination of this Franchise Agreement; or
- (b) in the event that there has been an extension to the term of the ERMA, the sum of:
- (i) the Fixed Fee payable for the Reporting Periods in that Franchisee Year calculated pursuant to paragraph 15.1;
 - (ii) the maximum potential Performance Based Fees for the PBF Assessment Periods in that Franchise Year calculated in accordance with Schedule 8.1B (*Performance Based Fee*); and
 - (iii) any remaining amounts as a debt from the Franchisee which the Secretary of State shall be entitled to claim in accordance with the Funding Deed or the Performance Bond on expiry or termination of this Franchise Agreement.

9.13 If any SoS Claim is a contingent or unliquidated claim (a "**Contingent SoS Claim**"), the Parties shall, pursuant to paragraph 9.4, paragraph 9.7 or paragraph 9.8 (as applicable) seek to agree (or in the absence of agreement, the Secretary of State may for the purposes of paragraph 9.5 and shall for the purposes of paragraph 9.9, reasonably determine) an initial value for such Contingent SoS Claim (the "**Initial SoS Claim Amount**") and the Initial SoS Claim Amount shall be deemed to be an Accrued Claim for the purposes of paragraph 9.10. If the value of Contingent SoS Claim once fully liquidated (that is, being agreed or determined through dispute resolution) is:

- (a) in excess of the Initial SoS Claim Amount, the Secretary of State shall be entitled to claim such amount in excess of the Initial SoS Claim Amount from the Franchisee:
 - (i) as an adjustment to the Aggregated Costs and Revenues Liabilities to be applied against the calculation of FFPBF, where Franchise Payments in favour of the Secretary of State remain to be paid after the date on which the Contingent SoS Claim has become fully liquidated; and/or
 - (ii) as an adjustment to the Franchise Payment payable after the expiry of the term of the ERMA; and/or
 - (iii) as a debt from the Franchisee which the Secretary of State shall be entitled to claim in accordance with the Funding Deed or from the

Performance Bond on expiry or termination of the Franchise Agreement; or

- (b) is less than the Initial SoS Claim Amount, the Secretary of State shall repay to the Franchisee the difference between the actual liquidated value of the relevant SoS Claim and the Initial SoS Claim Amount either:
 - (i) as an adjustment to the Aggregated Costs and Revenues Liabilities to be applied against the calculation of FFPBF, where Franchise Payments remain to be paid after the date on which the Contingent SoS Claim has become fully liquidated; or
 - (ii) where no Franchise Payment is payable after the date on which the Contingent SoS Claim becomes fully liquidated as a payment to the Franchisee.

9.14 The Secretary of State shall have the sole discretion (acting reasonably) to decrease (and subsequently increase) the required frequency of the Quarterly Budget Forecast Review Meetings and/or the Periodic Finance Review Meetings, provided they shall be no more frequent than once a Reporting Period.

9.15 Any Quarterly Budget Forecast Review Meeting or Period Finance Review Meeting (or part thereof) may be held remotely with the prior agreement of the Parties.

Unreimbursed Disallowable Costs

9.16 If the value of any Disallowable Cost is agreed or determined pursuant to this paragraph 9, the Franchisee may (subject to the prior written consent of the Secretary of State) request that the Guarantor pay to the Franchisee within ten (10) Weekdays of receipt of such request a sum equal to the value as such Disallowable Cost (such sum, once paid to the Franchisee in accordance with this paragraph 9.16, being an "**Unreimbursed Disallowable Cost**").

9.17 Paragraph 9.16 shall not apply in relation to Disallowable Costs specified in paragraph (e) or paragraph (k) of Appendix 1 (*Disallowable Costs*) to this Schedule 8.1A.

- 9.18** Any Unreimbursed Disallowable Costs shall be disregarded for the purposes of:
- (a) paragraph 1.16 (*Disallowable Costs*) of Schedule 10.2 (*Events of Default and Termination Events*); and
 - (b) calculating any Costs for the purposes of any Franchise Payment.

10 Periodic Adjustments

10.1 The value of PADJ for the current Reporting Period ("**n**") (other than the second and third Reporting Periods during the term of the ERMA) shall be equal to the following

PADJ for Reporting Period(n) =	$(ACRP_{n-3} - BCRP_{n-3}) + (ACAP_{n-3} - BCAP_{n-3}) - (ARRP_{n-3} - ERRP_{n-3})$
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Where:

ACRP_{n-3}	means the total Actual Costs in the third preceding Reporting Period ("n-3") as set out in the Management Accounts for that preceding Reporting Period, provided that any Reporting Periods prior to the ERMA Start Date shall be disregarded. ACRP _{n-3} may only be a positive number.
BCRP_{n-3}	means the total Budgeted Costs in respect of the third preceding Reporting Period ("n-3") (based on the version of the Budget which applied for the purpose of the calculation of the Franchise Payment for that preceding Reporting Period (n-3)), provided that any Reporting Periods prior to the ERMA Start Date shall be disregarded. BCRP _{n-3} may only be a positive number.
ACAP_{n-3}	means the total Actual Capex for the third preceding Reporting Period ("n-3"), provided that any Reporting Periods prior to the ERMA Start Date shall be disregarded. ACAP _{n-3} may only be a positive number.
BCAP_{n-3}	means the Budgeted Capex in respect of the third preceding Reporting Period ("n-3") (based on the version of the Budget which applied for the purpose of the calculation of the Franchise Payment for that preceding Reporting Period (n-3)), provided that any Reporting Periods prior to the ERMA Start Date shall be disregarded. BCAP _{n-3} may only be a positive number.
ARRP_{n-3}	means the total Actual Revenue for the third preceding Reporting Period ("n-3"), provided that any Reporting Periods prior to the ERMA Start Date shall be disregarded. ARRP may only be a positive number.
ERRP_{n-3}	means the total Estimated Revenue in respect of the third preceding Reporting Period (n-3), provided that any Reporting Periods prior to the ERMA Start Date shall be disregarded. ERRP may only be a positive number.

10.2 The value of PADJ in respect of a Reporting Period (other than the second and third Reporting Periods during the term of the ERMA) shall be made as an adjustment to the second Franchise Payment payable after that calculation of PADJ is determined, provided that no such adjustment shall apply in respect of the first Reporting Period during the term of the ERMA (a "**Periodic**

Adjustment"). A Periodic Adjustment shall be calculated on the basis that no interest is due pursuant to paragraph 3.1 of this Schedule 8.1A.

- 10.3** The Secretary of State agrees that, provided the Management Accounts (in a form consistent with the obligations of the Franchisee under Schedule 11.2 (*Management Information*)) are received from the Franchisee within the timescale specified in paragraph 9.2(a) of Schedule 11.2 (*Management Information*), the Secretary of State shall provide the Franchisee with the value of PADJ in sufficient time for the Periodic Adjustment to be included in the relevant Franchise Payment in accordance with paragraph 10.2 of this Schedule 8.1A above.
- 10.4** If the Franchisee fails to provide the Management Accounts in accordance with its obligations under Schedule 11.2 (*Management Information*), the Secretary of State shall (without prejudice to the Secretary of State's other rights) be entitled (but not obliged) to determine the amount of any Periodic Adjustment in accordance with this paragraph 10 but by reference to the relevant information available to the Secretary of State at the time of such determination.

11 Annual Adjustments

11.1 AADJ shall be equal to the following:

AADJ =	$(TotalAC - TotalAR) + TotalACAP - (TotalPFP + TotalPBCP) - TotalPADJ$
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Where, subject to paragraph 11.5 below:

TotalAC	means the total Actual Costs of the Franchisee for the relevant Franchisee Year as set out in the Annual Audited Accounts for the relevant Franchisee Year. TotalAC may only be a positive number.
TotalAR	means the total Actual Revenue for the relevant Franchisee Year as set out in the Annual Audited Accounts for the relevant Franchisee Year. TotalAR may only be a positive number.
TotalACAP	means the total Actual Capex for the relevant Franchisee Year as set out in the Annual Audited Accounts for the relevant Franchisee Year. TotalACAP may only be a positive number.
TotalPFP	means the total net value of the First Franchise Payment and all of the Periodic Franchise Payments paid to the Franchisee during the relevant Franchisee Year. TotalPFP may be positive or negative.
TotalPBCP	means the total net value of all of the FPBCP and the Periodic Budgeted Capex Payments paid to the

	Franchisee during the relevant Franchisee Year. TotalPBCP may only be a positive number.
TotalPADJ	means the total net value of PADJ paid in respect of each Reporting Period during the relevant Franchisee Year. TotalPADJ may be positive or negative.

- 11.2** The value of AADJ in respect of the relevant Franchisee Year (whether negative or positive) shall be made as an adjustment to the next Franchise Payment payable after the calculation of AADJ is determined (the "**Annual Adjustment**") and the Parties acknowledge this may be payable as part of the Franchise Payments following the completion of the term of the ERMA. The Annual Adjustment shall be calculated on the basis that no interest is due pursuant to paragraph 3.1 of this Schedule 8.1A.
- 11.3** If the Franchisee fails to provide the information required by paragraphs 9.4(b), 9.4A(c) and 9.4A(m) of Schedule 11.2 (*Management Information*), including Annual Audited Accounts, Final Accounts and the Audited Accounts Reconciliation by the date specified pursuant to that paragraph the Secretary of State shall (without prejudice to the Secretary of State's other rights) be entitled (but not obliged) to determine the amount of any Annual Adjustment in accordance with this paragraph 11 but by reference to the 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.
- 11.4** The Parties agree that notwithstanding the provisions of the EMA, no EMA Final Adjustment shall be payable in respect of the term of the EMA and (unless otherwise so requested by the Secretary of State) the Franchisee shall not be required to provide the EMA Final Reviewed Accounts.
- 11.5** The Secretary of State may, in the Secretary of State's sole discretion, determine that the relevant information set out in the Final Accounts, as well as the Annual Audited Accounts, shall be used for the purposes of calculating the components of AADJ, as set out in this paragraph 11.

12 Working Capital Payments

- 12.1** A Working Capital Payment shall become payable to the Franchisee as part of a Reporting Period's Franchise Payment where the Forecast Closing Cash Position for the preceding Reporting Period is less than the Floor Cash Position. The value of the Working Capital Payment shall be calculated in accordance with paragraph 12.3.
- 12.2** The Franchisee shall provide the Secretary of State with a statement of the Franchisee's Forecast Closing Cash Position prior to each Periodic Finance Review Meeting in accordance with paragraph 9.2.

12.3 The Working Capital Payment, if payable in any Reporting Period, shall be equal to the following:

WCP =	BCP – FCCP
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Where:

BCP	the Base Cash Position.
FCCP	the Forecast Closing Cash Position applicable to the preceding Reporting Period.

12.4 If, during a Reporting Period, the Franchisee becomes aware that in its opinion (acting reasonably), prior to the payment of the Franchise Payment in respect of the following Reporting Period, the Franchisee's available Cash Balance will be insufficient to meet its liabilities that will fall due prior to the payment of the Franchise Payment applicable to that Reporting Period (the "**Working Capital Shortfall**"), the Franchisee shall immediately:

- (a) notify the Secretary of State that a Working Capital Shortfall is likely to occur during that Reporting Period;
- (b) provide, in or with that notice, supporting information (including relevant accounts and calculations) evidencing the likely Working Capital Shortfall and the amount of additional working capital that the Franchisee considers it will require to ensure that the Working Capital Shortfall is remedied; and
- (c) provide such further supporting information as the Secretary of State shall reasonably require.

12.5 The Parties shall agree or (where the Parties fail to agree) the Secretary of State shall reasonably determine the amount required to remedy the Working Capital Shortfall (an "**Emergency Working Capital Payment**") and when such Emergency Working Capital Payments are required to be paid for that purpose.

12.6 The Secretary of State shall pay to the Franchisee any Emergency Working Capital Payment in accordance with the timescales agreed or determined in accordance with paragraph 12.5 of this Schedule 8.1A.

12.7 If the Franchisee fails to provide any information required by this paragraph 12, or any information in accordance with its obligations in Schedule 11.2 (*Management Information*) to enable the Secretary of State to calculate the amount of any Working Capital Payment or Emergency Working Capital Payment, the Secretary of State shall (without prejudice to the Secretary of State's other rights) be entitled (but not obliged) to determine the amount of WCP in accordance with this paragraph 12 but by reference to the relevant information available to the Secretary of State at the time of such determination.

12.8 The Secretary of State shall at any time on reasonable prior notice to the Franchisee be entitled to adjust the value of the Ceiling Cash Position, the Base

Cash Position and/or the Floor Cash Position provided that the Secretary of State shall have first consulted the Franchisee as to any such adjustments as the Secretary of State is considering making.

13 Working Capital Repayment

13.1 A Working Capital Repayment shall become payable by the Franchisee as part of a Reporting Period's Franchise Payment where the Franchisee's Forecast Closing Cash Position in the preceding Reporting Period is greater than the Ceiling Cash Position. The value of the Working Capital Repayment shall be calculated in accordance with paragraph 13.2 of this Schedule 8.1A.

13.2 A Working Capital Repayment, if payable in any Reporting Period, shall be equal to the following:

WCR =	FCCP – BCP
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Where:

FCCP	means the Forecast Closing Cash Position applicable to the preceding Reporting Period.
BCP	means the Base Cash Position.

14 Final Working Capital Adjustment

14.1 The value of FWCA shall equal:

FWCA =	(TotalWCP – TotalWCR) + FWCP
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Where:

FWCP	means an amount equal to the FWCP that was paid in the First Franchise Payment in accordance with paragraph 1.2 above
TotalWCP	means the aggregate of all Working Capital Payments, EMA Working Capital Payments, Emergency Working Capital Payments and EMA Emergency Working Capital Payments paid to the Franchisee during the term of the ERMA and the EMA (as applicable).
TotalWCR	means the aggregate of all Working Capital Repayments and EMA Working Capital Repayments paid by the Franchisee during the term of the ERMA and the EMA (as applicable).

14.2 The value of FWCA shall be payable as an adjustment to the Franchise Payment payable in the Reporting Period immediately following the expiry of the term of the ERMA. FWCA may be positive or negative.

14.3 If the Franchisee fails to provide any information in accordance with its obligations in Schedule 11.2 (*Management Information*) to enable the Secretary of State to calculate any Working Capital Repayment, EMA Working Capital Repayment or the Final Working Capital Adjustment, the Secretary of State shall

(without prejudice to the Secretary of State's other rights) be entitled (but not obliged) to determine the amount of WCR, EWCR or FWCA (as the case may be) in accordance with this paragraph 14 but by reference to the relevant information available to the Secretary of State at the time of such determination.

15 Fixed Fee and Performance Based Fee

15.1 Subject to paragraphs 15.2 to 15.4 (inclusive), the value of FFPBF shall equal:

FFPBF =	$(FF + PBF) - ACRL$
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Where, subject to paragraph 15.5 below:

FF	means the Fixed Fee.
PBF	means the sum of all the Performance Based Fee for the PBF Assessment Periods in the relevant Franchisee Year calculated in accordance with Schedule 8.1B (<i>Performance Based Fee</i>). PBF may only be a positive number.
ACRL	<p>means, for the purposes of this paragraph 15, the sum of the total value of the Aggregated Costs and Revenues Liabilities in the relevant Franchisee Year:</p> <p>(a) calculated on the basis of the Franchisee's Audited Accounts Reconciliation and/or the Final Accounts, at the Secretary of State's sole discretion; and</p> <p>(b) as agreed or reasonably determined (in accordance with paragraphs 9.4 and 9.5 of this Schedule 8.1A) at the Payment Date for FFPBF pursuant to paragraph 15.3 of this Schedule 8.1A.</p> <p>ACRL may only be a positive number.</p>

15.2 If the value of FFPBF is a negative amount:

- (a) for the purposes of paragraph 1.2 of this Schedule 8.1A, FFPBF shall be deemed to equal zero; and
- (b) the Secretary of State shall be entitled to claim the value of FFPBF (expressed as a positive value) from the Franchisee as an adjustment to the Franchise Payment following determination of the amount of the relevant Franchise Payment.

15.3 Subject to paragraph 15.4 of this Schedule 8.1A, the value of FFPBF may be made as an adjustment to the next Franchise Payment payable after:

- (a) the value of the Performance Based Fee in relation to all PBF Assessment Periods in that Franchisee Year has been finally calculated pursuant to Schedule 8.1B (*Performance Based Fee*); and
- (b) the value of the Aggregate Costs and Revenue Liabilities have been agreed or determined for the purposes of this paragraph 15.

FFPBF shall be calculated on the basis that no interest is due pursuant to paragraph 3 of this Schedule 8.1A.

The Parties acknowledge that the adjustment referred to in this paragraph 15.3 may occur after the expiry of the term of the ERMA.

- 15.4** Nothing in this paragraph 15 shall limit the rights and remedies of the Secretary of State in respect of any Disallowable Costs, Non-Recoverable Costs, Revenue Foregone and/or SoS Claims not taken into account in the calculation of ACRL. The Secretary of State's rights and remedies in respect of any Disallowable Costs, Non-Recoverable Costs, Revenue Foregone and/or SoS Claims not taken into account in the calculation of ACRL shall include claims pursuant to and in accordance with the Funding Deed and/or Performance Bond.
- 15.5** The Secretary of State may, in the Secretary of State's sole discretion, determine that the relevant information set out in the Final Accounts, as well as the Annual Audited Accounts or Audited Accounts Reconciliation, shall be used for the purposes of calculating the components of FFPBF, as set out in this paragraph 15.

16 Further Secretary of State's rights in relation to accounting matters

- 16.1** Where the Secretary of State reasonably considers that in calculating any matter which has an impact on the calculation of a Franchise Payment Component, 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) and having regard to all circumstances, including GAAP (as may be amended from time to time), the Secretary of State shall be entitled to require it to be accounted for on such other basis as the Secretary of State 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 Supporting Materials and applied through the Financial Model.
- 16.2** Where the Annual Audited Accounts or Final Accounts are subject to adjustment or restatement, the Secretary of State shall have the sole discretion to require the recalculation of any affected Franchise Payment Component for the relevant Franchisee Year and to require that the Franchisee shall pay to the Secretary of State the amount which is the difference between:
- (a) any amount actually paid to the Secretary of State or adjusted in favour of the Secretary of State and the amount that would have been paid or adjusted had the affected Franchise Payment Component been originally

calculated on the basis that such adjustment or revision was included in the Annual Audited Accounts or Final Accounts; and/or

- (b) any amount actually paid by the Secretary of State or adjusted in favour of the Franchisee and the amount that would have been paid or adjusted had the affected Franchise Payment Component been originally calculated on the basis that such adjustment or revision was included in the Annual Audited Accounts or Final Accounts.

16.3 Any payment due to the Secretary of State shall be paid by the Franchisee within thirty (30) days of the Secretary of State notifying the Franchisee that the Secretary of State requires a payment to be made pursuant to this paragraph 16.

17 Indexation

The Parties agree that the Franchise Payments and any sum shown in any Budget for any given Franchisee Year (or other period) shall not be subject to automatic indexation or adjustment to take into account the effect of inflation provided that this paragraph 17 is without prejudice to the adjustment of the Budget in accordance with paragraph 8 (*Revisions to the Budget*) of this Schedule 8.1A and/or the adjustment of the Franchise Payments in accordance with paragraph 10 (*Periodic Adjustments*) and paragraph 11 (*Annual Adjustments*) of this Schedule 8.1A.

18 Further obligations of the Franchisee

18.1 Except to the extent otherwise agreed by the Secretary of State, the Franchisee shall act as a Good and Efficient Operator in all respects in connection with the operation of this Schedule 8.1A and shall not act in a way that is contrary to the principles of the ERMA or the Franchise Agreement by using the existence or cessation of the ERMA to increase the profitability of the Franchisee.

18.2 The Franchisee warrants on a continuing basis and shall, if requested at any time by the Secretary of State, provide written confirmation from a statutory director of the Franchise confirming that the Franchisee is not (and, during the term of the ERMA, was not) party to any arrangement of any kind whatsoever (except if the Secretary of State provided prior written consent to such arrangement) under which:

- (a) any amounts which the Franchisee might otherwise have received from a third party are reduced, waived or otherwise suppressed; and/or
- (b) any amounts which the Franchisee might otherwise be properly obliged to pay or be liable are increased; and/or
- (c) any amounts required to be paid or accounted for by the Franchisee become or are recorded as paid or accounted for during the term of the:
 - (i) ERMA, which might otherwise be paid or accounted for in the periods preceding or following the term of the ERMA; and/or

- (ii) EMA, which might otherwise be paid or accounted for in the periods preceding or following the term of the EMA; and/or
- (d) any amounts which the Franchisee might otherwise have received from a third party during the term of the:
 - (i) ERMA are recovered or accounted for in the periods preceding or following the term of the ERMA; and/or
 - (ii) EMA are recovered or accounted for in the periods preceding or following the term of the EMA; and/or
- (e) Revenue and/or EMA Revenue is accounted for in the periods preceding or following the term of the:
 - (i) ERMA which should have been accounted for during the term of the ERMA; and/or
 - (ii) EMA which should have been accounted for during the term of the EMA.

18.3 Without limiting any other constraints which operate by virtue of any other part of the Franchise Agreement or otherwise, no application shall be made or other step taken by or on behalf of the Franchisee in respect of the winding up or striking off of the Franchisee (or any similar or analogous process) and nor shall the Franchisee permit or facilitate the same:

- (a) until all the adjustments and payments for which this Schedule 8.1A provides have been made and discharged in full; and/or
- (b) without the prior written consent of the Secretary of State.

18.4 The Secretary of State shall be entitled to notify the Franchisee of any future initiatives or proposals that the Secretary of State considers may have the potential to reduce certain Actual Costs below the applicable Budgeted Costs and the Franchisee shall, acting reasonably and in good faith, discuss with the Secretary of State all such matters as are relevant to the possible implementation of such initiatives.

18.5 The Franchisee shall:

- (a) upon the Secretary of State's direction maintain an amount equal to the Season Ticket Fare suspense liabilities in a separate bank account as the Secretary of State may nominate from time to time and the Franchisee shall secure the proceeds of any such account as chargor for the benefit of the Secretary of State as chargee under a relevant security agreement, as the Secretary of State may direct and to the Secretary of State's satisfaction; and
- (b) within ten (10) Weekdays of the start of each Reporting Period provide to the Secretary of State a written warranty from a Director that the value of the cash held in the account (if applicable) is equal to or more than the value of the Season Ticket Fare suspense liabilities, as reported to the Secretary of State in the previous Reporting Period.

19 Capex review

19.1 The Parties acknowledge and agree that:

- (a) the provisions of paragraph 17 (*Capex Review*) of schedule 8.A (*Franchise Payments*) of the EMA shall not apply; and
- (b) at the end of the term of the ERMA, the Secretary of State shall review the funding of capital expenditure assumed for the calculation of the contracted Annual Franchise Payments in the Financial Model that is Placed in Escrow. If the funding of such assumed capital expenditure through the Franchise Payments under Schedule 8.1 has been distorted by the implementation of the EMA and/or the ERMA, including by the implementation of the EMA and/or the ERMA in a part of a Franchisee Year in which the term of the EMA and/or the ERMA comes to an end, the Parties shall seek to agree an appropriate compensating amount. This amount may be payable either by the Secretary of State or by the Franchisee. In the event that this amount cannot be agreed, the Secretary of State shall reasonably determine the amount and direction of this payment.

Appendix 1 to Schedule 8.1A
Disallowable Costs

Any references in this Appendix 1 to Schedule 8.1A to costs, payments, expenses, fees, liabilities or other amounts shall be deemed to refer to Costs and/or Capital Expenditure as the context may require.

- (a) Any costs that were incurred otherwise than in accordance with those expected to be incurred by a Good and Efficient Operator. Variations between Actual Costs and Budgeted Costs and/or Actual Capex and Budgeted Capex (as the case may be) likely to be considered to be inconsistent with those expected of a Good and Efficient Operator include but are not limited to:
- (i) staff, director or officer costs in excess of the Budget (except where evidenced by the Franchisee as appropriate for delivery of the Franchise or of reasonable scale given the requirement for delivery of the Franchise, provided that any costs referred in to in paragraph (b) or paragraph (c) of this Appendix shall not in any circumstance be considered appropriate for the delivery of the Franchise or of a reasonable scale given the requirement for delivery of the Franchise);
 - (ii) costs that do not reflect the contracted position under existing contracts as at the EMA Start Date unless such change has been agreed by the Secretary of State (such agreement not to be unreasonably withheld or delayed);
 - (iii) new contracts entered in to by the Franchisee which have not been procured in compliance with the Franchisee's usual procurement procedures;
 - (iv) variations to existing contracts which have not been made in accordance with the Franchisee's usual procurement procedures; or
 - (v) any Costs or Capital Expenditure where the Franchisee has been unable to provide evidence to the satisfaction of the Secretary of State that such costs or expenditure have been properly incurred and are consistent with the Franchisee acting as a Good and Efficient Operator.
- (b) Any bonuses, rewards or discretionary benefits paid to any staff, directors or officers under any schemes which have not previously been approved by the Secretary of State (in the Secretary of State's sole discretion) in writing.
- (c) Any expenses, disbursements or equivalent costs (to which the Franchisee's expenses policy would apply) which are incurred other than in compliance with the Franchisee's expenses policy.
- (d) Costs incurred or to be incurred by the Franchisee:
- (i) in relation to:
 - A.** developing any Remedial Plan put in place in respect of breaches which occurred on or after the EMA Start Date; or

- B.** implementing any Remedial Plan put in place in respect of breaches which occurred on or after the EMA Start Date that:

 - I.** a Good and Efficient Operator would not have incurred; or
 - II.** are greater than the costs that the Franchisee would have incurred in connection with complying with the obligation to which the Remedial Plan relates had it acted as a Good and Efficient Operator prior to the implementation of the relevant Remedial Plan;
- (ii) in relation to Remedial Plans in respect of breaches which occurred prior to the EMA Start Date, cost in respect of implementing any such Remedial Plan unless such costs are specifically approved in writing by the Secretary of State; or
- (iii) other costs in relation to Remedial Plans or agreements unless such costs are specifically approved in writing by the Secretary of State;

costs in relation to any NRPS Improvement Proposal and/or a Service Quality Improvement Proposal unless such costs are specifically approved in writing by the Secretary of State;
- (iv) in removing branding or Marks under paragraph 2.2 of Schedule 14.2 (*Maintenance of Operating Assets*) except for branding or Marks whose removal from particular assets the Secretary of State has explicitly agreed for the purpose of this provision should be an allowable cost;
- (v) in relation to the inspection costs referred to in paragraph 6.4 of Schedule 11.2 (*Management Information*);
- (vi) in meeting Abellio audit requirements to the extent these are additional to audit costs which would otherwise be incurred by the Franchisee; and/or
- (vii) in relation to any reasonable enforcement costs incurred by the Secretary of State pursuant to clause 14.7.
- (e) Any cost that the Franchisee may incur as a result of:

 - (i) it failing to comply with its obligations under or in connection with the Franchise Agreement (including the grant thereof) save in respect of any failures which result from the Franchisee acting as a Good and Efficient Operator;
 - (ii) it failing to comply with its obligations under or in connection with any agreements which are ancillary to the Franchise Agreement save in respect of any failures which result from the Franchisee acting as a Good and Efficient Operator;
 - (iii) it failing to comply with any applicable Laws, if this gives rise to a criminal liability. Paragraph (a) above shall apply in respect of any other

- consequence of a failure by the Franchisee to comply with any applicable Laws; or
- (iv) indemnifying the Secretary of State for any matter which the Franchisee is obliged to indemnify the Secretary of State pursuant to the Franchise Agreement or any agreements which are ancillary to the Franchise Agreement.
 - (f) Any Facilitation Fee or Administration Fee pursuant to Clause 8 (*Change of Control and Facilitation Fee*).
 - (g) Any costs incurred by the Franchisee arising out of or in connection with a lawful demand by the Secretary of State under the Performance Bond or Season Ticket Bond or under the Funding Deed or under the Bonds (as defined in the Funding Deed).
 - (h) Any payments, costs or other liabilities owed to Affiliates save in respect of such payments costs or other liabilities which have been incurred by the Franchisee acting as a Good and Efficient Operator.
 - (i) Costs of developing and protecting any intellectual property rights which are not owned by the Secretary of State or the Franchisee or are so owned, but where the costs are not ancillary to an activity included in the Budget.
 - (j) Marketing or advertising costs incurred substantially to the benefit of wider group products or group brand recognition and which are not primarily for the benefit of Franchise Services.
 - (k) Fines from government or regulatory bodies.
 - (l) Costs of financial hedging, or gains/losses from hedging activity except with prior agreement from the Secretary of State or where such costs or gains/losses arise from the Franchisee's participation in an industry recognised hedging scheme or activity which has been agreed by the Secretary of State or which the Secretary of State reasonably considers have been made in good faith on an arm's length basis to any Affiliate in connection with fuel hedging instruments to help manage the exposure of the Franchisee to diesel fuel costs.
 - (m) The amount by which the Purchase Price payable by the Franchisee to the successor operator under the Supplemental Agreement at the end of the Franchise Period is higher than it would have been but for the Franchisee:
 - (i) incurring Disallowable Costs; or
 - (ii) otherwise acting other than as Good and Efficient Operator.
 - (n) Third party costs in relation to the development and preparation of any Remedial Plan, NRPS Improvement Proposal and/or a Service Quality Improvement Proposal. required by this Agreement, excluding such costs as approved by the Secretary of State, in the Secretary of State's sole discretion, prior to such costs being incurred by the Franchisee.

- (o) The amount of any interest payable by the Franchisee to the Secretary of State in accordance with paragraph 3 of this Schedule 8.1A.
- (p) Any costs incurred by the Franchisee in pursuing or defending any claim against the Secretary of State in respect of or in connection with the Franchise Agreement or otherwise.
- (q) Any costs incurred in relation to the period prior to the EMA Start Date which a Good and Efficient Operator would usually have discharged in the period prior to the EMA Start Date.
- (r) Any costs incurred in relation to the period prior to the expiry of the term of the ERMA which a Good and Efficient Operator would usually have discharged in the period following the expiry of the term of the ERMA.
- (s) Any costs incurred in relation to the discharge or carrying out of Committed Obligations which are in excess of the amounts a Good and Efficient Operator would ordinarily have expended on discharging the Committed Obligation in accordance with the contractual programme and to minimum specification contractually required.
- (t) Where costs are incurred during the term of the ERMA as the result of an obligation to incur expenditure from a fund required to be maintained pursuant to the Franchise Agreement (including, but not limited to, Minor Works and the CCI Amount), such expenditure shall be a Disallowable Cost except and to the extent that it relates to expenditure required to be incurred in relation to Franchisee Years beginning after 31 March 2020.

After the expiry of the ERMA, the Parties shall agree or the Secretary of State shall determine the remaining amounts in such funds with reference to the amounts available to be expended in the funds and the aggregate amount of expenditure incurred since the ERMA Start Date in relation to obligations related to those funds.

- (u) Interest paid or payable on PCS Advances (as defined in the Funding Deed).
- (v) Except with the prior agreement of the Secretary of State (not to be unreasonably withheld), any costs, charges, penalties, compensation or similar payments that the Franchisee may incur as a result of the termination of any contract or other arrangement.
- (w) Except with the prior agreement of the Secretary of State, losses on disposals of fixed or non current assets.
- (x) Maintenance costs where the maintenance activity was previously scheduled to be undertaken prior to or after the term of the ERMA or where (and to the extent that) it would have been reasonable and/or prudent for the maintenance to have been carried out prior to or after the term of the ERMA.
- (y) Depreciation or Capital Expenditure to the extent that the capital cost of acquisition of the relevant assets was (or was assumed in the Financial Model) to be funded by a third party.

- (z) Costs of any audit pursuant to paragraph 9.7(b) or paragraph 9.9 of Schedule 11.2 (*Management Information*).
- (aa) Legal, accountancy and other costs and expenses incurred in connection with the preparation and implementation of the ERMA (and any associated budgets, principles documents and other documents) and the EMA (and its associated heads of terms).
- (bb) Additional costs or expenses incurred by the Franchisee in procuring any new Performance Bond where required to do so pursuant to paragraph 4.3(c) of Schedule 12.1 (*Financial Covenants and Bonds*).
- (cc) Costs incurred in relation to preparing and negotiating the direct award of a new contract to the Franchisee in relation to the Franchise.
- (dd) Compensating the Secretary of State for all reasonable costs incurred by the Secretary of State in carrying out enhanced monitoring of the Franchisee's performance of any relevant obligations pursuant to paragraph 7.1 of Schedule 10.1 (*Procedure for Remediating a Contravention of the Franchise Agreement*).
- (ee) Any costs incurred in connection with or otherwise attributable to discharging its obligations pursuant to Schedule 14 (Preservation of Assets) insofar as they relate to supporting the transfer of the franchise to a Successor Operator at the end of the Franchise Period.
- (ff) Any costs incurred in connection with discharging its obligations following termination in accordance with Schedule 15 (Obligations Associated with Termination).
- (gg) Any costs incurred in connection with conducting, or otherwise procuring, any surveys or statement of condition of leased property as may be required at the end of the Franchise Period in accordance with the terms of the relevant Property Lease and/or to otherwise establish the condition of any other asset at the end of the Franchise Period.
- (hh) Unless otherwise agreed by the Secretary of State, any costs incurred in connection with maintenance of the Franchisee's leased property and/or other assets (other than any lifecycle maintenance costs) if and to the extent that the aggregate of such costs exceeds one hundred and fifty per cent (150 %) of maintenance costs incurred by the Franchisee in relation to such leased property and/or other assets (other than any lifecycle maintenance costs) in the Franchisee Year ending on 31 March 2020.
- (ii) Any lifecycle maintenance costs in respect of any leased property or other assets which the Secretary of State reasonably considers should have been incurred in the period prior to 1 March 2020.
- (jj) Any sums payable by the Franchisee to the Lessor (as defined in schedule 2 (Termination of the Franchise Agreement) to the ERMA) in respect of any Rolling Stock Dilapidations Liability (as defined in schedule 2 (Termination of the Franchise Agreement) to the ERMA).

- (kk) Any legal, accountancy and other costs and expenses incurred in connection with determining or agreeing the Termination Sum, the Interim Net Assets Payment Amount, the Updated Net Assets Amount and/or the Net Assets Reconciliation Amount, as applicable (and any associated models and other documents)
- (ll) Any costs incurred in relation to preparing, determining or agreeing any statements or amounts in connection with schedule 3 (*Early ERMA Termination*) to the ERMA.

APPENDIX 2 TO SCHEDULE 8.1A
EMA Periodic Adjustment Payment

The EMA Periodic Adjustment Payment shall be calculated in accordance with the following formula.

EMAPADJ for Reporting Period(n) =	$(AECRP_{n-3} - BECRP_{n-3}) + (AECAP_{n-3} - BECAP_{n-3}) - (AERRP_{n-3} - EERRP_{n-3})$
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Where:

AECRP_{n-3}	means the total Actual EMA Costs in the third preceding Reporting Period (n-3) as set out in the Management Accounts for that preceding Reporting Period. ACRP _{n-3} may only be a positive number.
BECP_{n-3}	means the total Budgeted EMA Costs in respect of the third preceding Reporting Period (n-3) based on the version of the EMA Budget which applied for the purpose of the calculation of the Franchise Payment for that preceding Reporting Period. BCRP _{n-3} may only be a positive number.
AECAP_{n-3}	means the total Actual EMA Capex for the third preceding Reporting Period (n-3). ACAP _{n-3} may only be a positive number.
BECAP_{n-3}	means the Budgeted EMA Capex in respect of the third preceding Reporting Period (n-3) based on the version of the EMA Budget which applied for the purpose of the calculation of the Franchise Payment for that Reporting Period. BCAP _{n-3} may only be a positive number.
AERRP_{n-3}	means the total Actual EMA Revenue for the third preceding Reporting Period (n-3). ARRP may only be a positive number.
EERRP_{n-3}	means the total Estimated EMA Revenue in respect of the third preceding Reporting Period (n-3). ERRP may only be a positive number.

Appendix 5 to Schedule 1
Schedule 8.1B (*Performance Based Fee*)

Schedule 8.1B
Performance Based Fee

1 Definitions

For the purposes of this Schedule 8.1B only, the following words and expressions shall have the following meanings unless otherwise specified:

"Amendable Financial Target"	means a: (a) Target Cost; (b) Target Cost Cap; (c) Target Cost Floor; (d) Target Profit; (e) Target Profit Cap; and/or (f) Target Profit Floor, as the case may be;
"Assumed Schedule of Contributions"	means the schedule of contributions for a Franchise Section which as at the date of agreement or determination of the Target Cost Template or Target Profit Template (as applicable) applies for the relevant PBF Assessment Period;
"Audited Accounts Reconciliation"	has the meaning given to that term in paragraph 9.4(b)(ii) of Schedule 11.2 (<i>Management Information</i>);
"Budget Supporting Materials"	means the supporting materials that were provided to the Secretary of State by the Franchisee in August and September 2020 in response to the Secretary of State's request for a budget forecast;
"Category A Target Amendment Trigger Event"	means: (a) in relation to a Target Cost, Target Cost Cap or Target Cost Floor an event listed in paragraph 1 (<i>Target Cost Target Amendment Trigger Events</i>) of Appendix 6 (<i>Category A Target Amendment Trigger Events</i>) of Schedule 8.1B; and (b) in relation to a Target Profit, Target Profit Cap or Target Profit Floor an event listed in paragraph 2 (<i>Target Profit Target Amendment Trigger Events</i>) of Appendix 6 (<i>Category A Target Amendment Trigger Events</i>) of Schedule 8.1B;

"Category B Target Amendment Trigger Event"	has the meaning given to that term in paragraph 6.1(b) of Schedule 8.1B;
"Category C Target Amendment Trigger Event"	has the meaning given to that term in paragraph 6.1(c) of Schedule 8.1B;
"CB Components"	means: (a) Network Rail Collaboration; (b) SoS Collaboration; and (c) Other Collaboration;
"CE(NRPS)"	means the element of the Customer Experience Fee that is calculated in accordance with the NRPS Methodology;
"CE(SC)"	means the element of the Customer Experience Fee that is calculated in accordance with the Scorecard Methodology;
"Collaborative Behaviour Fee" or "CB"	means the element of the Performance Based Fee attributable to the sum of: (a) Network Rail Collaboration; (b) SoS Collaboration; and (c) Other Collaboration;
"Combined Scorecard/SQR Methodology"	means, in relation to the Customer Experience Fee, a combination of the Scorecard Methodology and the SQR Methodology;
"Combined SQR/NRPS Methodology"	means, in relation to the Customer Experience Fee, a combination of the SQR Methodology and the NRPS Methodology;
"COVID-19 Guidance and Regulation"	means guidance and/or regulation relating to COVID-19 as from time to time issued by the ORR, Public Health England or any other relevant government department, agencies or public bodies;
"Cost Target Methodology"	means the methodology set out in paragraph 4.3 (<i>Calculation of FIN(CC)</i>) of Appendix 5 (<i>Quantified Target Methodology</i>) of Schedule 8.1B;
"Customer Experience Component"	means the NRPS Measures and/or the SQR Components;
"ERMA Evidence Report"	has the meaning given to it in paragraph 2.1 of Appendix 1 (<i>PBF Assessment Period Review</i>) of

	Schedule 8.1B (and "ERMA Evidence Reports" shall be construed accordingly);
"Exceptional Event"	<p>means an event, the effect of which, in the opinion of the Secretary of State (acting reasonably), is that:</p> <p>(a) it would no longer be reasonably practicable to collect the data required to assess the Franchisee's performance against one or more of the QTM Targets in respect of a PBF Assessment Period; or</p> <p>(b) the degree of challenge involved in meeting any one or more of the QTM Targets is likely to be increased or decreased to such a significant extent that it would no longer be appropriate to assess the Franchisee's performance against such QTM Targets;</p>
"Final PBF Assessment Period"	means the final PBF Assessment Period to occur during the term of the ERMA, being (subject to paragraph 7 (<i>Effect of Extended Term and amendments to the PBF Assessment Period</i>) of Schedule 8.1B the PBF Assessment Period commencing on 02:00 1 April 2021 and ending on 01:59 19 September 2021;
"Financial Performance Fee" or "FIN"	means the element of the Performance Based Fee, the purpose of which is to measure the Franchisee's effectiveness in controlling costs, driving revenue growth (subject to the constraints of the Government's public health requirements) and deterring ticketless travel;
"Financial Targets"	<p>means, as the case may be:</p> <p>(a) the Target Cost; and/or;</p> <p>(b) the Target Profit;</p>
"Initial PBF Assessment Period"	means the PBF Assessment Period commencing on the ERMA Start Date and ending at 01:59 on 1 April 2021;
"Maximum Performance Based Fee" or "MPBF"	has the meaning given to that term in paragraph 2.1 of Schedule 8.1B;
"Network Rail Collaboration" or "NRC"	means the element of the Performance Based Fee that relates to collaboration with Network

	Rail, other Train Operators, suppliers and industry bodies;
"Notifying Party"	means: (a) in relation to a Category A Target Amendment Trigger Event, either the Secretary of State or the Franchisee, as the case may be; (b) in relation to a Category B Target Amendment Trigger Event, the Franchisee; and (c) in relation to a Category C Target Amendment Trigger Event, the Secretary of State;
"NRPS Methodology"	means the methodology set out in paragraph 3.5 (<i>Calculation of CE(NRPS)</i>) of Appendix 5 (<i>Quantified Target Methodology</i>) of Schedule 8.1B;
"NRPS Target"	means the target, expressed as a range within which the Franchisee's performance is expected to fall, which applies to a NRPS Measure during the relevant PBF Assessment Period, as agreed or determined in accordance with paragraph 4.5 of Schedule 8.1B;
"Other Collaboration" or "OC"	means the element of the Performance Based Fee attributable to collaboration with applicable stakeholders, including those specified in paragraph 6.2 (<i>Two (2): Acceptable</i>) of Appendix 3 (<i>Scorecard Criteria</i>) of Schedule 8.1B;
"PBF Assessment Period Review"	means a review carried out (or to be carried out) with respect to a PBF Assessment Period in accordance with Appendix 1 (<i>PBF Assessment Period Review</i>) of Schedule 8.1B;
"PBF Assessment Period Review Checklist"	means, in respect of a PBF Assessment Period Review, a checklist completed (or, as the case may be, to be completed) substantially in the form of that set out in Appendix 2 (<i>PBF Assessment Period Review Checklist</i>) of Schedule 8.1B;
"PBF Assessment Period Review Meeting"	means, in respect of a PBF Assessment Period Review, a meeting held between the Parties to

	discuss the performance of the Franchisee during the relevant PBF Assessment Period;
"PBF Assessment Period Scorecard"	means, in respect of a PBF Assessment Period, a scorecard completed (or, as the case may be, to be completed) by the Secretary of State in accordance with paragraph 6 (<i>PBF Assessment Period Review Scoring</i>) of Appendix 1 (<i>PBF Assessment Period Review</i>) of Schedule 8.1B;
"PBF Component"	means each of the following components which shall be individually assessed to calculate the corresponding element of the PBF: <ul style="list-style-type: none"> (a) Operational Performance Fee; (b) Customer Experience Fee; (c) Financial Performance Fee; and Collaborative Behaviour Fee; and (d) any additional component to be implemented from time to time pursuant to paragraph 4.4(f) of Schedule 8.1B;
"Primary Delay"	means a delay that is attributed as "Primary Delay" in accordance with the Delay Attribution Principles and Rules;
"Profit Target Methodology"	means the methodology set out in paragraph 4.4 (<i>Calculation of FIN(P)</i>) of Appendix 5 (<i>Quantified Target Methodology</i>) of Schedule 8.1B;
"QTM Matters"	has the meaning given to it in paragraph 4.5(a) of Schedule 8.1B;
"QTM PBF Components"	means each of the: <ul style="list-style-type: none"> (a) Operational Performance Fee; (b) Customer Experience Fee; and (c) Financial Performance Fee;
"QTM Targets"	means any: <ul style="list-style-type: none"> (a) OP Targets; (b) NRPS Targets; (c) SQR Targets; and/or (d) Financial Targets, as applicable;
"Quarterly Financial Information"	means the financial information provided by the Franchisee to the Secretary of State pursuant to paragraph 9.3 (<i>Quarterly Financial</i>

	<i>Information</i>) of Schedule 11.2 (<i>Management Information</i>);
"Reactionary Delay"	means a delay that is attributed as "Reactionary Delay" in accordance with the Delay Attribution Principles and Rules;
"Relevant Threshold Amount"	means: (a) in relation to a Target Cost, the applicable non-indexed Threshold Amount multiplied by two; and (b) in relation to a Target Profit, an amount reasonably determined by the Secretary of State prior to the relevant PBF Assessment Period.
"Revenue"	has the meaning given to that term in paragraph 1A of Schedule 8.1A (<i>Franchise Payments</i>);
"Scorecard Criterion"	means each criterion set out in Appendix 3 (<i>Scorecard Criteria</i>) of Schedule 8.1B, in respect of which the Franchisee's performance is measured (in whole or in part) in relation to a PBF Assessment Period and for which a score shall be awarded in the PBF Assessment Period Scorecard (and "Scorecard Criteria" means the plural of Scorecard Criterion);
"Scorecard Methodology"	means, in relation to a PBF Component, the methodology set out in Appendix 4 (<i>Scorecard Methodology</i>) of Schedule 8.1B;
"SoS Collaboration" or "SC"	means the element of the Performance Based Fee attributable to collaboration with the Secretary of State;
"Subsequent CE Methodologies"	means, in relation to the Customer Experience Fee: (a) the Scorecard Methodology only; (b) Not used; (c) the Combined Scorecard/SQR Methodology; or (d) the Combined SQR/NRPS Methodology;
"Subsequent FP Methodologies"	means, in relation to the Financial Performance Fee: (a) the Scorecard Methodology as applied in whole or in part; and/or

	(b) the Cost Target Methodology; and/or (c) the Profit Target Methodology, and " Subsequent FP Methodology " shall be construed accordingly;
" Subsequent PBF Assessment Period "	means each PBF Assessment Period that falls after the end of the Initial PBF Assessment Period;
" Target Amendment Trigger Event "	means a: (a) Category A Target Amendment Trigger Event; (b) Category B Target Amendment Trigger Event; or (c) Category C Target Amendment Trigger Event, as the case may be;
" Target Cost Cap " or " TCC "	means the value in relation to the Target Cost agreed or determined (as applicable) pursuant to paragraph 5.1 (<i>Target Cost</i>) of Schedule 8.1B;
" Target Cost Floor " or " TCF "	means the value in relation to the Target Cost agreed or determined (as applicable) pursuant to paragraph 5.1 (<i>Target Cost</i>) of Schedule 8.1B;
" Target Profit Cap " or " TPC "	means the value in relation to the Target Profit agreed or determined (as applicable) pursuant to paragraph 5.2 (<i>Target Profit</i>) of Schedule 8.1B;
" Target Profit Floor " or " TPF "	means the value in relation to the Target Profit agreed or determined (as applicable) pursuant to paragraph 5.2 (<i>Target Profit</i>) of Schedule 8.1B;
" W_{CB} "	means twenty-two point five per cent (22.5%), or such alternative percentage as may be agreed or determined pursuant to paragraph 4.4(h) of Schedule 8.1B;
" W_{CC} "	means the weighting applied to the Cost Target Methodology pursuant to and in accordance with paragraph 4.4(d) of Schedule 8.1B;
" W_{CE} "	means twenty-two point five per cent (22.5%), or such alternative percentage as may be

	agreed or determined pursuant to paragraph 4.4(h) of Schedule 8.1B;
"W _{CESC} "	(a) in relation to the Initial PBF Assessment Period means one hundred per cent (100%); and (b) in relation to each Subsequent PBF Assessment Period has the meaning given to that term in paragraph 3.3(a) of Appendix 5 (<i>Quantified Target Methodology</i>) of Schedule 8.1B;
"W _{FIN} "	means thirty per cent (30%), or such alternative percentage as may be agreed or determined pursuant to paragraph 4.4(h) of Schedule 8.1B;
"W _{NRPS} "	has the meaning given to that term in paragraph 3.3(c) of Appendix 5 (<i>Quantified Target Methodology</i>) of Schedule 8.1B;
"W _{OP} "	means twenty-five per cent (25%), or such alternative percentage as may be agreed or determined pursuant to paragraph 4.4(h) of Schedule 8.1B;
"W _P "	means the weighting applied to the Profit Target Methodology pursuant to and in accordance with paragraph 4.4(d) of this Schedule 8.1B;
"W _{SQR} "	has the meaning given to that term in paragraph 3.3(b) of Appendix 5 (<i>Quantified Target Methodology</i>);

2 Maximum Fee

The Performance Based Fee attributable to any given PBF Assessment Period shall not exceed $EM * N$ (the "**Maximum Performance Based Fee**" or "**MPBF**"), where:

M	means [REDACTED ¹⁰] per period
N	means the number of Reporting Periods that fall within the relevant PBF Assessment Period.

¹⁰ December 2020 (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.

3 Calculation of the Performance Based Fee for the Initial PBF Assessment Period

3.1 The Performance Based Fee in relation to the Initial PBF Assessment Period shall be calculated in accordance with this paragraph 3.

3.2 The Performance Based Fee for the Initial PBF Assessment Period shall be calculated as the sum of the individual PBF Components calculated and weighted in accordance with the Scorecard Methodology in accordance with the following formula:

£PBF =	OP + CE + FIN + CB
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where:

£PBF	shall have a value between zero and the Maximum Performance Based Fee in relation to the Initial PBF Assessment Period;
OP	means the sum (in pounds sterling) that is zero or a positive number in relation to the Operational Performance Fee calculated in accordance with the Scorecard Methodology;
CE	means the sum (in pounds sterling) that is zero or a positive number in relation to the Customer Experience Fee calculated in accordance with the Scorecard Methodology;
FIN	means the sum (in pounds sterling) that is zero or a positive number in relation to the Financial Performance Fee calculated in accordance with the Scorecard Methodology; and
CB	means the sum (in pounds sterling) that is zero or a positive number in relation to the Collaborative Behaviour Fee calculated in accordance with the Scorecard Methodology.

4 Calculation of the Performance Based Fee for each Subsequent PBF Assessment Period

4.1 Subject to the inclusion of any additional PBF Component(s) pursuant to paragraph 4.4(f) below, the Performance Based Fee for each Subsequent PBF Assessment Period shall be calculated as the sum of the individual PBF Components for that period assessed using the Quantified Target Methodology and/or the Scorecard Methodology (as applicable) in accordance with the following formula:

£PBF =	OP + CE + FIN + CB
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where:

£PBF	shall have a value between zero and the Maximum Performance Based Fee in relation to the relevant PBF Assessment Period;
OP	means the sum in pounds sterling calculated in relation to the Operational Performance Fee in accordance with the Scorecard

	Methodology or the Quantified Target Methodology (as applicable during that PBF Assessment Period);
CE	means the sum in pounds sterling calculated in relation to the Customer Experience Fee in accordance with the Scorecard Methodology or the Quantified Target Methodology (as applicable during that Assessment Period);
FIN	means the sum in pounds sterling calculated in relation to the Financial Performance Fee in accordance with the Scorecard Methodology or the Quantified Target Methodology (as applicable during that PBF Assessment Period); and;
CB	means the sum in pounds sterling calculated in relation to the Collaborative Behaviour Fee in accordance with the Scorecard Methodology.

4.2 In relation to each Subsequent PBF Assessment Period

- (a) two months prior to the relevant PBF Assessment Period, the Secretary of State may notify the Franchisee whether:
- (i) the Scorecard Methodology shall apply in relation to all of the PBF Components; or
 - (ii) the Secretary of State is minded to apply the Quantified Target Methodology to one or more of the QTM PBF Components during that PBF Assessment Period,
- and set out the information that the Secretary of State requires the Franchisee to provide (and the date by when the Secretary of State requires the Franchisee to provide such information) to enable the Parties to agree (or the Secretary of State to determine, as the case may be) the applicable matters set out in paragraph 4.4 below ("**Subsequent PBF Assessment Period Notification**");
- (b) after the Secretary of State issues a Subsequent PBF Assessment Period Notification to the Franchisee, the Parties shall seek to agree the applicable matters set out in paragraph 4.4 below, each acting reasonably and in a timely manner. If, by the date falling ten (10) Weekdays prior to the commencement of the relevant PBF Assessment Period, the Parties have not agreed the matters set out in paragraph 4.4 below, the Secretary of State may:
- (i) reasonably determine such matters and notify the Franchisee accordingly prior to the commencement of the relevant PBF Assessment Period; or
 - (ii) in the Secretary of State's sole discretion, notify the Franchisee that the Scorecard Methodology will continue to apply to any or all of the QTM PBF Components; and

- (c) the Collaborative Behaviour Fee shall be assessed in accordance with the Scorecard Methodology.

4.3 If:

- (a) the Secretary of State does not issue a Subsequent PBF Assessment Period Notification to the Franchisee pursuant to and in accordance with paragraph 4.2(a) above (and paragraph 4.3(b) below, if applicable), the Scorecard Methodology shall apply to each of the PBF Components during the relevant Subsequent PBF Assessment Period; and
- (b) the Secretary of State issues a Subsequent PBF Assessment Period Notification to the Franchisee which proposes that the Quantified Target Methodology shall apply to some (but not all) of the QTM PBF Components, the Scorecard Methodology shall continue to apply to each of the QTM PBF Components in relation to which the Secretary of State has not proposed to apply the Quantified Target Methodology.

4.4 Not later than ten (10) Weekdays before the commencement of a Subsequent PBF Assessment Period in relation to which the Secretary of State has issued a Subsequent PBF Assessment Period Notification to the Franchisee pursuant to and in accordance with paragraph 4.2(a) above, the Parties shall seek to agree (each acting reasonably and in a timely manner) as applicable:

- (a) whether the Quantified Target Methodology shall be applied to any or all of the QTM PBF Components;
- (b) in accordance with the provisions set out in paragraph 4.5 below, the OP Targets, the SBU Action Plan Levels, Breach Performance Levels and Default Performance Levels in respect of Cancellations, TOC Minutes Delay Short Formations, NRPS Targets, SQR Targets and/or Improvement Plan Levels (as applicable) that shall apply during the relevant PBF Assessment Period;
- (c) which, if any, of the:
 - (i) Subsequent CE Methodologies shall apply to the Customer Experience Fee during the relevant PBF Assessment Period; and
 - (ii) Subsequent FP Methodologies shall apply to the Financial Performance Fee during the relevant PBF Assessment Period;
- (d) if more than one Subsequent FP Methodology applies to the Financial Performance Fee pursuant to paragraph 4.4(c)(ii) above, the weighting to be applied to each Subsequent FP Methodology, provided that the sum of such weightings shall equal one hundred per cent (100%);
- (e) any amendments to the Scorecard Criteria, which such amendments may amend, insert or remove requirements but shall not materially:
 - (i) change the overall purpose of the relevant Scorecard Criterion; and/or
 - (ii) improve or impede the ability of the Franchisee (acting as a Good and Efficient Operator) to achieve any particular score in accordance with the Scorecard Criteria;

- (f) whether any additional PBF Components shall apply for the purposes of calculating the Performance Based Fee for that PBF Assessment Period, provided that the aggregate weighting to be applied to such additional PBF Component(s) ("**W_{ADD}**") shall not exceed fifteen per cent (15%), the aggregate weighting to be applied to the PBF Components shall equal one hundred per cent (100%) and the calculation of any additional PBF Component (or PBF Components) shall provide the Franchisee with an opportunity to earn an amount of Performance Based Fee in respect of such additional component (or such additional components in aggregate) in the relevant PBF Assessment Period of up to $W_{ADD} * MPBF$;
- (g) any changes to the weightings W_{NR} , W_{SOS} and/or W_{OTH} , provided that the sum of such weightings shall equal one hundred per cent (100%); and
- (h) any changes to the weightings W_{OP} , W_{CE} , W_{FIN} and/or W_{CB} , provided that such weightings shall not fall below the minimum value or exceed the maximum value specified in the table below.

PBF Component	Weighting	Minimum Weighting	Maximum Weighting
Operational Performance Fee	W_{OP}	17.5%	32.5%
Customer Experience Fee	W_{CE}	15%	30%
Financial Performance Fee	W_{FIN}	25%	40%
Collaborative Behaviour Fee	W_{CB}	15%	30%

4.5 If the Quantified Target Methodology applies to any of the QTM PBF Components during the relevant PBF Assessment Period:

- (a) the Parties shall seek to agree:
- (i) the OP Targets that shall apply with respect to each Operational Performance Component, the SBU Action Plan Levels and the Breach Performance Levels and the Default Performance Levels that shall apply with respect to each SBU OP Measure during each Reporting Period which falls during the relevant PBF Assessment Period; and/or
- (ii) the NRPS Targets and SQR Targets shall apply with respect to each Customer Experience Component, and the Improvement Plan Levels that shall apply for each NRPS Measure in each NRPS Service

Group and for each Service Quality Area during the relevant PBF Assessment Period,

(the "**QTM Matters**") as applicable (each acting reasonably and in a timely manner, and by no later than the date falling ten (10) Weekdays before the commencement of the relevant PBF Assessment Period);

- (b) each OP Target, NRPS Target and/or SQR Target (as applicable) shall be expressed as a range within which the Franchisee's performance is expected to fall and shall be expressed substantively in the format set out in Appendix 7 to Schedule 8.1B (*Pro Forma Target Tables*);
- (c) each SBU Action Plan Level, Breach Performance Level and Default Performance Level shall be expressed as a number beneath which the Franchisee's performance is not expected to fall and shall be expressed substantively in the format set out in Appendix 7 to Schedule 8.1B (*Pro Forma Target Tables*);
- (d) if the Parties have agreed any of the QTM Matters in accordance with paragraph 4.5(a) above, prior to the date falling ten (10) Weekdays before the commencement of the relevant PBF Assessment Period, then such agreed QTM Matters shall apply during the relevant PBF Assessment Period;
- (e) if the Parties have not agreed any of the QTM Matters in accordance with paragraph 4.5(a) above prior to the date falling ten (10) Weekdays before the commencement of the relevant PBF Assessment Period, then the Secretary of State shall:
 - (i) either:
 - (A) reasonably determine the relevant QTM Matters (if such QTM Matters have not been agreed by the Parties pursuant to paragraph 4.5(a) above) that shall apply during the relevant PBF Assessment Period; and/or
 - (B) in the Secretary of State's sole discretion, notify the Franchisee that the Scorecard Methodology will continue to apply to any or all of the QTM PBF Components; and
 - (ii) notify the Franchisee of such decision not later than the commencement of the relevant PBF Assessment Period, in which case (unless the Secretary of State has notified the Franchisee that the Scorecard Methodology will continue to apply to the QTM PBF Components pursuant to sub-paragraph (i)(B) above) the QTM Matters determined by the Secretary of State in accordance with this paragraph 4.5(e) shall apply during the relevant PBF Assessment Period;
- (f) the range for each OP Target, NRPS Target and/or SQR Target and/or the value of each SBU Action Plan Level (in each case, as applicable), agreed or determined in accordance with this paragraph 4.5 shall comprise a range or value (as applicable) that:

- (i) a competent Train Operator, acting efficiently, can reasonably be expected to achieve in the circumstances that are prevailing for the relevant PBF Assessment Period (and in relation to each OP Target or SBU Action Plan Level, having regard to normal seasonal variability of operating performance); and
 - (ii) a high-performing Train Operator could have a realistic prospect of exceeding and would therefore attain the maximum possible amount of Performance Based Fee attributable to the relevant QTM PBF Component during the relevant PBF Assessment Period; and
- (g) the value of each:
- (i) Breach Performance Level agreed or determined in accordance with this paragraph 4.5 shall be set at a level that a competent Train Operator, acting efficiently, can reasonably be expected not to fall below (having regard to normal seasonal variability of operating performance); and
 - (ii) Default Performance Level agreed or determined in accordance with this paragraph 4.5 shall be set at a level that affords a reasonable opportunity for a competent Train Operator, having performed worse than the Breach Performance Level, to implement any necessary remedial actions to avoid performance deteriorating to that Default Performance Level (having regard to normal seasonal variability of operating performance).

5 Financial Targets

5.1 Target Cost

- (a) If the Secretary of State notifies the Franchisee that the Secretary of State is minded to apply the Cost Target Methodology in relation to the Financial Performance Fee pursuant to paragraph 4.2(a) of Schedule 8.1B, no later than five (5) Weekdays following receipt of the relevant Subsequent PBF Assessment Period Notification the Franchisee shall deliver to the Secretary of State a spreadsheet setting out the Franchisee's proposed Target Cost, with lines of forecast expenditure for each Reporting Period of the relevant PBF Assessment Period, in at least the level of disaggregation of the most disaggregated of:
- (i) the Financial Formats;
 - (ii) the "P&L2" tab of the Financial Model;
 - (iii) any set of Management Accounts for any period of the EMA or the ERMA; or
 - (iv) any previous Audited Accounts Reconciliation,
- (the "**Target Cost Template**"). The Target Cost Template shall allocate forecast expenditure consistently with the most disaggregated of the items listed in paragraphs (i) to (iv) above with no netting off between

lines. Unless otherwise directed by the Secretary of State the Target Cost Template shall assume that employer pension contributions payable to each Franchise Section are at the rate(s) and/or amount(s) set out in the Assumed Schedule of Contributions for that Franchise Section for the relevant period.

- (b) Within five (5) Weekdays of delivering the Target Cost Template to the Secretary of State, the Franchisee shall deliver to the Secretary of State a Target Cost Record of Assumptions which shall include the Franchisee's proposed Target Cost Cap and Target Cost Floor based on benchmarking evidence gathered by the Franchisee consistent with the principles set out in paragraphs (d)(ii) and (e)(ii) below.
- (c) The Parties shall seek to agree (each acting reasonably, in a timely manner and through sufficiently senior representatives) the Target Cost, Target Cost Cap and Target Cost Floor for the relevant PBF Assessment Period.
- (d) The Target Cost Cap shall be set at a value:
 - (i) lower than the value of the Target Cost; and
 - (ii) that the Parties agree (or, if the Parties are unable to agree such value by the date falling ten (10) Weekdays prior to the start of the relevant PBF Assessment Period, the Secretary of State may reasonably determine) that a highly efficient Train Operator would have a realistic prospect of achieving.
- (e) The Target Cost Floor shall be set at a value:
 - (i) greater than the value of the Target Cost; and
 - (ii) that the Parties agree (or, if the Parties are unable to agree such value by the date falling ten (10) Weekdays prior to the start of the relevant PBF Assessment Period, the Secretary of State may reasonably determine) that a broadly competent Train Operator would be likely to achieve or exceed.
- (f) Within five (5) Weekdays of the Target Cost Cap and the Target Cost Floor being agreed or determined in accordance with this paragraph 5, the Franchisee shall apply the Target Cost Cap and the Target Cost Floor to the Target Cost Template which shall then be Placed in Escrow.

5.2 Target Profit

- (a) If the Secretary of State notifies the Franchisee that the Secretary of State is minded to apply the Profit Target Methodology in relation to the Financial Performance Fee pursuant to paragraph 4.2(a) of this Schedule 8.1B, no later than five (5) Weekdays following receipt of the relevant Subsequent PBF Assessment Period Notification the Franchisee shall deliver to the Secretary of State a spreadsheet setting out the Franchisee's proposed Target Profit, with lines of forecast revenue and expenditure for each Reporting Period of the relevant PBF Assessment

Period, in at least the level of disaggregation of the most disaggregated of:

- (i) the Financial Formats;
- (ii) the "P&L2" tab of the Financial Model;
- (iii) any set of Management Accounts for any period of the EMA or ERMA; or
- (iv) any previous Audited Accounts Reconciliation,

(the "**Target Profit Template**"). The Target Profit Template shall allocate forecast revenue and expenditure consistently with the most disaggregated of the items listed in paragraphs (i) to (iv) above with no netting off between lines. Unless otherwise directed by the Secretary of State the Target Profit Template shall assume that employer pension contributions payable to each Franchise Section are at the rate(s) and/or amount(s) set out in the Assumed Schedule of Contributions for that Franchise Section for the relevant period.

- (b) Within five (5) Weekdays of delivering the Target Profit Template to the Secretary of State, the Franchisee shall deliver to the Secretary of State a Target Profit Record of Assumptions which shall include the Franchisee's proposed Target Profit Cap and Target Profit Floor based on benchmarking evidence gathered by the Franchisee consistent with the principles set out in paragraphs 5.2(d)(ii) and 5.2(e)(ii) below.
- (c) The Parties shall seek to agree (each acting reasonably, in a timely manner and through sufficiently senior representatives) the Target Profit, Target Profit Cap and Target Profit Floor for the relevant PBF Assessment Period.
- (d) The Target Profit Cap shall be set at a value:
 - (i) greater than the value of the Target Profit; and
 - (ii) that the Parties agree (or, if the Parties are unable to agree such value by the date falling ten (10) Weekdays prior to the start of the relevant PBF Assessment Period, the Secretary of State may reasonably determine) that a highly efficient Train Operator maximising its financial return would have a realistic prospect of achieving.
- (e) The Target Profit Floor shall be set at a value:
 - (i) lower than the value of the Target Profit; and
 - (ii) that the Parties agree (or, if the Parties are unable to agree such value by the date falling ten (10) Weekdays prior to the start of the relevant PBF Assessment Period, the Secretary of State may reasonably determine) that a broadly competent Train Operator would be likely to improve upon.

- (f) Within five (5) Weekdays of the Target Profit Cap and the Target Profit Floor being agreed or determined in accordance with this paragraph 5, the Franchisee shall apply the Target Profit Cap and the Target Profit Floor to the Target Profit Template which shall then be Placed in Escrow.

5.3 Continued application of Scorecard Methodology

If the Parties have not agreed (or, if applicable, the Secretary of State has not determined) any or all of the Target Cost, Target Cost Cap, Target Cost Floor, Target Profit, Target Profit Cap and/or Target Profit Floor in accordance with paragraph 5.1 (*Target Cost*) or 5.2 (*Target Profit*), as applicable, then the Secretary of State may notify the Franchisee that the Scorecard Methodology shall continue to apply unaltered in relation to the Financial Performance Fee.

6 Target Amendments

6.1 The Secretary of State may amend any Amendable Financial Target (in each case a "**Performance Fee Target Amendment**") during the relevant PBF Assessment Period following the occurrence of:

- (a) a Category A Target Amendment Trigger Event which one Party has notified to the other;
- (b) an event that:
 - (i) is outside the control of the Franchisee and its Affiliates;
 - (ii) the Franchisee has notified to the Secretary of State; and
 - (iii) the Secretary of State has agreed (acting reasonably) on the basis of evidence provided to the Secretary of State by the Franchisee has caused the applicable Amendable Financial Target to require amendment to ensure that the Franchisee is no more and no less likely to achieve the Amendable Financial Target than if such event had not occurred,(a "**Category B Target Amendment Trigger Event**"); or
- (c) an event that:
 - (i) was caused by the Secretary of State; or
 - (ii) is outside the control of the Franchisee and its Affiliates; and
 - (iii) in either case:
 - (A) the Secretary of State has notified to the Franchisee; and
 - (B) in the opinion of the Secretary of State, acting reasonably, has caused the applicable Amendable Financial Target to require amendment to ensure that the Franchisee is no more and no less likely to achieve the Amendable Financial Target than if such event had not occurred,(a "**Category C Target Amendment Trigger Event**"),

which either the Parties have agreed or the Secretary of State has reasonably determined pursuant to paragraphs 6.4 to 6.6 below has caused one or more of the Amendable Financial Targets to require amendment by a net financial value (an "**Amendment Amount**") that is equal to or greater than the Relevant Threshold Amount.

- 6.2** The Notifying Party may notify the other Party of the occurrence of a Target Amendment Trigger Event (and, if the Notifying Party is the Franchisee, shall provide sufficient evidence to enable the Secretary of State to calculate the impact of the Target Amendment Trigger Event on the Amendable Financial Target(s)) at any time between the date falling twenty (20) Weekdays prior to the commencement of a PBF Assessment Period and the date falling twenty (20) Weekdays following the end of a PBF Assessment Period, provided that the Notifying Party shall notify the other Party no later than ten (10) Weekdays following the day on which:
- (a) the Target Amendment Trigger Event occurs; or
 - (b) the Franchisee ought reasonably to have become aware of the occurrence of such Target Amendment Trigger Event.
- 6.3** Within ten (10) Weekdays of the Secretary of State receiving a notice pursuant to paragraph 6.2 above, the Secretary of State shall issue a provisional notice to the Franchisee confirming whether in the opinion of the Secretary of State (acting reasonably) a Target Amendment Trigger Event has occurred.
- 6.4** Within twenty (20) Weekdays of receipt of:
- (a) a notice from the Secretary of State pursuant to paragraph 6.2 above; or
 - (b) a provisional notice from the Secretary of State pursuant to paragraph 6.3 above,
- the Parties shall seek to agree (each acting reasonably and in a timely manner) whether a Target Amendment Trigger Event has occurred and the value of the relevant Performance Fee Target Amendment, if any. If the Franchisee does not respond to the relevant notice within five (5) Weekdays of receipt, then the Franchisee shall be deemed to have accepted the conclusions set out in the relevant notice and any Performance Fee Target Amendment proposed by the Secretary of State shall apply in accordance with paragraph 6.7 below.
- 6.5** If the Parties have agreed whether a Target Amendment Trigger Event has occurred and the value of the associated Performance Fee Target Amendment, if any, within twenty (20) Weekdays, then the Performance Fee Target Amendment (if any) agreed between the Parties shall apply in accordance with paragraph 6.7 below.
- 6.6** If the Parties have not agreed whether a Target Amendment Trigger Event has occurred and/or the value of the associated Performance Fee Target Amendment, if any, within twenty (20) Weekdays of receipt by the Franchisee of the provisional notice pursuant to paragraph 6.3 above, then the Secretary of State:

- (a) shall reasonably determine whether a Target Amendment Trigger Event has occurred and the value of the associated Performance Fee Target Amendment, if any; and
- (b) shall promptly notify the Franchisee of such decision, in which case the Performance Fee Target Amendment, if any, determined by the Secretary of State in accordance with this paragraph 6.6 shall apply in accordance with paragraph 6.7 below.

6.7 A Performance Fee Target Amendment shall apply retrospectively from the date on which the Target Amendment Trigger Event occurred and shall continue to apply until the end of the relevant PBF Assessment Period.

6.8 A Target Amendment Trigger Event may trigger a Performance Fee Target Amendment in relation to two PBF Assessment Periods, if:

- (a) the aggregate Amendment Amount across both relevant PBF Assessment Periods is greater than the Relevant Threshold Amount; and
- (b) the Target for the later of the two PBF Assessment Periods has already been agreed or determined on the date on which the Target Amendment Trigger Event occurred,

in which case the Amendable Financial Target for each relevant PBF Assessment Period shall be amended accordingly.

6.9 Within five (5) Weekdays of:

- (a) the Parties agreeing (or the Franchisee being deemed to have agreed) a Performance Fee Target Amendment pursuant to paragraph 6.4 above; or
- (b) the Secretary of State notifying the Franchisee of a Performance Fee Target Amendment pursuant to paragraph 6.6 above,

the Franchisee shall apply the Performance Fee Target Amendment to the Target Cost Template or Target Profit Template (as applicable) then Placed in Escrow in accordance with paragraph 10.1(d) of Schedule 11.2 (*Management Information*) and submit such amended Target Cost Template and/or Target Profit Template to the Secretary of State along with any applicable information in relation to the impact of such amendment(s) on the Financial Targets and an updated version of the Target Cost Record of Assumptions or the Target Profit Record of Assumptions (as applicable).

6.10 Within ten (10) Weekdays of receipt of the amended Target Cost Template and/or Target Profit Template (as applicable) pursuant to paragraph 6.9 above, the Secretary of State shall either:

- (a) agree the amended Financial Targets; or
- (b) reasonably determine any necessary amendments to the Target Cost Template and/or Target Profit Template (as appropriate) and associated Financial Targets to ensure the proper application of the Performance Fee Target Amendment,

and within five (5) Weekdays of such agreement or determination the updated Target Cost Template and/or Target Profit Template (as appropriate) shall be

Placed in Escrow in accordance with paragraph 10.1(d) of Schedule 11.2 (*Management Information*).

- 6.11** Nothing in this paragraph 6 shall automatically result in an amendment to any then-current Budget, Annual Business Plan or Quarterly Budget.

7 Effect of Extended Term and amendments to the PBF Assessment Period

- 7.1** If the Secretary of State elects to extend the term of the ERMA pursuant to clause 3.3 of the ERMA the Secretary of State shall promptly notify the Franchisee whether:

- (a) the duration of the originally scheduled Final PBF Assessment Period shall be extended; or
- (b) an additional PBF Assessment Period shall apply which shall be deemed to be the Final PBF Assessment Period.

- 7.2** Following an amendment to the duration of a PBF Assessment Period for any reason, the Parties shall seek to agree (each acting reasonably, in a timely manner and through sufficiently senior representatives):

- (a) any necessary amendments to the applicable Amendable Financial Targets in respect of the relevant PBF Assessment Period; and
- (b) the OP Targets, Breach Performance Levels and Default Performance Levels (as applicable) for the relevant PBF Assessment Period in respect of each of the additional Reporting Periods,

taking into consideration the amendment to the duration of the relevant PBF Assessment Period. If the Parties have agreed any amendment(s) to the applicable Amendable Financial Targets and/or the applicable OP Targets, Breach Performance Levels and/or Default Performance Levels within twenty (20) Weekdays of the amendment to the duration of the relevant PBF Assessment Period, then such agreed matters shall apply in accordance with paragraph 7.4 below.

- 7.3** If the Parties have not agreed any necessary amendments to the applicable Amendable Financial Targets and/or the applicable OP Targets, Breach Performance Levels and/or Default Performance Levels for the relevant PBF Assessment Period within twenty (20) Weekdays of the amendment to the duration of the relevant PBF Assessment Period, then the Secretary of State:

- (a) may reasonably determine any necessary amendments to the applicable Amendable Financial Targets for the relevant PBF Assessment Period;
- (b) may reasonably determine the OP Targets, Breach Performance Levels and Default Performance Levels (as applicable) for the relevant PBF Assessment Period; and
- (c) shall promptly notify the Franchisee of such decision, in which case the amendment(s) to the applicable Amendable Financial Targets (if any) and the OP Targets, Breach Performance Levels and Default Performance Levels (as applicable) determined by the Secretary of State in accordance

with this paragraph 7.3 shall apply in accordance with paragraph 7.4 below.

7.4 Any amendment(s) to the applicable Amendable Financial Targets (if any) and any new OP Targets, Breach Performance Levels and Default Performance Levels (as applicable) shall apply retrospectively from the date on which the amendment to the duration of a PBF Assessment Period occurred and shall continue to apply until the end of the relevant PBF Assessment Period.

7.5 If the Secretary of State:

- (a) elects to extend the term of the ERMA pursuant to clause 3.3 of the ERMA; and
- (b) intends to notify the Franchisee that an additional PBF Assessment Period shall apply pursuant to paragraph 7.1(b) above,

the Secretary of State may (notwithstanding the requirement to issue a Subsequent PBF Assessment Period Notification two months prior to the relevant PBF Assessment Period pursuant to paragraph 4.2(a) above) issue a Subsequent PBF Assessment Period Notification no later than the Weekday following the date of the notice issued to the Franchisee pursuant to paragraph 7.1(b) above, in which case the provisions of paragraph 4 (Calculation of the Performance Based Fee for each Subsequent PBF Assessment Period) shall apply.

8 Exceptional Events

Following the occurrence of an Exceptional Event, the Secretary of State may, acting reasonably:

- (a) if the Quantified Target Methodology applies to any QTM PBF Component pursuant to and in accordance with paragraph 4 (*Calculation of the Performance Based Fee for each Subsequent PBF Assessment Period*) of Schedule 8.1B, notify the Franchisee that from the date of such notification (or such alternative date as may be specified in the notification) the Scorecard Methodology shall apply in lieu of the Quantified Target Methodology in relation to any or all of the QTM PBF Components during the relevant PBF Assessment Period;
- (b) suspend any applicable Amendable Financial Target, NRPS Target, OP Target and/or SQR Target and apply the Scorecard Methodology in a manner which, as far as is reasonably practicable, aligns with any suspended target which has already been set for that PBF Assessment Period; and/or
- (c) for the relevant PBF Assessment Period, calculate the Performance Based Fee attributable to each QTM PBF Component on a *pro-rata* basis according to the duration of the period for which each of the Quantified Target Methodology and the Scorecard Methodology applied to such QTM PBF Component.

Appendix 1 to Schedule 8.1B PBF Assessment Period Review

1 Purpose of the PBF Assessment Period Review

- 1.1** The purpose of a PBF Assessment Period Review is for the Secretary of State to undertake a review of the Franchisee's performance in relation to the Franchise Services over the course of the relevant PBF Assessment Period.
- 1.2** The Secretary of State shall carry out a PBF Assessment Period Review with respect to each PBF Assessment Period.
- 1.3** At each periodic Franchise Performance Meeting, the Parties shall discuss and review:
- (a) without prejudice to the Secretary of State's right to determine each score that the Franchisee will achieve in accordance with Appendix 3 (*Scorecard Criteria*), the Franchisee's progress against the Scorecard Criteria and any other assessment criteria implemented pursuant to this Schedule 8.1B; and
 - (b) the evidence to be included within an ERMA Evidence Report for the Reporting Period to which that Franchisee Performance Meeting relates and/or for any other Reporting Period.
- 1.4** Each PBF Assessment Period Review shall be carried out in accordance with the process set out in this Appendix 1 to Schedule 8.1B.

2 ERMA Evidence Report

- 2.1** In advance of each Franchise Performance Meeting, the Secretary of State shall provide the Franchisee with a report detailing the information and evidence that the Secretary of State considers to be relevant to the PBF Assessment Period Review and the assessment of the Franchisee's performance against the Scorecard Criteria (each, an "**ERMA Evidence Report**"). Each ERMA Evidence Report shall contain only new information and evidence and shall not repeat the information and evidence that was included in a previous ERMA Evidence Report, except if that information and evidence has changed.
- 2.2** The Franchisee shall, following receipt of an ERMA Evidence Report, notify the Secretary of State of any information or evidence, in addition to that set out in the ERMA Evidence Report, which the Franchisee considers to be relevant to the PBF Assessment Period Review and the assessment of the Franchisee's performance against the Scorecard Criteria.
- 2.3** The Secretary of State shall, following receipt of a notice pursuant to paragraph 2.2 of this Appendix 1 to Schedule 8.1B, provide written confirmation to the Franchisee of whether the Secretary of State considers such information or evidence to be relevant to the PBF Assessment Period Review and, where the Secretary of State considers such information or evidence to be relevant, the Secretary of State shall either amend the relevant ERMA Evidence Report to

include such information or evidence or include the information or evidence in the next, or any subsequent, ERMA Evidence Report.

- 2.4** The Parties acknowledge and agree that the ERMA Evidence Report is not intended to be the final record of all information or evidence in respect of the Reporting Period to which the Franchise Performance Meeting relates and the Parties shall be entitled to agree, at or in advance of any subsequent Franchise Performance Meeting, that additional evidence relating to such Reporting Period may be added to that, or any subsequent, ERMA Evidence Report.

3 Notice of PBF Assessment Period Review Meeting

- 3.1** The Secretary of State shall notify the Franchisee of the date, time and location for the relevant PBF Assessment Period Review Meeting (or, where the Secretary of State considers that more than one PBF Assessment Period Review Meeting is necessary, each PBF Assessment Period Review Meeting) by no later than the end of the relevant PBF Assessment Period, provided always that any PBF Assessment Period Review Meeting shall take place no earlier than the last day in the relevant PBF Assessment Period and no later than sixty (60) days after the end of the relevant PBF Assessment Period.
- 3.2** Nothing in this Schedule 8.1B shall prevent the Parties from discussing any matter relevant to a PBF Assessment Period Review outside of any PBF Assessment Period Review Meeting.

4 PBF Assessment Period Review Checklist

- 4.1** Not less than thirty (30) days prior to the end of the relevant PBF Assessment Period, the Secretary of State, acting reasonably, shall notify the Franchisee in writing of any additional evidence or information that the Franchisee is required to submit at the same time as the completed PBF Assessment Period Review Checklist.
- 4.2** Not less than fifteen (15) days prior to the end of each PBF Assessment Period, the Franchisee shall notify the Secretary of State in writing of any evidence or information in addition to that set out in the PBF Assessment Period Review Checklist, each ERMA Evidence Report or the information notified to the Franchisee by the Secretary of State in accordance with paragraph 4.1 of this Appendix 1 to Schedule 8.1B, which the Franchisee considers to be relevant for the PBF Assessment Period Review. The Secretary of State shall, within ten (10) days of receiving such notice, provide written confirmation to the Franchisee of whether the Secretary of State considers such matters to be relevant to the PBF Assessment Period Review.
- 4.3** As soon as reasonably practicable after the end of each PBF Assessment Period, and in any event no later than ten (10) days after the end of the relevant PBF Assessment Period, the Franchisee shall deliver to the Secretary of State a duly completed copy of the PBF Assessment Period Review Checklist in respect of that PBF Assessment Period.

4.4 The PBF Assessment Period Review Checklist delivered by the Franchisee pursuant to paragraph 4.3 of this Appendix 1 to Schedule 8.1B shall include written commentary from the Franchisee in respect of the PBF Assessment Period covering:

- (a) each of the matters listed in the PBF Assessment Period Review Checklist;
- (b) the evidence and information included in the ERMA Evidence Reports;
- (c) any other matter notified by the Secretary of State to the Franchisee pursuant to paragraph 4.1 of this Appendix 1 to Schedule 8.1B; and
- (d) any other matter which the Secretary of State has confirmed as relevant for the PBF Assessment Period Review in accordance with paragraph 4.2 of this Appendix 1 to Schedule 8.1B.

4.5 The Secretary of State shall provide the Franchisee with:

- (a) a written commentary on the completed PBF Assessment Period Review Checklist and the evidence and information included in the ERMA Evidence Reports (including any commentary provided by the Franchisee under paragraph 4.4 of this Appendix 1 to Schedule 8.1B); and
- (b) any evidence or information additional to that:
 - (i) contained in the ERMA Evidence Reports; or
 - (ii) contained in, or submitted by the Franchisee at the same time as the PBF Assessment Period Review Checklist (in accordance with paragraph 4.1 of this Appendix 1 to Schedule 8.1B),

which the Secretary of State has used or intends to use to assess the Franchisee's performance,

in each case, no later than ten (10) days prior to the relevant PBF Assessment Period Review Meeting.

5 PBF Assessment Period Review Meeting

5.1 The PBF Assessment Period Review Meeting shall take place at the date, time and location notified by the Secretary of State to the Franchisee in accordance with paragraph 3.1 of this Appendix 1 to Schedule 8.1B and shall be attended by representatives of each of the Secretary of State and the Franchisee.

5.2 The Franchisee shall ensure that the representatives of the Franchisee at the PBF Assessment Period Review Meeting include such:

- (a) appropriate and qualified personnel of the Franchisee;
- (b) directors and/or senior managers of the Franchisee; and
- (c) directors and/or senior managers of the Parent,

as the Secretary of State may reasonably require.

5.3 At the PBF Assessment Period Review Meeting, the Parties shall discuss the Franchisee's performance by reference to the PBF Assessment Period Review Checklist and each ERMA Evidence Report, together with any supporting commentary, documents or evidence submitted by the Franchisee to the Secretary of State pursuant to paragraphs 4.3 and 4.4 of this Appendix 1 to Schedule 8.1B and any commentary and/or information provided by the Secretary of State to the Franchisee in accordance with paragraph 4.5 of this Appendix 1 to Schedule 8.1B.

6 PBF Assessment Period Review Scoring

6.1 The Secretary of State may take such steps as the Secretary of State considers (acting reasonably) to be necessary or appropriate to take into consideration any representations or evidence provided by Network Rail and/or any other relevant third party to the extent relevant to the Scorecard Criteria, including:

- (a) procuring views or evidence from Network Rail and/or other relevant stakeholders;
- (b) directing the Franchisee to procure such views or evidence, which shall be submitted with the Franchisee's own information and evidence pursuant to paragraph 2 (*ERMA Evidence Report*) of this Appendix 1 to Schedule 8.1B; and/or
- (c) subject to any requirements in relation to confidentiality, sharing extracts (on an anonymised or redacted basis, if required) of evidence supplied by the Franchisee with Network Rail and/or other relevant stakeholders.

6.2 The Secretary of State shall provide to the Franchisee, no later than seventy (70) days after the end of the relevant PBF Assessment Period, a duly completed PBF Assessment Period Scorecard setting out the Franchisee's performance in each of the Scorecard Criteria and any other assessment criteria implemented pursuant to this Schedule 8.1B for the PBF Assessment Period.

6.3 The Franchisee shall be scored three (3), two (2) or one (1) in relation to each Scorecard Criterion and, in relation to any other assessment criteria implemented pursuant to this Schedule 8.1B, shall be assessed or scored (as applicable) in accordance with such assessment criteria.

6.4 Scores in the PBF Assessment Period Scorecard shall be awarded by the Secretary of State having regard to the matters set out in the PBF Assessment Period Scorecard. One single, integer, overall score shall be awarded in relation to each Scorecard Criterion based on the Secretary of State's assessment of the Franchisee's performance in respect of that Scorecard Criterion and taking into account:

- (a) each ERMA Evidence Report;
- (b) the PBF Assessment Period Review Checklist provided to the Secretary of State by the Franchisee in accordance with paragraphs 4.3 and 4.4 of this Appendix 1 to Schedule 8.1B;

- (c) any commentary provided to the Franchisee by the Secretary of State in accordance with paragraph 4.5 of this Appendix 1 to Schedule 8.1B;
- (d) any discussions between the Franchisee and the Secretary of State at the PBF Assessment Period Review Meeting(s); and
- (e) any representations or evidence provided by Network Rail and/or any other relevant third party pursuant to paragraph 6.1 of this Appendix 1 to Schedule 8.1B.

6.5 The PBF Assessment Period Review shall be complete once the Secretary of State has sent a duly completed PBF Assessment Period Scorecard to the Franchisee in accordance with paragraph 6.2 of this Appendix 1 to Schedule 8.1B.

6.6 If the Franchisee:

- (a) is operating at a level that would, or would likely, be scored "one (1)"; or
- (b) has received a score of "one (1)",

in relation to any of the Scorecard Criteria during a PBF Assessment Period, then the Secretary of State may require a Remedial Plan and the provisions of Schedule 10.1 (*Procedure for Remediating a Contravention of the Franchise Agreement*) of the Franchise Agreement shall apply.

Appendix 2 to Schedule 8.1B
PBF Assessment Period Review Checklist

1 Operational Performance

A report on the Franchisee's operational performance, including:

- (a) an explanation of the level of performance achieved during the PBF Assessment Period and the underlying drivers of that performance, including evidence of the impacts of any significant actions the Franchisee has undertaken during the PBF Assessment Period to improve performance or to reduce the impacts of incidents;
- (b) in respect of significant or repeated failures to deliver the Enforcement Plan of the Day, an explanation of the underlying causes of those failures setting out (if relevant) any act, omission or failure of a third party which has impacted performance and the extent of that impact;
- (c) a summary of the Franchisee's approaches to service recovery, Depot and Train Fleet management and train crew management during the PBF Assessment Period, including any significant actions taken to improve those approaches, supported by evidence of their effectiveness; and
- (d) evidence of how the ratio of Reactionary Delay to Primary Delay, and incidences of delay attributable to Depot, Train Fleet and train crew related causes, compare with historic trends.

2 Customer Experience

A report on the customer experience delivered by the Franchisee, including:

- (a) tables, charts and other data (as appropriate) showing, for the PBF Assessment Period:
 - (i) delivery of Station and train cleans against the planned programme;
 - (ii) level of adherence to staffing rosters;
 - (iii) a summary of the availability of key assets such as Station and train toilets and ticket vending machines, and the length of time taken to remedy any faults; and
 - (iv) a summary of how the Franchisee has provided consistently accurate, timely and relevant information to customers at stations, on rolling stock used to deliver the Passenger Services and online;
- (b) an explanation of the level of performance achieved during the PBF Assessment Period in respect of each of the above and the underlying drivers of that performance, including evidence of the impacts of any significant actions the Franchisee has undertaken during the PBF Assessment Period to improve performance;

- (c) a summary of customer feedback obtained during the PBF Assessment Period, including insights gathered through complaints, surveys where relevant (including the Wavelength Survey and/or National Rail Passenger Survey (as applicable), if available), social media and any other relevant sources;
- (d) a summary of how the Franchisee has used these customer insights to identify and address customer needs; and
- (e) the results of any research or assessments undertaken by Transport Focus, the ORR or any other independent bodies which demonstrate the Franchisee's compliance with any of the Scorecard Criteria.

3 Financial Performance

A report detailing the extent to which the Franchisee has acted as a Good and Efficient Operator, including evidence of:

- (a) the actions which the Franchisee has taken to drive the recovery of revenue and demand, and the effect those actions have had on revenue and demand;
- (b) the actions the Franchisee has taken to reduce costs and improve efficiency, and the effect those actions have had on costs;
- (c) the approach the Franchisee has taken to balancing the short, medium and long term financial interest of the franchise (both within and beyond the Franchise Term); and
- (d) appropriate revenue protection being applied to reduce ticketless travel or travel with invalid tickets to the greatest extent reasonably practicable with the intention of maximising revenue while also treating passengers fairly and reasonably (and/or otherwise evidence that the Franchisee has followed government guidance prevailing at the time regarding revenue collection).

4 Collaborative Behaviour

4.1 Collaboration with Network Rail, other Train Operators, suppliers and industry bodies

A report detailing the Franchisee's collaboration with Network Rail, other Train Operators, suppliers and industry bodies, including evidence of:

- (a) the actions taken by the Franchisee to comply with the obligations in part 1 (*Co-operation*) of Schedule 6.4 (*ERMA Specific Obligations*) of the Franchise Agreement insofar as they relate to collaboration with those persons;
- (b) the actions taken by the Franchisee to collaborate with those parties in each of the areas identified in paragraph 4.2(b) of Appendix 3 (*Scorecard Criteria*) to Schedule 8.1B;

- (c) how those collaborative actions have demonstrably resulted in improved passenger outcomes and/or whole-industry financial efficiency or can reasonably be expected to result in such improvements (either during the Franchise Term or in the long term);
- (d) how the Franchisee has monitored the quality of its collaboration with those parties, any shortcomings identified and the remedial actions taken.

4.2 SoS Collaboration

A report detailing the Franchisee's collaboration with the Secretary of State, including evidence of:

- (a) the actions taken by the Franchisee to support the development, design and (where appropriate) implementation of initiatives to improve the long term financial performance of the Franchise, outcomes for passengers and/or other public policy objectives;
- (b) the actions taken by the Franchisee to share data with the Secretary of State, and to facilitate the sharing of data held by third parties on the Franchisee's behalf, pursuant to paragraphs 12 (*Further Information*) and 13 (*Information from Third Parties*) of Schedule 11.2 (*Management Information*);
- (c) the Franchisee having complied with the reporting requirements set out in the Franchise Agreement, and provided supporting commentary, analysis and (when requested) additional information to help the Secretary of State to assess and understand the drivers of the performance of the delivery of the Franchise Services;
- (d) how the Franchisee has managed its requests for guidance, consents, directions, derogations and other decisions so as to ensure they are accompanied by sufficient high-quality supporting evidence and allow sufficient time for due consideration by the Secretary of State;
- (e) the Franchisee's approach to collaborating with the Secretary of State in respect of business planning, budget setting and (where applicable) seeking to agree the matters described in paragraph 4.4 of Schedule 8.1B, the Target Cost, the Target Profit and/or any Performance Fee Target Amendment, and in particular how its approach has enabled the Secretary of State to agree such matters without the need for substantial amendment; and
- (f) how the Franchisee has monitored the quality of its collaboration with the Secretary of State, any shortcomings identified and the remedial actions taken.

4.3 Other Collaboration

A report detailing the Franchisee's collaboration with stakeholders specified in paragraph 6.2(a) of Appendix 3 (*Scorecard Criteria*) to Schedule 8.1B, including evidence of:

- (a) the collaborative actions the Franchisee has taken in each of the areas in paragraph 6.2(b) of Appendix 3 (*Scorecard Criteria*) to Schedule 8.1B, how those collaborative actions have directly improved outcomes for passengers and/or other stakeholders, and whether (and, if so, how) those actions have helped to leverage in third party funding for improvements to the railway infrastructure or to the Passenger Services;
- (b) how the Franchisee has collaborated with persons with disabilities and their representative bodies in particular, and how this collaboration has directly improved outcomes for such passengers.
- (c) the processes the Franchisee has put in place to monitor stakeholders' satisfaction with the quality of their collaboration and engagement, the results of that monitoring, any shortcomings identified and the actions taken to remedy them.

Appendix 3 to Schedule 8.1B Scorecard Criteria

1 Operational Performance

1.1 One (1): Below acceptable standard

The Franchisee has failed in any material respect to demonstrate that it has met the standard required to score a 'two (2)'.

1.2 Two (2): Acceptable

- (a) The Franchisee has generally delivered the Passenger Services in accordance with the applicable Enforcement Plan of the Day, such that where there have been significant or repeated failures to deliver the applicable Enforcement Plan of the Day:
 - (i) these have typically been due to external factors and/or incidents beyond the reasonable control of the Franchisee;
 - (ii) the Franchisee has taken reasonable steps to recover the Passenger Services as quickly as possible so as to minimise passenger inconvenience and delay, regardless of whether or not the root cause was within the Franchisee's reasonable control; and
 - (iii) the Franchisee has undertaken reviews of the root cause(s) of such failure(s) to deliver the applicable Enforcement Plan of the Day and the effectiveness of the Franchisee's actions to deal with the incident and recover the Passenger Services.
- (b) The Franchisee has in place and has implemented appropriate Depot and Train Fleet management plans that have been generally effective in minimising the number of instances of insufficient rolling stock vehicles being available to resource the applicable Enforcement Plan of the Day.
- (c) The Franchisee has in place and has implemented appropriate plans for train crew management (including to mitigate risks relating to COVID-19), recruitment, training, succession and contingency management that have generally been effective in minimising the number of instances of insufficient train crew being available to resource the applicable Enforcement Plan of the Day.

1.3 Three (3): Good

- (a) The Franchisee has fully met the criteria for a "two (2)" and in addition:
 - (i) there have been very few, if any, significant or repeated failures to deliver the applicable Enforcement Plan of the Day that have been due to factors and/or incidents within the reasonable control of the Franchisee;
 - (ii) the Franchisee's approach to service recovery has been particularly robust and, as a result, the ratio of Reactionary Delay to Primary

Delay in respect of the Passenger Services has been low by historical standards (taking account of all Primary Delay, whether attributed to the Franchisee or not);

- (iii) the reviews referred to in paragraph 1.2(a)(iii) of this Appendix 3 to Schedule 8.1B have been particularly thorough and, as a result of those reviews, the Franchisee has identified and implemented significant actions that have minimised (or will minimise) the likelihood and the impacts on passengers of similar incidents occurring in future; or
- (iv) the Franchisee's Depot, Train Fleet and train crew management has been particularly robust and, as a result, the number of instances of insufficient rolling stock or train crew being available to deliver the Enforcement Plan of the Day have been low by historical standards.

2 Customer Experience

2.1 One (1): Below acceptable standard

The Franchisee has failed in any material respect to demonstrate that it has met the standard required to score a "two (2)".

2.2 Two (2): Acceptable

- (a) The Franchisee has taken a proactive approach to managing customer experience for all customers, with appropriate plans and processes in place that have been generally effective in:
 - (i) providing information on rolling stock used to deliver the Passenger Services (where appropriate), online and at stations at which the Passenger Services call that is accurate, timely and easy for customers to understand, taking account of the needs of different customers and which covers (but is not limited to):
 - (A) the timetable being operated;
 - (B) planned and unplanned disruption;
 - (C) fares and ticketing;
 - (D) passenger rights (including compensation and redress);
 - (E) the availability of station and train facilities; and
 - (F) (when appropriate) COVID-19 Guidance and Regulation;
 - (ii) ensuring that all customer contact surfaces are cleaned regularly and keeping Stations and rolling stock used to deliver the Passenger Services free from litter, dirt and other unhygienic substances;
 - (iii) ensuring that all Stations, rolling stock used to deliver the Passenger Services and online services have been staffed as

required to provide a visible, helpful and proactive customer-facing service; and

- (iv) maintaining all Station and train facilities so that they are fully functional, available for use and presented in good condition, with any non-availability of facilities for repair or maintenance being kept to the minimum necessary.
- (b) The Franchisee has regularly and at an appropriate frequency monitored compliance with those plans and processes, and has taken prompt remedial action when they have been found not to be working.
- (c) The Franchisee has used some survey results and other relevant data and information to review customer needs and the extent to which they are being met (including, but not limited to, Wavelength and National Rail Passenger Survey data, where available). Where needs are not being met, the Franchisee has (where consistent with the requirement to act as a Good and Efficient Operator, or where the Secretary of State has otherwise consented) taken action to address them, and these actions have demonstrably resulted in meaningful improvements in outcomes for customers (or, in the opinion of the Secretary of State (acting reasonably), will result in such improvements, either during the Franchise Term or in the long term).

2.3 Three (3): Good

The Franchisee has fully met the criteria for a "two (2)" and in addition:

- (a) the Franchisee's plans and processes described in paragraph 2.2(a) of this Appendix 3 to Schedule 8.1B have been particularly robust, such that there have been very few, if any, repeated or systemic failures to:
 - (i) provide timely, accurate and relevant information in the manner described in paragraph 2.2(a)(i) of this Appendix 3 to Schedule 8.1B;
 - (ii) undertake cleaning activities and maintain high levels of cleanliness at Stations and on rolling stock used to deliver the Passenger Services;
 - (iii) staff Stations, rolling stock used to deliver the Passenger Services and online services to provide a proactive customer-facing service; and
 - (iv) maintain Station and train facilities so that they are fully functional and well-presented,

that have been due to factors and/or incidents within the reasonable control of the Franchisee.

- (b) The Franchisee's plans and processes for managing customer experience have been particularly thorough and, as a result, any *potential* issues have consistently been identified and resolved in a swift and effective manner.

Any *actual* issues have also been few in number and low in impact, and the Franchisee has taken prompt and effective remedial action when they have occurred.

- (c) The Franchisee has regularly used a range of different survey results and other relevant data and information (when possible) to review customer needs and the extent to which they are being met (including Wavelength and National Rail Passenger Survey data, where available), and the prompt actions taken to address those needs have demonstrably resulted in substantial improvements in outcomes for customers.

3 Financial Performance

3.1 One (1): Below acceptable standard

The Franchisee has failed in any material respect to demonstrate that it has met the standard required to score a "two (2)".

3.2 Two (2): Acceptable

- (a) The Franchisee has consistently acted as a Good and Efficient Operator and has been effective in optimising the financial prospects of its business over the short, medium and long term by:
 - (i) driving the recovery of passenger demand and revenue; and
 - (ii) robustly controlling the Franchisee's costs.
- (b) In driving the recovery of passenger demand and revenue, the Franchisee has taken effective action (in each case within the limits arising from COVID-19 Guidance and Regulation) to:
 - (i) promote rail as a safe mode of transport and to raise public awareness of the steps taken by the Franchisee and the wider rail industry to minimise public health risks;
 - (ii) monitor and deter ticketless travel; and
 - (iii) implement such further actions as may have been directed by the Secretary of State with a view to promoting demand and revenue growth.
- (c) In robustly controlling the Franchisee's costs, the Franchisee has:
 - (i) put in place internal processes which are comparable to (or better than) those adopted by the Franchisee prior to the EMA Start Date and which have been effective in managing the Franchisee's expenditure across all areas of the business, so as to improve efficiency and guard against unnecessary or excessive spend; and
 - (ii) implemented such further actions as may have been directed by the Secretary of State with a view to controlling costs,

while also continuing to incur such expenditure as is reasonably necessary to meet the Franchisee's obligations under this Agreement and to protect

the long-term financial interests of the franchise (both during the Franchise Term and in the longer term).

- (d) If and to the extent that there are any specific instances where the Franchisee has not fully complied with the requirements described above, such instances have been few in number and limited in impact, and the Franchisee has taken prompt and effective remedial action following any such instances.

3.3 Three (3): Good

The Franchisee has fully met the criteria for a "two (2)" and in addition on its own initiative, has developed and implemented (subject to the Secretary of State's consent where required pursuant to the Franchise Agreement) significant initiatives, the effect of which has been (or, in the Secretary of State's opinion (acting reasonably), will be):

- (a) to substantially accelerate the recovery of passenger demand and revenue (while avoiding material increases in costs, either during the Franchise Term or thereafter); and/or
- (b) to substantially reduce the costs of operating the franchise and/or improve its cost efficiency (while avoiding material adverse impacts on passenger outcomes or revenues).

4 Collaborative behaviours (collaboration with Network Rail, other Train Operators, suppliers and industry bodies)

4.1 One (1): Below acceptable standard

The Franchisee has failed in any material respect to demonstrate that it has met the standard required to score a "two (2)".

4.2 Two (2): Acceptable

- (a) The Franchisee has complied with the obligations set out part 1 (*Co-operation*) of Schedule 6.4 (*ERMA Specific Obligations*) of the Franchise Agreement insofar as they relate to collaboration with Network Rail, other Train Operators, suppliers and industry bodies;
- (b) In complying with those obligations, the Franchisee has demonstrated good collaborative behaviours in working with Network Rail, other Train Operators, suppliers and relevant industry bodies (as applicable) in **each** of the following areas:
 - (i) improving operational performance, which shall include (in particular) reducing Reactionary Delay, improving service recovery and investigating and addressing the root causes of sub-threshold delay;
 - (ii) improving the efficiency and effectiveness of the timetable development process, with the result that timetables better meet

- the needs of passengers while also being operationally robust and delivering high levels of performance;
- (iii) optimising the planning of access and possessions, so as to achieve an appropriate balance between protecting journey opportunities for passengers and minimising the cost of carrying out necessary works;
 - (iv) identifying and implementing opportunities to deliver whole-industry cost efficiencies, including by sharing resources, establishing joint teams and/or eliminating duplication of activities across multiple organisations at Stations, control centres and elsewhere;
 - (v) delivering major projects (including infrastructure upgrades, introduction of new or cascaded rolling stock fleets) efficiently, successfully and in a way that minimises any adverse passenger impacts; and
 - (vi) openly and proactively sharing data with Network Rail, in accordance with paragraph 9 (Sharing Data with Network Rail) of part 1 (*Co-operation*) of Schedule 6.4 (*ERMA Specific Obligations*) of the Franchise Agreement, as necessary to maximise the effectiveness of collaboration in each of the areas listed above.
- (c) The Franchisee's collaborative actions in **some** of the areas listed in paragraph 4.2(b) of this Appendix 3 to Schedule 8.1B have demonstrably resulted in meaningful improvements in passenger outcomes and/or meaningful whole-industry financial efficiencies (or, in the opinion of the Secretary of State (acting reasonably), will result in such improvements, either during the Franchise Term or in the long term).
- (d) If and to the extent that there are any specific instances where the Franchisee has not demonstrated good collaborative behaviours, these have been few in number and of minor impact and the Franchisee has taken prompt and effective remedial action where the Franchisee has become aware (or should reasonably have become aware) of any such instances.

4.3 Three (3): Good

The Franchisee has fully met the criteria for a "two (2)" and in addition:

- (a) the Franchisee's collaborative actions in **most** or **all** of the areas listed in paragraph 4.2(b) of this Appendix 3 to Schedule 8.1B have demonstrably resulted in meaningful improvements in passenger outcomes and/or meaningful whole-industry financial efficiencies (or, in the opinion of the Secretary of State (acting reasonably), will result in such improvements, either during the Franchise Term or in the long term); or
- (b) the Franchisee's collaborative actions in **some** of the areas listed in paragraph 4.2(b) of this Appendix 3 to Schedule 8.1B have demonstrably

resulted in **very substantial** improvements in passenger outcomes and/or **very substantial** whole-industry financial efficiencies (or, in the reasonable opinion of the Secretary of State, will result in such improvements, either during the Franchise Term or in the long term).

5 Collaborative behaviours (collaboration with the Secretary of State)

5.1 One (1): Below acceptable standard

The Franchisee has failed in any material respect to demonstrate that it has met the standard required to score a "two (2)".

5.2 Two (2): Acceptable

- (a) The Franchisee has co-operated with the Secretary of State in the development, design and (where applicable) implementation of initiatives to improve the long-term financial performance of the Franchise, outcomes for passengers and/or other public policy objectives (including Future Initiatives and Franchisee Initiatives pursuant to and in accordance with part 1 (*Co-operation*) of Schedule 6.4 (*ERMA Specific Obligations*) of the Franchise Agreement that relate to co-operation with the Secretary of State and prospective Fares, ticketing and ticket retailing reform pursuant to and in accordance with Schedule 5.10 (*Fares, Ticketing and Retail Reform*)).
- (b) The Franchisee has shared data fully and openly with the Secretary of State, and has taken reasonable steps to facilitate the sharing of data held by third parties on the Franchisee's behalf, in accordance with paragraphs 12 (*Further Information*) and 13 (*Information from Third Parties*) of Schedule 11.2 (*Management Information*);
- (c) The Franchisee has provided periodic reporting packs on time and to a good standard, including all data required by the Franchise Agreement with commentary and analysis to allow the Secretary of State to assess the performance of the Franchise Services and to understand the underlying drivers. Appropriate representatives of the Franchisee have attended each Franchise Performance Meeting. The Franchisee has responded to requests for additional information positively and within agreed timescales.
- (d) Requests for the Secretary of State to provide guidance, consents, directions, derogations and other decisions have been made in sufficient time to allow for due consideration by the Secretary of State. Such requests having been supported by appropriate supporting evidence and analysis to enable the Secretary of State to make an informed decision. Unnecessary or spurious requests have been avoided.
- (e) The Franchisee has worked constructively with the Secretary of State to agree appropriate business plans, budgets and (where applicable) the matters described in paragraph 4.4 of Schedule 8.1B, the Target Cost, the Target Profit and/or any Performance Fee Target Amendment, in each case

in a timely manner. In particular, the Franchisee's proposals in respect of these matters have been provided in accordance with required timescales, underpinned by sound assumptions and good supporting evidence, enabling the Secretary of State to accept them without the need for substantial amendment.

- (f) If and to the extent that there are any specific instances where the Franchisee has not demonstrated good collaborative behaviours, these have been few in number and of minor impact and the Franchisee has taken prompt and effective remedial action where the Franchisee has become aware (or should reasonably have become aware) of any such instances.

5.3 Three (3): Good

The Franchisee has fully met the criteria for a "two (2)" and in addition:

- (a) both proactively and in response to any specific requests by the Secretary of State, the Franchisee has developed and presented to the Secretary of State a variety of high-quality, credible reform initiatives to materially strengthen the long-term financial sustainability of the franchise, improve passenger outcomes and support other public policy objectives;
- (b) such proposals have been accompanied by credible delivery plans and clear, robust analysis of the financial and practical consequences, associated risks and other implications; and
- (c) when such proposals have been consistent with what a Good and Efficient Operator would do, or have otherwise been approved by the Secretary of State, the Franchisee has implemented those proposals in accordance with their terms (or, where applicable, the Franchisee's actions during the PBF Assessment Period have given the Secretary of State good confidence that the Franchisee will do so).

6 Collaborative behaviours (collaboration with other stakeholders)

6.1 One (1): Below acceptable standard

The Franchisee has failed in any material respect to demonstrate that it has met the standard required to score a "two (2)".

6.2 Two (2): Acceptable

- (a) The Franchisee has demonstrated good collaborative behaviours in working with stakeholders, including:
 - (i) passengers (including, and in particular, passengers with disabilities) and their representative bodies;
 - (ii) devolved administrations (where applicable);
 - (iii) local authorities;
 - (iv) community rail partnerships;

- (v) local enterprise partnerships and other representatives of the business community; and
 - (vi) other transport operators,
- but excluding the Secretary of State, Network Rail and other industry parties as identified in paragraph 4 (*Collaborative behaviours (Collaboration with Network Rail, other Train Operators, suppliers and industry bodies)*) of this Appendix 3 to Schedule 8.1B.
- (b) In particular, the Franchisee has:
 - (i) sought feedback from such stakeholders about the Franchise Services;
 - (ii) consulted with such stakeholders and involved them in significant decisions that affect them, such that they have had a meaningful opportunity to influence those decisions;
 - (iii) provided feedback to those stakeholders on significant decisions that affect them and the reasons for those decisions;
 - (iv) routinely and actively involved passengers with disabilities and their representatives in designing and developing the facilities and Passenger Services provided by the Franchisee, and in other decisions that may have a particular impact on passengers with disabilities; and
 - (v) provided support to prospective third party promoters and funders of improvements to the railway when requested to do so by the Secretary of State or the third party concerned.
 - (c) The Franchisee's collaborative actions in the areas identified in this paragraph 6.2 have resulted in **some** improvements in outcomes for passengers and other stakeholders served by the Franchisee, including in particular for passengers with disabilities (or, in the opinion of the Secretary of State (acting reasonably), will result in such improvements, either during the Franchise Term or in the long term).

6.3 Three (3): Good

The Franchisee has fully met the criteria for a "two (2)" and in addition:

- (a) the Franchisee has in place and has implemented effective processes to monitor stakeholder satisfaction with the quality of the Franchisee's collaboration and engagement with them, and the results of this monitoring show consistently excellent levels of stakeholder satisfaction during the PBF Assessment Period; and
- (b) regular, open collaboration, proactively initiated by the Franchisee, has demonstrably resulted in (or, in the opinion of the Secretary of State (acting reasonably) will, either during the Franchise Term or in the longer term, result in):

- (i) **substantial** improvements in outcomes for passengers and/or other stakeholders (including in particular passengers with disabilities); and/or
- (ii) third party investment or other funding contributions to **significantly** improve the Passenger Services and/or the railway infrastructure.

**Appendix 4 to Schedule 8.1B
Scorecard Methodology**

1 Application of the Scorecard Criteria and calculation of Performance Based Fee

Each PBF Component to be calculated in accordance with the Scorecard Methodology shall be assessed with respect to the Franchisee's PBF Assessment Period Review score for the relevant PBF Assessment Period by reference to the Scorecard Criteria, then the score shall be used to calculate the value of the Performance Based Fee attributable to that PBF Component, as applicable, as set out below:

PBF Component	PBF Assessment Period Scorecard score for relevant Scorecard Criterion	PBF £
Operational Performance Fee	Three (3)	£ MPBF * W_{OP}
	Two (2)	£ MPBF * W_{OP} * Seventy-five per cent (75%)
	One (1)	Zero pound (£0)
Customer Experience Fee	Three (3)	£ MPBF * W_{CE} * W_{CESC}
	Two (2)	£ MPBF * W_{CE} * W_{CESC} * Seventy-five per cent (75%)
	One (1)	Zero pound (£0)
Financial Performance Fee	Three (3)	£ MPBF * W_{FIN} * W_{FINSC}
	Two (2)	£ MPBF * W_{FIN} * W_{FINSC} * Fifty per cent (50%)

	One (1)	Zero pound (£0)
Network Rail Collaboration	Three (3)	£ MPBF * W _{CB} * W _{NR}
	Two (2)	£ MPBF * W _{CB} * W _{NR} * Seventy-five per cent (75%)
	One (1)	Zero pound (£0)
SoS Collaboration	Three (3)	£ MPBF * W _{CB} * W _{SOS} *
	Two (2)	£ MPBF * W _{CB} * W _{SOS} * Seventy-five per cent (75%)
	One (1)	Zero pound (£0)
Other Collaboration	Three (3)	£ MPBF * W _{CB} * W _{OTH}
	Two (2)	£ MPBF * W _{CB} * W _{OTH} * Seventy-five per cent (75%)
	Three (1)	Zero pound (£0)

where:

"W_{FINSC}"	<p>means:</p> <p>(a) if the Financial Performance Fee for that PBF Assessment Period is to be assessed solely in accordance with the Scorecard Methodology, the weighting to be applied to the Scorecard Methodology for that PBF Assessment Period, being one hundred per cent (100%); and</p> <p>(b) if the Financial Performance Fee is to be assessed in accordance with one or more of the Subsequent FP</p>
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	<p>Methodologies for that PBF Assessment Period, the weighting to be applied to the Scorecard Methodology with respect to the Financial Performance Fee for that PBF Assessment Period, being the value agreed or determined in accordance with paragraph 4.4(d) of Schedule 8.1B, provided that no calculation using the Scorecard Methodology shall be required in relation to the Financial Performance Fee if the value of W_{FINSC} is zero;</p>
" W_{NR} "	<p>means the weighting to be applied to Network Rail Collaboration when calculating the amount of the Collaborative Behaviour Fee for that PBF Assessment Period, being forty per cent (40%) or such alternative as may be agreed or determined pursuant to paragraph 4.4(g) of Schedule 8.1B;</p>
" W_{SOS} "	<p>means the weighting to be applied to SoS Collaboration when calculating the amount of the Collaborative Behaviour Fee for that PBF Assessment Period, being forty per cent (40%) or such alternative as may be agreed or determined pursuant to paragraph 4.4(g) of Schedule 8.1B;</p>
" W_{OTH} "	<p>means the weighting to be applied to Other Collaboration when calculating the amount of the Collaborative Behaviour Fee for that PBF Assessment Period, being twenty per cent (20%) or such alternative as may be agreed or determined pursuant to paragraph 4.4(g) of Schedule 8.1B.</p>

Appendix 5 to Schedule 8.1B
Quantified Target Methodology

1 Application of the Quantified Target Methodology

- 1.1** The Performance Based Fee in relation to each Subsequent PBF Assessment Period shall be either:
- (a) the sum of the amounts corresponding to each of the PBF Components calculated in accordance with paragraph 1 (*Application of the Scorecard Criteria and calculation of Performance Based Fee*) of Appendix 4 (*Scorecard Methodology*) to Schedule 8.1B; or
 - (b) the sum of:
 - (i) the amounts corresponding to each of the QTM PBF Components (if any) which, pursuant to paragraph 4.2(a) of Schedule 8.1B, are to be calculated in accordance with paragraph 1 (*Application of the Scorecard Criteria and calculation of Performance Based Fee*) of Appendix 4 (*Scorecard Methodology*) to Schedule 8.1B; and
 - (ii) the amounts corresponding to each of the QTM PBF Components (if any) which, pursuant to paragraph 4.2(a) of Schedule 8.1B, are to be calculated in accordance with this Appendix 5 to Schedule 8.1B; and
 - (iii) the amount of the Collaborative Behaviour Fee calculated in accordance with paragraph 1 (*Application of the Scorecard Criteria and calculation of Performance Based Fee*) of Appendix 4 (*Scorecard Methodology*) to this Schedule 8.1B.
- 1.2** If it has been agreed or determined pursuant to paragraph 4.2(a) of Schedule 8.1B that the Operational Performance Fee shall be calculated by reference to the Quantified Target Methodology, paragraph 2 (*Operational Performance*) of this Appendix 5 to Schedule 8.1B shall apply in respect of the value of the Performance Based Fee attributable to the Operational Performance Fee.
- 1.3** If it has been agreed or determined pursuant to paragraph 4.2(a) of Schedule 8.1B that the Customer Experience Fee shall be calculated by reference to the Quantified Target Methodology, paragraph 3 (*Customer Experience*) of this Appendix 5 to Schedule 8.1B shall apply in respect of the value of the Performance Based Fee attributable to the Customer Experience Fee.
- 1.4** If it has been agreed or determined pursuant to paragraph 4.2(a) of Schedule 8.1B that the Financial Performance Fee shall be calculated by reference to the Quantified Target Methodology, paragraph 4 (*Financial Performance*) of this Appendix 5 to Schedule 8.1B shall apply in respect of the value of the Performance Based Fee attributable to the Financial Performance Fee.

2 Operational Performance

2.1 The OP Targets agreed or determined in accordance with paragraph 4.5 of Schedule 8.1B shall apply to each Reporting Period during the relevant PBF Assessment Period.

2.2 For each Reporting Period within the relevant PBF Assessment Period, the Secretary of State shall calculate a financial sum in respect of each Operational Performance Component in accordance with the applicable formula set out below based on whether:

- (a) the Franchisee's Actual All Cancellations Performance Level, Actual T-3 Performance Level and Actual T-15 Performance Level; and
- (b) the Franchisee's actual performance in relation to Cancellations, TOC Minutes Delay and Short Formations as determined in accordance with Schedule 7.1 (*Operational Performance*),

are worse than, within or better than the expected range, in each case specified as the OP Target for the applicable Operational Performance Component in the relevant Reporting Period:

Operational Performance Component	Worse than the expected range	Within the expected range	Better than the expected range
Cancellations	Zero (£0)	Twenty-two point five per cent (22.5%) * MPBF * W _{OP/N}	Thirty per cent (30%) * MPBF * W _{OP/N}
TOC Minutes Delay	Zero (£0)	Fifteen per cent (15%) * MPBF * W _{OP/N}	Twenty per cent (20%) * MPBF * W _{OP/N}
Short Formations	Zero (£0)	Seven point five per cent (7.5%) * MPBF * W _{OP/N}	Ten per cent (10%) * MPBF * W _{OP/N}
T-3	Zero (£0)	Seven point five per cent (7.5%) * MPBF * W _{OP/N}	Ten per cent (10%) * MPBF * W _{OP/N}
T-15	Zero (£0)	Seven point five per cent (7.5%) * MPBF * W _{OP/N}	Ten per cent (10%) * MPBF * W _{OP/N}
All Cancellations	Zero (£0)	Fifteen per cent (15%) * MPBF * W _{OP/N}	Twenty per cent (20%) * MPBF * W _{OP/N}

where:

N	means the number of Reporting Periods that fall within the relevant PBF Assessment Period.
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2.3 The value of OP for the purposes of the formula set out in paragraph 4.1 of Schedule 8.1B shall be calculated as the sum of each of the calculations performed pursuant to paragraph 2.2 of this Appendix 5 to Schedule 8.1B in respect of each OP Component in each Reporting Period during the relevant PBF Assessment Period.

3 Customer Experience

3.1 For each relevant PBF Assessment Period, the Secretary of State shall calculate the element of the Performance Based Fee attributable to the Customer Experience Fee in accordance with the formula set out below.

ECE =	$CE(SC) + CE(SQR) + CE(NRPS)$
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3.2 If the weighting of any of CE(SC), CE(SQR) and/or CE(NRPS) is zero in accordance with paragraph 3.3 of this Appendix 5 to Schedule 8.1B then the value attributable to each such component shall be zero and such component shall be removed from the formula set out in paragraph 3.1 of this Appendix 5 to Schedule 8.1B for the purpose of calculating the value of the Performance Based Fee attributable to the Customer Experience Fee.

3.3 If the Customer Experience Fee for the relevant PBF Assessment Period is to be assessed in accordance with one or more of the Subsequent CE Methodologies, the weighting to be applied to:

- (a) the Scorecard Methodology ("**W_{CESC}**"); and/or
- (b) the SQR Methodology ("**W_{SQR}**"); and/or
- (c) the NRPS Methodology ("**W_{NRPS}**"),

shall be the weighting specified in this paragraph 3.3.

Methodology to be applied	W_{CESC}	W_{SQR}	W_{NRPS}
Scorecard Methodology only	One hundred per cent (100%)	Zero per cent (0%)	Zero per cent (0%)
Combined Scorecard/SQR Methodology	Thirty-five per cent (35%)	Sixty-five per cent (65%)	Zero per cent (0%)
Combined SQR/NRPS Methodology	Zero per cent (0%)	Sixty-five per cent (65%)	Thirty-five per cent (35%)

3.4 If:

- (a) W_{NRPS} is not zero in accordance with paragraph 3.3 above, the value attributable to (CE)NRPS shall be calculated in accordance with paragraph 3.5 (*Calculation of CE(NRPS)*) below;
- (b) W_{SQR} is not zero, the value attributable to CE(SQR) shall be *calculated* in accordance with paragraph 3.6 (*Calculation of CE(SQR)*) below;
- (c) W_{CESC} is not zero, the value of CE(SC) shall be calculated in accordance with the Scorecard Methodology as it relates to the Customer Experience Fee.

3.5 Calculation of CE(NRPS)

- (a) The NRPS Targets agreed or determined in accordance with paragraph 4.5 of Schedule 8.1B shall apply during the relevant PBF Assessment Period.
- (b) If:
 - (i) no findings of the National Rail Passenger Survey are published during the relevant PBF Assessment Period; or
 - (ii) in the opinion of the Secretary of State (acting reasonably) the findings of the National Rail Passenger Survey are not sufficiently robust to support the calculation of CE(NRPS),

the Customer Experience Fee for the relevant PBF Assessment Period shall be assessed using the Combined Scorecard/SQR Methodology, the weightings specified in paragraph 3.3 above in relation to such methodology shall apply, and the Secretary of State may reasonably determine such amendments to the Scorecard Methodology as may be reasonably appropriate in consequence of the unavailability or unsuitability of the National Rail Passenger Survey findings.

- (c) For each relevant PBF Assessment Period, the Secretary of State shall calculate the Franchisee's performance against each of the NRPS Targets in accordance with the applicable formula set out below based on whether the Franchisee's applicable Overall Performance Score in respect of against the applicable NRPS Target is:
 - (i) worse than the expected range;
 - (ii) within the expected range; or
 - (iii) better than the expected range,

in each case specified as the NRPS Target for the applicable NRPS Measure:

NRPS Measure	Worse than the expected range	Within the expected range	Better than the expected range
Stations	Zero pound (£0)	Twenty five per cent (25%) * MPBF * W _{CE} * W _{NRPS}	One third (1/3) * MPBF * W _{CE} * W _{NRPS}
Trains	Zero pound (£0)	Twenty five per cent (25%) * MPBF * W _{CE} * W _{NRPS}	One third (1/3) * MPBF * W _{CE} * W _{NRPS}
Customer Service	Zero pound (£0)	Twenty five per cent (25%) * MPBF * W _{CE} * W _{NRPS}	One third (1/3) * MPBF * W _{CE} * W _{NRPS}

- (d) For each relevant PBF Assessment Period, the Secretary of State shall calculate the value of the Performance Based Fee attributable to CE(NRPS) in accordance with the formula set out below.

£CE(NRPS) =	S + T + C
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where:

S	means the value attributable to the Stations NRPS Measure calculated in accordance with paragraph 3.5(c) above;
T	means the value attributable to the Trains NRPS Measure calculated in accordance with paragraph 3.5(c) above;
C	means the value attributable to the Customer Service NRPS Measure calculated in accordance with paragraph 3.5(c) above; and

3.6 Calculation of CE(SQR)

- (a) The SQR Targets agreed or determined in accordance with paragraph 4.4(b) of Schedule 8.1B shall apply during the relevant PBF Assessment Period.
- (b) Within ten (10) Weekdays after the end of each Subsequent PBF Assessment Period, the Franchisee shall provide to the Secretary of State its calculation of:

- (i) the mean average of the five Pass Rates calculated pursuant to paragraph 8.2 (*Calculation of Pass Rates*) of Schedule 7.3 (*West Midlands Franchise Service Quality Regime*) in relation to the SQR Stations Component (the "**Overall Station Pass Rate**"), being:
 - (A) Ambience;
 - (B) Maintenance;
 - (C) Cleanliness;
 - (D) Information; and
 - (E) Ticketing & Staffing;
 - (ii) the mean average of the four Pass Rates calculated pursuant to paragraph 8.2 of Schedule 7.3 (*West Midlands Franchise Service Quality Regime*) in relation to the SQR Trains Component (the "**Overall Trains Pass Rate**"), being:
 - (A) Ambience;
 - (B) Cleanliness; and
 - (C) Information; and
 - (D) Customer Service.
 - (iii) the mean average of the two Pass Rates calculated pursuant to paragraph 8.2 (*Calculation of Pass Rates*) of Schedule 7.3 (*West Midlands Franchise Service Quality Regime*) in relation to the SQR Customer Service Component (the "**Overall Customer Service Pass Rate**"), being:
 - (A) Information and Customer Contact; and
 - (B) Technology and Information.
- (c) Subject to paragraph 5.9 of Schedule 7.3 (*West Midlands Franchise Service Quality Regime*), within twenty eight (28) days following receipt of the calculations from the Franchisee pursuant to paragraph 3.6(b) above and the findings of the Independent Service Quality Audit pursuant to paragraph 5 (*Independent Service Quality Audit / SoS Audits*) of Schedule 7.3 (*West Midlands Franchise Service Quality Regime*), the Secretary of State shall calculate the Franchisee's performance against each of the SQR Targets pursuant to and in accordance with the applicable formula set out below based on whether the Franchisee's performance against the applicable SQR Target is:
- (i) worse than the expected range;
 - (ii) within the expected range; or
 - (iii) better than the expected range,

in each case specified as the SQR Target for the applicable SQR Component:

Overall Pass Rate	Worse than the expected range	Within the expected range	Better than the expected range
Overall Station Pass Rate	Zero pound (£0)	Twenty-five (25%) * MPBF * W _{CE} * W _{SQR}	One-third (1/3) * MPBF * W _{CE} * W _{SQR}
Overall Trains Pass Rate	Zero pound (£0)	Twenty-five (25%) * MPBF * W _{CE} * W _{SQR}	One-third (1/3) * MPBF * W _{CE} * W _{SQR}
Overall Customer Service Pass Rate	Zero pound (£0)	Twenty-five (25%) * MPBF * W _{CE} * W _{SQR}	One-third (1/3) * MPBF * W _{CE} * W _{SQR}

- (d) For each relevant PBF Assessment Period the Secretary of State shall calculate the value of the Performance Based Fee attributable to CE(SQR) in accordance with the formula set out below.

$\pounds CE(SQR) =$	$S + T + C$
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where:

S	means the value attributable to the Stations SQR Component calculated in accordance with paragraph 3.6(c) above;
T	means the value attributable to the Trains SQR Component calculated in accordance with paragraph 3.6(c) above; and
C	means the value attributable to the Customer Service SQR Component calculated in accordance with paragraph 3.6(c) above.

4 Financial Performance

- 4.1 For each relevant PBF Assessment Period the Secretary of State shall calculate the value of the Performance Based Fee attributable to the Financial Performance Fee in accordance with the formula set out below.

$\pounds FIN =$	$FIN(CC) + FIN(P) + FIN(TTR) + FIN(SC)$
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- 4.2 If the weighting of any of FIN(CC), FIN(P), FIN(TTR) and/or FIN(SC) is zero in accordance with paragraph 4.4(d) of Schedule 8.1B, then the value attributable to each such component shall be zero and such component shall be removed

from the formula set out in paragraph 4.1 above for the purpose of calculating the value of the Performance Based Fee attributable to the Financial Performance Fee.

4.3 Calculation of FIN(CC)

- (a) Subject to paragraph 6 (*Target Amendments*), the Target Cost agreed or determined in accordance with paragraph 5.1 (*Target Cost*) shall apply to the relevant PBF Assessment Period.
- (b) The Franchisee shall provide to the Secretary of State all financial information required for the purposes of making each of the calculations required pursuant to this paragraph 4.3 in accordance with paragraphs 9.1 (*Accounting Records*) to 9.4 (*Annual Financial Information*) of Schedule 11.2 (*Management Information*).
- (c) Within twenty eight (28) days of receipt of all financial information required for the purposes of making the relevant calculations, the Secretary of State shall calculate the value of the Performance Based Fee attributable to FIN(CC) in accordance with the applicable formula set out below based on whether the Outturn Cost is:
- (i) greater than the Target Cost Floor;
 - (ii) greater than the Target Cost but less than or equal to the Target Cost Floor;
 - (iii) less than or equal to the Target Cost but greater than the Target Cost Cap; or
 - (iv) less than or equal to the Target Cost Cap.

Outturn Cost	£FIN(CC)
Greater than TCF	Zero (£0)
Greater than Target Cost, less than or equal to TCF	$(TCF - OTC)/(TCF - TC) * W_{FIN} * W_{CC} * MPBF * \text{Fifty per cent (50\%)}$
Less than or equal to Target Cost, greater than TCC	$W_{FIN} * W_{CC} * MPBF - \{(OTC - TCC)/(TC - TCC) * W_{FIN} * W_{CC} * MPBF * \text{Fifty per cent (50\%)}\}$
Less than or equal to TCC	$W_{FIN} * W_{CC} * MPBF$

4.4 Calculation of FIN(P)

- (a) Subject to paragraph 6 (*Target Amendments*) of Schedule 8.1B, the Target Profit agreed or determined in accordance with paragraph 5.2 (*Target Profit*) shall apply to the relevant PBF Assessment Period.
- (b) The Franchisee shall provide to the Secretary of State all financial information required for the purposes of making each of the calculations required pursuant to this paragraph 4.4 in accordance with paragraphs 9.1 (*Accounting Records*) to 9.4 (*Annual Financial Information*) of Schedule 11.2 (*Management Information*).
- (c) Within twenty eight (28) days of receipt of all financial information required for the purposes of making the relevant calculations, the Secretary of State shall calculate the value of the Performance Based Fee attributable to FIN(P) in accordance with the applicable formula set out below based on whether the Outturn Profit is:
- (i) greater than the Target Profit Cap;
 - (ii) greater than the Target Profit but less than or equal to the Target Profit Cap;
 - (iii) less than or equal to the Target Profit but greater than the Target Profit Floor; or
 - (iv) less than or equal to the Target Profit Floor:

Outturn Profit	£FIN(P)
Greater than TPC	$W_{FIN} * W_P * MPBF$
Greater than Target Profit, less than or equal to TPC	$W_{FIN} * W_P * MPBF - \{ (TPC - OTP)/(TPC - TP) * W_{FIN} * W_P * MPBF * \text{Fifty per cent (50\%)} \}$
Less than or equal to Target Profit, greater than TPF	$(OTP - TPF)/(TP - TPF) * W_{FIN} * W_P * MPBF * \text{Fifty per cent (50\%)}$
Less than or equal to TPF	Zero (£0)

4.5 Not used

4.6 Calculation of FIN(SC)

- (a) FIN(SC) shall be calculated using the Scorecard Methodology as it applies to the Financial Performance Fee.

Appendix 6 to Schedule 8.1B
Category A Target Amendment Trigger Events

1 Target Cost Target Amendment Trigger Events

- 1.1** Any variation in the rate of employer pension contributions (or, to the extent applicable, the amount of any lump sum employer deficit contributions) payable to a Franchise Section from the rate (or amount) set out in the Assumed Schedule of Contributions applicable to that Franchise Section which is not already provided for in the Target Cost Template provided that, to the extent the Franchisee's consent or permission was required for that variation, the Franchisee has complied with its obligations pursuant to Schedule 16 (*Pensions*), including the obligations to:
- (a) obtain the Secretary of State's prior written consent in respect of any such variation; and
 - (b) act in a Reasonable Commercial Manner.
- 1.2** For reasons related to COVID-19 or otherwise in the national interest, the Secretary of State or Network Rail requires the Franchisee to operate the Passenger Services to a specification that is materially reduced compared to the specification that was assumed when the Target Cost was established.
- 1.3** Either:
- (a) the Secretary of State designates the occurrence of Industrial Action as a Category A Target Amendment Trigger Event pursuant to paragraph 5.3 of part 2 (*Industrial Relations and Dispute Handling*) of Schedule 6.4 (*ERMA Specific Obligations*); or
 - (b) the occurrence of Industrial Action in the circumstances set out in paragraph 5.4 of part 2 (*Industrial Relations and Dispute Handling*) of Schedule 6.4 (*ERMA Specific Obligations*).
- 1.4** A Variation which either results in the Franchisee incurring additional expenditure or would reasonably result in the Franchisee incurring lower expenditure than if the Variation had not been implemented.
- 1.5** An event set out in any Secretary of State Risk Assumptions specified in Schedule 9.4 (*Secretary of State Risk Assumptions*).
- 1.6** A Charge Variation.
- 1.7** A Change of Law.
- 1.8** 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 16.5 of Schedule 1.1 (*Franchise Services and Service Development*).
- 1.9** The Franchisee being required to take any action pursuant to paragraph 19.1(a) and/or paragraph 19.1(b) of Schedule 1.1 (*Franchise Services*).

- 1.10 The imposition, subject to the provisions of paragraph 2.6 of Schedule 4 (*Accessibility and Inclusivity*), of any increased access charges in respect of EA Requirements at Franchisee Access Stations.
- 1.11 The imposition, subject to the provisions of paragraph 2.6 of Schedule 4 (*Accessibility and Inclusivity*), of any increased access charges in respect of EA Requirements at Franchisee Access Stations.
- 1.12 The exercise by the Secretary of State of the Secretary of State's rights pursuant to paragraph 14.1A(c) (*Environmental Information Data Collection Plan*) of Schedule 11.2 (*Management Information*).
- 1.13 The circumstances set out in paragraph 3.2 of Schedule 2.2 (*Security of Access Agreements, Rolling Stock Leases, Station and Depot Leases*) occur.
- 1.14 The Secretary of State issues a TDR Amendment pursuant to paragraph 12.8 (*TDR Amendments*) of Schedule 1.1 (*Franchise Services and Service Development*) in the circumstances described in paragraph 12.10(b) of Schedule 1.1 (*Franchise Services and Service Development*).
- 1.15 The circumstances contemplated in paragraph 12.11(b) of Schedule 1.1 (*Franchise Services and Service Development*) occur.
- 1.16 The delay of an item of expenditure or a group of items of similar expenditure where the timing of expenditure is materially different from that included in the Target Cost.
- 1.17 The Secretary of State issuing any other guidance or instruction which could reasonably be expected to have a material impact on the Franchisee's ability to achieve, exceed or fail to achieve the relevant Target Cost.
- 1.18 The circumstances set out in paragraph 3.2 of Schedule 2.2 (*Security of Access Agreements, Rolling Stock Leases, Station and Depot Leases*) occur.
- 1.19 The circumstances set out in paragraph 25.7 of Part 1 of Schedule 6.2 (*The Birmingham/Worcester Proposal*).
- 1.20 The circumstances set out in paragraph 26.7 of Part 1 of Schedule 6.2 (*The Walsall/Wolverhampton Proposal*).
- 1.21 The circumstances set out in paragraph 27.7 of Part 1 of Schedule 6.2 (*The Coventry Corridor Sunday Services Proposal*).
- 1.22 The Secretary of State issues a TDR Amendment pursuant to paragraph 12.7 of Schedule 1.1 (*Franchise Services and Service Development*).

2 Target Profit Target Amendment Trigger Events

- 2.1 Any variation in the rate of employer pension contributions (or, to the extent applicable, the amount of any lump sum employer deficit contributions) payable to a Franchise Section from the rate (or amount) set out in the Assumed Schedule of Contributions applicable to that Franchise Section which is not already provided for in the Target Profit Template provided that, to the extent the Franchisee's consent or permission was required for that variation, the

Franchisee has complied with its obligations pursuant to Schedule 16 (*Pensions*), including the obligations to:

- (a) obtain the Secretary of State's prior written consent in respect of any such variation; and
- (b) act in a Reasonable Commercial Manner.

2.2 For reasons related to COVID-19 or otherwise in the national interest, the Secretary of State or Network Rail requires the Franchisee to operate the Passenger Services to a specification that is materially reduced compared to the specification that was assumed when the Target Profit was established.

2.3 Either:

- (a) the Secretary of State designates the occurrence of Industrial Action as a Category A Target Amendment Trigger Event pursuant to paragraph 5.3 of part 2 (*Pay and Industrial Relations and Dispute Handling*) of Schedule 6.4 (*ERMA Specific Obligations*); or
- (b) the occurrence of Industrial Action in the circumstances set out in paragraph 5.4 of part 2 (*Pay and Industrial Relations and Dispute Handling*) of Schedule 6.4 (*ERMA Specific Obligations*).

2.4 A Variation which:

- (a) results in the Franchisee incurring additional expenditure;
- (b) would reasonably result in the Franchisee incurring lower expenditure;
- (c) results in the Franchisee earning less revenue; or
- (d) would reasonably result in the Franchisee earning greater revenue, than if the Variation had not been implemented.

2.5 An event set out in any Secretary of State Risk Assumptions specified in Schedule 9.4 (*Secretary of State Risk Assumptions*).

2.6 A Charge Variation.

2.7 A Change of Law.

2.8 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 16.5 of Schedule 1.1 (*Franchise Services and Service Development*).

2.9 The Franchisee being required to take any action pursuant to paragraph 19.1(a) and/or paragraph 19.1(b) of Schedule 1.1 (*Franchise Services and Service Development*).

2.10 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.

2.11 The Secretary of State approves an amendment or proposed amendment to an Inter-Operator Scheme, as referred to in paragraph 4.5 of Schedule 2.5

(Transport, Travel and Other Schemes) to the extent and only to the extent that the Franchisee makes a saving as a consequence of such amendment or proposed amendment.

- 2.12** The imposition, subject to the provisions of paragraph 2.6 of Schedule 4 (Accessibility and Inclusivity), of any increased access charges in respect of EA Requirements at Franchisee Access Stations.
- 2.13** The Secretary of State exercises the Secretary of State's 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 and Smart Ticketing).
- 2.14** 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.
- 2.15** The exercise by the Secretary of State of the Secretary of State's rights pursuant to paragraph 14.1A(c) (*Environmental Information Data Collection Plan*) of Schedule 11.2 (*Management Information*).
- 2.16** The circumstances set out in paragraph 3.2 of Schedule 2.2 (*Security of Access Agreements, Rolling Stock Leases, Station and Depot Leases*) occur.
- 2.17** The Secretary of State issues a TDR Amendment pursuant to paragraph 12.8 (*TDR Amendments*) of Schedule 1.1 (*Franchise Services and Service Development*) in the circumstances described in paragraph 12.9(b) of Schedule 1.1 (*Franchise Services and Service Development*).
- 2.18** The circumstances contemplated in paragraph 12.10(b) of Schedule 1.1 (*Franchise Services and Service Development*) occur.
- 2.19** The circumstances set out in paragraph 3.2 of Schedule 2.2 (*Security of Access Agreements, Rolling Stock Leases, Station and Depot Leases*) occur.
- 2.20** The circumstances set out in paragraph 25.7 of Part 1 of Schedule 6.2 (*The Birmingham/Worcester Proposal*).
- 2.21** The circumstances set out in paragraph 26.7 of Part 1 of Schedule 6.2 (*The Walsall/Wolverhampton Proposal*).
- 2.22** The circumstances set out in paragraph 27.7 of Part 1 of Schedule 6.2 (*The Coventry Corridor Sunday Services Proposal*).
- 2.23** The Secretary of State issues a TDR Amendment pursuant to paragraph 12.7 of Schedule 1.1 (*Franchise Services and Service Development*).
- 2.24** The delay of an item of expenditure or a group of items of similar expenditure where the timing of expenditure is materially different from that included in the Target Profit.

- 2.25** The Secretary of State issuing any other guidance or instruction which could reasonably be expected to have a material impact on the Franchisee's ability to achieve, exceed or fail to achieve the relevant Target Profit.

**Appendix 7 to Schedule 8.1B
Pro Forma Target Tables**

1 **Table 1:** Required when the Operational Performance Fee is assessed using the Quantified Target Methodology. Each item marked with ✓ is to be agreed or reasonably determined in respect of each Reporting Period within the relevant PBF Assessment Period pursuant to paragraph 4.5 of Schedule 8.1B.

Indicator	Default Performance Level	Breach Performance Level	Action Plan Level	Range within which the Franchisee's performance is expected to fall	
				From	To
Cancellations	n/a	n/a	n/a	✓	✓
TOC Minutes Delay				✓	✓
Short Formations				✓	✓
T-3				✓	✓
T-15				✓	✓
All Cancellations				✓	✓
WMSBU Cancellations	✓	✓	✓	n/a	
WCSBU Cancellations	✓	✓	✓		
WMSBU TOC Minutes Delay	✓	✓	✓		
WCSBU TOC Minutes Delay	✓	✓	✓		
WMSBU Short Formations	✓	✓	✓		
WCSBU Short Formations	✓	✓	✓		

- 2 **Table 2:** Required when the Customer Experience Fee is assessed (wholly or in part) using the NRPS Methodology. Each ✓ indicates a single figure to be agreed or reasonably determined for the whole PBF Assessment Period.

Indicator	NRPS Improvement Plan Level	Range within which the Franchisee's performance is expected to fall	
		From	To
NRPS Trains		✓	✓
NRPS Stations		✓	✓
NRPS Customer Service		✓	✓
NRPS Trains – NRPS Service Group 1 (West Midlands NRPS Service Group)	✓		
NRPS Trains - NRPS Service Group 2 (West Coast NRPS Service Group)	✓		
NRPS Trains – NRPS Service Group 3 (London Commuter Service Group)	✓		
NRPS Station – NRPS Service Group 1 (West Midlands NRPS Service Group)	✓		
NRPS Station - NRPS Service Group 2 (West Coast	✓		

3	NRPS Service Group)			
	NRPS Station – NRPS Service Group 3 (London Commuter Service Group)	✓		
	NRPS Customer Services – NRPS Service Group 1 (West Midlands NRPS Service Group)	✓		
	NRPS Customer Services - NRPS Service Group 2 (West Coast NRPS Service Group)	✓		
	NRPS Customer Services – NRPS Service Group 3 (London Commuter Service Group)	✓		

Table 3A: Required when the Customer Experience Fee is assessed (wholly or in part) using the SQR Methodology. Each ✓ indicates a single figure to be agreed or reasonably determined for the whole PBF Assessment Period.

Service Quality Area	SQR Improvement Plan Level
Stations: Ambience	✓
Stations: Maintenance	✓

Stations: Cleanliness	✓
Stations: Information	✓
Stations: Ticketing and staffing	✓
Trains: Ambience	✓
Trains: Cleanliness	✓
Trains: Information	✓
Trains: Customer Service	✓
Customer Service: Technology	✓
Customer Service: Information and customer contact	✓

Table 3B: Required when the Customer Experience Fee is assessed (wholly or in part) using the SQR Methodology. Each ✓ indicates a single figure to be agreed or reasonably determined for the whole PBF Assessment Period.

SQR Component	Range within which the Franchisee's performance is expected to fall	
	From	To
SQR Stations Component	✓	✓
SQR Trains Component	✓	✓
SQR Customer Service Component	✓	✓

4 **Not used**

Appendix 6 to Schedule 1
Schedule 11.2 (*Management Information*)

Schedule 11.2 Management Information

1 Corporate Information

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

- (a) its name;
- (b) its business address and registered office;
- (c) its directors and company secretary;
- (d) its auditors;
- (e) its trading name or names; and
- (f) to the best of the Franchisee's knowledge and belief, having made due and diligent enquiry, the identity of all persons holding, separately or acting by agreement, directly or indirectly, the right to cast more than twenty per cent (20%) of the votes at general meetings of the Franchisee.

1.2 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, any Parent or any Guarantor.

2 Information about Assets used in the Franchise

2.1 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);
 - (iii) all permits, licences, certificates or other documents required to operate such asset; and
 - (iv) a printed or electronic list of all assets owned by the Franchisee from time to time (excluding, unless otherwise requested by the Secretary of State, any office furniture and consumable items); and
- (b) each capital asset acquired by the Franchisee during the term of the EMA and the ERMA with a value of over £50,000, including the Franchisee's source of funding for such asset, the depreciation policy for such asset, the assumed

asset life on bringing such asset into use and the remaining asset life of such asset as at the date of any request from the Secretary of State for this information.

- 2.2** As soon as practicable and, in any event, no later than 27 November 2020, the Franchisee shall identify and provide to the Secretary of State a list and reasonable details of all contracts it has entered into with third parties (including Affiliates) which the Franchisee would not be entitled to terminate on expiry of the Franchise Term without incurring liability in relation to the termination of such contract on that date

3 Identification of Key Personnel and Provision of Organisation Chart

- 3.1** The Franchisee shall identify and provide to the Secretary of State a schedule of Key Personnel who shall be employed by the Franchisee in the performance of the Franchise Agreement. This shall include, but not be limited to, the following persons:

- (a) a managing director whose role will include the overall management of the operation of the Franchise Services;
- (b) a train service delivery director, whose role will include responsibility for ensuring compliance by the Franchisee with Schedule 7.1 (*Operational Performance*);
- (c) a safety director, 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; and
- (d) a finance director, whose role will include responsibility in relation to the Budget, the Annual Audited Accounts, the Final Accounts and the provision of other financial data to Secretary of State.

- 3.2** The Franchisee shall nominate a board level director of the Franchisee (or at the Secretary of State's sole discretion, a director of a Parent or an Affiliate) within seven (7) days of the date of this Agreement. Such director's responsibilities include overseeing, at a strategic level, the Franchisee's interface with the Secretary of State in relation to Sections 119 to 121 (inclusive) of the Act and co-ordinating relevant activities and delivery of counter terrorist security on behalf of the Franchisee in connection with the Franchisee's compliance with relevant instructions issued by the Secretary of State under Section 119 of the Act from time to time. Such director shall be identified by job title in the organisation chart referred to in paragraph 3.3 and shall be deemed part of the Key Personnel.

- 3.3** On or before the Start Date, the Franchisee shall provide to the Secretary of State the schedule of Key Personnel and the organisation chart detailing the responsibilities and reporting lines of each of the Key Personnel and shall update the schedule and organisation chart (and provide copies to the Secretary of State promptly thereafter) as and when any changes occur.

4 Operational Performance Information

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

5 Maintenance of Records

- 5.1** The Franchisee shall maintain true, up to date and complete records of all of the information required to be provided by the Franchisee under the Franchise Agreement.
- 5.2** Each record required to be maintained by the Franchisee in accordance with this Schedule 11.2 shall be held for a period of six (6) years following the date on which such record was required to be created.
- 5.3** References to records in this Schedule 11.2 shall include records maintained under any Previous Franchise Agreement to the extent that such records relate to services equivalent to the Franchise Services and the Franchisee has access to them (which it shall use all reasonable endeavours to secure).
- 5.4** The Franchisee shall not be responsible for any records maintained under any Previous Franchise Agreement, as referred to in paragraph 5.3, being true, complete and up to date. As soon as reasonably practicable after becoming aware that any such records 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 5.1.

6 Right to Inspect

- 6.1** The Franchisee shall, if requested by the Secretary of State, allow the Secretary of State and the Secretary of State's representatives and advisers:
- (a) to inspect and copy any records referred to in this Schedule 11.2, Schedule 8.1A (*Franchise Payments*) or Schedule 8.1B (*Performance Based Fee*) and the Secretary of State may verify any such records; and/or
 - (b) to inspect and copy at any reasonable time any books, records and any other material kept by or on behalf of the Franchisee and/or its auditors and any assets (including the Franchise Assets) used by the Franchisee in connection with the Franchise Services.
- 6.2** The Franchisee shall make available to the Secretary of State, the Secretary of State's representatives and advisers the information referred to in paragraph 6.1 and grant or procure the grant of such access (including to or from third parties) as the Secretary of State, the Secretary of State's representatives and advisers shall reasonably require in connection therewith. The obligation of the Franchisee under this paragraph 6.2 shall include an obligation on the Franchisee to grant or procure the grant of such access to premises (including third party premises) where the information referred to in paragraph 6.1 is kept by or on behalf of the Franchisee.

- 6.3** The Secretary of State, the Secretary of State's representatives and advisers shall be permitted to take photographs, film or make a video recording, or make any other kind of record of any such inspection.
- 6.4** If any inspection reveals that information previously supplied to the Secretary of State was, in the reasonable opinion of the Secretary of State, inaccurate in any material respect or if such inspection reveals any other contravention of the Franchisee's obligations under the Franchise Agreement which the Secretary of State considers to be material, the costs of any such inspection shall be borne by the Franchisee and which, for the avoidance of doubt, shall be Disallowable Costs pursuant to Appendix 1 (*Disallowable Costs*) to Schedule 8.1A.

7 Information to the Passengers' Council and Local Authorities

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

7A Information relating to Committed Obligations and Franchise Specific Obligations

- (a) As soon as practicable and, in any event no later than 27 November 2020, the Franchisee shall deliver to the Secretary of State a statement in respect of the status of each Franchise Specific Obligation and Committed Obligation as at 1 March 2020 including:
- (i) a breakdown of Franchise Specific Obligations and Committed Obligations setting out those which:
 - A. were completed in full and in respect of which the Franchisee has no further obligations;
 - B. were fully implemented but where the Franchisee retained ongoing obligations in relation to the continued discharge of the relevant Franchise Specific Obligation and/or Committed Obligation (as applicable);
 - C. were partially implemented and in respect of which the Franchisee retained ongoing obligations; and
 - D. the Franchisee had not yet commenced implementing.
 - (ii) in respect of each of the Franchise Specific Obligations and Committed Obligations identified in paragraph (i)(B)-(C) above, details of:
 - A. the progress of implementation of the relevant Franchise Specific Obligation or Committed Obligation (as applicable) and any Franchisee obligations which remain outstanding or are continuing;
 - B. where applicable, the reason(s) for any delay in implementing the relevant Franchise Specific Obligation or Committed

Obligation (as applicable), together with any supporting evidence; and

- C. the Franchisee's actual expenditure together with a reconciliation against the amount it was obliged or otherwise projected to spend up to 1 March 2020 in respect of the implementation and continued discharge (as applicable) of the relevant Franchise Specific Obligation or Committed Obligation (as applicable).
- (b) Without prejudice to the Secretary of State's rights pursuant to paragraph 7A(c) below, the Secretary of State may exercise the Secretary of State's rights under paragraph 9.9 of Schedule 11.2 to audit or otherwise investigate any of the matters described in paragraph (a).
- (c) Without prejudice to the Franchisee's obligations under paragraph 7A(a) above, the Secretary of State reserves the right to determine, in the Secretary of State's sole discretion, the position in respect of the matters described in paragraph (a) by reference to all the information available to it.

8 Periodic Update Reports

- 8.1** The Franchisee shall (including in accordance with the requirements of paragraph 5.1 (Review of Compliance) of Part 2 (Special Terms related to Committed Obligations) of Schedule 6.2 (Committed Obligations)) prepare and submit to the Secretary of State a periodic report in each Reporting Period containing such information as the Secretary of State may reasonably specify on or after commencement of this Agreement or from time to time in accordance with paragraph 8.2 below for the previous quarter, or such period as may be reasonably required and disaggregated to the extent that the Secretary of State shall require.
- 8.2** The Franchisee's obligations under this paragraph 8 are subject to the Franchisee having received at least twenty eight (28) days' notice of:
 - (a) the requirement to prepare any such report; and
 - (b) any amendments required to contents of such report.
- 8.3** Without prejudice to any other reporting obligations of the Franchisee, the Franchisee shall, at the end of each Reporting Period, provide a separate and standalone progress update to the Secretary of State in respect of:
 - (a) the matters included in schedule 2 (*Termination of the Franchise Agreement*) to the ERMA and the matters referenced in paragraphs 2.2 and 7A of this Schedule 11.2; and
 - (b) such other related information as the Secretary of State may request.

9 Financial Information

9.1 Accounting Records

The Franchisee shall prepare and at all times during the Franchise Term maintain true, up to date and complete accounting records as are required to be kept under section 386 of the Companies Act 2006. Such records shall be prepared on a consistent basis for each Reporting Period of the Franchisee Year. In particular, the Franchisee shall ensure that such accounting records are produced and maintained in a form which distinguishes between transactions which reasonably and properly relate, on the accruals basis, to:

- (a) the period prior to 1 March 2020;
- (b) the period from 1 March 2020 to the EMA Start Date;
- (c) the term of the EMA;
- (d) the term of the ERMA; and
- (e) the period after the term of the ERMA (if any).

9.2 Reporting Period Financial Information

- (a) The Franchisee shall deliver to the Secretary of State, within ten (10) Weekdays of the end of each Reporting Period:
 - (i) 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 ensuring that:
 - (A) the profit and loss account shall adopt the same format and structure as either (a) the Financial Formats; or (b) the "P&L2" tab of the Financial Model (whichever format and structure has the more detailed breakdown of costs and revenues) except to the extent expressly agreed otherwise by the Secretary of State from time to time for this purpose;
 - (B) in particular, Costs, Capital Expenditure and Revenues shall be allocated consistently to the level of disaggregation required by the Financial Formats or the "P&L2" tab of the Financial Model (whichever format and structure has the more detailed breakdown of costs and revenues) and there shall be no netting off between those disaggregated areas; and
 - (C) the cashflow statement shall clearly state the gross amount of Capital Expenditure incurred by the Franchisee (separately identifying and excluding any amounts funded by third parties) for that Reporting Period and cumulatively for the Franchisee Year to date;
 - (ii) written confirmation that the Management Accounts, to the best of the knowledge, information and belief of the board of directors of the

Franchisee, contain a true and accurate reflection of the current revenues, costs, 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; and

- (iii) written confirmation from a statutory director of the Franchisee that the Franchisee has complied with the restrictions applicable during the Lock-up Period pursuant to paragraph 3 of Schedule 12 (*Financial Covenants and Bonds*).

(b) The Management Accounts shall also set out:

- (i) sufficient information to enable the Secretary of State to calculate with reasonable accuracy the Forecast Closing Cash Position as at the end of the following three (3) Reporting Periods;
- (ii) the Franchisee's forecast of:
 - (A) the Franchisee's daily Cash Balance for the period of thirteen (13) weeks following the Reporting Period to which the Management Accounts relate;
 - (B) the amount of Working Capital Payment (if any) that the Franchisee forecasts that it will require pursuant to paragraph 9 (*Review of Franchisee's performance against Budget*) of Schedule 8.1A in respect of the three (3) Reporting Periods following the Reporting Period to which the Management Accounts relate, which forecasts shall provide an explanation in relation to any material differences between the actual and forecast payments to and from Affiliates as referred to in paragraph 9.2(b)(iv)(C) below; and
 - (C) payments to and from Affiliates of the Franchisee, disaggregated between each individual Affiliate entity, in respect of the three (3) Reporting Periods following the Reporting Period to which the Management Accounts relate;
- (iii) a detailed statement of the Franchisee's actual payments to and from Affiliates of the Franchisee and the net balance of such payments, disaggregated between each individual Affiliate entity in respect of the Reporting Period to which the Management Accounts relate, setting out the details of the specific company or legal entity the transactions were with and the nature of the goods or services exchanged in respect of the Reporting Period to which the Management Accounts relate, which shall provide separate identification of:
 - (A) the Affiliate to or from whom each such payment was made; and

- (B) a description of the nature of the services rendered in relation to each such payment;
- (iv)
- (A) a comparison of the Franchisee's financial performance during such period against the forecast provided by the Franchisee in the then current Business Plan and Quarterly Forecast;
 - (B) a comparison on a line by line basis of Actual Costs, Actual Capex and Actual Revenue of the Franchisee compared to the Budgeted Costs, Budgeted Capex and Estimated Revenue for that Reporting Period; and
 - (C) a detailed statement and a detailed and comprehensive written explanation of any material differences between the actual payments to and from Affiliates of the Franchisee and the forecast of such payments as referred to in paragraph 9.2 (b)(ii) above as set out in the Management Accounts in relation to the preceding Reporting Period;
- (v) a comparison of the Franchisee's cumulative financial performance during the Franchisee Year in which such period occurs against the then current Business Plan and Quarterly Forecast and in particular of cumulative Actual Costs, Actual Capex and Actual Revenue of the Franchisee compared to cumulative forecasts of the same in the then current Business Plan and Quarterly Forecast;
- (vi) a detailed statement and a detailed and comprehensive written explanation of any material differences between such Management Accounts and the forecasts referred to in paragraph 9.2(b)(ii) above as set out in the Management Accounts in relation to the preceding Reporting Period and a detailed and comprehensive explanation of the variances between Actual Costs and Budgeted Costs, Actual Capex and Budgeted Capex, and Actual Revenues and Estimated Revenue and a description of (1) the steps which have been taken by the Franchisee to address and mitigate any Costs in excess of Budgeted Costs and/or Capex variances to Budgeted Capex and/or Estimated Revenue shortfall and/or (2) which could otherwise be taken for that purpose;
- (vii) where:
- (A) 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 then current Business Plan or Quarterly Forecast (whichever is more recent);
 - (B) the Franchisee's Outturn Cost and/or Outturn Profit (as applicable) in relation to the preceding PBF Assessment Period

was worse than the applicable Target Cost or Target Profit pursuant to Schedule 8.1B (*Performance Based Fee*); or

- (C) the Secretary of State considers (acting reasonably) that it is likely that the Franchisee's Outturn Cost and/or Outturn Profit (as applicable) in relation to the current PBF Assessment Period or the preceding PBF Assessment Period (if the Outturn Cost and/or Outturn Profit has not yet been calculated)),

the Secretary of State may require the Franchisee to prepare and submit to the Secretary of State, 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; and

- (viii) if applicable, a detailed statement and explanation of any Agreed Funding Commitment and PCS Advances (each as defined in the Funding Deed) provided during such Reporting Period and any repayments made during such Reporting Period in respect of (i) previously provided Agreed Funding Commitments as against the AFC Plan (as defined in the Funding Deed) and (ii) PCS Advances;
- (ix) a detailed statement and a detailed and comprehensive written explanation of any material differences between such payments to and from Affiliates and the forecast referred to in paragraph 9.2(b)(ii)(C);
- (x) sufficient information to enable the Secretary of State to calculate the Performance Based Fee, including (where applicable) a clear and detailed comparison of the:
 - (A) cumulative Actual Costs less any cumulative Disallowable Costs in relation to the PBF Assessment Period to date, as compared with the cumulative forecast Costs set out in the Target Cost Template as Placed in Escrow; and
 - (B) cumulative Actual Costs less any cumulative Disallowable Costs and cumulative Actual Revenue plus cumulative Revenue Foregone in relation to the PBF Assessment Period to date, as compared with the cumulative forecast Costs and Revenues set out in the Target Profit Template as Placed in Escrow,

and any other information which the Secretary of State may request (acting reasonably).

- (c) Within five (5) Weekdays after receipt of the Management Accounts for each Reporting Period in accordance with paragraphs (a) and (b) above, the Secretary of State shall notify the Franchisee of any further information, explanation or analysis which the Secretary of State requires in relation to the Management Accounts (including information in relation to the

calculation of the Franchise Payment under the provisions of Schedule 8.1A (*Franchise Payments*)) and the Franchisee shall promptly provide such further information or analysis.

9.3 Quarterly Financial Information

(a) Within at least twenty (20) weekdays after the end of the 3rd, 6th and 9th Reporting Periods in each Franchisee Year, the Franchisee shall deliver to the Secretary of State the following information (a "**Quarterly Forecast**"):

(i) a comprehensive updated version of the profit and loss forecast, cash flow forecast and forecast balance sheet provided as part of either the current Annual Business Plan in accordance with paragraph 10.1 (*Annual Business Plans*) of this Schedule 11.2 or the then-current Quarterly Forecast (whichever is more recent) together with a detailed and comprehensive written explanation as to any changes in such forecast from the previous forecast provided pursuant to the provisions of this Schedule 11.2, for each of the following thirteen (13) Reporting Periods or for each of the Reporting Periods to 31 March 2022, whichever is greater;

(ii)

(A) a copy of each new contract with an Affiliate which the Franchisee proposes to enter into or renew in the next 6 months;

(B) a copy of each existing contract with an Affiliate which the Franchisee proposes to amend in the next 6 months; and

(C) details of any potential contract procurement process (pursuant to which the Franchisee proposes to enter into a contract with the successful bidder) in which the Franchisee reasonably expects an Affiliate to participate in the next 6 months,

in each case following the end of the relevant Quarter; and

(iii) a statement from a statutory director of the Franchisee confirming that the profit and loss forecast delivered pursuant to paragraph 9.3(a)(i) has been prepared in accordance with the requirements of the Franchise Agreement.

(b) Where any Reporting Period falls partly within one (1) 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.

(c) The Franchisee shall, promptly and in any event within twenty-five (25) Weekdays of a request from the Secretary of State (acting reasonably), deliver to the Secretary of State an updated forecast in relation to the information required to be delivered pursuant to paragraphs 9.3(a) and 9.3(b) in the same level of detail as is required pursuant to paragraphs 9.3 (a) and 9.3 (b).

- (d) If:
- (i) the Secretary of State has issued a notice to the Franchisee pursuant to paragraph 4.2(a) of Schedule 8.1B (*Performance Based Fee*) in relation to a PBF Assessment Period commencing on any date other than 1 April in any Franchisee Year; and
 - (ii) the Franchisee has not delivered a Quarterly Forecast to the Secretary of State in accordance with this paragraph 9.3 for the most recent quarter,

the Secretary of State may reasonably determine the contents of the Quarterly Forecast for the purposes of setting the Target Cost and/or the Target Profit (as applicable).

9.4 Annual Financial Information

(a) Within fifteen (15) Weekdays of the end of each Franchisee Year, the Franchisee shall deliver to the Secretary of State:

- (i) its Annual Management Accounts for that Franchisee Year, divided between Reporting Periods:
 - (A) prior to 1 March 2020;
 - (B) during the period from 1 March 2020 to the EMA Start Date;
 - (C) during the term of the EMA;
 - (D) during the term of the ERMA; and
 - (E) following the term of the ERMA (if any).

For all Reporting Periods, line items should be disaggregated between sections in relation to Actual Costs, Actual Revenues, Actual Capex, Disallowable Costs, Revenue Foregone, Accrued Disallowable Costs, Accrued Revenue Foregone, accrued SoS Claims, Non-Recoverable Costs and Unreimbursed Disallowable Costs; and

- (ii) a supplementary explanation setting out details of any Non-Recoverable Costs and Disallowable Costs that have not been reimbursed for that Franchisee Year.
- (b) Within four (4) Reporting Periods after the end of each Franchisee Year, the Franchisee shall deliver to the Secretary of State the following information:
- (i) 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. Additionally, the auditors shall certify that the accounting for and reporting of any annual related bonuses paid to the directors and managers is reasonably consistent with GAAP;
 - (ii) a detailed and comprehensive reconciliation between the Annual Audited Accounts and the Management Accounts for the Franchisee

Year (the "**Audited Accounts Reconciliation**"). The Audited Accounts Reconciliation shall:

- (A) include a detailed reconciliation, disaggregating Actual Costs, Actual Revenues, Actual Capex, Disallowable Costs, Revenue Foregone, Accrued Disallowable Costs, Accrued Revenue Foregone, accrued SoS Claims, Non-Recoverable Costs and Unreimbursed Disallowable Costs in the Annual Audited Accounts to: (1) each of the periodic Management Accounts within that Franchisee Year and (2) the Annual Management Accounts in relation to that Franchisee Year, all in a format to be from time to time reasonably specified by the Secretary of State. This reconciliation shall:
 - (I) disaggregate the Actual Costs, Actual Capex and Actual Revenues in the Annual Audited Accounts so as to report against (and show in a format consistent with that used in) the Budget and, where relevant, the Target Cost Template and/or the Target Profit Template held in Escrow in relation to any PBF Assessment Periods within that Franchisee Year; and
 - (II) facilitate the identification of Actual Costs, Actual Capex and Actual Revenues as reported in the Annual Audited Accounts;
- (B) include a statement of the Franchisee's balance sheet included within the Annual Audited Accounts in relation to the previous Franchisee Year (the "**Opening Balance Sheet**"), disaggregated between balances payable to or receivable from the Secretary of State and the aggregate amount of all other balances (such aggregated other balances being the "**Opening Operational Balances**"); and
- (C) include a statement of the Franchisee's audited balance sheet included within the Annual Audited Accounts as at the end of the Franchisee Year (the "**Closing Balance Sheet**"), disaggregated between balances payable to or receivable from the Secretary of State and the aggregate amount of all other balances (such aggregated other balances being the "**Closing Operational Balances**");
- (D) include a statement identifying and explaining the differences between the Opening Operational Balances and the Closing Operational Balances (such differences comprising the "**Operational Delta**") in sufficient detail to allow the Secretary of State to obtain a full understanding of the reasons for the Operational Delta;

- (E) clearly identify and distinguish between transactions within the Operational Delta which reasonably and properly relate, on the accruals basis to each of that Franchisee Year, any other Reporting Periods during the term of the EMA or the ERMA, and any Reporting Periods prior to 1 March 2020, sufficient to allow identification of transactions and accounting adjustments which do not relate to the term of the EMA or the ERMA;
 - (F) identify the total Actual Costs and total Actual Revenue that are included within the Operational Delta;
 - (G) identify any and all Accrued Disallowable Costs or Accrued Revenue Foregone which are in the Opening Balance Sheet or Closing Balance Sheet, and any Accrued Revenue Foregone which is not included in the Closing Balance Sheet but which existed at 19 September 2020;
- (iii) a statement from the Franchisee's auditors (in a format to be reasonably specified by the Secretary of State from time to time, on the basis of providing the Secretary of State with reasonable assurance) that the Audited Accounts Reconciliation has been undertaken accurately;
 - (iv) Not used
 - (v) a statement from the Franchisee's auditors confirming that GAAP has been applied in a fair and consistent manner;
 - (vi) Not used;
 - (vii) Not used; and
 - (viii) sufficient information for the Secretary of State to calculate the Final Adjustments, the Final Working Capital Adjustment and the Performance Based Fee.

9.4A Additional Financial Information

- (a) By no later than the end of the first Reporting Period following the date of the ERMA, the Franchisee shall deliver to the Secretary of State:
 - (i) a draft of the Franchisee's balance sheet as at 1 March 2020, prepared in accordance with GAAP, on the accruals basis and on the basis of all knowledge and information available to the Franchisee at the time of preparation, such balance sheet being disaggregated between balances payable to or receivable from the Secretary of State (such balances in aggregate being the "**Restated P2012 SoS Balances**") and all other balances (such other balances in aggregate being the "**Restated P2012 Operational Balances**"), both provided in a level of detail to be specified from time to time by the Secretary of State (the "**Restated P2012 Balance Sheet**"); and

- (ii) a reconciliation to the Restated P2012 Balance Sheet within the Annual Audited Accounts provided by the Franchisee for the Franchisee Year ending on the date that is closest to 1 March 2020.
- (b) Within 10 Weekdays following the date on which the Restated P2012 Balance Sheet is agreed or determined by the Secretary of State in accordance with paragraphs 9.4A(i) or 9.4A(j) (as applicable) below, the Franchisee shall deliver to the Secretary of State:
 - (i) a draft of the Franchisee's balance sheet as at 20 September 2020 prepared in accordance with GAAP, on the accruals basis and on the basis of all knowledge and information available to the Franchisee at the time of preparation, such balance sheet being disaggregated between balances payable to or receivable from the Secretary of State (such balances in aggregate being the "**Restated P2106 SoS Balances**") and all other balances (such other balances in aggregate being the "**Restated P2106 Operational Balances**") both provided in a level of detail to be specified from time to time by the Secretary of State (the "**Restated P2106 Balance Sheet**"); and
 - (ii) a reconciliation between the Restated P2012 SoS Balances and the Restated P2106 SoS Balances, and between the Restated P2012 Operational Balances and the Restated P2106 Operational Balances.
- (c) As soon as practicable and in any event by no later than two (2) months following the term of the ERMA, the Franchisee shall deliver to the Secretary of State:
 - (i) a draft of the Franchisee's balance sheet as at the date of the end of the ERMA term, prepared in accordance with GAAP, on the accruals basis and on the basis of all knowledge and information available to the Franchisee at the time of preparation, such balance sheet being disaggregated between balances payable to or receivable from the Secretary of State (such balances in aggregate being the "**Final ERMA SoS Balances**") and all other balances (such other balances in aggregate being the "**Final ERMA Operational Balances**") both provided in a level of detail to be specified from time to time by the Secretary of State (the "**Final ERMA Balance Sheet**"); and
 - (ii) a reconciliation between the Restated P2012 SoS Balances and the Final ERMA SoS Balances, and between the Restated P2012 Operational Balances and the Final Operational Balances,with such Final ERMA Balance Sheet being a Closing Balance Sheet as at the date of the end of the ERMA term and, where such date is also the Expiry Date, shall include and be reconciled to the Net Asset Statement (as defined in Appendix 2 (*Form of Supplemental Agreement*) to Schedule 15.4 (*Provisions applying on and after Termination*)) of the Franchise Agreement.
- (d) The Franchisee shall ensure that each of the schedule of Restated P2012 Operational Balances, schedule of Restated P2106 Operational Balances and

schedule of Final ERMA Operational Balances in each Balance Sheet (as defined below) shall clearly identify the assets and liabilities to the account of the Franchisee (being balance sheet items of the Franchisee), properly prepared on an accruals basis for, and disaggregated between, all relevant items including:

- (i) reserves, equity or any other balance sheet items in relation to any Performance Based Fee, Fixed Fee or Management Fee and Performance Payment (as such term is defined in schedule 8.A (*Franchise Payments*) of the EMA);
 - (ii) if applicable, any Agreed Funding Commitments and PCS Advances (each as defined in the Funding Deed), and any interest payable on such amounts, in accordance with the terms of the ERMA;
 - (iii) fixed assets designated as Primary Franchise Assets and/or Residual Value Assets (as applicable); and
 - (iv) fixed assets that have been funded by the Secretary of State in accordance with the terms of the ERMA.
- (e) The Franchisee shall ensure that each of the schedule of Restated P2012 SoS Balances, schedule of Restated P2106 SoS Balances and schedule of Final ERMA SoS Balances in each Balance Sheet (as defined below) shall clearly identify the assets and liabilities to the account of the Franchisee (being balance sheet items of the Franchisee), properly prepared on the accruals basis for, and disaggregated between, all relevant items including but not being limited to:
- (i) any Accrued Disallowable Costs, Accrued Revenue Foregone and accrued SoS Claims;
 - (ii) the Working Capital Payment or Working Capital Repayment (if any) pursuant to Schedule 8.1A (*Franchise Payments*);
 - (iii) accruals in relation to any Franchise Payment;
 - (iv) deferred or accrued Franchise Payments relating to the period prior to 1 March 2020;
 - (v) deferred or accrued Franchise Payments relating to the period from 1 March 2020 onwards; and
 - (vi) accruals or provisions for claims between the Franchisee and the Secretary of State relating to Change or SOSRA.
- (f) The Franchisee shall ensure that each of Restated P2012 Balance Sheet, Restated P2106 Balance Sheet and Final ERMA Balance Sheet shall clearly identify:
- (i) where provisions or accruals have been created for the period following 1 March 2020, a clear evidence base for how these provisions or accruals have been valued by the Franchisee; and

- (ii) where provisions or accruals exist as at the date of any Balance Sheet and such provisions or accruals relate to the period prior to 1 March 2020:
 - (A) a summary of these items;
 - (B) where such items are included with the relevant Balance Sheet(s); and
 - (C) the Franchisee's proposed approach to winding down these items over the term of the ERMA.
- (g) Each of the Restated P2012 Balance Sheet, the Restated P2016 Balance Sheet and the Final ERMA Balance Sheet (together, the "**Balance Sheets**") shall be accompanied by a statement from a director of the Franchisee confirming that such Balance Sheet gives a true and fair view of the assets, liabilities, equity and reserves of the Franchisee as at the relevant dates in accordance with GAAP consistently applied and on the basis of all knowledge and information available to the Franchisee on the date of provision to the Secretary of State in each case.
- (h) The Franchisee shall promptly supply, or procure prompt supply of, all supporting information on an open book basis the Secretary of State may reasonably require in relation to each delivery of any Balance Sheet. If requested by the Secretary of State to do so, the Franchisee shall procure a statement from the Franchisee's auditor confirming that GAAP has been applied in a fair and consistent manner in any such Balance Sheet, including any version of such Balance Sheet after any amendments have been made. As requested by the Secretary of State, the Franchisee shall promptly provide updated versions of any such Balance Sheet to reflect amendments prior to final agreement or determination in accordance with paragraphs 9.4A(i) or 9.4A(j) (as applicable) below.
- (i) After receipt of each Balance Sheet by the Secretary of State in accordance with this paragraph 9.4A, the Franchisee and the Secretary of State shall seek to promptly agree any amendments required to the Balance Sheets in order to give a true and fair view of the assets, liabilities, equity and reserves of the Franchisee as at the relevant dates in accordance with GAAP consistently applied and on the basis of all knowledge and information available to the Franchisee and the Secretary of State at the time of consideration. The Franchisee and the Secretary of State recognise and agree that this will require the most recent revaluation of assets and liabilities of the Franchisee as at the dates of each Balance Sheet, and that such revaluation shall be included in place of any earlier valuation provided in the balance sheets included in any Management Accounts, Annual Management Accounts or Annual Audited Accounts
- (j) Subject to paragraph 9.4A(k) below, in the event that the Franchisee and the Secretary of State cannot agree final versions of any Balance Sheets which, in the Secretary of State's opinion (acting reasonably), give a true and fair

view on the basis of the evidence available to the Secretary of State, the Secretary of State may reasonably determine any values within any such Balance Sheets.

- (k) The Secretary of State shall not be entitled to reasonably determine any Final ERMA Balance Sheet values in accordance with paragraph 9.4A(j) above until the later of:
 - (i) seven (7) Reporting Periods following the termination of the EMA; or
 - (ii) the date upon which the Annual Audited Accounts and Annual Accounts Reconciliation for the Franchisee Year in which the ERMA ends are due to be provided.

Where the value of any assets or liabilities within the Final ERMA Balance Sheet have previously been determined by the Reporting Accountants pursuant to Appendix 2 (*Form of Supplemental Agreement*) to Schedule 15.4 (*Provisions applying on and after Termination*), the Secretary of State shall only be entitled to reasonably determine a different value in the case of manifest error being discovered in the valuation previously determined by the Reporting Accountants.

- (l) The Franchisee shall unwind the Final ERMA Balance Sheet promptly following the date on which the Final ERMA Balance Sheet is agreed or determined by the Secretary of State, acting as a Good and Efficient Operator.
- (m) The Franchisee shall, if requested to do so by the Secretary of State and in the Secretary of State's sole discretion, within two (2) Reporting Periods following the final Reporting Period of the ERMA Term or the Extended Term, as applicable, deliver to the Secretary of State:
 - (i) certified true copies of its Final Accounts for the ERMA Stub Reporting Periods in aggregate, together with copies of all related directors' and auditors' reports;
 - (ii) a detailed and comprehensive reconciliation between the Final Accounts and the Management Accounts for the ERMA Stub Reporting Periods (the "**Final Audited Accounts Reconciliation**"). The Final Audited Accounts Reconciliation shall:
 - (A) include a detailed reconciliation, disaggregating Actual Costs, Actual Revenues, Actual Capex, Disallowable Costs, Revenue Foregone, Accrued Disallowable Costs, Accrued Revenue Foregone, accrued SoS Claims, Non-Recoverable Costs and Unreimbursed Disallowable Costs in the Final Accounts to: (1) each of the periodic Management Accounts within the ERMA Stub Reporting Periods and (2) the Annual Management Accounts in relation to that Franchisee Year, all in a format to be from time to time reasonably specified by the Secretary of State. This reconciliation shall:

- (I) disaggregate the Actual Costs, Actual Capex and Actual Revenues in the Final Accounts so as to report against (and show in a format consistent with that used in) the Budget and, where relevant, the Target Cost Template and/or the Target Profit Template held in Escrow in relation to the ERMA Stub Reporting Periods; and
 - (II) facilitate the identification of Actual Costs, Actual Capex and Actual Revenues as reported in the Final Accounts;
- (B) include a statement of the Franchisee's balance sheet included within the Final Accounts in relation to the ERMA Stub Reporting Periods (the "**Final Opening Balance Sheet**"), disaggregated between balances payable to or receivable from the Secretary of State and the aggregate amount of all other balances (such aggregated other balances being the "**Final Opening Operational Balances**");
 - (C) include a statement of the Franchisee's audited balance sheet included within the Final Accounts as at the expiry of the ERMA Term or the Extended Term (as applicable) (the "**Final Closing Balance Sheet**"), disaggregated between balances payable to or receivable from the Secretary of State and the aggregate amount of all other balances (such aggregated other balances being the "**Final Closing Operational Balances**");
 - (D) include a statement identifying and explaining the differences between the Final Opening Operational Balances and the Final Closing Operational Balances (such differences comprising the "**Final Operational Delta**") in sufficient detail to allow the Secretary of State to obtain a full understanding of the reasons for the Final Operational Delta;
 - (E) clearly identify and distinguish between transactions within the Final Operational Delta which reasonably and properly relate, on the accruals basis to each of the ERMA Stub Reporting Periods, any other Reporting Periods during the term of the ERMA or the ERMA, and any Reporting Periods prior to 1 March 2020, sufficient to allow identification of transactions and accounting adjustments which do not relate to the term of the ERMA or the ERMA;
 - (F) identify the total Actual Costs and total Actual Revenue that are included within the Final Operational Delta;
 - (G) identify any and all Accrued Disallowable Costs or Accrued Revenue Foregone which are in the Final Opening Balance Sheet or Final Closing Balance Sheet, and any Accrued Revenue Foregone which is not included in the Final Closing Balance

Sheet but which existed at the expiry of the ERMA Term or the Extended Term (as applicable);

- (iii) a statement from the Franchisee's auditors (in a format to be reasonably specified by the Secretary of State from time to time, on the basis of providing the Secretary of State with reasonable assurance) that the Final Audited Accounts Reconciliation has been undertaken accurately; and
- (iv) a statement from the Franchisee's auditors confirming that GAAP has been applied in a fair and consistent manner.
- (n) Notwithstanding the foregoing, the Franchisee shall at all times continue to collect and review evidence regarding the true and fair valuation of any assets or liabilities in any Balance Sheet and shall notify the Secretary of State promptly if such evidence indicates that the Balance Sheets previously submitted no longer give a true and fair view of any such assets or liabilities. The Secretary of State is entitled to take this information into consideration in the exercise of any further rights or obligations in this paragraph 9.4A.

9.5 Accounting Standards and Practices

- (a) Each set of Management Accounts and Annual Management Accounts shall:
 - (i) be in the formats set out in the document in the agreed terms marked FF or in such other as the Secretary of State may reasonably specify from time to time;
 - (ii) be prepared in accordance with the Franchisee's obligations in Clause 6.1 (*General Obligations*); and
consistently in accordance with the Franchisee's normal accounting policies, details of which shall be supplied on request to the Secretary of State; and
 - (iii) not include any changes in such accounting policies from those policies that were applied in preparing each of the profit and loss account, the cash flow projection and the balance sheet contained in the last Quarterly Forecast provided pursuant to paragraph 9.3 (*Quarterly Financial Information*) without the prior approval of the Secretary of State.
- (b) The Annual Audited Accounts and Final Accounts shall:
 - (i) be prepared and audited in accordance with GAAP, consistently applied and in accordance with the Companies Act 2006; and
 - (ii) give a true and fair view of:
 - (A) the state of affairs, profits and financial condition of the Franchisee for the period covered by such accounts; and
 - (B) the amount of its total revenue (being all revenue whatsoever from any source obtained from any commercial or non-

commercial activity or undertaking of the Franchisee, such revenue to be disaggregated by reference to revenue derived by the Franchisee from:

- (I) the sale of tickets;
 - (II) income received from Network Rail pursuant to Schedule 4 and Schedule 8 to the Track Access Agreement;
 - (III) car park revenue; and
 - (IV) other income;
- (C) NOT USED.

9.5A Changes to Accounting Policies

The Franchisee shall not, without the express written consent of the Secretary of State, make any alteration to its accounting policies or basis of preparation in relation to its Management Accounts, Annual Management Accounts, Annual Audited Accounts or Final Accounts.

9.6 Parent and Affiliate Accounts and Affiliate Trading

(a) The Franchisee shall, upon the request of the Secretary of State, promptly deliver to, or procure delivery to, the Secretary of State:

- (i) certified true copies of the annual reports and audited accounts of each Parent and Guarantor, together with copies of all related directors' and auditors' reports. If any of the Parents or any Guarantor is domiciled outside England and Wales, the equivalent documents in the jurisdiction of residence of any Parent or Guarantor (as applicable) shall be delivered to the Secretary of State;
- (ii) certified true copies of and/or details of (as instructed by the Secretary of State) any contracts or non-contractual arrangements with any Affiliate, including those which give rise to payments from an Affiliate to the Franchisee or payments from the Franchisee to an Affiliate (including payments or charges in relation to management services);
- (iii) procurement policies in relation to contracts and non-contractual arrangements with Affiliates, including policies in relation to Affiliates procuring services from third parties on behalf of the Franchisee; and
- (iv) evidence that all services provided by Affiliates (including management services) have been procured competitively and on an arm's length basis, have a sound business case, comply with of the Franchise Agreement and are in all ways appropriate.

(b) The Franchisee shall procure that any new contract entered into between the Franchisee and any of its Affiliates is capable of being terminated in accordance with its terms after a period of seven (7) Reporting Periods and

that the Franchisee shall not incur any penalty or be required to make any termination payment to the relevant Affiliate if the Franchisee elects to exercise any such termination right.

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

- (a) Without prejudice to paragraph 2.2 of Schedule 12 (*Financial Obligations and Covenants*) or to any other rights of the Secretary of State under the Franchise Agreement, the Secretary of State and the Secretary of State's representatives shall be permitted to inspect at any time the books, records and any other material kept by or on behalf of the Franchisee in order to check or audit any item contained in or relating to the Management Accounts, the Annual Audited Accounts, the Audited Accounts Reconciliation, the Final Accounts and any information held or provided in connection with the Franchisee's obligations under paragraph 2 of Schedule 12 (*Financial Obligations and Covenants*) or Schedule 8.1A (*Franchise Payments*).
- (b) The Franchisee shall make available to the Secretary of State and the Secretary of State's representatives such information and grant such access or procure the grant of such access (including to or from third parties) as they shall reasonably require in connection with any audit to be carried out pursuant to paragraph 9.7(a). If any audit carried out pursuant to paragraph 9.7(a) reveals, in the reasonable opinion of the Secretary of State, any material inaccuracy in the Management Accounts, then:
- (i) the Secretary of State may:
- (A) reasonably determine any item contained in or relating to the Management Accounts; or
- (B) require any items contained in or relating to the Management Accounts 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 contained in or relating to the Management Accounts should have been accounted for by the Franchisee as reasonably determined by the Secretary of State,
- in either case to the extent that the Secretary of State considers appropriate in the circumstances for the purpose of making any such reasonable determination; and
- (ii) the Franchisee shall pay all reasonable costs of any such audit as a monitoring cost pursuant to paragraph 7.4 of Schedule 10.1 (Procedure for remedying a Contravention of the Franchise Agreement). The Franchisee shall not in any circumstances be entitled to claim back any such costs from the Secretary of State whether pursuant to Schedule 8.1A (*Franchise Payments*) or otherwise.
- (c) Without prejudice to paragraph 9 (*Review of Franchisee's performance against Budget*), 10 (*Periodic Adjustments*), 11 (*Annual Adjustments*) or 17

(*Indexation*) of Schedule 8.1A (*Franchise Payments*), if any audit carried out pursuant to paragraph 9.7(a) reveals, in the reasonable opinion of the Secretary of State, any material inaccuracy in the Annual Audited Accounts, the Final Accounts and/or the contents or form of the Audited Accounts Reconciliation then the Secretary of State shall have the right to reasonably determine the Opening Operational Balance, the Closing Operational Balance and/or any Franchise Payment Components for the purposes of correcting the effect of such material inaccuracy.

9.8 Adjustment and Restatement of the Annual Audited Accounts or Final Accounts

The Franchisee shall promptly notify the Secretary of State as soon as it becomes aware of any requirement to adjust or restate the Annual Audited Accounts or the Final Accounts and shall deliver to the Secretary of State any such adjusted or restated Annual Audited Accounts or the Final Accounts, as soon as such accounts are available.

9.9 Access to financial information

The Secretary of State, the Secretary of State's representatives and/or advisors shall be permitted to inspect at any time the books, records and other material kept by or on behalf of the Franchisee in order to check or audit any item contained in or relating to the financial information provided pursuant to this paragraph 8 (*Periodic Update Reports*) and this paragraph 9 or paragraph 7A of this Schedule 11.2 and paragraph 4 (*Residual Value Assets and Committed Obligations*) of schedule 3 (*Early ERMA Termination*) of the ERMA, and to request further information or review of this information, including:

- (a) the use of an external auditor;
- (b) provision of full access to this information by the Secretary of State's officials, representatives and/or advisors on an "open book" basis; and
- (c) provision of full access to this information by the National Audit Office or other equivalent body on an "open book" basis.

10 Business Plans

10.1 Annual Business Plans

- (a) By no later than the day falling 40 Weekdays prior to the start of the first Reporting Period in each Franchisee Year, the Franchisee shall deliver to the Secretary of State any annual business plan (in written or electronic form) that it provides to its Parent (or any other document or documents which individually or collectively can reasonably be considered to be an annual business plan) in relation to a Franchisee Year (other than the first Franchisee Year) and which describes the Franchisee's planned activities for such Franchisee Year or describes the manner in which the Franchisee will meet its obligations under the Franchise Agreement in respect of that Franchisee Year (the "**Annual Business Plan**"). Any such Annual Business Plan shall be

provided to the Secretary of State within one month of submission of same to the Parent. Where the Franchisee does not produce an annual business plan it shall notify the Secretary of State of all the periodic plans that it does produce and:

- (i) the Secretary of State shall be entitled to copies of such periodic plans as he shall reasonably determine; and
 - (ii) any such periodic plans shall be deemed to be Annual Business Plans for the purposes of this paragraph 10.1.
- (b) The Franchisee shall, at the same time as it submits the Annual Business Plan to the Secretary of State in accordance with paragraph 9.1 (or to the extent that no Annual Business Plan is submitted to the Parent in any Franchisee Year, not more than three (3) Reporting Periods and not less than one (1) Reporting Period prior to the start of each Franchisee Year), provide to the Secretary of State:
- (i) a revised profit and loss forecast (prepared in accordance with the accounting standards and practices set out in paragraph 8.7 (*Accounting Standards and Practices*) and GAAP), which shall include a forecast of Costs, Revenue, Capital Expenditure and any forecast Disallowable Costs, Non-recoverable Costs and Revenue Foregone, in the same format and structure, and using the allocation of Costs and Revenues to individual lines, as either (a) the Financial Formats; or (b) the "P&L2" tab of the Financial Model (whichever format and structure has the more detailed breakdown of costs and revenues), a revised cash flow forecast which clearly states the gross amount of Capital Expenditure forecast to be incurred by the Franchisee (separately identifying any amounts funded by third parties) and a revised forecast balance sheet for each of the thirteen (13) Reporting Periods in the relevant Franchisee Year and each subsequent Franchisee Year of the Franchise Period;
 - (ii) a statement from a statutory director of the Franchisee confirming that the profit and loss forecast delivered pursuant to paragraph 8.5(a)(i) has been prepared in accordance with the requirements of the Franchise Agreement;
 - (iii)
 - (A) a forecast of the Franchisee's Forecast Closing Cash Position for the last day of each of the following thirteen (13) Reporting Periods; and
 - (B) a statement demonstrating how the Franchisee intends to ensure that at the end of each of the following thirteen (13) Reporting Periods it will have an available Forecast Closing Cash Position which is not less than the Floor Cash Position;

- (iv) an annual improvement plan providing:
 - (A) details of any new technologies, processes, developments and/or proposals which could improve the provision of the Franchise Services, reduce the cost of providing the Franchise Services or enable the Franchise Services to be provided more efficiently;
 - (B) an analysis of the impact of any technologies, processes, developments and/or proposals that are proposed in relation to the Franchise Services, including analyses of the costs of and timescale for effecting such changes and the impact on the provision of the Franchise Services;
 - (C) details of those technologies, processes, developments and/or proposals which the Franchisee proposes to implement during that Franchisee Year; and
 - (D) an analysis of the technologies, processes, developments and/or proposals which the Franchisee implemented in the previous Franchisee Year, including details of any cost reductions and/or efficiency gains arising from the same and a reconciliation to the annual improvement plan for the previous Franchisee Year;
- (v) a statement from each of, a statutory director of the Franchisee and, a statutory director of the Parent confirming that the Annual Business Plan has been provided to, considered and endorsed by the board of directors of each Parent and that the board of directors of each Parent is not aware of any other plan which may alter, vary of impact on the Business Plan and shall at any time during the following twelve (12) months notify the Secretary of State should any of them become aware of any such plan; and
- (vi) information in relation to arrangements with Affiliates, including:
 - (A) a forecast of payments to or from any Affiliate;
 - (B) a forecast of fees, remuneration, pension contributions or any other payment to or in respect of any director or officer of the Franchisee; and
 - (C) evidence that all such payments are on arms' length commercial terms in the ordinary course of business and are otherwise compliant with the terms of the Franchise Agreement.
- (b) If:
 - (i) the Secretary of State has issued a notice to the Franchisee pursuant to paragraph 4.2(a) of Schedule 8.1B (*Performance Based Fee*) in relation to a PBF Assessment Period commencing on 1 April in any Franchisee Year; and

- (ii) the Franchisee has not delivered the Annual Business Plan to the Secretary of State in accordance with paragraph 10.2(a),

the Secretary of State may reasonably determine the contents of the Annual Business Plan for the purposes of setting the Target Cost and/or the Target Profit (as applicable and in each case as defined in Schedule 8.1B (*Performance Based Fee*)).

- (c) If the Secretary of State has not issued a notice to the Franchisee pursuant to paragraph 4.2(a) of Schedule 8.1B (*Performance Based Fee*) in relation to a PBF Assessment Period commencing on 1 April of any Franchisee Year, the Franchisee may elect to deliver to the Secretary of State an updated Annual Business Plan within twenty (20) Weekdays of the start of that Franchisee Year.
- (d) If the Parties have agreed or the Secretary of State has reasonably determined the value of the Target Cost and/or the Target Profit pursuant to paragraphs 5.1 and 5.2 of Schedule 8.1B (*Performance Based Fee*), the Franchisee shall:

- (i) update the Annual Business Plan to reflect the Target Cost as agreed or determined (as applicable) pursuant to paragraph 5.1 of Schedule 8.1B (*Performance Based Fee*);
- (ii) update the Target Cost Template, the Target Cost Record of Assumptions, the Target Profit Template and/or the Target Profit Record of Assumptions (in each case, as applicable) to reflect the:
 - (A) Target Cost, Target Cost Cap and Target Cost Floor; and/or
 - (B) Target Profit, Target Profit Cap and Target Profit Floor,(as applicable) as agreed or determined pursuant to paragraphs 5.1 and 5.2 of Schedule 8.1B (*Performance Based Fee*); and
- (iii) deliver the updated Annual Business Plan, Target Cost Template, Target Cost Record of Assumptions, Target Profit Template and/or Target Profit Record of Assumptions (as applicable) to the Secretary of State by no later than 1 April 2021,

and the Target Cost Spreadsheet, Target Cost Record of Assumptions, Target Profit Template and/or Target Profit Record of Assumptions (as applicable) shall be Placed in Escrow once the Secretary of State is satisfied that such documents accurately reflect the:

- (i) Target Cost, Target Cost Cap and Target Cost Floor; and/or
- (ii) Target Profit, Target Profit Cap and Target Profit Floor,

(as applicable) as agreed or determined pursuant to paragraphs 5.1 and 5.2 of Schedule 8.1B (*Performance Based Fee*).

- (e) If at any time during a Franchisee Year the Franchisee produces any other annual business plan or periodic plan which is delivered to its Parents, it shall

at the same time as delivering such plan to its Parents notify the Secretary of State of all such plans. The Secretary of State shall be entitled to copies of such further plans as the Secretary of State shall reasonably determine.

10.2 Business Action Plan

- (a) The Secretary of State may at any time require the Franchisee to produce a Business Action Plan in respect of any aspect of the Business Plan. Such Business Action Plan may include steps relating to:
 - (i) timetable and service pattern development;
 - (ii) Station facility improvement;
 - (iii) performance management improvement;
 - (iv) customer service improvement; and
 - (v) improvements in the quality of service delivery or the efficiency of delivery of the Franchise Services.
- (b) The Franchisee shall comply with any guidance issued by the Secretary of State about how and with whom any consultation on the content of a Business Action Plan is to take place.
- (c) Any proposal in a Business Action Plan shall only be implemented if and to the extent that the Secretary of State decides it is appropriate to do so and subject to any conditions which the Secretary of State may impose.

11 Safety Information

11.1 Safety

- (a) The Franchisee shall co-operate with any request from any relevant competent authority for provision of information and/or preparation and submission of reports detailing or identifying compliance with safety obligations set out in the Safety Regulations including any breaches of the Safety Regulations.
- (b) The Franchisee shall notify the Secretary of State as soon as practicable of the receipt and contents of any formal notification relating to safety or any improvement or prohibition notice received from the ORR. Immediately upon receipt of such notification or notice, the Franchisee shall provide the Secretary of State with a copy of such notification or notice.
- (c) The Franchisee shall participate in industry groups and committees addressing the domestic and European safety agenda of the Railway Group.

12 Further Information

12.1 The Franchisee shall:

- (a) deliver to the Secretary of State, or procure the delivery to the Secretary of State of, such data, 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 12.1(a) in respect of any data, information, records or documents that relate to its dealings with the Franchisee in connection with the Franchisee's performance of its obligations under the Franchise Agreement.

12.2 The information referred to in paragraph 12.1 shall include:

- (a) any agreement, contract or arrangement to which the Franchisee is a party in connection with any rolling stock vehicles used in the operation of 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;
and
- (d) any arrangements for the securitisation of any lease granted in respect of such rolling stock vehicles.

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

- (a) the information required to be provided under this Schedule 11.2 more frequently than set out in this Schedule 11.2;
- (b) the information required to be provided under this Schedule 11.2, or, in the Secretary of State's sole discretion, more detailed financial information, at any time in connection with the re-letting of the Franchise;
- (c) such unaudited accounts under such accounting policies as may be prescribed by the Secretary of State, acting reasonably, from time to time;
- (d) research or survey datasets which relate to or are connected with the Franchisee's performance of the Franchise Agreement;
- (e) any data or information which supports operational and business functions;
and
- (f) information about any agreement, contract or arrangement to which the Franchisee is a party and which relate to or are connected with the Franchisee's performance of the Franchise Agreement.

12.4 Request for Data

- (a) If the Secretary of State requires any further information, data, records or documents during the Franchise Term which the Franchisee is not otherwise required to provide pursuant to this Franchise Agreement (the "**Relevant**

Data”), the Secretary of State may issue a request to the Franchisee specifying:

- (i) the Relevant Data the Franchisee is to provide to the Secretary of State;
- (ii) any requirements in relation to timeliness, format and method of delivery of such Relevant Data; and
- (iii) where such Relevant Data is required to be provided on an ongoing basis, may include the frequency with which such Relevant Data shall be required to be delivered,

(each a “**Request for Data**”).

- (b) The Franchisee acknowledges and agrees that any Relevant Data provided by the Franchisee pursuant to a Request for Data may be shared with other persons who are acting on the Secretary of State’s behalf or such other persons as the Secretary of State may notify, in each case, in accordance with Schedule 17 (*Confidentiality and Freedom of Information*).
- (c) Within fourteen (14) days of the date of issuance of a Request for Data by the Secretary of State or such other timeframe as may be specified in the relevant Request for Data, the Franchisee shall:
 - (i) provide to the Secretary of State all Relevant Data specified in the Request for Data as it is reasonably able to provide or procure within such period; and
 - (ii) if the Franchisee has not provided all the Relevant Data specified in the Request for Data, it shall provide the Secretary of State with:
 - (A) details of any further action that would be required to enable it to provide such Relevant Data, including the rationale for requiring such further action together with relevant supporting evidence;
 - (B) the Franchisee’s proposed timescales for taking such action in timely manner and the rationale for arriving at such timeframe; and
 - (C) where applicable, an estimate (including a breakdown of the individual cost components) of any additional costs the Franchisee expects to incur (acting reasonably) in order to provide such Relevant Data together with relevant supporting evidence.
- (d) The Secretary of State may, following review of the Franchisee’s response pursuant to paragraph 12.4(c)(ii), require the Franchisee to take such further action as the Secretary of State may specify (acting reasonably), including providing part or all of the Relevant Data which remains outstanding or taking any steps to mitigate the amount of any costs that the Franchisee may incur in order to comply with the Request for Data.

- 12.5** The Franchisee shall provide an audit of data sources and information that are used by the Franchisee's business, as requested by the Secretary of State (acting reasonably) from time to time. The Secretary of State may also request information and guidance from the Franchisee about its data sources, including the purpose for collecting such data, any risks associated with handling or sharing such data, and any third party contracts or agreements used to collect and process the data.
- 12.6** Nothing in paragraphs 11 or 12 shall require the Franchisee to provide any Relevant Data or any other data, information, records or documents which would, or is reasonably likely to:
- (a) require it to incur additional costs, over and above those a Good and Efficient Operator would incur, unless the Secretary of State otherwise directs or gives consent or such additional costs were contemplated when the Secretary of State agreed or reasonably determined the Franchisee's most recent business plan and cost budget in accordance with the terms of Schedule 8.1A, and Schedule 11.2; or
 - (b) put it in breach of any applicable law or regulation.
- 12.7** If the Franchisee reasonably considers that any provision of paragraphs 11 and 12 requires, or is likely to require, it do anything inconsistent with acting as a Good and Efficient Operator, it shall notify and consult with the Secretary of State as soon as reasonably practicable following becoming aware of the same and proceed in accordance with any guidance or directions that the Secretary of State may reasonably provide or direct.

13 Information from Third Parties

- 13.1** The Franchisee shall, if the Secretary of State so requests, through a Request for Data or otherwise, use all reasonable endeavours to ensure that the Secretary of State has direct access to any information, data or records relating to the Franchisee which is or are maintained by third parties and to which the Secretary of State is entitled to have access, or of which the Secretary of State is entitled to receive a copy under the Franchise Agreement.
- 13.2** The Franchisee shall, if the Secretary of State so requests, procure the provision by RSP to the Secretary of State of such information, data and records as the Franchisee is entitled to receive under the Ticketing and Settlement Agreement, in such form as the Secretary of State may specify from time to time.
- 13.3** The obligations of the Franchisee under this Schedule 11.2 to provide information to the Secretary of State shall not apply if the Secretary of State notifies the Franchisee that 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.
- 13.4** The Franchisee shall promptly advise the Secretary of State of any changes that are to be made to the databases, systems or processes which are owned, operated or otherwise used by the Franchisee which may have an impact on the Franchisee's

ability to meet its data sharing obligations pursuant to the Franchisee Agreement or any Request for Data issued by the Secretary of State or will, in the reasonable opinion of the Franchisee, materially affect the continuity of any the supply of information or data that the Franchisee is required to provide to the Secretary of State pursuant to this Schedule 11.2. Any such advice shall include an assessment of the materiality of the relevant change.

13.5 To the extent that collection or supply of any data, information, records or documents is managed by a third party on the Franchisee's behalf:

- (a) the Franchisee shall use all reasonable endeavours to ensure that all relevant third party service providers permit the sharing with the Secretary of State of all data, information, records or documents which such third party service provider shall be required to provide or may provide on request to the Franchisee; or
- (b) where the Franchisee is unable to procure access pursuant to paragraph 13.5(a), it shall use all reasonable endeavours to agree a variation or amendment to any contract or other arrangement in place between the Franchisee and the relevant third party as may be required to comply with paragraph 13.5(a).

13.6 During the Franchise Term, the Franchisee shall:

- (a) not enter into any new contracts or other arrangements which may materially adversely affect the Franchisee's ability to comply with paragraphs 12 and 13 of this Schedule 11.2, without the prior written consent of the Secretary of State; and
- (b) to the extent it is entering into any material amendments to any existing contracts or arrangements with third parties, use all reasonable endeavours to ensure that the contract or arrangement (as amended) does not materially adversely affect the Franchisee's ability to comply with its requirements pursuant to paragraphs 12 and 13.

14 Compatibility of Information

14.1 All financial, operational or other information, and any data and records required to be provided to the Secretary of State under the Franchise Agreement shall be provided, if so requested by the Secretary of State, in a form compatible with the Secretary of State's electronic data and records systems on the Start Date, as modified from time to time in accordance with paragraph 3 of Schedule 13.1 (*Rail Industry Initiatives*).

14.2 The Franchisee shall ensure that the interconnection of such systems or the provision of such information, data and records to the Secretary of State under the Franchise Agreement will not result in any infringement of any third party Intellectual Property Rights to which its systems or such information, data or records may be subject.

15 Environmental Information

15.1A Data Sharing

- (a) The Franchisee shall share all available environmental data with the Secretary of State and RSSB as requested from time to time by the Secretary of State and/or RSSB, each acting reasonably, including in relation to:
 - (i) air pollution emissions referenced in the Clean Air Strategy 2019 (including nitrogen oxides and particulate matter);
 - (ii) emissions of Greenhouse Gases (as defined in the Kyoto Protocol to the United Nations Framework Convention on Climate Change); and
 - (iii) energy usage.
- (b) The Secretary of State and/or (with the prior approval of the Secretary of State) RSSB, each acting reasonably, may instruct the Franchisee to collect and share with the Secretary of State and/or RSSB (as applicable) such additional environmental data as the Secretary of State and/or RSSB (as applicable) may require from time to time.

15.1 Environmental Information Data Collection Plan

- (a) The Franchisee shall, by no later than three (3) months after the Start Date, 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 Collection Plan**") detailing, in relation to each item of Excluded Data, the actions which the Franchisee would need to take in order to be able to provide such Excluded Data, the Franchisee's best estimate of the cost of taking such action and the date by which, if such actions were taken, the Franchisee would be able to begin providing such Excluded Data to the Secretary of State.
- (b) The Dataset, excluding any measures which the Secretary of State agrees, acting reasonably, that the Franchisee is, despite using reasonable endeavours, unable to provide, shall be referred to as the "**Initial Dataset**".
- (c) The Secretary of State may require:
 - (i) the Franchisee to implement the Environmental Data Collection Plan in whole or in part; and/or
 - (ii) the Franchisee to take such other actions as, in the reasonable opinion of the Secretary of State, would enable the Franchisee to provide any item of Excluded Data,

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

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

the Franchisee 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).

- (e) With effect from the Start Date, the Franchisee shall measure and collect the data included in the Initial Dataset.
- (f) The Franchisee may, in its discretion, measure and collect additional data, provided that the minimum required under the Initial Dataset is adhered to and the Franchisee 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.
- (g) The Franchisee shall ensure that the form of measurement of the Initial Dataset enables it to report a consolidated periodic or annual usage figure to the Secretary of State as specified for each measure in paragraph 1 of Appendix 1 (*Environmental Information*) to this Schedule 11.2.
- (h) In addition to paragraph (g) above, the Franchisee shall deliver the information required to be delivered pursuant to and in accordance with paragraph 1 (*Environmental Impact Monitoring Dataset*) of Appendix 1 (*Environmental Information*) to this Schedule 11.2 through the RSSB's online "Environmental Reporting Tool".

15.2 Environmental Impact Monitoring Report and Environmental Impact Monitoring Audit

- (a) The Franchisee shall submit to the Secretary of State a report setting out the result of the data collection of the Initial Dataset required by this paragraph 15 in accordance with the applicable granularity and regularity specified in paragraph 2 of Appendix 1 (*Environmental Information*) to this Schedule 11.2 (the "**Environmental Impact Monitoring Report**") within three (3) months following the end of each Franchisee Year.
- (b) The Franchisee shall procure a suitably qualified independent body (such independent body to be appointed only with the prior written approval of the Secretary of State) to undertake an annual independent written audit of the data provided in the Environmental Impact Monitoring Report and the

collection methodology of the Initial Dataset in respect of each Franchisee Year (the "**Environmental Impact Monitoring Audit**").

- (c) The Franchisee shall procure that the independent body appointed pursuant to paragraph 15.2(b) includes in the Environmental Impact Monitoring Audit:
 - (i) a retrospective assessment (covering the Franchisee Year to which the audit relates) of the Franchisee's data collection methodology and level of data granularity carried out in accordance with this paragraph 15.2 and any recommendations by the independent body in respect of such methodology;
 - (ii) a verification of the accuracy of past data submissions made in respect of the Initial Dataset and as summarised in the Environmental Impact Monitoring Report; and
 - (iii) an assessment of the Franchisee's proposed data collection methodology and level of data granularity for the following Franchisee Year's data collection, and
 - (iv) where the independent body has identified as part of its audit any errors, discrepancies or concerns with any of the items described in paragraphs 15.2(c)(i) to (iii) above, whether these are, in the reasonable opinion of the independent body undertaking the audit material or minor errors, discrepancies or concerns.
- (d) The Franchisee shall submit a copy of the Environmental Impact Monitoring Audit to the Secretary of State at the same time as Environmental Impact Monitoring Report is submitted in accordance with paragraph 15.2(a) above.
- (e) Where the Environmental Impact Monitoring Audit highlights errors, discrepancies or concerns with any of the items described in paragraphs 15.2(c)(i) to (iii) above, the Franchisee shall:
 - (i) 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 ten (10) Weekdays following the date of the submission of the Environmental Impact Monitoring Audit to the Secretary of State so that there is a complete and accurate record of the data in question;
 - (ii) 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 ten (10) Weekdays, following the date of 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

- (iii) in the case of concerns in relation to the Franchisee's data collection methodology and level of data granularity for the forthcoming Franchisee Year's data collection, make such amendments to such methodology as recommended in the Environmental Impact Monitoring Audit so as to address those concerns.

15.3 Air Quality Monitoring and Improvement

- (a) The Franchisee shall for the purposes of air quality monitoring at Stations under its control:
 - (i) provide to the Secretary of State all existing data in relation to air quality and measures that the Franchisee is implementing to improve air quality at Stations under its control;
 - (ii) provide to the Secretary of State, RSSB, or any person whom the Secretary of State might reasonably specify, access to any sites, power supplies and telemetry under its control as requested by the Secretary of State or RSSB from time to time, including for the purpose of installing air quality monitors; and
 - (iii) assist the Secretary of State, RSSB or any person whom the Secretary of State might reasonably specify in the placement, replacement and dispatch of diffusion tubes.
- (b) The Franchisee shall for the purposes of air quality monitoring on rolling stock vehicles:
 - (i) provide to the Secretary of State, RSSB or any person whom the Secretary of State might reasonably specify during the Franchise Term, free-of-charge access to rolling stock vehicles whilst in or out of service;
 - (ii) consent for equipment to be installed on rolling stock vehicles for the purposes of air quality monitoring;
 - (iii) provide available on-train air quality data as the Secretary of State may require from time to time; and
 - (iv) consider cost-effective opportunities to improve air quality on rolling stock vehicles through operational or maintenance changes and, where reasonable and with the agreement or direction of the Secretary of State, make changes to rolling stock vehicles to improve on-board air quality.
- (c) The Franchisee shall for the purposes of monitoring and reducing emissions from traction:

- (i) through an RSSB-led industry working group, support the development and delivery of a policy in relation to the maximum time for which a train's engine may be kept idling while stationary;
 - (ii) use all reasonable endeavours to work with the fleet owner to develop an emissions reduction pathway for all diesel rolling stock vehicles;
 - (iii) consider cost-effective opportunities to reduce emissions through operational or maintenance changes and, where reasonable and with the agreement or direction of the Secretary of State, make changes to rolling stock vehicles to reduce their air pollution impact;
 - (iv) provide to the Secretary of State, RSSB or any person whom the Secretary of State might reasonably specify free-of-charge access to rolling stock vehicles and infrastructure for emissions testing as requested by the Secretary of State from time to time; and
 - (v) provide to the Secretary of State such information and/or data in relation to exhaust emissions from rolling stock vehicles comprised within the Train Fleet as the Secretary of State may reasonably require from time to time for the purposes of data collection and analysing the consequent impact of such emissions on air quality in Depots and Stations and along the Routes on which such rolling stock vehicles are deployed.
- (d) The Franchisee shall for the purposes of supporting wider industry approaches to emissions reduction:
- (i) consider the impact of any rolling stock vehicle, operational or infrastructure changes on emissions; and
 - (ii) provide to the Secretary of State and RSSB a named contact as a point of enquiry in relation to air quality.

16 Environmental Impact Targets

16.1 Environmental Impact Targets set by the Secretary of State

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

16.2 Performance against the Environmental Impact Targets

- (a) For each Franchisee Year the Secretary of State shall determine the Franchisee's performance against each Environmental Impact Target on an annual basis (within two (2) Reporting Periods of receipt of the Environmental Impact Monitoring Report) by comparing:
- (i) **for traction carbon emissions:** the Franchisee's performance set out in the Environmental Impact Monitoring Report (as updated

- following the Environmental Impact Monitoring Audit) against the relevant Environmental Impact Target for the relevant Franchisee Year, in accordance with the annual trajectory specified in the Sustainable Development Strategy;
- (ii) **for non-traction energy use:** the Franchisee's performance as set out in the Environmental Impact Monitoring Report (as updated following the Environmental Impact Monitoring Audit) against the relevant Environmental Impact Targets;
 - (iii) **for waste:** the Franchisee's performance as set out in the Environmental Impact Monitoring Report (as updated following the Environmental Impact Monitoring Audit) against the relevant Environmental Impact Targets;
 - (iv) **for mains water:** for the second (2nd) Franchisee Year, the number of automatic water meters installed against the total number of water meters. These details shall be reported by the Franchisee within three (3) months of the end of the second (2nd) Franchisee Year. For subsequent Franchisee Years, the Franchisee's performance as set out in the Environmental Impact Monitoring Report (as updated following the Environmental Impact Monitoring Audit) against the relevant Environmental Impact Targets.
- (b) For the purposes of undertaking the comparison pursuant to paragraph 16.2(a), the results referred to in paragraphs 16.2(a)(i) to (iii) (as the case may be) shall be rounded up to one (1) decimal place with the midpoint (that is, 4.45) rounded upwards (that is, 4.5).
 - (c) As soon as reasonably practicable following the Start Date and in any event within six (6) months of the Start Date, the Franchisee shall produce and provide to the Secretary of State for approval an implementation plan for the duration of the Franchise Period which is capable of achieving each of the Environmental Impact Targets each Franchisee Year (as such implementation plan may be revised in accordance with paragraph 16.3 (*Remedial Actions*) below (the "**Environmental Impact Targets Plan**").
 - (d) Following the Secretary of State's approval, the Franchisee shall use all reasonable endeavours to implement the Environmental Impact Targets Plan (including any such plan which is revised in accordance with paragraph 16.2(e)) in order to achieve the Environmental Impact Targets.
 - (e) Notwithstanding the requirements of this paragraph 16.2, the Franchisee shall review its then current Environmental Impact Targets Plan and revise such plan as necessary by the end of the fifth (5th) Franchisee Year to ensure that such plan, in the reasonable opinion of the Secretary of State, is capable of achieving each Environmental Impact Target in each Franchisee Year.

16.3 Remedial Actions

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

16.4 Publication

- (a) The Franchisee shall publish (in such format as the Secretary of State may reasonably require) details of its performance against the Environmental Impact Targets (the "**Performance Information**") in widely accessible forms, including, as a minimum, publishing them on its website and in each Customer Report.
- (b) The Franchisee:
 - (i) agrees that the Secretary of State shall be permitted to publish the Performance Information from time to time in such format and through such media as the Secretary of State may elect; and
 - (ii) shall co-operate with any programme or other initiative mandated or undertaken by the Secretary of State to publish the Performance Information.

**Appendix 1 to Schedule 11.2
Environmental Information**

1 Environmental Impact Monitoring Dataset

Subject	Unit	Granularity	Regularity
TRACTION	EC4T (kWh)	Breakdown per distinct fleet - metered	Four (4) week period
	EC4T (kWh)	Breakdown per distinct fleet - unmetered	Four (4) week period
	Gas-oil (litres)	Breakdown per distinct fleet	Four (4) week period
NONTRACTION	Electricity (kWh)	Total	Four (4) week period or monthly
	Gas (kWh)	Total	Four (4) week period or monthly
	Gas-oil (litres)	Total	Four (4) week period or monthly
CARBON	Scope 1 emissions (tonnes)	Total	Annual
	Scope 2 emissions (tonnes)	Total	Annual
	Embodied carbon in new infrastructure projects over the amount set out in paragraph 10.3 (b) (<i>Sustainable Construction</i>) of Schedule 13.1 (<i>Rail Industry Initiatives</i>)	Total	Per project
WATER	Mains Water consumption (m ³)	Total	Annual
	Water recycling initiatives	Narrative	Annual
WASTE	Waste generated (tonnes)	Total	Annual
	Waste recycled (tonnes)	Total	Annual
	Waste subject to other recovery (tonnes)	Total	Annual
	Waste to landfill (tonnes)	Total	Annual

Subject	Unit	Granularity	Regularity
	Hazardous waste	Total	Annual
ENVIRONMENTAL MANAGEMENT SYSTEM (EMS)	Enforcement/information Notices	Total	Annual
	Environmental fines or prosecutions	Total	Annual
	Environmental incidents reported through the EMS	Total	Annual
	Environmental training records % personnel briefed/trained	Total	Annual

2 Environmental Impact Targets

Traction Carbon Emissions	Non-Traction Energy Use	Waste	Mains Water
A reduction of 49% in kg CO2E per vehicle km against the 2015/16 baseline figure of 0.920 CO2E per vehicle km over the Franchise Term, such reduction to be achieved in accordance with the Sustainable Development Strategy referred to in paragraph 10.1 (<i>Sustainable Development Strategy</i>) of Schedule 13.1 (<i>Rail Industry Initiatives</i>), which will contain a target for each Franchisee Year for this purpose.	<p>1 By the Expiry Date, an overall reduction in kilowatt hours (kWh) of an amount expressed as a percentage equal to (A) + (B) + (C) (calculated in accordance with paragraph 2 below), against the 2015/16 baseline figure of 24,868,570 kWh (the "Overall kWh Reduction").</p> <p>2 For the purposes of paragraph 1 of this table 2, the references to (A), (B) and (C) shall have the meanings given to them below: (A) means an amount equal to the product of:</p>	From the end of the second (2nd) Franchisee Year, the Franchisee must send zero waste to landfill and must recycle or prepare for re-use, ninety per cent (90%) of waste (by weight) per Franchisee Year.	By the end of the second (2nd) Franchisee Year, the Franchisee must install automatic meter readings (AMR) for all water meters, where practicable. The Franchisee shall determine a baseline of water consumption by the end of the third (3rd) Franchisee Year, such baseline to be agreed with the Secretary of State. The Franchisee shall develop a target to reduce

Traction Carbon Emissions	Non-Traction Energy Use	Waste	Mains Water
	<p>(i) the total number of Franchisee Years comprised in the Franchise Term which are of thirteen (13) Reporting Periods in duration; and</p> <p>(ii) two point five per cent (2.5%);</p> <p>(B) means, if the first Franchisee Year is of less than thirteen (13) Reporting Periods in duration, an amount expressed as a percentage in relation to that Franchisee Year which is derived by the application of the following formula: $2.5 \times (FY/13)$</p> <p>Where: FY means the number of Reporting Periods in the first Franchisee Year during the Franchise Term; and</p> <p>(C) means, if the Final Franchisee Year is of less than thirteen (13) Reporting Periods in duration, an amount expressed as a percentage in relation to that Franchisee Year which is derived by the application of the following formula: $2.5 \times (FY/13)$</p> <p>Where: FY means the number of Reporting Periods in</p>		<p>water consumption against the agreed baseline referred to above by the end of the fourth (4th) Franchisee Year, such target to be agreed with the Secretary of State.</p>

Traction Carbon Emissions	Non-Traction Energy Use	Waste	Mains Water
	<p>the Final Franchisee Year during the Franchisee Term:</p> <p>3 By 31 December 2020, a reduction in kWh of an amount equal to not less than fifty per cent (50%) of the Overall kWh Reduction.</p> <p>4 By 31 March 2024, a reduction in kWh of an amount equal to not less than seventy five per cent (75%) of the Overall kWh Reduction.</p>		

Appendix 2 to Schedule 11.2
Operational Performance 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 2. Such information shall include details as to whether or not any curtailment, diversion, delay or failure to attain any connection is attributable, in the Franchisee's opinion, to either a Force Majeure Event or the implementation of a Service Recovery Plan.

1.2 The Franchisee shall, subject to paragraph 1.3, provide to the Secretary of State the information set out in the following tables at the frequency specified in the Column of each such table headed "**When information to be provided**".

1.3 When so requested by the Secretary of State, the Franchisee shall, within such reasonable period as the Secretary of State may specify, make such information available for review by the Secretary of State by reference to:

- (a) such level of disaggregation (including by Route or Service Group) as is reasonably specified by the Secretary of State; and
- (b) any particular day, week or other longer period as is reasonably specified by the Secretary of State.

1.4 The following key shall apply to the table in this Appendix 2:

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

1.5 For the purposes of this Schedule 11.2, the following words and expressions shall have the following meanings:

Number of Primary

Minutes Delay attributable to any other Train Operator

- means the number of minutes of delay to the Passenger Services that are:
- (a) attributed as a "Primary Delay" in accordance with the Delay Attribution Principles and Rules; and
 - (b) attributable to any other Train Operator;

Number of Primary

Minutes Delay attributable to Network Rail

- means the number of minutes of delay to the Passenger Services that are:
- (a) attributed as a "Primary Delay" in accordance with the Delay Attribution Principles and Rules; and
 - (b) attributable to Network Rail;

<p>Number of Primary Minutes Delay attributable to the Franchisee</p>	<p>means the number of minutes of delay to the Passenger Services that are:</p> <p>(a) attributed as a "Primary Delay" in accordance with the Delay Attribution Principles and Rules; and</p> <p>(b) attributable to the Franchisee;</p>
<p>Number of Primary Minutes Delay on other Operators attributable to the Franchisee</p>	<p>means the number of minutes of delay to passenger services operated by any other Train Operator or services operated by freight operators that are attributed:</p> <p>(a) as "Primary Delay" in accordance with the Delay Attribution Principles and Rules; and</p> <p>(b) to the Franchisee pursuant to the Track Access Agreement,</p> <p>disregarding any minutes of delay that are imputed to other Train Operators' passenger services that were cancelled.</p>
<p>Number of Reactionary Minutes Delay attributable to any other Train Operator</p>	<p>means the number of minutes of delay to the Passenger Services that are:</p> <p>(a) attributed as a "Reactionary Delay" in accordance with the Delay Attribution Principles and Rules; and</p> <p>(b) attributable to any other Train Operator;</p>
<p>Number of Reactionary Minutes Delay attributable to Network Rail</p>	<p>means the number of minutes of delay to the Passenger Services that are:</p> <p>(a) attributed as a "Reactionary Delay" in accordance with the Delay Attribution Principles and Rules; and</p> <p>(b) attributable to Network Rail;</p>
<p>Number of Reactionary Minutes Delay attributable to the Franchisee</p>	<p>means the number of minutes of delay to the Passenger Services that are:</p> <p>(a) attributed as a "Reactionary Delay" in accordance with the Delay Attribution Principles and Rules; and</p> <p>(b) attributable to the Franchisee; and</p>
<p>Number of Reactionary Minutes Delay on other Operators attributable to the Franchisee</p>	<p>means the number of minutes of delay to passenger services operated by any other Train Operator or services operated by freight operators that are attributed:</p> <p>(a) as "Reactionary Delay" in accordance with the Delay Attribution Principles and Rules; and</p> <p>(b) to the Franchisee pursuant to the Track Access Agreement,</p> <p>disregarding any minutes of delay that are imputed to other Train Operators' passenger services that were cancelled.</p>

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

Table 1 - Operational Performance Information		
Information to be provided	Information (format)	When information to be provided
Number of Passenger Services		
Number of Passenger Services in the Timetable	[number]	B
Number of Passenger Services in the Enforcement Plan of the Day	[number]	B
Number of Cancellations and Partial 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

Table 1 - Operational Performance Information		
Information to be provided	Information (format)	When information to be provided
Number of Disputed Cancellations and Disputed Partial Cancellations for the twelve (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 twelve (12) preceding Reporting Periods for which disputed attribution has been resolved or determined since the Franchisee's previous report including whether each relevant Disputed Cancellation and/or Disputed Partial Cancellation was attributed to Network Rail or to the Franchisee	[number]	B
Where there is a difference between the Timetable and the Plan of the Day on any day the following: (a) the fact of such difference; and (b) the number of: (i) Passenger Services affected; and (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	[number]	B
Where there is a difference between the Plan of the Day and the Enforcement Plan of the Day on any day: (a) the fact of such difference; (b) the number of: (i) Passenger Services affected; and (ii) Cancellations or Partial Cancellations which would have arisen if the Plan of the	[number]	B

Table 1 - Operational Performance Information		
Information to be provided	Information (format)	When information to be provided
Day had been the same as the Enforcement Plan of the Day		
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	[number]	B
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	[number]	B
Number of Short Formations		
Simple Short Formations		
All day and Peak		
Number of all day and Peak Passenger Services that have less than the required Passenger Carrying Capacity specified in the Train Plan	[number]	B
Number of all day and Peak Passenger Services that have less than the required Passenger Carrying Capacity specified in the Train Plan attributable to the Franchisee's implementation of a Service Recovery Plan	[number]	B
Number of all day and 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

Table 1 - Operational Performance Information		
Information to be provided	Information (format)	When information to be provided
Number of all day and Peak Passenger Services scheduled (excluding Cancellations or Partial Cancellations) All day Short Formations for weekends will be recorded for reporting purposes only.	[number]	B
Number of Short Formations		
Graduated Short Formations		
All day and Peak		
Number of all day and Peak Passenger Services that have less than the required Passenger Carrying Capacity specified in the Train Plan	[number]	B
Number of all day and Peak Passenger Services that have less than the required Passenger Carrying Capacity specified in the Train Plan attributable to the Franchisee's implementation of a Service Recovery Plan	[number]	B
Number of all day and 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
Number of all day and Peak Passenger Services scheduled (excluding Cancellations or Partial Cancellations) All day Short Formations for weekends will be recorded for reporting purposes only	V67	Y5
Minutes Delay		
Number of Minutes Delay attributable to the Franchisee	[number]	B
Number of Primary Minutes Delay attributable to the Franchisee	[number]	B
Number of Reactionary Minutes Delay attributable to the Franchisee	[number]	B

Table 1 - Operational Performance Information		
Information to be provided	Information (format)	When information to be provided
Number of Minutes Delay attributable to Network Rail	[number]	B
Number of Primary Minutes Delay attributable to Network Rail	[number]	B
Number of Reactionary Minutes Delay attributable to Network Rail	[number]	B
Number of Minutes Delay attributable to any other Train Operator	[number]	B
Number of Primary Minutes Delay attributable to any other Train Operator	[number]	B
Number of Reactionary Minutes Delay attributable to any other Train Operator	[number]	B
Number of Primary Minutes Delay on other Operators attributable to the Franchisee	[number]	B
Number of Reactionary Minutes Delay on other Operators attributable to the Franchisee	[number]	B
Number of Minutes Delay for such Reporting Period for which the attribution is in dispute between Network Rail and the Franchisee	[number]	B
Number of Minutes Delay for the twelve (12) preceding Reporting Periods for which the attribution remains in dispute between Network Rail and the Franchisee	[number]	B
Number of Minutes Delay from the twelve (12) preceding Reporting Periods for which disputed attribution has been resolved or determined since the Franchisee's previous report and the number of such Minutes Delay attributed to each of the Franchisee and Network Rail as a result of such resolution or determination	[number]	B
Number of Minutes Delay attributed to the occurrence of a Force Majeure Event	[number]	B

Table 1 - Operational Performance Information		
Information to be provided	Information (format)	When information to be provided
T-3, T-15, On Time and All Cancellations		
Time to 3 Minutes percentage published by Network Rail, rounded to two (2) decimal places	[number]	B
Time to 15 Minutes percentage published by Network Rail, rounded to two (2) decimal places	[number]	B
On Time percentage published by Network Rail, rounded to two (2) decimal places	[number]	B
All Cancellations percentage published by Network Rail rounded to two (2) decimal places	[number]	B
Train Mileage		
Planned Train Mileage	[mileage]	A
Actual Train Mileage	[mileage]	B

Appendix 3 to Schedule 11.2
Summary of Reporting and Other Requirements

This Appendix 3 contains a non-exhaustive summary of the obligations on the Franchisee throughout this Agreement in respect of the provision of information to the Secretary of State which are not set out in this Schedule 11.2. This summary is for guidance only. If there are any inconsistencies with the other contents of the Schedules mentioned below (including any Appendix), those other contents shall apply.

Reference	Summary of Obligation
Paragraph 11.2(a) (<i>Consultation on Significant Alterations to the Timetable</i>) of Schedule 1.1 (<i>Franchise Services and Service Development</i>)	Requirement for Franchisee to provide a comprehensive summary of the proposed changes from the Timetable then in force.
Paragraph 11.2(e) and 11.2(f) (<i>Consultation on Significant Alterations to the Timetable</i>) of Schedule 1.1 (<i>Franchise Services and Service Development</i>)	Requirement for Franchisee to publish a report containing a summary of the main issues raised by respondents to the consultation.
Paragraph 13.1 (<i>Certification and Notification by Franchisee of Exercising Timetable Development Rights</i>) of Schedule 1.1 (<i>Franchise Services and Service Development</i>)	Requirement for Franchisee to provide a certificate addressed to the Secretary of State, signed by a statutory director in respect of the exercise of timetable development rights.
Paragraph 13.3(a) (<i>Certification and Notification by Franchisee of Exercising Timetable Development Rights</i>) of Schedule 1.1 (<i>Franchise Services and Service Development</i>)	Requirement for Franchisee to provide copies to the Secretary of State of correspondence in respect of any discussions with Network Rail.
Paragraph 15.1 (<i>Capacity Mitigation Plan</i>) of Schedule 1.1 (<i>Franchise Services and Service Development</i>)	Requirement for Franchisee to provide a Capacity Mitigation Plan if required by the Secretary of State.
Paragraph 16.1(a) (<i>New or amended Train Service Requirement by Secretary of State and Franchisee's Informed Opinion</i>) of Schedule 1.1 (<i>Franchise Services and Service Development</i>)	Requirement for Franchisee to provide an informed estimate of Forecast Passenger Demand.
Paragraph 16.1(b) (<i>New or amended Train Service Requirement by Secretary of State and Franchisee's Informed Opinion</i>) of Schedule 1.1 (<i>Franchise Services and Service Development</i>)	Requirement for Franchisee to provide informed opinion in respect of a new or amended Train Service Requirement.

Reference	Summary of Obligation
Paragraph 16.1(c) (<i>New or amended Train Service Specification by Secretary of State and Franchisee's Informed Opinion</i>) of Schedule 1.1 (<i>Franchise Services and Service Development</i>)	Requirement to provide informed opinion as to changes to the current Train Service Specification.
Paragraph 16.1(d) (<i>New or amended Train Service Specification by Secretary of State and Franchisee's Informed Opinion</i>) of Schedule 1.1 (<i>Franchise Services and Service Development</i>)	Requirement to provide a draft Train Plan in respect of each set of proposed changes.
Paragraph 16.3 (<i>New or amended Train Service Specification by Secretary of State and Franchisee's Informed Opinion</i>) of Schedule 1.1 (<i>Franchise Services and Service Development</i>)	Requirement for Franchisee to provide informed opinion in respect of a new or amended Train Service Specification.
Paragraph 7.7 (<i>Obligation to use all reasonable endeavours under this Schedule 1.2</i>) of Schedule 1.2 (<i>Operating Obligations</i>)	Provide evidence to the Secretary of State of the steps taken under Paragraph 7 (<i>Obligation to use all reasonable endeavours under this Schedule 1.2</i>).
Paragraph 8 (<i>Publication of Performance Data</i>) of Schedule 1.4 (<i>Passenger Facing Obligations</i>)	Requirements to publish performance data.
Paragraph 9 (<i>Publication of Complaints and Faults Handling Data</i>) of Schedule 1.4 (<i>Passenger Facing Obligations</i>)	Requirements to publish complaints and fault handling data.
Paragraph 1 (<i>Passenger Numbers Information</i>) of Schedule 1.5 (<i>Information about Passengers</i>)	Requirement to provide Secretary of State information about the use by passengers of the Passenger Services.
Paragraph 7 (<i>Information about Station Improvement Measures</i>) of Schedule 1.7 (<i>Stations</i>)	Requirement to maintain and provide records regarding Station improvement measures and measures taken to improve Station environments.
Paragraph 2.2 (<i>Rolling Stock Related Contracts and Insurance Arrangements</i>) of Schedule 2.2 (<i>Security of Access Agreements, Rolling Stock Leases, Station and Depot Leases</i>)	Obligation to provide a copy of all draft Rolling Stock Related Contracts and all executed Rolling Stock Related Contracts and any agreements amending the Rolling Stock Related Contracts, including such other information as required by the Secretary of State together with a justification of the Franchisee's proposed

Reference	Summary of Obligation
	rolling stock maintenance strategy and provision of analysis of whole life costs.
Paragraph 3.5(b) (<i>Cascaded Rolling Stock and Delayed Cascade Mitigation Plan</i>) of Schedule 2.2 (<i>Security of Access Agreements, Rolling Stock Leases, Station and Depot Leases</i>)	Requirement to produce a Delayed Cascade Mitigation Plan.
Paragraph 1.5 (<i>Local Authority Concessionary Travel Schemes</i>) of Schedule 2.5 (<i>Transport, Travel and Other Schemes</i>)	Requirement to provide information about Local Authority Concessionary Travel Schemes.
Paragraph 2.6 (<i>Multi-Modal Fares Schemes</i>) of Schedule 2.5 (<i>Transport, Travel and Other Schemes</i>)	Requirement to provide information about Multi-Modal Fares Schemes.
Paragraph 3.3 (<i>Discount Fares Schemes</i>) of Schedule 2.5 (<i>Transport, Travel and Other Schemes</i>)	Requirement to provide information about Discount Fares Schemes.
Paragraph 4.4 (<i>Inter-Operator Schemes</i>) of Schedule 2.5 (<i>Transport, Travel and Other Schemes</i>)	Requirement to provide information about Inter-Operator Schemes.
Paragraph 4 (<i>Specific additional obligations relating to persons with disabilities</i>) of Schedule 4 (<i>Accessibility and Inclusivity</i>)	Recording of obligations relating to persons with disabilities.
Paragraph 1 (<i>Information</i>) of Schedule 5.8 (<i>Fares Regulation Information and Monitoring</i>)	Requirement to provide a summary of the Prices and Child Prices of London Commuter Fares, West Midlands Commuter Fares and Protected Fares to the Secretary of State no later than week twelve (12) of each Fares Setting Round.
Paragraph 2.1 (<i>Monitoring</i>) of Schedule 5.8 (<i>Fares Regulation Information and Monitoring</i>)	Requirement to provide information relating to the Prices or Child Prices of London Commuter Fares, West Midlands Commuter Fares and Protected Fares to the Secretary of State and information relating to the Gross Revenue of the Franchisee in relation to the any particular Fare or Fares or any particular period.
Paragraph 2.2 (<i>Monitoring</i>) of Schedule 5.8 (<i>Fares Regulation Information and Monitoring</i>)	Requirement to provide written confirmation to the Secretary of State from a statutory director whether the

Reference	Summary of Obligation
	Franchisee has complied with the obligations under Schedule 5 (Fares and Ticketing) during each Fares Setting Round.
Paragraph 5 (<i>Review of Compliance</i>) of Schedule 6.2 (<i>Committed Obligations</i>) Part 2 (<i>Special Terms related to Committed Obligations</i>)	Requirement to provide such evidence of compliance with Committed Obligations as the Secretary of State may request.
Paragraph 2 (<i>Reporting Requirements</i>) of Schedule 7.1 (<i>Operational Performance</i>)	Reporting requirements relating to the operational performance information set out in Appendix 2 (<i>Operational Performance Information</i>) of Schedule 11.2 (<i>Management Information</i>).
Paragraph 26.2 (<i>Action Plans</i>) of Schedule 7.1 (<i>Operational Performance</i>)	Requirement to produce an Action Plan to secure a Required Performance Improvement.
Paragraph 5 (<i>Required Improvement and NRPS Action Plans</i>) of Schedule 7.2 (<i>National Rail Passenger Surveys, Customer Report and CCIF Scheme</i>)	Requirement to produce a NRPS action plan to secure any Required Improvement for submission to the Secretary of State.
Paragraph 9 (<i>Customer and Stakeholder Engagement Strategy</i>) of Schedule 7.2 (<i>National Rail Passenger Surveys, Customer Report and CCIF Scheme</i>)	Requirement to provide to the Secretary of State any proposed revisions to the Customer and Stakeholder Engagement Strategy.
Paragraph 10 (<i>Customer Report</i>) of Schedule 7.2 (<i>National Rail Passenger Surveys, Customer Report and CCIF Scheme</i>)	Requirement to produce and publish a Customer Report.
Paragraph 11 (<i>CCI Scheme</i>) of Schedule 7.2 (<i>National Rail Passenger Surveys, Customer Report and CCIF Scheme</i>)	Requirement to provide details of any CCIF Scheme proposed by the Franchisee.
Paragraph 12.1 (<i>Customer Service and Satisfaction Data</i>) of Schedule 7.2 (<i>National Rail Passenger Surveys, Customer Report and CCIF Scheme</i>)	Requirement to publish details of the Franchisee's level of adherence to scheduled ticket office opening hours and performance in respect of Passenger Assistance service.
Paragraph 12.2 and 12.3 (<i>Customer Service and Satisfaction Data</i>) of Schedule 7.2 (<i>National Rail Passenger</i>	Requirement to publish NRPS scores achieved by the Franchisee.

Reference	Summary of Obligation
<i>Surveys, Customer Report and CCIF Scheme)</i>	
Paragraph 2 (<i>Relevant Profit Report</i>) of Schedule 8.2 (<i>Profit Share Mechanism</i>)	Reporting requirements relating to Relevant Profit Reports.
Paragraph 11 (<i>Information</i>) of Schedule 9.1 (<i>Financial and Other Consequences of Change</i>)	Requirement to provide information in respect of obligations under Schedule 9.1 (<i>Financial and Other Consequences of Change</i>) as the Secretary of State may request.
Paragraph 1 (<i>Franchisee's Obligations</i>) of Schedule 9.2 (<i>Identity of Financial Model</i>)	Requirement to provide the Financial Model and the Escrow Documents.
Paragraphs 3 (<i>Remedial Plan Notices</i>) and 4 (<i>Remedial Plans</i>) of Schedule 10.1 (<i>Procedure for remedying a Contravention of the Franchise Agreement</i>)	Obligation to provide certain information in a Remedial Plan Notices/Remedial Plans.
Paragraph 4 (<i>Business Continuity</i>) of Schedule 10.3 (<i>Force Majeure and Business Continuity</i>)	Requirement to provide a Business Continuity Plan.
Paragraph 1.3 (<i>Franchise Performance Meetings</i>) of Schedule 11.1 (<i>Franchise Performance Meetings</i>)	Requirement to prepare and present such reports to each Franchise Performance Meeting as the Secretary of State may reasonably requests.
Paragraph 2 (<i>Community Rail Partnerships</i>) of Schedule 13.1 (<i>Rail Industry Initiatives</i>)	Requirement to provide a Community Rail Report.
Paragraph 8 (<i>Small and Medium-sized Enterprises</i>) of Schedule 13.1 (<i>Rail Industry Initiatives</i>)	Requirement to provide breakdown of Small and Medium-sized Enterprises.
Paragraph 9 (<i>Apprenticeships</i>) of Schedule 13.1 (<i>Rail Industry Initiatives</i>)	Requirement to provide record of apprenticeships offered.
Paragraph 10.1(d) (<i>Sustainability and other related initiatives</i>) of Schedule 13.1 (<i>Rail Industry Initiatives</i>)	Requirement to submit a copy of the assessment report produced by an independent body in respect of performance against the Rail Safety and Standard's Board's Sustainable Development Self-Assessment Framework.
Paragraph 10.1(f) (<i>Sustainability and other related initiatives</i>) of Schedule 13.1 (<i>Rail Industry Initiatives</i>)	Obligation to produce an improvement plan in respect of the targets against the Sustainable Development Strategy.

Reference	Summary of Obligation
Paragraph 10.1(j) (<i>Sustainability and other related initiatives</i>) of Schedule 13.1 (<i>Rail Industry Initiatives</i>)	Requirement on the Franchisee to publish its Sustainable Development Strategy on the request of the Secretary of State.
Paragraph 10.1(j) (<i>Sustainability and other related initiatives</i>) of Schedule 13.1 (<i>Rail Industry Initiatives</i>)	Requirement to provide copies of the certification audit reports and a copy of the ISO50001 Energy Review.
Paragraph 10.2 (<i>Sustainability and other related initiatives</i>) of Schedule 13.1 (<i>Rail Industry Initiatives</i>)	Requirement to provide copies of the certification audit reports and a copy of the ISO50001 Energy Review.
Paragraph 12.6 (<i>Minimum Wi-Fi Service on Train</i>) of Schedule 13.1 (<i>Rail Industry Initiatives</i>)	Requirement to provide the Secretary of State with the MCS Report.
Paragraph 9 (<i>Provision of Information to the Secretary of State</i>) of Schedule 14.4 (<i>Designation of Franchise Assets</i>)	Obligation to provide such information as the Secretary of State requires in respect of Primary Franchise Assets, including details of Security Interests.
Paragraph 5 (<i>Miscellaneous</i>) of Schedule 14.5 (<i>Dealing with Franchise Assets</i>)	Obligation to provide such information as the Secretary of State requires in respect of Security Interests.
Paragraph 1.3 (<i>Process for issue of a Certificate of Completion for RV Assets</i>) of Schedule 14.6 (<i>Residual Value Mechanism</i>)	Obligation to provide such information as the Secretary of State requires in respect of RV Assets.
Paragraph 2 (<i>Maintenance Requirements for RV Assets</i>) of Schedule 14.6 (<i>Residual Value Mechanism</i>)	Obligation to provide a schedule of condition in respect of RV Assets.
Paragraphs 2 (<i>Preparation for Reletting</i>) and 3 (<i>Data Site Information</i>) of Schedule 15.1 (<i>Reletting Provisions</i>)	Obligation to provide certain information to the Secretary of State in respect of a reletting of the Franchise.
Paragraph 1 (<i>Handover Package Status</i>) of Schedule 15.3 (<i>Handover Package</i>)	Requirement to produce and maintain the Handover Package.
Paragraph 2 (<i>Director's Certificate</i>) of Schedule 15.3 (<i>Handover Package</i>)	Requirement to provide a director's certificate in each Franchisee Year.
Paragraph 9 (<i>Information about Passengers</i>) of Schedule 15.4 (<i>Provisions Applying on and after Termination</i>)	Requirement to provide passenger numbers information, CRM Data and Yield Management Data on expiry of the Franchise Period.

Reference	Summary of Obligation
Paragraph 2.2 (<i>Net Asset Statement</i>) of Appendix 2 (<i>Form of Supplemental Agreement</i>) of Schedule 15.4 (<i>Provisions Applying on and after Termination</i>)	Obligation to prepare and provide a net asset statement under the supplemental agreement.
Paragraph 6 (<i>Discharge of Obligations</i>) of Schedule 16 (<i>Pensions</i>)	Obligation to provide a certificate signed by the Trustee in relation to the Franchise Sections stating that the Franchisee has fully complied with its obligations under the Railways Pensions Scheme.
Paragraph 10 (<i>Redactions</i>) of Schedule 17 (<i>Confidentiality and Freedom of Information</i>)	Obligation to provide details of provisions of the Franchise Documents or any such variations which the Franchisee believes are exempt from the Freedom of Information Act, Environmental Information Regulations or the Act.

Appendix 7 to Schedule 1
Appendix 2 (*D&I Strategy*) to Schedule 13.1 (*Rail Industry Initiatives and Co-operation*)

Diversity and Inclusion Strategy Framework

The Department requires a train operator who will develop and implement a tailored Diversity and Inclusion Strategy, the goal of which is to deliver a more diverse workforce, reflective of the communities that it serves, by increasing representation of under-represented groups at all levels and grades.

Requirement from the Franchisee

The train operator shall prepare and submit a Diversity & Inclusion Strategy in accordance with the guidance and templates contained in this framework. However, it should be noted that this is not a comprehensive framework and should only be used as a guide.

The train operator shall submit a strategic Diversity & Inclusion action plan including the steps that they will take to ensure a more diverse workforce. The train operator shall also set out the methods they propose to monitor and report on the implementation of the policy and its effectiveness.

Strategic Diversity and Inclusion Action Plan

The Diversity & Inclusion Strategy shall include the following:

- Plans to implement a range of recruitment and retention policies and procedures to ensure they recruit and retain a diverse group of candidates.
- A set of recruitment targets which is 50% female with BAME composition reflective of the local area.
- Plans to address gaps in representation in all job types and levels to meet recruitment targets on gender and BAME.
- A list of specific KPIs to measure progress/success of implementing diversity action plan.
- Plans for achieving, maintaining and progressing within a specific diversity accreditation scheme.
- Plans to collect, monitor and report diversity data of its workforce.

Plans to implement recruitment and retention policies and procedures

This is an example below of what a general diversity plan might look like.

Goal	Objective	Current position/ baseline	Actions	Accountability	By when	Measure of success
Increase workforce diversity	Recruit from a diverse group of candidates	Some advertisement in different publications	Work with local employment agencies and JCP	HR	Q4	Workforce is increasingly reflective Internal targets

Retain a diverse workforce	Create an inclusive culture that encourages collaboration and increases retention	Employee engagement survey	Inclusive leadership training for managers	HR	Q3	All leaders to have D&I training Engagement results should increase
Monitoring diversity data	Monitor diversity data to implement a range of recruitment policies	Data is collected on gender and age but there is no action Data is not collected on other protected characteristics	Collect diversity data on all groups Monitor data every 6 months	HR	Q2	Recruitment policies are reviewed and updated

The Strategy should also cover most of the protected characteristics, as well as looking at caring responsibilities, social mobility and issues affecting parents returning to work. Below are some examples of what this could look like depending at what point of the journey the train operator is at.

Goal	Objective	Actions	Measure of success
BAME	Improve representation of people from a BAME background in leadership and across the business. Seek to undertake and publish ethnicity pay gap report and activities.	Programme of mentoring and activities	Increase in BAME representation in leadership/ across organisation 10% employees from BAME Reduction in pay gap
Disability	Develop appropriate environment for people.	Train managers to deliver reasonable adjustment	Increase number of disabled employees Disability Confident Leader
Gender	Improve gender diversity across workforce and in leadership positions.	Set targets Programme of activities	25% of employees to be women Reduction in gender pay gap
LGBT+	Be an inclusive employer of LGBT+ employees	Provide specific LGBT+ awareness/ confidence training for managers	Stonewall Inclusive Employers

Carers	Support carers in the workplace	Review family-friendly policies to support carers Increase awareness amongst managers of carers' needs	Level 1 Carer Confident Benchmark Carer Positive award
Faith and belief	Be an employer where people of different faiths and beliefs feel equally valued and respected	Provide series of briefings for employees Faith spaces for employees	Inclusive Employer status
Age	Transfer skills between generations	Develop inter-generational mentoring between older and younger employees	Recognised as an employer for all ages
Social mobility	Make sure everyone can succeed and make the most of their talents, whatever the circumstances	Promote work with ex-offenders and lone parents Collect data on social mobility	The Social Mobility Employer Index

KPIs Example

The plan should be supported by an appropriate set of key performance indicators to measure progress. For example, this could include:

- Number of positive action initiatives in employment.
- Number of adverts in targeted publications to reach BAME and women.
- Membership of networks and forums.

Schedule 2

Termination of the Franchise Agreement

1 Definitions

"Applicable Rolling Stock Lease" means a Rolling Stock Lease in respect of which the Lease Expiry Date applicable to that Rolling Stock Lease is later than 1.59 a.m. on the date specified in paragraph (a) of the definition of Expiry Date.

"Bonds" means the Bonds as defined under and provided pursuant to the Funding Deed.

"DfT Funded Early Termination Amount" has the meaning given to it in paragraph 6.3.

"Estimated Termination Sum" means the Secretary of State's estimate of the amount payable by the Franchisee as the Termination Sum as notified to the Franchisee in accordance with paragraph 3.2.

"Final ERMA Balance Sheet" means the Final ERMA Balance Sheet as agreed or determined by the Secretary of State, in accordance with schedule 11.2 (*Management Information*) of the Franchise Agreement.

"Final Settlement Date" has the meaning given to it in paragraph 7.6.

"Forecast Net Assets Amount" means, as set out in the Restated P2012 Balance Sheet, the aggregate amount of the Franchisee's assets after deducting its liabilities and excluding any Available Cash Balances, any items included in paragraph 9.4A(d)(ii) of Schedule 11.2 (*Management Information*) of the Franchise Agreement, any onerous contract provisions, and any balances relating to the R

¹¹"Franchisee Interim Net Assets Payment Amount" has the meaning given to it in paragraph 7.3.

¹²"Interim Net Assets Payment Amount" means the Franchisee Interim Net Assets Payment Amount or the SoS Interim Net Assets Payment Amount as applicable.

"Lease Expiry Date" means the date on which an Applicable Rolling Stock Lease is stated therein to expire by effluxion of time.

"Lease Termination Clawback Amount" means any amount or proportion of the Lease Termination Sums payable by the Franchisee under an Applicable Rolling Stock Lease which the Franchisee is entitled to reclaim or receive (whether by way of rebate of rent or otherwise) from the Lessor under such Applicable Rolling Stock Lease where the Lessor sells or re-leases the rolling stock vehicles (previously leased pursuant to such Applicable Rolling Stock Lease) at any time during the period from the date on which such Applicable Rolling Stock Lease is terminated and ending on the Lease Expiry Date.

¹¹ 26 November 2020 (Date of Contract Change Letter) – Contract insertion agreed by the Secretary of State and Franchisee.

¹² 26 November 2020 (Date of Contract Change Letter) Contract variation agreed by the Secretary of State and Franchisee.

“Lease Termination Sums” means any sums that the Franchisee is required to pay to a Lessor in circumstances where an Applicable Rolling Stock Lease terminates prior to its Lease Expiry Date excluding, for these purposes, any sums payable by the Franchisee to the Lessor in respect of any Rolling Stock Dilapidations Liability.

“Lessor” means a person from whom the Franchisee leases any rolling stock vehicles comprised in the Train Fleet pursuant to the terms of an Applicable Rolling Stock Lease.

“Net Assets Reconciliation Amount” means the aggregate amount of any assets received or liabilities settled by the Franchisee since the date of the Final ERMA Balance Sheet and which were not reflected in the value of the Updated Net Assets Amount.

“Non-COVID Trajectory Model” has the meaning given to it in Appendix 1.

“Original Franchise Term” has the meaning given to it in Appendix 1.

“Outstanding Lease Termination Amount” has the meaning given to it in paragraph 4.2(d).

“Rent” means any rent or rental (or equivalent payment), including amounts paid in respect of a maintenance reserve or otherwise in connection with the maintenance of the applicable rolling stock, which the Franchisee is obliged to pay the Lessor for the leasing of the rolling stock, under the terms of an Applicable Rolling Stock Lease.

“Rolling Stock Dilapidations Liability” means any outstanding liability of the Franchisee on or following the end of the Franchise Agreement which is owed by the Franchisee to the Lessor in accordance with an Applicable Rolling Stock Lease and arising out of a failure by the Franchisee to redeliver the relevant rolling stock in the required condition as specified under such Applicable Rolling Stock Lease.

¹³**“SoS Interim Net Assets Payment Amount”** has the meaning given to it in paragraph 7.3A.

“Termination Sum” means the amount notified to the Franchisee by the Secretary of State in accordance with paragraph 3.5.

“Termination Sum Acceptance Letter” means the letter substantially in the form set out in Appendix 2 (*Termination Sum Acceptance Letter*).

“Updated Net Assets Amount” means the value of the Forecast Net Assets Amount updated to reflect the unwinding of assets and liabilities identified as a result of the process to produce the Final ERMA Balance Sheet.

“Waiver Letters” has the meaning given to it in paragraph 4.1.

2 Default termination

The Parties acknowledge and agree that the provisions of this Schedule 2 shall not apply in circumstances where, following service of a Termination Notice by the

¹³ 26 November 2020 (Date of Contract Change Letter) Contract insertion agreed by the Secretary of State and Franchisee.

Secretary of State pursuant to Schedule 10.2 (*Events of Default and Termination Events*) of the Franchise Agreement, the Franchise Agreement terminates earlier than the end of the Franchise Term and in those circumstances the consequences of termination shall be determined by reference to the applicable terms of the Franchise Agreement.

3 Calculation of the Termination Sum

- 3.1 The Parties acknowledge and agree that the Estimated Termination Sum and the Termination Sum shall be determined using the Non-COVID Trajectory Model developed in accordance with Appendix 1 (*Termination Sum Principles*).
- 3.2 ¹⁴**As soon as reasonably practicable following the date of the amendment letter between the Secretary of State and the Franchisee dated 15 October 2020, the Secretary of State shall notify the Franchisee of the Secretary of State's estimate of the amount payable as the Termination Sum determined using the Non-COVID Trajectory Model (the "Estimated Termination Sum").**
- 3.3 ¹⁵**If and to the extent that the Franchisee reasonably considers the Estimated Termination Sum does not reasonably reflect the amount which should have been determined using the Non-COVID Trajectory Model, it shall no later than 10 November 2020, make written representations to the Secretary of State setting out any issues which it considers should be taken into consideration together with details of its reasoning and any supporting evidence ("Initial Representations").**
- 3.3A ¹⁶**If, following review of the Non-COVID Trajectory Modelling Suite and any other information made available to the Franchisee by the Secretary of State on or after the date on which the Initial Representations were made, the Franchisee reasonably considers that:**
- (a) **the Estimated Termination Sum does not reasonably reflect the amount which should have been determined using the Non-COVID Trajectory Model;**
 - (b) **there are any issues relevant to the determination of the matters set out in paragraph 7 (*Net Assets*) of this Schedule 2 which it reasonably considers should be taken into consideration (where the Non-COVID Trajectory Model shows that the Franchisee was forecast to breach its Financial Ratios and thereby trigger the right for the Secretary of State to notify the Franchisee that an Event of Default has occurred during the Original Franchise Term); or**
 - (c) **there is any other impact on the Initial Representations,**

¹⁴ 15 October 2020 (Date of Contract Change) Contract variation agreed by the Secretary of State and Franchisee.

¹⁵ 18 November 2020 (Date of Contract Change Letter) Contract variation agreed by the Secretary of State and Franchisee.

¹⁶ 18 November 2020 (Date of Contract Change Letter) Contract insertion agreed by the Secretary of State and Franchisee.

it shall by no later than the expiry of fifteen (15) Weekdays from the date on which the Non-COVID Trajectory Modelling Suite is provided to the Franchisee or 14 December 2020 if later make written representations to the Secretary of State setting out any issues which it considers should be taken into consideration in this regard, together with details of its reasoning and any supporting evidence (“Final Representations”). The Parties acknowledge and agree that the Final Representations shall be limited to points arising out of the Franchisee’s review of the Non-COVID Trajectory Modelling Suite and any other information made available to the Franchisee by the Secretary of State on or after the date on which the Initial Representations were made.

- 3.4 ¹⁷The Secretary of State will take account of any Initial Representations and Final Representations made by the Franchisee pursuant to paragraph 3.3 and 3.3A above. This shall not oblige the Secretary of State to adjust the Estimated Termination Sum or the Non-COVID Trajectory Model on account of any such representations.
- 3.5 ¹⁸ ¹⁹The Secretary of State shall, by no later than 19 March 2021, provide to the Franchisee the Secretary of State’s final determination of the Termination Sum.
- 3.6 By no later than the expiry of seven (7) Weekdays following the date of receipt of the notice referred to in paragraph 3.5, in respect of the Termination Sum notified to it by the Secretary of State pursuant to paragraph 3.5, the Franchisee shall either:
- 3.6.1 confirm its acceptance of the Termination Sum by issuing a signed Termination Sum Acceptance Letter to the Secretary of State; or
- 3.6.2 inform the Secretary of State in writing that it does not accept the Termination Sum.
- 3.7 If the Franchisee fails to comply with paragraph 3.6 by the date which is seven (7) Weekdays following the date of receipt of the notice referred to in paragraph 3.5, the Franchisee shall be deemed to have rejected the Termination Sum.
- 3.8 If the Franchisee has accepted the Termination Sum in accordance with paragraph 3.6.1, the Franchisee shall pay the Termination Sum to the Secretary of State no later than the last day of the Franchise Period in accordance with such payment instructions as the Secretary of State may notify to the Franchisee in writing.

4 Rolling Stock

- 4.1 The Franchisee shall use all reasonable endeavours to deliver, by no later than 27 November 2020 (or such later date as the Secretary of State may determine), to the Secretary of State waiver letters (each substantively in the applicable forms set

¹⁷ 18 November 2020 (Date of Contract Change Letter) Contract variation agreed by the Secretary of State and Franchisee.

¹⁸ 18 November 2020 (Date of Contract Change Letter) Contract variation agreed by the Secretary of State and Franchisee.

¹⁹ 20 January 2021 (Date of Contract Change Letter) Contract variation agreed by the Secretary of State and Franchisee.

out in Appendix 4 (*Waiver Letters*) or such other form as may be agreed by the Franchisee and the Lessor and approved by the Secretary of State) signed by each relevant Lessor and the Franchisee (the "**Waiver Letters**").

4.2 Provided that the Franchisee:

4.2.1 has complied with its obligations in paragraph 4.1; and

4.2.2 complies with the terms of the applicable Waiver Letter and enforces its rights under that Waiver Letter at the direction of the Secretary of State,

the Secretary of State shall:

4.2.3 pay as a Cost any Lease Termination Sums (taking into account, where applicable, any Lease Termination Clawback Amounts that are due or payable to the Franchisee under the Applicable Rolling Stock Lease) that the Franchisee reasonably and properly incurs, and excluding any costs incurred by the Franchisee which are inconsistent with acting as a Good and Efficient Operator, where the Lessor terminates an Applicable Rolling Stock Lease on the occurrence of an event of default under such Applicable Rolling Stock Lease which has arisen solely as a result of the Franchisee entering into this ERMA; or

4.2.4 be liable to pay any Lease Termination Sums (taking into account, where applicable, any Lease Termination Clawback Amounts that are due or payable to the Franchisee under the Applicable Rolling Stock Lease) that the Franchisee may properly and reasonably incur solely as a consequence of this Agreement expiring by effluxion of time prior to the applicable Lease Expiry Date (the "**Outstanding Lease Termination Amount**").

4.3 The Secretary of State shall reimburse the Franchisee for any Outstanding Lease Termination Amount(s) paid by the Franchisee within twenty one (21) days of receipt of a notice from the Franchisee demonstrating to the Secretary of State's satisfaction that such Outstanding Lease Termination Amount(s) were properly and reasonably incurred and paid by the Franchisee, provided that the Secretary of State may exercise the Secretary of State's right to set-off the Secretary of State's obligation to pay any Outstanding Lease Termination Amount against any right to receive payment of any Lease Termination Clawback Amounts and/or rebates of Rent from the Franchisee.

4.4 If following payment of any Lease Termination Sums by the Secretary of State pursuant to paragraph 4.2.3, the Franchisee subsequently becomes entitled under the terms of an Applicable Rolling Stock Lease to any Lease Termination Clawback Amounts (excluding Lease Termination Clawback Amounts taken into account in calculation of the Lease Termination Sums in accordance with paragraph 4.2), the Franchisee shall, within fourteen (14) days of the date on which the Franchisee becomes entitled to receipt of each such Lease Termination Clawback Amount, pay that amount to the Secretary of State.

4.5 If on or following the end of the Franchise Agreement, the Franchisee is entitled to receive any rebate of Rent (which was paid in advance by the Franchisee in respect

of the period from and including the date after the Franchise Agreement terminates but was not taken into account in the calculation of the Lease Termination Clawback Amount), the Franchisee shall within fourteen (14) days of the date on which the Franchisee becomes entitled to receive such rebate of Rent pay that amount to the Secretary of State.

4.6 The Franchisee shall:

4.6.1 immediately notify the Secretary of State as soon as the Franchisee becomes aware of any entitlement to a Lease Termination Clawback Amount or any amounts referred to in paragraph 4.5; and

4.6.2 provide such supporting information as the Secretary of State may reasonably require for the purposes of verifying such amounts and/or the Franchisee's entitlements to such amounts.

5 Network Rail

5.1 ²⁰The Franchisee shall use all reasonable endeavours to deliver, by no later than 4 December 2020 (or such later date as the Secretary of State may determine), to the Secretary of State a signed waiver letter (substantively in the form set out as Appendix 3 (*Form of Waiver Letter*)).

6 Third Party Contracts

6.1 For the purpose of this paragraph 6, an "**Applicable Third Party Contract**" means a contract:

6.1.1 included in the notification from the Franchisee to the Secretary of State pursuant to paragraph 2.2 of Schedule 11.2 (*Management Information*) to the Franchise Agreement and in respect of which the Franchisee has demonstrated to the Secretary of State's reasonable satisfaction that it would incur the relevant liability if it were to terminate such contract on the expiry of the Franchise Term;

6.1.2 in relation to which the Franchisee has taken all actions required or directed by the Secretary of State to mitigate or extinguish any potential liability arising on its termination or transfer; and

6.1.3 in relation to which the Franchisee has not taken any action to restrict or prevent the transfer of such contract or any rights or obligations under or in respect of it (by way of a Transfer Scheme or otherwise).

6.2 The Secretary of State shall be entitled (in the Secretary of State's sole discretion) to direct how the rights and obligations of the Franchisee under each Applicable Third Party Contract shall be dealt with on the expiry of the Franchise Period (whether by inclusion in a Transfer Scheme, novation and/or other transfer or dealing, by termination or otherwise). The Franchisee shall comply with the Secretary of State's directions under this paragraph 6.2.

²⁰ 26 November 2020 (Date of Contract Change Letter) Contract variation agreed by the Secretary of State and Franchisee.

- 6.3 Subject to compliance by the Franchisee with its obligations under paragraph 6.2, on the expiry but not earlier termination of the Franchise Term, the Secretary of State shall be liable to the Franchisee in respect of such costs and/or liabilities as the Franchisee incurs solely as a result of future obligations and liabilities of the Franchisee under an Applicable Third Party Contract (i.e. those arising in respect of the period following the expiry of the Franchise Term and excluding any accrued or arising before that date) not being transferred to a Successor Operator or other person or otherwise relieved or discharged, provided that the Secretary of State shall not be liable for any costs which:
- 6.3.1 are incurred as a result of the Franchisee's failure to mitigate;
 - 6.3.2 arise as a result of the Franchisee's failure to act as a Good and Efficient Operator; and/or
 - 6.3.3 which the Franchisee has failed to demonstrate to the Secretary of State's satisfaction were reasonably incurred and evidenced,
- (a "**DfT Funded Early Termination Amount**").
- 6.4 The Secretary of State shall reimburse the Franchisee for any DfT Funded Early Termination Amount(s) paid by the Franchisee within twenty one (21) days of receipt of a notice from the Franchisee demonstrating to the Secretary of State's satisfaction that such DfT Funded Early Termination Amount(s) were reasonably incurred and paid by the Franchisee.

7 Net Assets

- 7.1 This paragraph 7 shall only apply to the Franchisee in circumstances where the Non-COVID Trajectory Model shows that the Franchisee was forecast to breach its Financial Ratios and thereby trigger the right for the Secretary of State to notify the Franchisee that an Event of Default has occurred during the Original Franchise Term.
- 7.2 The Parties acknowledge and agree that the Forecast Net Assets Amount shall be determined in accordance with the Restated P2012 Balance Sheet as agreed or determined by the Secretary of State in accordance with Schedule 11.2 (*Management Information*) to the Franchise Agreement.
- 7.3 ²¹**If the Forecast Net Assets Amount is a positive number, the Franchisee shall, no later than the last day of the ERMA Term or the Extended Term (as applicable) and in accordance with such payment instructions as the Secretary of State may notify to the Franchisee in writing at least 5 Weekdays in advance of the last date for payment, pay to the Secretary of State an amount equal to ninety per cent (90%) (or such lower percentage as the Secretary of State may, in the Secretary of State's sole discretion, direct) of the Forecast Net Assets Amount (the "Franchisee Interim Net Assets Payment Amount").**

²¹ 26 November 2020 (Date of Contract Change Letter) Contract variation agreed by the Secretary of State and Franchisee.

- 7.3A ²²If the Forecast Net Assets Amount is a negative number, the Secretary of State shall, no later than the last day of the ERMA Term or the Extended Term (as applicable) and in accordance with such payment instructions as the Franchisee may notify to the Secretary of State in writing at least 5 Weekdays in advance of the last date for payment, pay to the Franchisee an amount equal to one hundred per cent (100%) of the Forecast Net Assets Amount (the "SoS Interim Net Assets Payment Amount").
- 7.4 ²³No later than ten (10) days following the date on which the Final ERMA Balance Sheet is agreed or determined by the Secretary of State in accordance with Schedule 11.2 (*Management Information*) to the Franchise Agreement, the Franchisee shall notify the Secretary of State of the difference between the Updated Net Assets Amount and the Interim Net Assets Payment Amount and:
- (a) if a Franchisee Interim Net Assets Payment Amount was paid pursuant to and in accordance with paragraph 7.3 and the Updated Net Assets Amount:
 - (i) is greater than the Franchisee Interim Net Assets Payment Amount, the Franchisee shall, within thirty-five (35) days of receipt of such notice, pay to the Secretary of State an amount equal to the difference between the Updated Net Assets Amount and the Franchisee Interim Net Assets Payment Amount;
 - (ii) is less than the Franchisee Interim Net Assets Payment Amount, the Secretary of State shall, within thirty-five (35) days of receipt of such notice, pay to the Franchisee an amount equal to the difference between the Updated Net Assets Amount and the Franchisee Interim Net Assets Payment Amount;
 - (b) if an SoS Interim Net Assets Payment Amount was paid pursuant to and in accordance with paragraph 7.3A and the Updated Net Assets Amount:
 - (i) is less than the SoS Interim Net Assets Payment Amount, the Secretary of State shall, within thirty-five (35) days of receipt of such notice, pay to the Franchisee an amount equal to the difference between the Updated Net Assets Amount and the SoS Interim Net Assets Payment Amount;
 - (ii) is greater than the SoS Interim Net Assets Payment Amount, the Franchisee shall, within thirty-five (35) days of receipt of such notice, pay to the Secretary of State an amount equal to

²² 26 November 2020 (Date of Contract Change Letter) Contract insertion agreed by the Secretary of State and Franchisee.

²³ 26 November 2020 (Date of Contract Change Letter) Contract variation agreed by the Secretary of State and Franchisee.

the difference between the Updated Net Assets Amount and the SoS Interim Net Assets Payment Amount,

and provided that in each case, any payment instructions are notified by the payee to the other Party at least 5 Weekdays in advance of the last date for the payment.

- 7.5 The Franchisee shall notify the Secretary of State promptly following full and final recovery of all of the Franchisee's assets and settlement of all of the Franchisee's outstanding liabilities as at the date of the Final ERMA Balance Sheet (the "**Final Settlement Date**").
- 7.6 ²⁴**Within thirty (30) days of the Final Settlement Date, the Secretary of State shall notify the Franchisee of the Net Assets Reconciliation Amount and whether the Secretary of State or the Franchisee (as applicable) shall be liable to pay the Net Assets Reconciliation Amount.**
- 7.7 Within thirty five (35) days of receipt of notice from the Secretary of State pursuant to paragraph 7.7 (or such later date as the Secretary of State may notify), the Franchisee or the Secretary of State (as applicable) shall pay the Net Assets Reconciliation Amount to the other Party, in accordance with such payment instructions as the Secretary of State or the Franchisee (as applicable) may notify the other Party in writing provided that any payment instructions are notified to the relevant Party at least 5 Weekdays in advance of the last date for the payment of the Net Assets Reconciliation Amount in accordance with this paragraph 7.8.
- 7.8 The Secretary of State shall have an unfettered discretion to make the determinations contemplated in this paragraph 7.

8 Miscellaneous

- 8.1 Any notice, notification or other communication under or in connection with the matters specified in this Schedule 2 shall be served in accordance with Clause 12 (*Notices*) of the Franchise Agreement.
- 8.2 In the event of conflict between the terms of this Schedule 2 and the other terms of the Franchise Agreement, subject to Clause 2.1.2 of this ERMA, the terms of this Schedule 2 shall prevail.
- 8.3 Notwithstanding any other provisions of Schedule 2, the Parties acknowledge and agree:
- 8.3.1 neither Party shall be entitled to recover more than once in respect of the same amount; and
- 8.3.2 where the same amounts are taken account of more than once as part of any calculation in accordance with this Schedule 2 and/or the terms of the Franchise Agreement which would result in a Party being obliged to account for the same amount more than once, the Parties shall agree suitable adjustments to prevent any double recovery or where, the Parties are unable

²⁴ 26 November 2020 (Date of Contract Change Letter) Contract variation agreed by the Secretary of State and Franchisee.

to agree such adjustments within a reasonable time, the Secretary of State may determine those adjustments in the Secretary of State's sole discretion.

Appendix 1 to Schedule 2

Termination Sum Principles

1 Definitions and Interpretation

1.1 Definitions

“Available Cash Balances” means the aggregate value of all cash held by the Franchisee as at 1 March 2020 after excluding:

- (i) any amounts the Franchisee was required to retain by the Franchise Agreement and / or the Funding Deed in order to satisfy its Financial Ratios;
- (ii) the value of the Season Ticket suspense account; and
- (iii) any other amounts of ringfenced cash which is not included within Modified Revenue or Forecast Modified Revenue as applicable;

1.1.2 **“Forecast Net Losses”** means the aggregate amount of all profits or losses (before tax) projected to be incurred by the Franchisee as determined using the Non-COVID Trajectory Model for the period from 1 March 2020 to expiry of the Original Franchise Term, as discounted at an annual equivalent rate of three point five per cent (3.5%) from the date of such profits or losses being incurred to the last day of the ERMA Term;

1.1.3 **“Non-COVID Trajectory”** means the Franchisee’s forecast financial performance during the Original Franchise Term assuming COVID-19 has not occurred;

1.1.4 **“Non-COVID Trajectory Model”** means a model in respect of the Non-COVID Trajectory built, by the Secretary of State and the Secretary of State’s advisers, on the basis of industry standard frameworks (including the Passenger Demand Forecasting Handbook and DfT Transport Analysis Guidance) and which takes account of, the most recent version of the Financial Model and Record of Assumptions placed in Escrow, the Franchisee’s original bid submissions and the Franchisee’s actual performance from the date of the Original Franchise Agreement to 1 February 2020, which:

- (i) takes account of all parent company support drawn down as at 1 March 2020; and
- (ii) on the basis of certain fair, reasonable and objective assumptions (including as detailed in paragraph 3 below), forecasts any drawdown, or where applicable, further drawdown of parent company support on a period by period basis and, where applicable, the projected date on which the Franchisee would have breached its Financial Ratios triggering the right for the Secretary of State to notify the Franchisee that an Event of Default has occurred;

- 1.1.5 **“Original Franchise Agreement”** means the Franchise Agreement in the form existing immediately prior to 1 March 2020;
- 1.1.6 **“Original Franchise Term”** means the term of Franchise Agreement under the Original Franchise Agreement assuming that, provided the Franchisee would not have been in default at the relevant time, the Secretary of State exercised any unilateral option to extend the term in accordance with its terms;
- 1.1.7 **“PCS Advance”** has the meaning given to the term in the Funding Deed;
- 1.1.8 **“PCS Facility”** has the meaning given to the term in the Funding Deed;
- 1.1.9 **“Undrawn PCS Amount”** means the difference between the original total value of the PCS Facility (as defined in the Funding Deed) and the amount advanced and which remain outstanding under that PCS Facility as at 1 March 2020.

1.2 Construction

- 1.2.1 In this Appendix 1, “reasonable” refers only to public law standards of reasonableness and any challenge to a decision of the Secretary of State by reference to such term may only be determined in accordance with principles of English public law.
- 1.2.2 If and insofar as there is found to exist any implied obligation of reasonableness in respect of the implementation of the terms of this Appendix 1, this must be construed only in accordance with that term in English public law.

2 Termination Sum

- 2.1 The Secretary of State shall determine the Termination Sum using the Non-COVID Trajectory Model so that:
- 2.1.1 where the Non-COVID Trajectory Model shows that the Franchisee has drawn down on the PCS Facility or a PCS Advance would have been made to the Franchisee in order to avoid the Franchisee breaching its Financial Ratios and thereby triggering the right for the Secretary of State to notify the Franchisee that an Event of Default has occurred during the Original Franchise Term, the Termination Sum shall be equal to the Forecast Net Losses provided that:
- (i) this amount shall not exceed the aggregate of the Undrawn PCS Amount and Available Cash Balances; and
 - (ii) where the Forecast Net Losses (after discounting) result in a net profit the Forecast Net Losses shall be deemed to be zero.
- 2.1.2 where the Non-COVID Trajectory Model shows that the Franchisee has drawn down on the PCS Facility or a PCS Advance would have been made to the Franchisee but that the Franchisee does not avoid breaching its Financial Ratios and thereby triggering the right for the Secretary of State to notify the Franchisee that an Event of Default has occurred during the Original

Franchise Term, the Termination Sum shall, subject to paragraph 2.2, be the aggregate of the Undrawn PCS Amount and Available Cash Balances.

- 2.2 For the purposes of paragraph 2.1.2, the Undrawn PCS Amount shall be discounted at an annual equivalent rate of three point five per cent (3.5%) from the date of PCS Advance forecast by the Non-COVID Trajectory Model being incurred to the last day of the ERMA Term.

3 Modelling Assumptions

- 3.1 The Secretary of State shall generate a projection for the Franchisee's financial performance (including revenue, cost and balance sheet forecasts) on a Non-COVID Trajectory during the Original Franchise Term based on a set of reasonable assumptions for quantifying relevant exogenous and endogenous factors, including in relation to:

3.1.1 projected exogenous and endogenous revenues of the Franchisee during the Original Franchise Term from farebox and non-farebox revenue sources (as applicable);

3.1.2 projected costs incurred by the Franchisee during the Original Franchise Term, including, amongst others, operating costs, capex and potential savings;

3.1.3 a reasonable estimate of the aggregate Franchise Payments during the Original Franchise Term including in relation to any claims between the Franchisee and the Secretary of State and where known, between the Franchisee and third parties, taking into account the likelihood of success of such claims; and

3.1.4 the scope for value creation and increased savings through implementation of new strategic initiatives which were not contemplated as part of the Franchisee's bid submission.

Appendix 2 to Schedule 2**Termination Sum Acceptance Letter**

Secretary of State for Transport
Department for Transport Department
Great Minster House
33 Horseferry Road
London
SW1P 4DR

[By Email]

[●] 2020

Dear Secretary of State

**Termination Sum
Emergency Recovery Measures Agreement**

1. We refer to the Emergency Recovery Measures Agreement entered into between us (as "Franchisee") and the Secretary of State for Transport (the "Secretary of State") dated [●] 2020 (the "**ERMA**").
2. We further refer to your notice dated [●] issued in accordance with paragraph 3.5 of Schedule 2 (*Termination of the Franchise Agreement*) to the ERMA notifying us that the Termination Sum is [●] pounds (£[●]).
3. Unless otherwise stated, defined terms used in this letter shall have the meaning given to them in the ERMA.
4. The Franchisee acknowledges and agrees that:
 - a. the Termination Sum has been calculated on the basis of a fair and reasonable principles as further detailed in Schedule 2 (*Termination of the Franchise Agreement*) to the ERMA; and
 - b. it shall pay the Termination Sum in accordance with the terms of the ERMA.
5. The Franchisee hereby warrants to the Secretary of State that the information provided by it to the Secretary of State during the period between the date of the ERMA and the date of this letter is true, accurate and not misleading as at the date of this letter.
6. The Franchisee acknowledges that the decisions by the Secretary of State in relation to the calculation, and mechanics for payment, of the Termination Sum, including the policy and procedure adopted by the Secretary of State to reach and implement these decisions (together, the "**Decisions**") are reasonable.
7. The Franchisee covenants that it will not, and will procure that none of its Related Parties will, make, maintain, support, assist or encourage any Claim of any kind against the Secretary of State or any other party in connection with or arising out of the Decisions.

Yours sincerely

West Midlands Trains Limited

**Appendix 3 to Schedule 2
Form of Waiver Letter**

[*On DfT headed notepaper*]

Network Rail Infrastructure Limited
1 Eversholt Street
London
NW1 2DN
Email: notices@networkrail.co.uk

Dear Sir/Madam

West Midlands Trains Limited

1. As you may be aware, in response to the COVID-19 pandemic the Secretary of State for Transport ("**SoS**") and West Midlands Trains Limited (the "**Franchisee**") have entered into an Emergency Recovery Measures Agreement ("**ERMA**"). Pursuant to the terms of the ERMA, the SoS and the Franchisee have agreed that the franchise agreement dated 8 September 2017 between the SoS and the Franchisee (the "**Franchise Agreement**") will terminate by effluxion of time at 01:59 on [*insert date*] (the "**Revised Expiry Date**").
1. Following the Revised Expiry Date, the services previously provided by the Franchisee under the Franchise Agreement will either:
 - (a) continue to be provided by the Franchisee under a directly awarded franchise agreement (a "**Direct Award**"); or
 - (b) be provided by [*Successor Operator*] (company registration number [*insert number*]), a wholly owned subsidiary of DfT OLR Holdings Limited ("**DOHL**") in fulfilment of the SoS's duty pursuant to section 30 of the Railways Act 1993. DOHL is a wholly owned subsidiary of the Secretary of State.
2. In circumstances where a Direct Award is made, it is intended that the Franchisee will continue to perform its obligations and take the benefit of its rights under each of the agreements listed in the Appendix to this letter.
3. In circumstances where the SoS is unable to agree the terms of a Direct Award with the Franchisee (or the Franchise Agreement terminates for whatever reason at any time prior to the Revised Expiry Date), then the Secretary of State intends to transfer, via a statutory transfer scheme to be made pursuant to the Railways Act 2005, the Franchisee's future rights and liabilities under the Relevant Agreements to a Successor Operator who is appointed by the Secretary of State to exercise the Secretary of State's duty under section 30 of the Railways Act 1993 to provide the passenger services currently provided under the Franchise Agreement.
4. The agreements listed in Part A of the Appendix to this letter ("**Category A Relevant Agreements**") are expressed to trigger an event of default on a termination of the Franchise Agreement. Network Rail agrees that, in consideration of payment of £1.00 (receipt of which is hereby acknowledged by Network Rail), it will not exercise any right to terminate any of the Category A Relevant Agreements

(or any other agreement between Network Rail and the Franchisee) where such right to terminate arises solely as a consequence of the termination or expiry of the Franchise Agreement.

- 5. The agreements listed in Part B of the Appendix to this letter (“**Category B Relevant Agreements**”) are expressed to terminate automatically upon a termination of the Franchise Agreement (the “**Automatic Termination Right**”). Network Rail agrees that, in consideration of payment of £1.00 (receipt of which is hereby acknowledged by Network Rail), the Automatic Termination Right in each of the Category B Relevant Agreements shall be deemed to be amended such that each of the Category B Relevant Agreements does not terminate solely as a consequence of the termination or expiry of the Franchise Agreement.
- 6. ***[Insert any bespoke arrangements for the relevant Franchise that are not covered by the paragraphs above.]***

Please sign and return the enclosed copy of this letter by way of your agreement to its terms.

Yours sincerely

.....
For and on behalf of
The Secretary of State for Transport

We acknowledge and agree to the terms of this letter.

.....
For and on behalf of
West Midlands Trains Limited

.....
For and on behalf of
Network Rail Infrastructure Limited

Appendix

Part A: Category A Relevant Agreements

[Details of each agreement between the Franchisee and Network Rail (e.g. access agreements, collateral agreements, connection agreements, shared facility agreements, works agreements) which include an event of default triggered by the termination of the Franchise Agreement to be inserted.]

Part B: Category B Relevant Agreements

[Details of each agreement between the Franchisee and Network Rail (e.g. access agreements, collateral agreements, connection agreements, shared facility agreements, works agreements) which include an automatic termination right triggered by the termination of the Franchise Agreement to be inserted.]

Appendix 4 to Schedule 2
[REDACTED²⁵]

²⁵ December 2020 (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 3

Early ERMA Termination

1 Survival

- 1.1 The provisions of this Schedule 3 shall only apply if the Secretary of State exercises the right to terminate this ERMA pursuant to Clause 3.2 of this ERMA. and any other provisions of this ERMA and/or the Franchise Agreement as amended by the terms of this ERMA (as applicable) reasonably required for the purpose of giving full effect to such provisions or for any other purpose shall survive the termination of this ERMA pursuant to Clause 3.2 and shall continue in full force and effect in accordance with their terms unless and until the Secretary of State instructs otherwise, and the continued operation of such provisions following the termination of this ERMA pursuant to Clause 3.2 shall not constitute a Change for the purposes of the Franchise Agreement:
- 1.1.1 Clauses 12.2 and 12.6;
 - 1.1.2 Clause 13.1 (*Early ERMA Termination*);
 - 1.1.3 the amendments to schedule 2.2 (*Security of Access Agreements, Rolling Stock Leases, Station and Depot Leases*) to the Franchise Agreement set out in Schedule 1 (*Amendments to the Franchise Agreement*) to this ERMA;
 - 1.1.4 the amendments to schedule 4 (*Accessibility and Inclusivity*) of the Franchise Agreement set out in Schedule 1 (*Amendments to the Franchise Agreement*) to this ERMA;
 - 1.1.5 the amendments to schedule 5.9 (*Smart Ticketing*) to the Franchise Agreement set out in Schedule 1 (*Amendments to the Franchise Agreement*) to this ERMA;
 - 1.1.6 schedule 5.10 (*Fares, Ticketing and Retail Reform*) to the Franchise Agreement as inserted by Schedule 1 (*Amendments to the Franchise Agreement*) to this ERMA;
 - 1.1.7 paragraphs 1 (*Development, Design and Implementation of Future Initiatives*) to 5 (*Integrated Control Centres Initiative*) of Part 1 (*Co-Operation*) of schedule 6.7 (*ERMA Specific Obligations*) to the Franchise Agreement as effected pursuant to Schedule 1 (*Amendments to the Franchise Agreement*) to this ERMA except to the extent such provisions contain obligations on the Franchisee to implement any initiatives, schemes or other projects pursuant to such terms, and in all circumstances paragraphs 5A (*Operational Performance*) to 13 (*TD Academy*) of Part 1 (*Co-Operation*) of schedule 6.7 (*ERMA Specific Obligations*) to the Franchise Agreement as effected pursuant to Schedule 1 (*Amendments to the Franchise Agreement*) to this ERMA;
 - 1.1.8 paragraphs 1 (*Digital Signalling*) (with the exception of paragraphs 1.2(c) and 1.2(d)) and 2 (*Wavelength*) of part 3 (*Miscellaneous*) of schedule 6.7

(ERMA Specific Obligations) to the Franchise Agreement as effected pursuant to Schedule 1 (*Amendments to the Franchise Agreement*) to this ERMA;

- 1.1.9 the amendments to schedule 7.1 (*Operational Performance*) to the Franchise Agreement as set out in Schedule 1 (*Amendments to the Franchise Agreement*) to this ERMA to the extent necessary to evaluate the Franchisee's operational performance during the term of the ERMA, provided that nothing in this paragraph 1.1.9 shall prevent the provisions of schedule 7.1 (*Operational Performance*) to the Franchise Agreement that prevailed immediately prior to the EMA Start Date (save as amended pursuant to any Variation agreed between the Parties during the period from the EMA Start Date until the Early ERMA Termination Date other than the Variation constituted by the EMA or this ERMA) from applying from the Early ERMA Termination Date, subject to paragraph 2 (*Performance benchmarks and enforcement*) below;
- 1.1.10 the amendments to paragraphs 2.5, 2.6, 3 (*NRPS Targets and NRPS Improvement Plan Levels*), 4 (*Performance Review*) and 5 (*NRPS Improvement Proposals*) of schedule 7.2 (*Customer Experience and Engagement*) to the Franchise Agreement set out in Schedule 1 (*Amendments to the Franchise Agreement*), to the extent the Secretary of State has instructed that such paragraphs shall apply prior to the Early ERMA Termination Date and to the extent necessary to evaluate the Franchisee's performance during the term of the ERMA, provided that nothing in this paragraph 1.1.10 shall prevent the provisions of schedule 7.2 (*Customer Experience and Engagement*) to the Franchise Agreement that prevailed immediately prior to the EMA Start Date (save as amended pursuant to any Variation agreed between the Parties during the period from the EMA Start Date until the Early ERMA Termination Date other than the Variation constituted by the EMA or this ERMA) from applying from the Early ERMA Termination Date, subject to paragraph 2 (*Performance Benchmarks*) below;
- 1.1.11 the amendments to paragraphs 8 (*Consultations*) and 12.1(b) of schedule 7.2 (*Customer Experience and Engagement*) to the Franchise Agreement set out in Schedule 1 (*Amendments to the Franchise Agreement*);
- 1.1.12 if the Secretary of State has instructed that schedule 7.3 (*West Midlands Franchise Service Quality Regime*) shall apply prior to the Early ERMA Termination Date, the amendments to schedule 7.3 (*West Midlands Franchise Service Quality Regime*) to the Franchise Agreement set out in Schedule 1 (*Amendments to the Franchise Agreement*) to this ERMA to the extent necessary to evaluate the Franchisee's performance during the term of the ERMA, provided that nothing in this paragraph 1.1.12 shall prevent the provisions of schedule 7.3 (*West Midlands Franchise Service Quality Regime*) to the Franchise Agreement that prevailed immediately prior to the EMA Start Date (save as amended pursuant to any Variation agreed between the Parties during the period from the EMA Start Date

until the Early Termination Date other than the Variation constituted by the EMA or this ERMA) from applying from the Early ERMA Termination Date, subject to paragraph 2 (*Performance Benchmarks and enforcement*) below;

1.1.13 the amendment to paragraph 1.1 of schedule 9.3 (*Variations to the Franchise Agreement and Incentivising Beneficial Changes*) to the Franchise Agreement set out in Schedule 1 (*Amendments to the Franchise Agreement*) to this ERMA;

1.1.14 the amendments to schedule 10.1 (*Procedure for Remediating a Contravention of the Franchise Agreement*), paragraph 1.17 of schedule 10.2 (*Events of Default and Termination Events*) and paragraph 3.3 of schedule 10.3 (*Force Majeure and Business Continuity to the Franchise Agreement*) set out in Schedule 1 (*Amendments to the Franchise Agreement*) to this ERMA;

1.1.15 paragraphs 7A (*Information relating to Committed Obligations and Franchise Specific Obligations*), 9.9 (*Access to financial information*), paragraph 15.1A (*Data Sharing*) and paragraph 15.3 (*Air Quality Monitoring and Improvement*) of schedule 11.2 (*Management Information*) to the Franchise Agreement as effected pursuant to Schedule 1 (*Amendments to the Franchise Agreement*) to this ERMA;

1.1.16 without prejudice to the provisions of sub-paragraph 1.1.15 above, schedule 11.2 (*Management Information*) to the Franchise Agreement as effected pursuant to Schedule 1 (*Amendments to the Franchise Agreement*) to this ERMA to the extent such provisions relate to the Franchisee's reporting of information in relation to the period covering the term of the ERMA, and the amendments to schedule 15.4 (*Provisions Applying on and After Termination*) to the Franchise Agreement set out in Schedule 1 (*Amendments to the Franchise Agreement*);

1.1.17 the amendments to paragraph 8 (*Franchisee obligations to participate in any Investigation and reform*) and paragraph 9 (*Information Powers*) of schedule 16 (*Pensions*) to the Franchise Agreement set out in Schedule 1 (*Amendments to the Franchise Agreement*) to this ERMA; and

1.1.18 this Schedule 3.

2 Performance Benchmarks

2.1 For the duration of the period from the Early ERMA Termination Date until 01:59 on 1 April 2021 (the "**Interim Period**"), unless otherwise instructed by the Secretary of State, the provisions of:

2.1.1 Part 2 of schedule 7.1 (*Operational Performance*) to the Franchise Agreement;

2.1.2 paragraphs 2.5, paragraph 2.6 and paragraphs 3 (*NRPS Targets and NRPS Improvement Plan Levels*), to 7 (*Payments on Termination*) of schedule

7.2 (*Customer Experience and Engagement*) to the Franchise Agreement;
and

2.1.3 schedule 7.3 (*West Midlands Franchise Service Quality Regime*) to the Franchise Agreement,

shall **not** apply.

2.2 For the duration of the Interim Period, unless otherwise instructed by the Secretary of State, the provisions of schedule 7.1 (*Operational Performance*) to the Franchise Agreement that prevailed immediately before the Parties entered into the EMA (except Part 2 thereof) shall apply, subject to any Variations that have been or may be effected in accordance with schedule 9 (*Changes and Variations*) of the Franchise Agreement.

2.3 From 02:00 on 1 April 2021, the provisions of schedule 7.1 (*Operational Performance*), schedule 7.2 (*Customer Experience and Engagement*) and schedule 7.3 (*West Midlands Franchise Service Quality Regime*) to the Franchise Agreement that prevailed immediately before the Parties entered into the EMA shall apply, subject to any Variations that have been or may be effected in accordance with schedule 9 (*Changes and Variations*) of the Franchise Agreement.

3 Fixed Fee and Performance Based Fee

3.1 The Secretary of State shall pay to the Franchisee the amount of the Fixed Fee in relation to each Reporting Period that falls between the ERMA Start Date and the Early ERMA Termination Date, calculated in accordance with the terms of Schedule 8.1A (*Franchise Payments*) to the Franchise Agreement that prevailed during the term of the ERMA.

3.2 The Franchisee shall not be entitled to payment of any Performance Based Fee in relation to each Reporting Period that falls between the ERMA Start Date and the Early ERMA Termination Date.

4 Residual Value Assets and Committed Obligations

"Actual Expenditure Amount" or **"AEA"** means, in relation to a Committed Obligation or a Franchise Specific Obligation (as applicable), the total Costs and Capital Expenditure that were funded by the Secretary of State and which relate to costs that the Franchisee incurred in delivering the relevant Committed Obligation or Franchise Specific Obligation (as applicable) during the EMA-ERMA Period . For the purpose of this definition, the actual costs incurred shall be determined subject to paragraph 4.1.

"Balancing Payment" means, in relation to an Other Commitment, a balancing payment in accordance with paragraph 4.1.9.

"EMA-ERMA Period" means the period on and from 1 March 2020 to the Early ERMA Termination Date (inclusive).

"Expenditure Commitments" means the Franchisee's obligations to incur a specified (or minimum) amount of expenditure towards such purpose or outcome (as applicable)

as may be specified in the relevant Committed Obligation or Franchise Specific Obligation in accordance with Part 1 to schedule 6.2 (*Committed Obligations*) or schedule 6.1 (*Franchise Specific Obligations*) to the Franchise Agreement respectively.

“Modelled Expenditure Amount” or **“MEA”** means, in relation to a Committed Obligation or a Franchise Specific Obligation (as applicable), the total amount of Secretary of State funding included as a modelled cost in the calculation of Franchise Payments as calculated by the Financial Model and (as applicable) documented in the Record of Assumptions for the EMA-ERMA Period, assuming that such funding would have been included in Periodic Franchise Payments on a pro rata basis calculated by reference to the number of days in the relevant Reporting Periods and relevant Franchisee Years.

“Other Commitments” means the Franchisee’s obligations to deliver any Committed Obligation or Franchise Specific Obligation which does not constitute an Expenditure Commitment.

“Recalculated Balancing Payment” means, in relation to an Other Commitment, a Balancing Payment which has been recalculated on the basis of the Updated Values (as defined in paragraph 4.15.(ii)).

“Relevant Other Commitment” means each Other Commitment in respect of which either the Total Actual Expenditure or the Total Modelled Expenditure, exceeds or has exceeded [REDACTED²⁶].

“Total Actual Expenditure” or **“TAE”** means, in relation to a Committed Obligation or a Franchise Specific Obligation (as applicable):

- a) where the relevant obligation has been fulfilled in full, the total cost of delivering the relevant Committed Obligation or Franchise Specific Obligation (as applicable) as substantiated by the Franchisee to the Secretary of State’s reasonable satisfaction; or
- b) otherwise, an estimate of the total cost expected to be incurred in delivering the relevant Committed Obligation or Franchise Specific Obligation (as applicable) which the Parties shall, use all reasonable endeavours to agree,

in each case, determined subject to paragraph 4.1.1.

“Total Modelled Expenditure” or **“TME”** means, in relation to a Committed Obligation or a Franchise Specific Obligation (as applicable), the total cost which the Franchisee was projected to incur in delivering the relevant Committed Obligation or Franchise Specific Obligation (as applicable) during the Franchise Period, as determined by reference to the aggregate amount that the Record of Assumptions and/or the Financial Model (as applicable) assumed would be spent in relation to such Committed Obligation or Franchise Specific Obligation (as applicable).

“Updated TAE” means, in relation to a Committed Obligation or a Franchise Specific Obligation (as applicable), the total costs actually incurred during the Franchise Term

²⁶ December 2020 (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.

in delivering such Committed Obligation or Franchise Specific Obligation (as applicable) as substantiated by the Franchisee to the Secretary of State's reasonable satisfaction. For the purpose of this definition, the actual costs incurred shall be determined subject to paragraph 4.1.1.

4.1 Committed Obligations and Franchise Specific Obligations

4.1.1 For the purposes of this paragraph 4.1 (and the definition of any expression used in this paragraph 4.1):

- (i) any costs incurred by the Franchisee in relation to delivering any Committed Obligation or Franchise Specific Obligation which were Disallowable Costs or Unreimbursed Disallowable Costs shall be disregarded;
- (ii) any costs incurred by the Franchisee in relation to delivering any Committed Obligation or Franchise Specific Obligation:
 - (a) in respect of the period prior to 1 March 2020, which were incurred otherwise than in accordance with its obligations under the Franchise Agreement (as in effect at the time the relevant costs were incurred);
 - (b) in respect of the period on and from 1 March 2020 to the ERMA Start Date, which were incurred otherwise than in accordance with acting as a Good and Efficient Operator (as defined under the EMA);
 - (c) in respect of the period on and from the ERMA Start Date until the Early ERMA Termination Date, which were incurred otherwise than in accordance with acting as a Good and Efficient Operator, and
 - (d) on and from the Early ERMA Termination Date, which were incurred otherwise than in accordance with its obligations under the Franchise Agreement (as in effect at the time the relevant costs were incurred),shall be disregarded,
- (iii) any references to the Record of Assumptions and/ or Financial Model (as applicable) means the latest version of the Record of Assumptions and/or Financial Model (as applicable) agreed under the Franchise Agreement;
- (iv) the Franchisee shall use all reasonable endeavours to cooperate with the Secretary of State to agree the matters described in this paragraph 4.1 and shall respond to any requests for information, calculations or comments as the Secretary of State may reasonably make in connection with such matters; and
- (v) where Parties are required to "use all reasonable endeavours to agree" a particular matter, they shall use all reasonable endeavours

to agree that matter, provided that, if the Parties fail to reach an agreement within the specified time period (or in the absence of a specified time period, a period of time which the Secretary of State considers reasonable), the Secretary of State shall have the right to reasonably determine the matter.

- 4.1.2 Neither Party shall have the right to receive nor the obligation to pay (or otherwise compensate) the other Party in respect of the same amount more than once.
- 4.1.3 No later than 28 February 2021 (or such later date as the Secretary of State may notify the Franchisee), the Franchisee shall deliver to the Secretary of State:
- (i) an updated statement in respect of the matters set out in the Franchisee's statement provided pursuant to and in accordance with paragraph 7A (*Information relating to Committed Obligations and Franchise Specific Obligations*) of schedule 11.2 (*Management Information*) to the Franchise Agreement (save that all references in that paragraph to 1 March 2020 shall be replaced with the Early ERMA Termination Date); and
 - (ii) any other information that the Secretary of State may reasonably request.
- 4.1.4 Without prejudice to the Secretary of State's rights pursuant to paragraph 4.1.5 below, the Secretary of State may exercise its rights under paragraph 9.9 of Schedule 11.2 (*Management Information*) of the Franchise Agreement to audit or otherwise investigate any of the matters described in paragraph 4.1.3.
- 4.1.5 Without prejudice to the Franchisee's obligations under paragraph 4.1.4, the Secretary of State reserves the right to determine, in the Secretary of State's sole discretion (acting reasonably), the position in respect of any of the matters described in paragraph 4.1.3 by reference to all the information available to the Secretary of State.
- 4.1.6 Having due regard to information available to them, including the statements provided by the Franchisee pursuant to paragraph 4.1.3 and paragraph 7A (*Information relating to Committed Obligations and Franchise Specific Obligations*) of schedule 11.2 (*Management Information*) to the Franchise Agreement, and where applicable, the findings of any audit(s) conducted pursuant to paragraph 9.9 of Schedule 11.2 (*Management information*) to the Franchise Agreement, the Parties shall use all reasonable endeavours to agree, in relation to each Committed Obligation or Franchise Specific Obligation:
- (i) the Modelled Expenditure Amount; and
 - (ii) the Actual Expenditure Amount.

4.1.7 In relation to each Committed Obligation or Franchise Specific Obligation which constitutes an Expenditure Commitment, the Parties acknowledge and agree that where the Actual Expenditure Amount is:

- (i) less than the Modelled Expenditure Amount, the Secretary of State shall be liable in respect of the difference to the Franchisee and the Secretary of State may discharge such liability (in the Secretary of State's sole discretion) by way of:
 - (a) an adjustment to the Franchise Payments in the Franchisee's favour;
 - (b) set-off against any amounts owed by the Franchisee to the Secretary of State; and/or
 - (c) implementing an equivalent reduction in the value of the relevant Expenditure Commitment, or of any other Expenditure Commitment, under the Franchise Agreement (provided that the resulting value of the Expenditure Commitment shall not be lower than the amount the Franchisee has already spent, or cannot reasonably avoid spending, in respect of that Expenditure Commitment).
- (ii) greater than the Modelled Expenditure Amount, the Franchisee shall be liable for the difference to the Secretary of State and shall, on the direction of the Secretary of State:
 - (a) pay the relevant amount to the Secretary of State on the next Payment Date falling no fewer than seven days after receipt of a written notice from the Secretary of State;
 - (b) apply such amounts towards such other alternative scheme or schemes as the Secretary of State may nominate in the Secretary of State's sole discretion; or
 - (c) apply such amounts in such manner as the Secretary of State may direct, in the Secretary of State's sole discretion.

4.1.8 No later than 31 March 2021 (or such later date as the Secretary of State may notify the Franchisee), the Parties shall use all reasonable endeavours to agree a list of all Relevant Other Commitments.

4.1.9 As soon as reasonably practicable following agreement (or if applicable determination) as to which Committed Obligations or Franchise Specific Obligations constitute Relevant Other Commitments or such other time as the Parties may agree, the Parties shall use all reasonable endeavours to agree a balancing payment in respect of the proportion of each Relevant Other Commitment delivered during the EMA-ERMA Period such that:

- (i) in circumstances where there is a difference between the Actual Expenditure Amount and the Modelled Expenditure Amount in respect of a Relevant Other Commitment:

- (a) the Secretary of State shall compensate the Franchisee for any underfunding; and
 - (b) the Franchisee shall compensate the Secretary of State for any overfunding,
- during the EMA-ERMA Period, taking into account the proportion of such Relevant Other Commitment which: (a) was delivered before 1 March 2020, (b) was delivered during the EMA-ERMA Period through the Franchise Payments, (c) is assumed in the Financial Model and/or Record of Assumptions to be delivered during the EMA-ERMA Period; and (d) remains to be delivered after the EMA-ERMA Period, in each case, in accordance with paragraph 4.1.13 below; and
- (ii) in circumstances where there is a difference between the Total Actual Expenditure and the Total Modelled Expenditure in respect of a Relevant Other Commitment, any overspend or underspend (as applicable) shall be apportioned to each Party in accordance with the proportion of the Total Actual Expenditure in relation to such Relevant Other Commitment incurred or expected to be incurred during the period when such Party was or is on cost risk, (a "**Balancing Payment**").

4.1.10 The Parties acknowledge and agree that the Balancing Payment in respect of each Relevant Other Commitment shall, subject to any such adjustment as the Secretary of State may reasonably determine is necessary to take into account any actions already taken to compensate either of the Parties in respect of the matters described in paragraph 4.1.9 (in accordance with the principle described in paragraph 4.1.2), be calculated in accordance with the following formula:

$$\text{Balancing Payment} = \text{MEA} - \text{AEA} + X$$

where X represents the Secretary of State's share of any overspend or underspend, calculated in accordance with paragraph 4.1.11.

4.1.11 For the purposes of paragraph 4.1.10, X shall be calculated in accordance with the following formula:

$$X = \frac{\text{AEA}}{\text{TAE}} * (\text{TAE} - \text{TME})$$

4.1.12 If the Parties agree or the Secretary of State reasonably determines that the results of applying the formulae set out in paragraphs 4.1.10 and 4.1.11 give rise to an outcome which is inconsistent with the principles set out in paragraphs 4.1.10 and 4.1.11 above, the Parties shall use all reasonable endeavours to agree an alternative formula or approach to calculating the Balancing Payments.

4.1.13 In relation to each Relevant Other Commitment, where the Balancing Payment is:

- (i) a positive number, the Secretary of State shall be liable to pay the Franchisee such Balancing Payment and the Secretary of State may discharge such liability (in the Secretary of State's sole discretion) by way of:
 - (a) an adjustment to the Franchise Payments in the Franchisee's favour; and/or
 - (b) set-off against any amounts owed by the Franchisee to the Secretary of State;
- (ii) a negative number, the Franchisee shall be liable to pay the Secretary of State such Balancing Payment and shall, on the direction of the Secretary of State:
 - (a) pay the relevant amount to the Secretary of State on the next Payment Date falling no fewer than seven days after a written notice from the Secretary of State;
 - (b) apply such amounts towards such other alternative scheme or schemes as the Secretary of State may nominate in the Secretary of State's sole discretion; or
 - (c) apply such amounts in such manner as the Secretary of State may direct, in the Secretary of State's sole discretion.

4.1.14 When the Total Actual Expenditure is determined based on an estimate of the total cost expected to be incurred in delivering a Committed Obligation or a Franchise Specific Obligation (as applicable), the Franchisee shall, on delivering such Committed Obligation or Franchise Specific Obligation (as applicable) in full, provide to the Secretary of State a reconciliation between the Total Actual Expenditure and the Updated TAE.

4.1.15 In relation to any Other Commitment, following: (i) the provision of a reconciliation pursuant to paragraph 4.14 above; or (ii) a Run of the Financial Model in relation to any Change:

- (i) the Secretary of State may, at the Secretary of State's sole discretion, determine whether the Balancing Payment should be calculated or recalculated in respect of such Other Commitment;
- (ii) where the Secretary of State so determines pursuant to paragraph 4.15.(i), the Parties shall use all reasonable endeavours to agree the updated values of TAE, MEA and/ or TME (as applicable) (the "**Updated Value(s)**"); and
- (iii) the Balancing Payment shall be calculated or recalculated (as applicable) using the Updated Value(s).

4.1.16 If the Secretary of State has elected to recalculate a Balancing Payment in respect of any Other Commitment, pursuant to paragraph 4.1.15, the Parties acknowledge and agree that where the Recalculated Balancing Payment is:

- (i) greater than the sum of the Balancing Payment and any previous Recalculated Balancing Payment(s), the Secretary of State shall be liable in respect of the difference to the Franchisee; or
- (ii) less than the sum of the Balancing Payment and any previous Recalculated Balancing Payment(s), the Franchisee shall be liable in respect of the difference to the Secretary of State,

and, in each case, the relevant Party shall discharge its liability in accordance with paragraph 4.1.13(i) or 4.1.13(ii) (as applicable).

4.1.17 In respect of a Balancing Payment calculated pursuant to paragraph 4.1.15 (which is not a Recalculated Balancing Payment), the Parties acknowledge and agree that where the Balancing Payment is:

- (i) a positive number, the Secretary of State shall be liable in respect of the difference to the Franchisee; or
- (ii) a negative number, the Franchisee shall be liable in respect of the difference to the Secretary of State,

and, in each case, the relevant Party shall discharge its liability in accordance with paragraph 4.1.13.(i) or 4.1.13.(ii) (as applicable).

4.2 **RV Assets**

4.2.1 No later than 28 February 2021 (or such later date as the Secretary of State may notify the Franchisee), the Franchisee shall provide to the Secretary of State such information as is required by the Secretary of State, and in the detail needed to demonstrate and evidence the degree to which any RV Asset listed in Column 1 of the table set out in appendix 1 (*List of the RV Assets*) to schedule 14.6 (*Residual Value Mechanism*) to the Franchise Agreement has been progressed and the actual capital cost incurred in relation to each such RV Asset during the EMA-ERMA Period.

4.2.2 The Secretary of State may, in assessing the status and condition of the relevant RV Asset, exercise its rights under paragraph 6 (*Right to Inspect*) of schedule 11.2 (*Management Information*) to the Franchise Agreement.

4.2.3 The Parties acknowledge that during the EMA-ERMA Period, the Secretary of State has, subject to the terms of the ERMA, funded the cost of delivering the RV Assets listed in Column 1 of the table set out in appendix 1 (*List of the RV Assets*) to schedule 14.6 (*Residual Value Mechanism*) to the Franchise Agreement and, in order to reflect this, the Parties agree that, in respect of each relevant RV Asset:

- (i) the Secretary of State shall adjust the capital cost amount specified in Column 5 of the table in Appendix 1 to Schedule 14.6 (*List of the RV Assets*) to reduce it by the amount of the capital expenditure which was funded by the Secretary of State during the EMA-ERMA Period (and excluding any funding of depreciation costs by the Secretary of State);

- (ii) the Secretary of State shall adjust the RV Asset Transfer Value applicable to such RV Asset by using the same principles as were specified in the Financial Model and Record of Assumptions for the calculation of the initial RV Asset Transfer Value except that the capital cost (as adjusted pursuant to paragraph 4.2.3(i) above) shall replace the capital cost specified for such RV Asset in Column 5 of the table in appendix 1 (*List of the RV Assets*) to schedule 14.6 (*List of the RV Assets*) to the Franchise Agreement in order to calculate the revised RV Asset Transfer Value; and
- (iii) Column 2 of the table in appendix 1 (*List of the RV Assets*) to schedule 14.6 (*List of the RV Assets*) to the Franchise Agreement shall be restated using the amounts of the revised RV Asset Transfer Value pursuant to paragraph 4.2.3(ii).

4.2.4 The adjustments and restatement set out in paragraph 2.3 shall be deemed to take effect from the Early ERMA Termination Date. The provisions of paragraph 4.2.3 shall be without prejudice to any other further adjustments which may be made to the RV Asset Transfer Value pursuant to Schedule 14.6 (*List of the RV Assets*).

5 Adjustments

5.1 In respect of all Franchise Payments that relate to the Interim Period or to any period thereafter, unless otherwise instructed by the Secretary of State, the provisions of:

- 5.1.1 schedule 8.1 (*Franchise Payments*);
- 5.1.2 schedule 8.2 (*Profit Share Mechanism*);
- 5.1.3 schedule 8.4 (*GDP Adjustment Payments*); and
- 5.1.4 schedule 8.5 (*CLE Adjustment Payments*),

to the Franchise Agreement that prevailed immediately before the Parties entered into the EMA (subject to any Variations that have been or may be effected in accordance with schedule 9 (*Changes and Variations*) to the Franchise Agreement shall apply pursuant to the terms of this ERMA, provided that for such duration of the Interim Period, each of:

- 5.1.5 the First Profit Share Threshold Amount, the Second Profit Share Threshold Amount and the Third Profit Share Threshold Amount (as applicable) in respect of the year from 1 April 2020 to 31 March 2021, as set out in appendix 1 to schedule 8.2 (*Profit Share Mechanism*);
- 5.1.6 DfTGDPWR in respect of the year from 1 April 2020 to 31 March 2021, as set out in appendix 1 to schedule 8.4 (*GDP Adjustment Payments*); and
- 5.1.7 DfTCLERW in respect of the year from 1 April 2020 to 31 March 2021, as set out in appendix 1 to schedule 8.5 (*CLE Adjustment Payments*),

shall each be amended so that such amounts shall be adjusted on a pro-rata basis by being multiplied by the Pro-Rata Amount.

- 5.2 For the purposes of this paragraph 5, the “**Pro-Rata Amount**” shall be a number calculated as:

$$Pro - Rata Amount = \frac{N}{365}$$

where ‘N’ is the number of days in the Interim Period or, in the event that the Franchise Agreement is terminated before 1 April 2021, the number of days from the Early ERMA Termination Date until such date the Franchise Agreement is terminated.

- 5.3 The Secretary of State may, at the Secretary of State’s sole discretion, direct any further adjustments to any of the calculations or components set out in each of schedule 8.1 (*Franchise Payments*), schedule 8.2 (*Profit Share Mechanism*), schedule 8.4 (*GDP Adjustment Payments*) or schedule 8.5 (*CLE Adjustment Payments*) to the Franchise Agreement as is reasonably necessary to disregard the term of the EMA and the term of this ERMA from any such calculations or components.

Schedule 4 Funding Deed, Bond and Performance Bond

Terms used but not otherwise defined in this Schedule 4 shall have the meanings given to them in the Funding Deed, the Franchise Agreement and the ERMA (as applicable).

1 General

- 1.1 Subject to the provisions of this Schedule 4, the Franchisee acknowledges and agrees that each of the Funding Deed and Performance Bond shall continue in full force and effect upon entry into the ERMA.
- 1.2 The Secretary of State acknowledges that following payment by the Franchisee of all outstanding liabilities, including any ERMA Costs and Claims Amount, which the Franchisee owes the Secretary of State following termination of the Franchise Agreement, the Secretary of State shall relinquish any further rights it may have to make any further calls under the Performance Bonds.
- 1.3 The Franchisee acknowledges and agrees that the provisions of this Schedule 4 shall, insofar as they relate to the Secretary of State's rights in respect of any ERMA Costs and Claims Amounts, survive termination of the ERMA on the Early Termination Date.
- 1.4 The Franchisee shall, on the Secretary of State's request and without prejudice to any other reporting obligations of the Franchisee, provide a progress update to the Secretary of State in respect of its engagement with its counterparties under the Funding Deed and the Performance Bond and Bond providers with respect to agreeing the amendments to each of the Funding Deed, Performance Bonds and Bonds as set out in this Schedule 4.
- 1.5 The Franchisee shall provide the Secretary of State with copies of the proposed amendments to the Funding Deed, Performance Bonds and Bonds in draft form no later than 13 November 2020 and shall use all reasonable endeavours to agree suitable amendments to address any comments the Secretary of State may provide on such documents.
- 1.6 For the purposes of this Schedule 4, "**ERMA Costs and Claims Amount**" means the Aggregated Costs and Revenue Liabilities which have not been offset by the Fixed Fee and, where applicable, the Performance Based Fee in the relevant Franchisee Year.

2 Funding Deed

- 2.1 **²⁷No later than 7 December 2020 or such later date as the Secretary of State may agree, the Franchisee shall procure the following amendments to the Funding Deed to satisfy the requirements of this paragraph 2.1 in a form satisfactory to the Secretary of State which shall:**

²⁷ 26 November 2020 (Date of Contract Change Letter) Contract variation agreed by the Secretary of State and Franchisee.

- 2.1.1 ensure the Secretary of State is able to serve notice on each Guarantor during the Facility Term requiring it to pay to the Secretary of State by no later than the Advance Date an amount specified in the notice in respect of any Termination Sum amount or ERMA Costs and Claims Amount, provided that each Guarantor's liability under the Funding Deed shall not exceed the amount of each Guarantor's Respective Share;
- 2.1.2 ensure that the Secretary of State has the right to call each Bond in respect of any portion of the ERMA Costs and Claims Amount which is outstanding after its due date in circumstances where the Guarantor has failed to comply with a demand notice contemplated in paragraph 2.1.1 above, provided that the Bond provider's liability shall be limited to the total amount of the Bond;
- 2.1.3 ensure that each Guarantor acknowledges and agrees that its rights to receive repayment of PCS Advances and interest payments accruing on any loans under the Funding Deed are subordinated to the Franchisee's obligations to settle any other outstanding liabilities until the Final Settlement Date (as defined in Schedule 2 (*Termination of the Franchise Agreement*)); and
- 2.1.4 in respect to provisions which relate to or are otherwise linked to the period which is six (6) months following the expiry of the Franchise Period, amendments to extend such period until the Final Settlement Date (as defined in Schedule 2 (*Termination of the Franchise Agreement*)).

3 Bond

- 3.1 ²⁸**No later than 7 December 2020 or such later date as the Secretary of State may agree, the Franchisee shall procure amendments to each Bond in a form satisfactory to the Secretary of State which shall ensure that the Secretary of State has the right to call each or any Bond in respect of any portion of the ERMA Costs and Claims Amount in circumstances where the relevant Guarantor has failed to comply with a demand notice contemplated in paragraph 2.1.1 above provided that each Bond provider's liability shall be limited to the total amount of their respective Bond.**

4 Performance Bond

- 4.1 ²⁹**No later than 7 December 2020 or such later date as the Secretary of State may agree, the Franchisee shall procure amendments to the Performance Bond in a form satisfactory to the Secretary of State which shall ensure that the Secretary of State has the right to call the Performance Bond in in respect of any ERMA Costs and Claims Amounts,**

²⁸ 26 November 2020 (Date of Contract Change Letter) Contract variation agreed by the Secretary of State and Franchisee.

²⁹ 26 November 2020 (Date of Contract Change Letter) Contract variation agreed by the Secretary of State and Franchisee.

provided that the Bond provider's liability shall be limited to the total amount of the Performance Bond.