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Emergency Measures Agreement ("**EMA**")

The Secretary of State for Transport

and

XC Trains Limited

Withdrawn March 2022

31 March 2020

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THIS AGREEMENT is made the

31 March 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) **XC Trains Limited** (company number 04402048), whose registered office is at C/O Arriva Plc 1 Admiral Way, Doxford International, Business Park, Sunderland, SR3 3XP (the "**Franchisee**"),
- each a "**Party**" and together, the "**Parties**".

RECITALS:

- (A) The Secretary of State and the Franchisee entered into a franchise agreement dated 28 September 2016 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. It is anticipated that COVID-19 will have a significant impact on the operation of rail services in the United Kingdom.
- (C) The Secretary of State wishes to amend 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 for the duration of the Term and any Extended Term (if applicable) in accordance with clause 3 of this EMA.
- (D) The Parties now wish to record their agreement regarding the amendments to the Franchise Agreement to address the impacts of COVID-19 by entering into this Emergency Measures Agreement ("**EMA**").
- (E) The Franchisee acknowledges that this EMA 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 EMA (unless the context otherwise requires):

- (a) words and expressions defined under the Franchise Agreement and the Act shall have the same meanings when used in this EMA;
- (b) words and expressions defined in the Interpretation Act 1978 shall have the same meanings when used in this EMA;
- (c) the words "including", "include" and "in particular" are to be construed without limitation;
- (d) references to a person include its successors, transferees and assignees;

- (e) references in this EMA to clauses and schedules are to clauses and schedules of this EMA unless expressly specified to the contrary;
- (f) headings and references to headings shall be disregarded in construing this EMA;
- (g) 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; and
- (h) words importing the masculine gender include the feminine gender and vice versa and words in singular include the plural and vice versa.

1.2 Construction

- (a) This EMA is supplemental to and shall be read and construed together with the Franchise Agreement and this EMA and the Franchise Agreement shall together constitute one and the same document.
- (b) In the event of conflict between the terms of this EMA and the terms of the Franchise Agreement, subject to clause 2.1(b), the terms of this EMA shall prevail.
- (c) Save as expressly provided for in this EMA the Franchise Agreement shall continue in full force and effect.
- (d) Any reference to the "term" or "duration" of the EMA shall mean the Term in accordance with clause 3 of this EMA.

2. PURPOSE OF THIS EMA

2.1 The Parties acknowledge that:

- (a) this EMA is based on the following overriding principles:
 - (i) the Parties recognising the exceptional circumstances presented by COVID-19;
 - (ii) the Parties seeking to ensure that, as far as possible, operational performance and the provision of Passenger Services is maintained;
 - (iii) the Parties seeking to ensure the Franchisee is insulated as far as is reasonable from the severe financial impacts of COVID-19 whilst not being overcompensated; and
 - (iv) the Parties cooperating with an overall goal of acting in the national interest;
- (b) this EMA has been prepared as an emergency measure in a circumstance of extreme emergency. To the extent that there are any anomalies or inconsistencies within this EMA or with the terms of the Franchise Agreement as a result of the variations imposed by this EMA, the Parties shall discuss such matters in good faith and work towards a practical and sensible solution, to further amend the Franchise Agreement to reflect the intention of this EMA.

3. COMMENCEMENT AND TERM

3.1 Subject to clause 3.2, this EMA shall take effect from 1 April 2020 ("**EMA Start Date**") and shall continue until the earlier of:

- (a) 1.59 a.m. on 18 October 2020; or

(b) the date the Parties mutually agree to terminate this EMA,
(the "**Term**").

3.2 Notwithstanding clause 3.1, the provisions of Appendix 2 to Schedule 8A, included in schedule 1 to this EMA (Schedule 8.A (Franchise Payments)) shall apply retrospectively from 1 March 2020.

3.3 Not used.

3.4 Not used.

3.5 The amendments to the Franchise Agreement pursuant to this EMA shall, unless otherwise required by the Secretary of State or pursuant to this EMA, cease to have effect on the later of the expiry of the Term or the Extended Term (as applicable).

3.6 Not used.

3.7 Not used.

4. **AMENDMENTS TO THE FRANCHISE AGREEMENT**

4.1 With effect from the EMA Start Date until the expiry of the Term or the Extended Term (as applicable), the Franchise Agreement shall be varied as set out in schedule 1 to this EMA and by clauses 5 to 18 below.

4.2 For the avoidance of doubt, this EMA shall not have the effect of suspending or varying the Deed of Variation to the Franchise Agreement entered into between the parties on 30 January 2020 (the "**Variation**"), the terms of such Variation shall continue in full force and effect save that, in the event of any conflict between this EMA and the Variation, this EMA shall take precedence.

5. **COOPERATION**

5.1 The Franchisee agrees to coordinate and cooperate with other Train Operators, Network Rail and other rail industry bodies, to ensure the continuation of Passenger Services across the network in a coordinated manner, and in line with the priorities and directions as may be set out by the Secretary of State from time to time, including, but not limited to:

- (a) coordinating 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 operate their own Franchise Services;
- (b) 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
- (c) continuing where possible and appropriate to enforce any agreements with third parties to deliver quality and value for money.

6. **ADDITIONAL SERVICES**

6.1 The Franchisee acknowledges that the Secretary of State may require special measures, in the form of increased cooperation or additional services, to be implemented while COVID-19 subsists and the Franchisee shall use its best endeavours to accommodate such requests and act in the national interests.

6.2 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.

6.3 The reasonable and proper costs incurred in carrying out such additional services shall be recoverable from the Secretary of State as part of the Actual Costs subject to the provisions of Schedule 8.A of the Franchise Agreement, as set out in Appendix 2 to schedule 1 to this EMA.

7. MEETINGS

7.1 Where the Franchise Agreement 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.

8. REMEDIAL PLANS

8.1 Subject to the provisions of Schedule 10.1 of the Franchise Agreement, as amended by this EMA, the requirement to submit a Remedial Plan shall be suspended for the duration of the EMA.

8.2 Any Remedial Plans that are in place at the start of the EMA will be reviewed by the Secretary of State within thirty (30) Weekdays and the Secretary of State shall determine (acting in its absolute discretion) and confirm in writing whether the Remedial Plan will be:

- (a) continued "as is";
- (b) delayed;
- (c) suspended; or
- (d) reduced in scope or application.

9. FARES

9.1 The Franchisee shall remain responsible for the collection of fare revenue using the same degree of skill, diligence, prudence and foresight which would be exercised by a skilled and experienced Train Operator using all reasonable endeavours to maximise revenue, 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 other relevant authority in relation to public interaction.

9.2 To the extent a ticket is sold which relates partially to the term of the EMA and partially to the period before 1 March 2020 or after the expiry of the EMA, this shall be accounted for using the same principles that apply on the transfer of a franchise.

10. TREATMENT OF REVENUE AND PROFIT SHARE MECHANISMS

The Parties acknowledge and agree that the revenue risk-sharing mechanisms, the profit share mechanism and any other relevant regimes that are prescribed in annual terms under the Franchise Agreement (prior to the implementation of the EMA) shall be treated for the Franchisee Year beginning in April 2019 as if that Franchisee Year had ended at the end of the twelfth Reporting Period in the same manner as may be provided for in the Franchise Agreement for an early termination and/or exercising part of a year in an optional extension period. If and to the extent that the Franchise Agreement does not already otherwise pro rate or otherwise make an allocation in relation to a part year, the Secretary of State will, acting reasonably, determine the appropriate pro rating for the relevant figures or metric.

11. FUNDING DEED

- 11.1 The Funding Deed shall remain in force and shall not be amended by this EMA.
- 11.2 The Franchisee will not pay any interest accruing in relation to any loans provided under the Funding Deed during the term of the EMA. Such interest shall remain due at the expiry of the EMA.
- 11.3 Subject to clause 11.4, the Franchisee shall not during the term of the EMA repay any part of any Agreed Funding Commitment or PCS Advance (as defined in the Funding Deed) that has been advanced pursuant to the Funding Deed.
- 11.4 The Franchisee shall be entitled to use a sum equivalent to the payment made by the Secretary of State pursuant to Appendix 2 of Schedule 8A of the Franchise Agreement in relation to the Reporting Period starting on 1 March 2020 (less any element of that payment which consists of Management Fee), to repay any Agreed Funding Commitment or PCS Advance which were made to the Franchisee between 1 March 2020 and 31 March 2020, provided such repayment occurs before 30 April 2020.

12. CHANGE

- 12.1 Save as specified in Schedule 1 to this EMA, the provisions of Schedule 9.1 (Changes and Variations) of the Franchise Agreement shall be suspended for the duration of the EMA.
- 12.2 Unless otherwise specifically agreed by the Secretary of State, the impacts of COVID-19 shall not be considered, and such impact shall be excluded, in relation to any of the limbs of the definition of "Change" for the duration of the EMA and the Franchisee shall not raise a claim for Change that arises from the impact of COVID-19 for the duration of the EMA.
- 12.3 Any Change event that arises during the EMA and does not relate to the impacts of COVID-19 during the EMA shall be evaluated in accordance with the provisions in Schedule 9 (Changes and Variations) of the Franchise Agreement after the expiry of the EMA.
- 12.4 In relation to Change events triggered before the EMA:
- (a) the processing of the Change shall continue and be treated on the terms of the Franchise Agreement that existed before the entry into this EMA, taking into account the fact that the EMA has been in place since the execution of this EMA;
 - (b) any payments in respect of the relevant Change that are agreed or determined in accordance with that process shall be made as and when determined; and
 - (c) notwithstanding clauses 12.4(a) and (b), any Estimated Revisions shall cease, and shall not be payable, from 1 March 2020 until the expiry of the EMA.

13. PERFORMANCE BENCHMARKS

- 13.1 Where the Franchisee's performance in the Reporting Periods prior to the EMA results in a breach or is at "default level", this shall be disregarded for the duration of the EMA and the Secretary of State shall determine (acting in its absolute discretion) the course of action, after the expiry of the EMA.
- 13.2 Any course of action determined by the Secretary of State in accordance in clause 13.1 shall in no circumstances be more advantageous to the Secretary of State than the position prior to the EMA.

14. COMMITTED OBLIGATIONS

14.1 Following execution of this EMA, the Parties shall within thirty (30) Weekdays of the EMA Start Date meet and consider, acting reasonably and in good faith, whether the completion of Committed Obligations will be:

- (a) continued "as is";
- (b) delayed;
- (c) suspended; or
- (d) reduced in scope or application.

14.2 In the event that the Committed Obligation involves Capital Expenditure the default assumption will be that the Committed Obligation shall continue unaffected during the period of the EMA.

14.3 In the event the Parties are unable to agree the approach to completion of a Committed Obligation within sixty (60) Weekdays of the EMA Start Date, the Secretary of State shall reasonably determine the approach.

14.4 If a delay, suspension or reduction agreed or determined in accordance with this clause 14 is such that it is reasonably likely to have an impact on the Franchisee's financial position or performance of the relevant obligation following the expiry of the EMA, then the Parties will also agree (or if they are unable to agree, the Secretary of State will reasonably determine) how that impact will be addressed (whether by way of a Variation or some other mechanism).

15. COVID-19 RELATED SUPPORT

15.1 The Franchisee shall use all reasonable endeavours to avail itself of, including applying for, any UK Government support that is offered in relation to the impact of COVID-19, including for example tax relief.

15.2 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.A of the Franchise Agreement, as set out in Appendix 2 to schedule 1 to this EMA, such that the Franchisee does not benefit from double recovery.

16. STATE AID

16.1 The Franchisee acknowledges and agrees that the EMA 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 8A of 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 EMA, 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. 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 or any other financial advantage that is identified as having been granted as a result of the EMA 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.

17. ACCOUNTING ALLOCATION

It is acknowledged that pursuant to clause 3.1 of this EMA, this EMA shall terminate on or around the Expiry Date. The Franchisee acknowledges that financial balances transferred on the Expiry Date to any subsequent Direct Award with the Franchisee shall be considered on a basis consistent with constructing a Net Asset Statement when any future franchise agreement is being awarded to an operator other than the Franchisee, and no balance shall be transferred which is inconsistent with this principle. Where the Secretary of State reasonably considers that any balance has not been considered on this basis (including where the accounting treatment looks to the form rather than the substance, of the item or transaction) 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 this to the Franchisee. The Franchisee acknowledges that if any future franchise agreement is awarded to the Franchisee or any subsidiary of a parent undertaking of the Franchisee that the Secretary of State shall be entitled to require such party as a condition of entry into the franchise agreement to agree a transfer of balances on this basis, and where the Secretary of State reasonably considers that any item or transaction has not been accounted for on this basis (including where the accounting treatment looks to the form rather than the substance, of the item or transaction) 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.

18. WARRANTIES

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

- (a) the budget submitted by the Franchisee prior to the EMA Start Date is a true and valid reflection of the budget assumed by the Franchisee at 1 March 2020; and
- (b) in the preparation of such budget, no measures have been undertaken to:
 - (i) suppress revenue and/or increase costs during the term of the EMA;
 - (ii) reallocate costs to, or revenues from the period when the EMA is in place; or
 - (iii) act in a way that is contrary to the principles of the EMA by using the existence or cessation of the EMA to increase profitability.

19. ENTIRE AGREEMENT

19.1 This EMA contains all the terms which the Parties have agreed in relation to the subject matter of this EMA and supersedes any prior written or oral agreements, representations or understandings between the Parties in relation to such subject matter.

19.2 The Franchisee acknowledges that this EMA 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 EMA. To the extent that any such warranties, statements, promises or representations have been given the Franchisee unconditionally and irrevocably waives any claims, rights or remedies which it might otherwise have had in relation to them.

19.3 Nothing in this clause 19 shall exclude any liability which one Party would otherwise have to the other Party in respect of any statements made fraudulently.

20. **COUNTERPARTS**

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

21. **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 EMA and all documents ancillary to it.

22. **GOVERNING LAW**

This EMA (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 EMA except as specified to the contrary.

23. **RIGHTS OF THIRD PARTIES**

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

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

SIGNED FOR AND ON BEHALF OF)
The Secretary of State for Transport)
)
)

Print Name of Authorised Signatory:

Position:

SIGNED FOR AND ON BEHALF OF)
XC 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 existing Schedule remains unamended and continues to apply;
- any text that appears in blue and is underlined shall be added to existing paragraphs / Schedules; and
- any text that appears in blue and is struck-out shall be deleted from existing paragraphs / Schedules.

| REFERENCE (PARAGRAPH / SCHEDULE) | AMENDMENT |
|--------------------------------------|---|
| Main Body | |
| 1.1 – Interpretation | <p>The following new subclause (dd) shall be inserted into clause 1.1:</p> <p><u><i>"(dd) a reference to a sum being calculated in accordance with Schedule 8.1 or 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."</i></u></p> <p>The full stop at the end of clause 1.1(cc) shall be deleted and replaced with "<u><i>: and</i></u>".</p> <p>The word "and" at the end of clause 1.1(b) shall be deleted.</p> |
| 2 – Agreed Documents and Definitions | <p>The following new definitions shall be inserted into paragraph 2.1:</p> <p><u><i>"COVID-19"</i></u> <u><i>means the coronavirus disease 2019;</i></u></p> <p><u><i>"EMA"</i></u> <u><i>means the Emergency Measures Agreement entered into by the Parties on or around 1 April 2020 to deal with the impacts of COVID-19;</i></u></p> |

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| | <p><u>"Initial Budget"</u> <i>means the Budget (as defined in Schedule 8.A) to be agreed between the Parties within 10 Weekdays of the EMA Start Date or, if the Parties are unable to agree, as reasonably determined by the Secretary of State;</i></p> <p>The following existing definitions shall be amended as follows:</p> <p>"Franchise Payment" <i>means, in relation to any Reporting Period, the amount determined in accordance with paragraph 1.1 of Schedule 8.A1 (Franchise Payments);</i></p> <p>"Payment Date" <i>means the date for the payment of Franchise Payments in accordance with paragraph 3.3 2.3 of Schedule 8.A1 (Franchise Payments);</i></p> |
| <p>8 – Entire Agreement/Warranty</p> | <p>Clause 8.1 shall be amended as follows:</p> <p><i>"This Franchise Agreement contains all the terms which the parties have agreed in relation to the subject matter of this Franchise Agreement, <u>except as amended</u>, and supersedes all prior written or oral agreements, representations or understanding between the parties in relation to such subject matter."</i></p> |
| <p>Schedule 1: Passenger Service Obligations</p> | |
| <p>1.1 – Service Development</p> | <p>Schedule 1 shall be replaced with the new Schedule 1 attached at Appendix [1].</p> |
| <p>1.2 – Operating Obligations</p> | |
| <p>1.3 – NOT USED</p> | |
| <p>1.4 – Passenger Facing Obligations</p> | |

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| 1.5 – Information about Passengers | |
| 1.6 – Franchise Services | |
| 1.7 – The Rolling Stock | |
| 1.8 – NOT USED | |
| Schedule 2: Assets, Leases, Other Franchisees and Schemes | |
| 2.1 – Asset Vesting and Transfer | N/A |
| 2.2 – Security of Access Agreements and Rolling Stock Leases | N/A |
| 2.3 – Third Party Delivery of Passenger Services and Other Franchisees | <p>Paragraph 1.2 (d) shall be amended as follows:</p> <p><i>“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 <u>(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 any such subcontracting or delegation)</u>; and”</i></p> |
| 2.4 – Other Franchise Operations | N/A |
| 2.5 – Transport, Travel and Other Schemes | N/A |
| Schedule 3: Priced Options | |
| - | N/A |
| Schedule 4: Persons with Disabilities and Disability Discrimination | |

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| - | N/A |
| Schedule 5: Fares and Ticketing | |
| 5.1 – Purpose, Structure and Construction | N/A |
| 5.2 – Franchisee's Obligations to Create Fares | N/A |
| 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, Regulated Price or Regulated Child Price | N/A |
| 5.7 – Changes to Fares and Fares Regulation | N/A |
| 5.8 – Fares Regulation Information and Monitoring | N/A |
| 5.9 – Ticketing | N/A |
| Schedule 6: Committed Obligations and Franchise Specific Obligations | |
| 6.1 – Committed Obligations and Special Terms | N/A |
| 6.2 – Franchise Specific Obligations | N/A |
| Schedule 7: Performance Benchmarks | |
| 7.1 – Performance Benchmarks | <p>The text in paragraphs 18.1 to 18.5 (inclusive) shall be deleted and replaced with "not used".</p> <p>The text in paragraphs 19.8, 19.9 and 19.10 shall be deleted and replaced with "not used".</p> |

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| 7.2 – National Rail Passenger Surveys and Customer Report | Unless otherwise instructed by the Secretary of State, Schedule 7.2 shall not apply for the duration of the EMA. |
| Schedule 8: Payments | |
| 8.1 – Franchise Payments | Schedule 8.1 shall be replaced with (together): (i) the new Schedule 8.A attached at Appendix [2]; and (ii) the new Schedule 8.B attached at Appendix [3]. |
| 8.2 – Profit Share Mechanism | Unless otherwise instructed by the Secretary of State, Schedule 8.2 shall not apply for the duration of the EMA. |
| 8.3 – Track Access Adjustments | Unless otherwise instructed by the Secretary of State, Schedule 8.3 shall not apply for the duration of the EMA. |
| 8.4 – GDP Adjustment Payments | Unless otherwise instructed by the Secretary of State, Schedule 8.4 shall not apply for the duration of the EMA. |
| 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 EMA. |
| 9.2 – Identity of the Financial Model | N/A |
| 9.3 – Not Used | N/A |
| 9.4 – Not Used | N/A |
| 9.5 – Variations to this Franchise Agreement and Incentivising Beneficial Changes | N/A |
| 9.6 – Threshold Amount | N/A |

| Schedule 10: Remedial Plans, Termination and Expiry | |
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| <p>10.1 – Remedial Plans and Remedial Agreements</p> | <p>Paragraph 1.1 shall be deleted and replaced with the following new paragraph:</p> <p><u><i>"If:</i></u></p> <p><u><i>(a) the Secretary of State is satisfied that the Franchisee is operating at a level that would, or would likely, be scored "1"; or</i></u></p> <p><u><i>(b) the Franchisee has received a score of "1",</i></u></p> <p><u><i>in relation to any of the EMA Criteria, for a particular EMA Performance Period, in accordance with the EMA Review process set out in Schedule 8.B, the Secretary of State may serve a notice on the Franchisee requiring it to 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 EMA Criterion (a "Remedial Plan Notice")."</i></u></p> <p>Paragraph 1.2(a) shall be deleted and replaced with the following new paragraph:</p> <p><u><i>(a) the specific EMA Criterion under the EMA Review Scorecard that the Secretary of State is satisfied that the Franchisee is likely to score, or has scored, "1" in ("Relevant Term");</i></u> <u><i>and</i></u></p> <p>Paragraph 1.4 shall be amended as follows:</p> <p><i>"1.4 Each Remedial Plan shall set out:</i></p> <p><i>(a) the Relevant Term which has caused such Remedial Plan to be required;</i></p> <p><i>(b) an explanation of the reasons for the <u>Franchisee receiving, or being likely to receive, a score of "1" with respect to contravention or likely contravention of</u> the Relevant Term;</i></p> <p><i>(c) the steps proposed for the purposes of <u>addressing and overcoming the shortfalls or failures that have led to the Franchisee receiving, or being likely to receive, a score</u></i></p> |

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| | <p>of "1" with respect to the Relevant Term securing or facilitating compliance with the Relevant Term; and</p> <p>(d) <i>the time period within which the Franchisee proposes to implement those steps."</i></p> |
| <p>10.2 – Termination and Expiry</p> | <p>N/A</p> |
| <p>10.3 – Events of Default and Termination Events</p> | <p>The text in paragraph 2.6 shall be deleted and replaced with "not used".</p> <p>The text in paragraph 2.9 shall be deleted and replaced with "not used".</p> <p>A new paragraph 2.18 shall be inserted as follows:</p> <p><u>"1.17 Disallowable Costs</u></p> <p><i><u>The Franchisee's Disallowable Costs exceed the maximum value for Aggregated Costs and Revenues Liabilities as specified in paragraph 5.8A of Schedule 8.A to this Agreement."</u></i></p> |
| <p>10.4 – Force Majeure</p> | <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> <p><i><u>"(iv) for the duration of the EMA, 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:</p> <p><i><u>"The definition of "Force Majeure Event" shall for the duration of the EMA exclude the occurrence and impact, whether direct or indirect, of COVID-19."</u></i></p> <p>Paragraph 3 shall be amended by inserting the following new paragraph:</p> <p><i><u>"3.3 Notwithstanding any other provision of this Agreement, the Franchisee agrees that it shall not for the duration of the EMA be entitled to further relief from obligations pursuant to the Force Majeure provisions under this Schedule 10.4 as a direct or indirect impact of COVID-19."</u></i></p> |

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| 10.5 – Liability | N/A |
| Schedule 11: Agreement Management Provisions | |
| Agreement Management Provisions | Schedule 11 shall be replaced with the new Schedule 11 attached at Appendix [4]. |
| Schedule 12: Financial Obligations and Covenants | |
| Financial Obligations and Covenants | <p>Paragraph 1 shall be amended by:</p> <p>deleting the word "or" at the end of paragraph (c).</p> <p>amending subparagraph (d) as follows:</p> <p>"(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>"</p> <p>inserting a new subparagraph (e) as follows:</p> <p><u>"(e) borrow any sum, or enter into any loan or lending agreement for the purpose of borrowing from any person."</u></p> <p>The text in paragraph 2 shall be deleted and replaced with "not used".</p> <p>Paragraph 3.2 shall be replaced with the following:</p> <p><u>"3.2 "Lock-up Period" means the period commencing on the EMA Start Date and expiring on the date which the Secretary of State confirms by notice in writing to the Franchisee that:</u></p> <p><u>(a) the Secretary of State considers that all the obligations of the Parties to account to each other pursuant to Schedule 8.A (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> |

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| | <p>No such notice shall constitute a waiver of any rights which the Secretary of State may have under or in respect of Schedule 8.A."</p> <p>Paragraph 3.3 is deleted.</p> <p>A new paragraph 3A shall be added as follows:</p> <p>"3A. The Franchisee shall use reasonable endeavours to plan its business activities and working capital position such that the Forecast Closing Cash Position as does not fall below the Floor Cash Position."</p> <p>A new paragraph 4.3(c) shall be amended by inserting the following text at the end of the subparagraph:</p> <p>"The Parties acknowledge and agree that the Franchisee shall under no circumstances be entitled to reimbursement, pursuant to Schedule 8.A (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)."</p> <p>Paragraph 4.5(a)(i)(A) shall be amended as follows:</p> <p>"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 including where the Franchise Period has terminated or expired but provisions of the Franchise Agreement remain in operation and effect (including Schedule 8.A (Franchise Payments)); and/or</p> <p>The subparagraphs in paragraph 4.5(b) shall be amended as follows:</p> <p>"(i) early termination of the Franchise Agreement; and/or</p> <p>(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;</p> <p>and which are not otherwise recovered by the Secretary of State; and/or</p> |
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| | <p>(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 Year, the Secretary of State has not offset against MFPP in accordance with paragraph 11 of Schedule 8.A (Franchise Payments); or (b) which are not taken into account in any payment received by the Secretary of State pursuant to the Funding Deed:</u></p> <p>(A) <u>SoS Claims; and</u></p> <p>(B) <u>any other sums which the Secretary of State has the right in accordance with Schedule 8.A (Franchise Payments) to offset against MFPP; and/or</u></p> <p>(iv) <u>any amount of the Final Working Capital Adjustment not paid to the Secretary of State in accordance with paragraph 10.4 of Schedule 8.A (Franchise Payments)."</u></p> <p>A new subparagraph 4.5(d) shall be added as follows:</p> <p><u>"The Parties acknowledge and agree that the Franchisee shall under no circumstances be entitled to reimbursement, pursuant to Schedule 8.A (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."</u></p> <p>A new paragraph 7 shall be inserted as follows:</p> <p><u>"7. Survival</u></p> <p><u>For the avoidance of doubt this Schedule 12 and any other provisions of the Franchise Agreement reasonably required for the purpose of giving this Schedule 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."</u></p> |
| <p>Schedule 13: Information and Industry Initiatives</p> | |

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| Information and Industry Initiatives | Schedule 13 shall be replaced with the new Schedule 13 attached at Appendix [5]. |
| Schedule 14: Preservation of Assets | |
| 14.1 – Maintenance of Franchise | N/A |
| 14.2 – Maintenance of Operating Assets | N/A |
| 14.3 – Key Contracts | N/A |
| 14.4 – Designation of Franchise Assets | N/A |
| 14.5 – Dealing with Franchise Assets | N/A |
| 14.6 – NOT USED | N/A |
| 14.7 – Incentivising Long Term Investment | N/A |
| Schedule 15: Obligations Associated with Termination | |
| 15.1 – Reletting Provisions | N/A |
| 15.2 – Last 12 or 13 months of Franchise Period | N/A |
| 15.3 – Handover Package | N/A |
| 15.4 – Provisions Applying on and After Termination | N/A |
| Schedule 16: Pensions | |
| - | In paragraph 6.4 and 6.5, the references to "Schedule 8 (Payments)" shall be deleted and replaced with " Schedule 8.A (Franchise Payments) ". |

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| Schedule 17: Confidentiality, Freedom of Information and Data Protection | |
| - | N/A |
| Schedule 18: Additional Reporting Periods | |
| - | N/A |
| Schedule 19: Other Provisions | |
| Paragraph 2.8 | <p>Paragraph 2.8 shall be amended by:</p> <p>"2.8 The parties shall comply with the terms of paragraph 43.7 of Schedule 88.A (Franchise Payments) of this Franchise Agreement."</p> |

Appendix 1 to Schedule 1

Schedule 1 (Passenger Service Obligations)

SCHEDULE 1**Passenger Service Obligations**

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| Schedule 1.1: | Service Development |
| Schedule 1.2: | Operating Obligations |
| Schedule 1.3: | NOT USED |
| Schedule 1.4: | Passenger Facing Obligations |
| Schedule 1.5: | Information about Passengers |
| Schedule 1.6: | Franchise Services |
| Schedule 1.7: | The Rolling Stock |
| Schedule 1.8: | NOT USED |

SCHEDULE 1.1

Service Development

1. Service Level Commitment - Purpose and Responsibility

- 1.1 The Service Level Commitment is the minimum specification of the Passenger Services and capacity to be provided by the Franchisee during the Franchise Term.
- 1.2 The Service Level Commitment as at the date of this Franchise Agreement is comprised in the following, all in the agreed terms marked as follows:
 - (a) SLC1 being the Service Level Commitment applicable from the Start Date until the Passenger Change Date in December 2017; and
 - (b) SLC2 being the Service Level Commitment applicable from the Passenger Change Date in December 2017 until the end of the Franchise Term.
- 1.3 For the purposes of this Schedule 1.1, the Service Level Commitment shall remain in force unless and until amended or replaced pursuant to this Schedule 1.1.
- 1.4 The Service Level Commitment does not in any way limit the Franchisee's obligations pursuant to paragraph 6 (Planning to meet Target Passenger Demand) of this Schedule 1.1.
- 1.5 The Service Level Commitment may be expressed in whole or in part at any level of generality or to any level of detail the Secretary of State considers appropriate.

2. Train Plan

- 2.1 Subject to paragraph 2.2, for the purposes of this Franchise 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 Franchise Agreement.
- 2.2 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.
- 2.3 The Franchisee shall submit to the Secretary of State a Train Plan in respect of each Timetable in accordance with this Schedule 1.1.

- 2.4 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 Service Level Commitment and paragraph 6 (Planning to meet Target Passenger Demand) of this Schedule 1.1.
- 2.5 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.
- 2.6 A Train Plan shall be in any format that the Secretary of State may reasonably specify for this purpose.
- 2.7 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.

3. Consultation on Significant Alterations to the Timetable

- 3.1 Notwithstanding any consultation the Secretary of State might separately undertake in respect of any amended or new draft Service Level Commitment issued pursuant to paragraph 8 (New or amended Service Level Commitment by the Secretary of State and Franchisee Informed Opinion), the Franchisee shall where:
- (a) it intends that any future Timetable shall contain Significant Alterations compared to the Timetable then in force otherwise than as a result of restrictions of use proposed by Network Rail or due to its inability to secure the necessary Timetable Development Rights or due to the timetable otherwise able to be secured from Network Rail; 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.

3.2 The first Timetable to which these provisions apply is the Timetable with effect from the Passenger Change Date in December 2017.

3.3 In conducting any consultation under paragraph 3.1 the Franchisee shall:

- (a) after first providing a summary to the Secretary of State regarding the Significant Alterations in the future timetable as soon as reasonably practicable give all Stakeholders notice and consult them in respect of the changes to the Passenger Services specified in such summary;
- (b) 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 but that the Franchisee and the Secretary of State in appropriate circumstances may agree a different period);
- (c) after sending or receiving any correspondence in respect of such notice or consultation, provide the Secretary of State with copies of such correspondence;
- (d) take due account of such bodies' views that are submitted to the Franchisee in accordance with any guidance referred to in paragraph 3.3(f) below;
- (e) inform the Secretary of State of any material changes that it would expect there to be to such timetable if the views of such bodies were accommodated; and
- (f) comply with such reasonable requirements and guidance as the Secretary of State may notify to it from time to time in respect of giving notice to and consulting such stakeholders in accordance with this paragraph 3.3.

4. Timetable Development Rights

- 4.1 The Franchisee shall use all reasonable endeavours to amend and/or enter into such Access Agreements as may be necessary or desirable from time to time to obtain the Timetable Development Rights that it requires to secure a Timetable that enables it to operate railway passenger services that comply with the Service Level Commitment and otherwise comply with its obligations under this Franchise Agreement (including under paragraph 6 (Planning to meet Target Passenger Demand of this Schedule 1.1)).
- 4.2 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.
- 4.3 Subject to the remaining provisions of this paragraph 4, 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 Service Level Commitment and paragraph 6 (Planning to meet Target Passenger Demand of this Schedule 1.1 in accordance with its obligations under paragraph 9 (Procedural Arrangements and Timescales) of this Schedule 1.1.
- 4.4 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 3) act reasonably with the intention of obtaining a Timetable which enables paragraphs 6.1(b) and 6.1(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 estimation of Forecast Passenger Demand made pursuant to paragraph 4.2 above.
- 4.5 Unless the Secretary of State otherwise directs, the Franchisee shall, for the purposes of securing a Timetable that complies with the Service Level Commitment and paragraph 6 (Planning to meet Target Passenger Demand 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.
- 4.6 If the Secretary of State does not consider that the Franchisee has taken sufficient steps under paragraph 4.5, he may require the Franchisee to exercise its rights in such manner as he reasonably considers appropriate in the circumstances, including:
- (a) disputing any actual or proposed act or omission by Network Rail in respect of any Timetable Development Rights; and
 - (b) submitting such dispute to any relevant dispute resolution arrangements or procedures and appealing against any award or determination under such arrangements or procedures, including to the ORR.

4.7 Subject to the Franchisee complying with its obligations under paragraph 4.5, it shall not be liable for any failure to secure a Timetable that enables the Franchisee to operate railway passenger services that comply with the Service Level Commitment and paragraph 6 (Planning to meet Target Passenger Demand) 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 4.3;
- (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.

4.8 TDR Amendments

- (a) If and to the extent that the Franchisee is not able to secure a Timetable enabling it to operate railway passenger services that comply with the Service Level Commitment as a result of it not being able to obtain the timetable development rights that it requires for that purpose, then the Secretary of State shall (subject to paragraphs 4.8(b) and 4.8(c) below) issue to the Franchisee such amendments to the Service Level Commitment ("**TDR Amendment**") as the Secretary of State considers necessary such that the Franchisee is able to secure a Timetable in compliance with the Service Level Commitment as amended by the TDR Amendment 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 4.3; and
 - (ii) it is not relieved by paragraph 4.7 from liability for such failure to secure a Timetable that enables the Franchisee to operate railway passenger services that comply with the Service Level Commitment.

- (c) Where the Secretary of State reasonably considers that the failure to secure a Timetable that enables the Franchisee to operate the Service Level Commitment is partly due to the default of the Franchisee in not properly complying with its obligations under this Franchise Agreement in relation to securing timetable development rights any TDR Amendment shall not relieve the Franchisee of the obligation to comply with the Service Level Commitment to the extent that the Secretary of State determines that the failure is due to such default of the Franchisee and the Franchisee may be in contravention of this Franchise Agreement accordingly.
- 4.9 Following issue of any TDR Amendment pursuant to paragraph 4.8, 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 Service Level Commitment without such TDR Amendment.
- 4.10 Any TDR Amendment issued pursuant to paragraph 4.8 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 that it requires to secure a Timetable that enables it to operate railway passenger services that comply with the Service Level Commitment without any such TDR Amendment;
 - (b) amount to a Change.
- 4.11 With effect from the date on which any TDR Amendment ceases to have effect in accordance with paragraph 4.8:
 - (a) the Service Level Commitment without such TDR Amendment shall thereafter apply;
 - (b) there shall be a further Change to the extent necessary so as, with effect from such date, to disapply the effect of the Change referred to in paragraph 4.10(b) in respect of such TDR Amendment.
- 5. Certification and Notification by Franchisee of Exercising Timetable Development Rights**
- 5.1 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 4.3.
- 5.2 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 5.1 is a true and accurate confirmation of compliance with its obligation specified in paragraph 4.3.

5.3 The Franchisee shall:

- (a) keep the Secretary of State fully informed of any discussions with Network Rail in relation to the matters referred to in this Schedule 1.1 which may, in the reasonable opinion of the Franchisee, have a material bearing on the ability of the Franchisee to deliver the Service Level Commitment or meet the requirements of paragraph 6 (Planning to meet Target Passenger Demand) 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 5.3 and/or certification under paragraph 5.1 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.

6. Planning to meet Target Passenger Demand

6.1 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 Service Level Commitment.
- (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 Passenger Service during each Off Peak; and
 - (ii) 20 minutes after boarding (or such other time period as the Secretary of State may stipulate) on any Passenger Service during each Peak.

6.2 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 6.1(b) and 6.1(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 Passenger Service during each Off Peak; and
 - (ii) 20 minutes after boarding (or such other time period as the Secretary of State may stipulate) on any Passenger Service during each Peak.

6.3 Preparation of Timetable and Train Plan

- (a) Subject to paragraph 6.3(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 6.1 and 6.2 above.
- (b) The Franchisee shall in preparing its Timetable and Train Plan deploy the entire Train Fleet (excluding reasonable planning requirements for the allocation of Hot Standbys or other rolling stock vehicles to be out of service due to maintenance requirements, Mandatory Modifications or any other reason agreed with the Secretary of State (such agreement not to be unreasonably withheld or delayed)) in delivering the Passenger Services:
 - (i) during each Peak; and
 - (ii) at such times during each Off Peak where such deployment of the entire Train Fleet is reasonably required to meet the Franchisee's obligations pursuant to paragraphs 6.1 and 6.2 above.

6.4 Finalising the Train Plan

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

6.6 The Secretary of State may notify the Franchisee of:

- (a) any respect in which he considers that the Train Plan does not comply with the requirements of this Schedule 1.1; and
- (b) any revisions that he requires to address such non-compliance,

and the Franchisee shall revise the Train Plan in accordance with the Secretary of State's requirements.

6.7 If the Franchisee considers that any of the revisions that the Secretary of State requires pursuant to paragraph 6.6(b) are not required for the Train Plan to comply with this Schedule 1.1 then:

- (a) it shall nevertheless make such revisions;
- (b) it may subsequently refer the question as to whether such revisions were so required for resolution in accordance with such dispute resolution procedure as the parties may agree or, in the absence of agreement, in accordance with the Dispute Resolution Rules; and

- (c) following determination of any such dispute, the parties shall take such steps as are required to give effect to such determination.

7. Capacity Mitigation Plan

- 7.1 Without prejudice to the obligation of the Franchisee to include in the Train Plan the capacity specified in the Service Level Commitment, if at any time the Franchisee is unable to prepare a Timetable and/or a Train Plan which meets the requirements of paragraph 6.1 (regardless of whether the Franchisee has used all reasonable endeavours to do so), the Secretary of State may serve a notice on the Franchisee requiring it to produce a plan to a reasonable specification provided with the notice to remedy or mitigate such inability ("**Capacity Mitigation Plan**").
- 7.2 The Capacity Mitigation Plan 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 6.1; 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 Passenger Service during each Off Peak; and
 - (ii) 20 minutes after boarding (or such other time period as the Secretary of State may stipulate) on any Passenger Service during each Peak,

in all such cases (unless the Secretary of State specifies to the contrary) taking into account both Actual Passenger Demand and Forecast Passenger Demand.
- 7.3 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 6.1 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 Plan to remedy or mitigate such future circumstances on the basis of assumptions provided by the Secretary of State.
- 7.4 The Capacity Mitigation Plan shall (unless the Secretary of State specifies to the contrary) include the Franchisee's informed estimate of Forecast Passenger Demand, in such format and to such level of disaggregation as the Secretary of State may reasonably require. Without limitation such specification may require the Franchisee to present options to address relevant issues through:

- (a) alterations to the Service Level Commitment;
 - (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.
- 7.5 The Capacity Mitigation Plan shall provide a comprehensive analysis backed by relevant data and assumptions of:
- (a) all cost and revenue and other financial implications of options contained within it including the potential implications for Franchise Payments;
 - (b) the implications (if any) for the Benchmarks and/or the Annual Benchmarks; and
 - (c) the likely impact of options within it for existing and future passenger journeys and journey opportunities.
- 7.6 The Franchisee shall meet with the Secretary of State to discuss the Capacity Mitigation Plan and provide such further information or analysis and further iterations of the Capacity Mitigation Plan as the Secretary of State shall reasonably require.
- 8. New or amended Service Level Commitment by the Secretary of State and Franchisee Informed Opinion**
- 8.1 As and when required, whether for the purposes of considering alterations to the Service Level Commitment or otherwise, the Franchisee shall provide to the Secretary of State:
- (a) its informed estimate of Forecast Passenger Demand, in such format and to such level of disaggregation as the Secretary of State may reasonably require in order to assist the Secretary of State's decision making on future service level commitments, infrastructure, station and rolling stock vehicle investment, the best use of the network and the alleviation of overcrowding;
 - (b) its informed opinion as to any changes to the current Service Level Commitment which:
 - (i) should be made in order to deliver an optimal range of railway passenger service patterns relative to Target Passenger Demand; and
 - (ii) could be implemented and operated without additional resources or an adjustment to the Franchise Payments;
 - (c) its informed opinion as to any changes to the current Service Level Commitment which:
 - (i) would deliver an optimal range of railway passenger service patterns relative to Target Passenger Demand; and

- (ii) could only be implemented and operated with additional resources and/or an adjustment to the Franchise Payments, together with an explanation as to:
 - (A) what additional resources and/or adjustments are necessary to make such changes; and
 - (B) why such additional resources and/or adjustments are necessary;
 - (d) a draft of the Train Plan that it considers that each set of proposed changes would require.
- 8.2 Prior to issuing any amended or new Service Level Commitment the Secretary of State shall provide to the Franchisee his draft of any proposed amended or new Service Level Commitment stating the date upon which he proposes that such amended or new Service Level Commitment should take effect along with the Secretary of State's views as to the changes (if any) that he proposes to make to the Benchmarks and/or the Annual Benchmarks.
- 8.3 On receipt of any such draft of a proposed amended or new Service Level Commitment the Franchisee shall provide to the Secretary of State (if so requested) its informed opinion:
 - (a) with supporting reasons as to the impact of the proposed amended or new Service Level Commitment on the delivery of an optimal range of railway passenger services patterns relative to Target Passenger Demand and compliance with paragraph 6.1 of this Schedule;
 - (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 Service Level Commitment;
 - (c) with supporting reasons as to changes (if any) to the Benchmarks;
 - (d) of the process to be required to implement the proposed amendment to the Service Level Commitment together with a plan for the implementation of the amendment to the Service Level Commitment (including all steps required to ensure that the Franchisee can deliver a Timetable compliant with such amended or new Service Level Commitment) prepared in accordance with procedural arrangements specified by the Secretary of State pursuant to paragraph 9 (Procedural Arrangements and Timescales); and
 - (e) together with a draft of the Train Plan that it considers that the proposed amended or new Service Level Commitment would require.
- 8.4 There may be iterations of drafts of the proposed amended or new Service Level Commitment and the Franchisee shall to the extent required by the Secretary of State have the obligations described in this paragraph 8 in respect of all such iterations.

- 8.5 Processes contained in this paragraph 8 shall take place in accordance with procedural arrangements and timescales stipulated by the Secretary of State pursuant to paragraph 9.2.
- 8.6 The Secretary of State may, in accordance with any stipulation made under paragraph 9.2, issue to the Franchisee any amended or new Service Level Commitment that he requires the Franchisee to operate and notice of the changes (if any) to the Benchmarks and/or Annual Benchmarks. Such amended or new Service Level Commitment will be issued prior to the commencement of the timetable development process of Network Rail for the Timetable in respect of which it is proposed to implement the change to Passenger Services arising from the amended or new Service Level Commitment.
- 8.7 In the absence of the Secretary of State issuing any amended or new Service Level Commitment the existing Service Level Commitment will remain in full force and effect. The degree of variation from any Service Level Commitment specified at the date of this Franchise Agreement was entered into in respect of any particular period and brought about by any amended or new Service Level Commitment issued pursuant to this paragraph 8 shall (where relevant) be of a magnitude no greater than that contemplated in the Request for Proposal.
- 8.8 At the same time as the Secretary of State provides the Franchisee with a draft of any proposed amended or new Service Level Commitment pursuant to paragraph 8.1, the Secretary of State shall also provide to the Franchisee his opinion of any changes (if any) that are required to the Benchmarks and/or Annual Benchmarks.
- 8.9 The Secretary of State shall be permitted to carry out indicative Runs of the Financial Model for the purposes of considering the effects of his proposed amended or new Service Level Commitment.

9. Procedural Arrangements and Timescales

- 9.1 The Franchisee agrees that the effective operation of the provisions of this Schedule 1.1, and of provisions addressing the same or similar matters in other franchise agreements, will require certain procedural arrangements and timescales to be followed to a common timescale by the Secretary of State, the Franchisee, Network Rail and others.
- 9.2 The Franchisee agrees that the Secretary of State may stipulate any reasonable procedural arrangements and timescales that are to be followed by the Secretary of State and the Franchisee for these purposes (which shall be consistent with any relevant standard railway industry processes for development of the Timetable and the resultant Train Plan) and that the Secretary of State may amend any such stipulation from time to time.
- 9.3 The Secretary of State agrees to consult the Franchisee as far as reasonably practicable prior to stipulating or amending any such procedural arrangements and timescales in accordance with paragraph 9.2.
- 9.4 Any stipulation by the Secretary of State pursuant to paragraph 9.2:
- (a) shall be at the reasonable discretion of the Secretary of State;

- (b) may contain procedural arrangements and timescales to be followed by the Franchisee in relation to other changes to the Franchise Services (pursuant to paragraph 1 of Schedule 9.5 (Variations to this Franchise Agreement and Incentivising Beneficial Changes) in conjunction with the Service Level Commitment; and
- (c) may provide for iterations of drafts of any amended or new Service Level Commitment, Train Plan or Timetable and for indicative Runs of the Financial Model in relation thereto.

9.5 Any procedural arrangements and timescales stipulated by the Secretary of State pursuant to paragraph 9.2 shall have contractual effect between the Franchisee and the Secretary of State in accordance with the terms of such stipulation.

10. Obligations in relation to other Train Operators

- 10.1 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 or last trains are involved, taking account of seasonal fluctuations in passenger demand and the time needed to make any such Connection).

11. Provisions relating to Access Agreements and Property Leases

- 11.1 Where the Secretary of State considers it requisite for the purposes of better securing the delivery of railway passenger services under this Franchise Agreement, or any other franchise agreement, or for the better achievement by him of any of his duties, functions and powers in relation to railways, or the implementation of:
- (a) the Crossrail Programme;
 - (b) Great Western Route Modernisation;
 - (c) Derby Area Station Re-modelling;
 - (d) the HS2 Project; and
 - (e) such other Control Period 5 and Control Period 6 infrastructure enhancement projects which affect the routes over which the Passenger Services are

operated and are required to be delivered in consequence of a high level output specification or the operation of a high level specification change process as notified to the Franchisee by the Secretary of State from time to time;

the Secretary of State may require the Franchisee:

- (f) 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
- (g) subject to the consent of the counterparty thereto, to assign, novate or surrender its rights under any Access Agreement or Property Lease.

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

- (a) where the approval of the ORR is required under the Act, not less than 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.

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

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

11.4 If and to the extent that:

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

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

12. The Timetable and Network Rail's Working Timetable

12.1 Any specification of Passenger Services in the Service Level Commitment 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.

- 12.2 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.

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 4.1, 4.3, 4.4, 4.5, 6.1 or 6.2 of Schedule 1.1 (Service Development) and/or paragraph 1 of this Schedule 1.2, he shall (in addition to his right to obtain further information pursuant to paragraph 1.1 of Schedule 1.5 (Information about Passengers) and without prejudice to any other rights of the Secretary of State under this 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 4.1, 4.3, 4.4, 4.5, 6.1 or 6.2 of Schedule 1.1 (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 4.1, 4.3, 4.4, 4.5, 6.1 or 6.2 of Schedule 1.1 (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 Service Level Commitment and paragraph 6 of Schedule 1.1 (Service Development) and fully co-operate with and provide all information needed to facilitate such audit.

2.3 **Contravention of this Franchise Agreement**

- (a) The Franchisee shall be in contravention of this Franchise Agreement if following the completion by the Secretary of State of the Timetabling and Train Planning Compliance Investigation he concludes that the Franchisee breached any of its obligations under any of paragraphs 4.1, 4.3, 4.4, 4.5, 6.1 or 6.2 of Schedule 1.1 (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) above that the Franchisee has breached any relevant obligation the Franchisee shall pay to the Secretary of State the costs incurred by him in undertaking any Timetabling and Train Planning Compliance Investigation (including any audit pursuant to paragraph 2.2(b)).
- (c) The Secretary of State shall notify the Franchisee if he concludes pursuant to paragraph 2.3(a) that the Franchisee is in contravention of this Franchise Agreement and he may at his discretion, and entirely without prejudice to his other rights consequent upon the relevant contravention, serve a Remedial Plan Notice pursuant to paragraph 1.1 of Schedule 10.1 (Remedial Plans and Remedial Agreements).

3. Timetable changes proposed by Network Rail

- 3.1 The Franchisee shall notify the Secretary of State promptly after being notified by Network Rail that Network Rail has decided or proposes to:
- (a) omit from the Plan of the Day Passenger Services that are included in the Timetable; or
 - (b) reschedule in the Plan of the Day Passenger Services from their scheduling in the Timetable.
- 3.2 To the extent that any such decision or proposal may, in the reasonable opinion of the Franchisee, materially (having regard to both duration and scale) prejudice the Franchisee's ability to deliver the Timetable with the Passenger Carrying Capacity stipulated in the Train Plan the Franchisee shall explain in such notification the way in which, in its reasonable opinion, such omission or rescheduling may materially prejudice the Franchisee's ability to deliver the Timetable with the Passenger Carrying Capacity stipulated in the Train Plan.
- 3.3 The Franchisee agrees to supply to the Secretary of State from time to time, in the format required by the Secretary of State, such details of any actual or proposed omission or rescheduling of Passenger Services by Network Rail as the Secretary of State may reasonably require, including details of the steps which the Franchisee proposes to take pursuant to paragraph 3.4.
- 3.4 Where the actual or proposed omission or rescheduling of Passenger Services is one which may, in the reasonable opinion of the Secretary of State or the Franchisee, materially prejudice the Franchisee's ability to deliver the Timetable with the Passenger Carrying Capacity stipulated in the Train Plan, the Franchisee shall promptly notify the Secretary of State and the Franchisee agrees to cooperate with Network Rail in relation to such proposal, unless and until: (i) the Franchisee reasonably believes that such proposal would be likely to materially be detrimental to the interests of passengers on railway passenger services in Great Britain; or (ii) the Secretary of State specifically instructs the Franchisee accordingly, 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 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 4.3, 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.
- 4.2A 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.
- 4.2B The Franchisee shall ensure that any proposals to Network Rail submitted pursuant to paragraphs 4.1 or 4.2A:
- (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 4.2B(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.
- 4.2C 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 4.2A 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).

4.2D 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 4.2A.

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

5. Timetable changes requested by the Secretary of State

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 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 PPM attrition and delay to the Passenger Services; and
 - (ii) the causes of the 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 such Track Access Agreement.
- 7.5 The Franchisee undertakes to reasonably co-operate with Network Rail with regard to Network Rail's management of the network, including in relation to the establishment of up to date Timetable Planning Rules.
- 7.6 To the extent not already provided for in this Franchise Agreement, the Franchisee shall use all reasonable endeavours to ensure the performance by Network Rail of its obligations under any relevant agreement including, where appropriate or where requested by the Secretary of State, enforcing its rights against Network Rail under any such agreement.
- 7.7 When and to the extent reasonably requested by the Secretary of State, the Franchisee shall provide to the Secretary of State evidence of the steps taken by it in order to comply with its obligations under this paragraph 7.

SCHEDULE 1.3

NOT USED

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

1.1 The Franchisee shall publish on the Start Date:

- (a) the Timetable:
 - (i) at each staffed Station, by making the relevant information available upon request and free of charge in one or more booklets or in other similar form;
 - (ii) at each Station, by displaying the relevant information on information displays;
 - (iii) at each Franchisee Access Station, by providing to the operator of each such station the departure and arrival times of the Passenger Services that call at each such station and the principal Connections to any other transport services relevant to each such station in the same forms as are specified in paragraphs 1.1(a)(i) and 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 Schedule 11.4.

Timetable Revisions and Alterations

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

- 1.3 In addition, 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 Passenger Change Dates to railway passenger services calling at that Station, no later than four weeks in advance of the date on which the alterations come into effect; and
 - (b) provide posters to the operators of Franchisee Access Stations, advising passengers of all Significant Alterations between any two Passenger Change Dates to the Passenger Services which call at such Franchisee Access Stations, in sufficient time for such information to be published by such operators within the time limit provided for in paragraph 1.3.

Other Train Operators' Timetables

- 1.4 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.

National Rail Timetable and National Rail Enquiry Scheme

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

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

2. Late Timetable Changes

- 2.1 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 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 The Franchisee shall publish:
- (a) any amendments to the Timetable made pursuant to paragraphs 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 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 Operators 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).

3. Fares Selling Restrictions

3.1 Restrictions on Sales

NOT USED.

3.2 The Franchisee shall procure that for any:

- (a) Protected Return Fare 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 such Fare shall be offered for sale at all staffed ticket offices at which Fares for a journey between the same origin and destination stations are sold and otherwise wherever and whenever any Season Ticket Fare is offered for sale,

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

3.3 Where the Franchisee sets a limit on the number of 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 1.7 (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 Schedules 5.4 (Regulation of Fares Basket Values) and 5.5 (Regulation of Individual Fares), at prices that are greater than the Prices set for such Fares from time to time in accordance with Schedules 5.4 (Regulation of Fares Basket Values) and 5.5 (Regulation of Individual Fares); and
 - (ii) Child Prices are regulated under Schedules 5.4 (Regulation of Fares Basket Values) and 5.5 (Regulation of Individual Fares), at prices that are greater than the Child Prices set for such Fares from time to time in accordance with Schedules 5.4 (Regulation of Fares Basket Values) and 5.5 (Regulation of Individual Fares);
- (b) any Fare or Discount Card which has a validity of 13 or more months, except to the extent required to do so under the terms of the Ticketing and Settlement Agreement.

3.5 **Agents of the Franchisee**

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

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

- (i) do not sell or offer to sell any Fare or Discount Card with a validity of 13 or more months without the consent of the Secretary of State (such consent not to be unreasonably withheld); and
- (ii) comply with the provisions of paragraph 3 of Schedule 15.2 (Last 12 or 13 Months of Franchise Period) 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 Protected Fare for any additional services:

- (a) which are ancillary to the railway passenger service for which such 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.

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 Charter at least every three years, in consultation with the Passengers' Council, and shall submit a draft of any revisions to the Passenger's Charter that it wishes to propose, together with proof of such consultation, to the Secretary of State; 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 days before it comes into effect;
- (b) providing copies to passengers, free of charge, at each staffed Station and in the case of any revision thereto, providing such copies at least seven days before such revision comes into effect;
- (c) sending a copy, free of charge, to any person who requests it; and
- (d) displaying it on its website at all times and, in the case of any revision thereto, at least seven days before such revision comes into effect,

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

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

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

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

The Franchisee shall:

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

and any other reasonable means requested in writing by the Secretary of State and agreed by the Franchisee (both parties acting reasonably) to reflect future advancements in technology.

4.7 The Franchisee shall use all reasonable endeavours:

- (a) to comply with any other obligations, statements and representations; and

(b) to meet any other standards or targets of performance,
as are comprised in its Passenger's Charter from time to time.

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

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 it 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 it in the provision of the Passenger Services; and
- 7.3 use all reasonable endeavours to ensure that all Franchisee Access Stations are clean, free of litter and graffiti, painted to a reasonable standard and free from minor defects throughout the Franchise Term.

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 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 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,
 - (e) and such information may be used by the Secretary of State for such purposes as he may reasonably require including for the purposes of assisting his decision making on future train service requirements, infrastructure, station and rolling stock investment, the best use of the network and the alleviation of overcrowding.
- 1.4 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.

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 equipment 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 him or otherwise). In the event that such audit reveals, in the reasonable opinion of the Secretary of State, a material error, or a reasonable likelihood of material error, in such counts, the Secretary of State may require the counts to be repeated or the results adjusted as he considers appropriate, and in these circumstances the Franchisee shall pay to the Secretary of State the costs of any such audits.

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, subject to technical obsolescence or unavailability of supply, be infra-red sensor bars mounted above each external passenger doorway to detect the entry and exit of passengers and when the external passenger doorway is opened or closed. In each vehicle in which the infra-red sensor bars are mounted there shall be a system computer which receives and stores the information required to be obtained and collated by the Franchisee (as specified in paragraph 1.1), and which transmits this information using a radio frequency antenna to three download points (two situated at Birmingham New Street station and another at Central Rivers Depot). The three download points shall transmit the information to the Franchisee's central computer. On each Rolling Stock Unit in which the infra-red sensor bars are mounted, one system computer on the Rolling Stock Unit shall be connected to a GPS antenna in order to establish relevant geographical location data.
- 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, 100% of it from the date that such rolling stock is properly admitted; and
 - (b) in the case of all other rolling stock, by 1 January 2020, to every vehicle comprised within no less than 35% 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 shall be used to provide counts in respect of, in any period of not less than twelve (12) weeks, at least two 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. CRM Data

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

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

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

4.3 Any consent referred to in paragraph 4.2 shall be sought in such manner as shall from time to time be approved by the Secretary of State (such approval not to be unreasonably withheld or delayed) and shall be on terms such as shall permit, in each case in compliance with the Data Protection Act:

- (a) the Franchisee to disclose such CRM Data to any Successor Operator and/or the Secretary of State; and
- (b) any such Successor Operator to process such CRM Data in the manner contemplated by paragraph 4.2.

4.4 The Franchisee shall not be required to:

- (a) disclose, publish, share or otherwise provide or make available any Personal Data (including CRM Data) to any person (including a Successor Operator or any participant involved with the re-letting of the Franchise); or

- (b) provide access to any CRM System,

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

5. Yield Management Data

- 5.1 The Franchisee shall ensure that any Yield Management Data and Yield Management System are the property of the Franchisee or are licensed to the Franchisee on terms which have been approved by the Secretary of State (such approval not to be unreasonably withheld or delayed).
- 5.2 If and to the extent that the collection, use and/or processing of any Yield Management Data is subject to the Data Protection Act then paragraphs 4.1(a), 4.2, 4.3, 4.4 and 6 of this Schedule 1.5 shall apply in respect of Yield Management Data in the same way as they apply to CRM Data.

6. Personal Data - General Provisions

- 6.1 In respect of any Personal Data processed by the Franchisee, including CRM Data, the Franchisee agrees that it shall (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 breach of the measures as set out herein;
 - (ii) ensure that only authorised personnel have access to CRM Data and that any persons authorised to have access to CRM Data will respect and maintain all due confidentiality; and
 - (iii) (in the case of the CRM Data Processor) include compliance with a schedule of minimum security measures pursuant to the written terms between the Franchisee and the CRM Data Processor;
 - (c) the Franchisee shall procure that any CRM Data Processor which it appoints shall:
 - (i) promptly notify the Franchisee of any actual or suspected, threatened or 'near miss' incident of accidental or unlawful destruction or accidental loss, alteration, unauthorised or accidental disclosure of or access to the CRM Data or other breach of this paragraph 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 date of this Franchise Agreement:
- (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 this 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 breach of paragraph 7.1 of 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 this Franchise Agreement in respect of a breach 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 (**£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 he 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 he 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 it as a result of a breach by the Secretary of State of its 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 will 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 4 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 this 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 Franchise 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-transferrable 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 transferrable 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 he may reasonably require including for the purposes of assisting his decision making on future train service

requirements, infrastructure, station and rolling stock investment, the best use of the network and the alleviation of overcrowding; and/or

- (d) to the extent permitted by the other provisions of this 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 Franchise 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 this Franchise Agreement or any Continuation Document, together with any other provisions which expressly or impliedly continue in force after the expiry or termination of this Franchise Agreement or any Continuation Document.

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**Franchise Services****1. Franchise Services**

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

2. Restrictions relating to Franchise Services

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

2.2 The Franchisee shall not without the prior written consent of the Secretary of State operate Passenger Services other than on the following routes and, when necessary in the event of planned or unplanned disruption or to the extent reasonably necessary to preserve train crew knowledge of such routes, any reasonable diversionary routes that the Franchisee is permitted to use pursuant to its Track Access Agreement:

- (a) Penzance to Plymouth;
- (b) Newquay to Plymouth;
- (c) Plymouth to Bristol Temple Meads via Weston-super-Mare;
- (d) Plymouth to Bristol Temple Meads via Weston-super-Mare avoiding line;
- (e) Paignton to Bristol Temple Meads via Weston-super-Mare;
- (f) Paignton to Bristol Temple Meads via Weston-super-Mare avoiding line;
- (g) Cardiff Central to Bristol Temple Meads via Newport and Severn Tunnel Junction;
- (h) Bath Spa to Bristol Temple Meads;
- (i) Bristol Temple Meads to Birmingham New Street via Gloucester or Gloucester avoiding line;
- (j) Bournemouth to Reading via Southampton Central;
- (k) Guildford to Reading;
- (l) Reading to Birmingham New Street via Oxford, Heyford, Leamington Spa and Solihull;
- (m) Reading to Birmingham New Street via Oxford, Heyford, Leamington Spa and Coventry;
- (n) Birmingham New Street to Manchester Piccadilly via Wolverhampton, Stafford, Stoke on Trent, Macclesfield and Stockport;

- (o) Birmingham New Street to Manchester Piccadilly via Wolverhampton, Stafford, Crewe, Wilmslow and Stockport;
- (p) Birmingham New Street to Glasgow via Tamworth, Sheffield, Wakefield Westgate, Leeds, York, Newcastle, Edinburgh and Motherwell;
- (q) Birmingham New Street to Leeds via Tamworth, Sheffield, Doncaster and Wakefield Westgate;
- (r) Birmingham New Street to Newcastle via Derby, Sheffield, Doncaster and York;
- (s) Edinburgh Waverley to Aberdeen via Dundee
- (t) Cardiff Central to Nottingham via Newport, Lydney, Gloucester, Barnt Green, Birmingham, Derby, Long Eaton and Beeston;
- (u) Birmingham New Street to Stansted Airport via Water Orton, Nuneaton, Leicester, Peterborough and Cambridge.

It is acknowledged that a Passenger Service to be operated by the Franchisee on the routes specified above 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.

- 2.3 The Secretary of State may impose such conditions to his consent as he considers appropriate for the purpose of securing the continuity of the provision of the Franchise Services at the end of the Franchise Term.
- 2.4 The Franchisee shall not during the Franchise Term, without the consent of the Secretary of State:
- (a) provide or operate any railway passenger services other than the Passenger Services or Charter Services;
 - (b) operate any stations or light maintenance depots other than the Stations and Depots; or
 - (c) hold shares, participations or any other interest in any other company or body corporate unless such company or body corporate is:
 - (i) Network Rail; or
 - (ii) owned directly or indirectly by another participant in the railway industry and the holding is incidental to the Franchisee's participation in an Inter-Operator Scheme or any other arrangement designed to ensure or facilitate co-operation between such participants or between any such participants and any other person.
- 2.5 The Franchisee shall not engage any Franchise Employee in any activity or business which it may not conduct or engage in under this paragraph 2.

3. NOT USED**4. Light Maintenance Services**

4.1 Light Maintenance Services shall comprise:

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

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

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

5. Ancillary Services

5.1 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 5.1(a) 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 this 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 this Franchise Agreement, provided that it could not reasonably be carried out by or through an Affiliate of the Franchisee;
- (n) **NOT USED;**

- (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 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 4 or 5.1(a) to 5.1(p), subject to the gross value of any such services or activity (excluding any attribution of costs) not exceeding £25,000 per annum in each Franchisee Year, per item and in aggregate, £250,000 per annum in each Franchisee Year, provided that in the second and each subsequent Franchisee Year (if applicable), these amounts will be increased by "RPI", and "RPI" shall have the meaning given to it in Appendix 1 (Annual Franchise Payments) to Schedule 8.1 (Franchise Payments).

5.2 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 reasonable endeavours to, carry out the following Ancillary Services:

- (a) in any Reporting Period, the subleasing, hiring or licensing of up to ten per cent (10%) of the rolling stock vehicles used in the provision of the Passenger Services (such percentage to be determined by reference to the aggregate period of time for which such rolling stock vehicles are sub-let, hired or licensed and the aggregate period of time for which they are used in the provision of the Passenger Services);
- (b) the lending, seconding, hiring or contracting out during any Reporting Period to another person or persons (whether for a charge or not) of:
 - (i) up to one per cent (1%) of the number of Franchise Employees as at the Start Date, for over ninety per cent (90%) of their normal working hours during such Reporting Period (including on a full-time basis); and
 - (ii) one per cent (1%) of any other Franchise Employees as at the Start Date,

provided that this paragraph shall not apply to any employee lent, seconded, hired or contracted out under any of paragraphs 5.1(a) to 5.1(b) inclusive, paragraphs 5.1(f) to (j) inclusive, paragraph 5.2(a) or paragraphs 5.2(c) to 5.2(e) inclusive, or engaged in any other activity which is permitted under this Schedule 1.6;

- (c) not used;
- (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; and
- (e) 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.

6. Affiliates of the Franchisee

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

Schedule 1.7

The Rolling Stock

1. Purpose

- 1.1 The Original Rolling Stock is set out in Table 1 of Appendix 1 to Schedule 1.7.
- 1.2 The Specified Additional Rolling Stock is set out in Table 2 of Appendix 1 to Schedule 1.7.
- 1.3 **NOT USED.**

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 Schedule 1.7 the rolling stock vehicles set out in Table 1 in Appendix 1 to Schedule 1.7 ("Original Rolling Stock") with the Passenger Carrying Capacity per unit referred to in Column 3 of Table 1 in Appendix 1 to Schedule 1.7;
 - (b) from the dates set out in Column 6 of Table 2 in Appendix 1 to Schedule 1.7, until the lease expiry dates referred to in Column 7 of Table 2 in Appendix 1 to Schedule 1.7 with the Passenger Carrying Capacity per unit, the rolling stock vehicles ("Specified Additional Rolling Stock") set out in Table 2, in Appendix 1 to Schedule 1.7 with the Passenger Carrying Capacity per unit referred to in Column 3 of Table 2;
 - (c) **NOT USED**; and
 - (d) following any lease expiry dates referred to in paragraph 2.1(a) or 2.1(b), substitute rolling stock vehicles having (unless otherwise agreed by the Secretary of State and subject to compliance with all other relevant provisions of this Franchise Agreement including in relation to Rolling Stock Related Contracts):
 - (i) at least the capacity specified in respect of the rolling stock vehicles being substituted;
 - (ii) reliability, capability and quality that is at least equal to the reliability, capability and quality of the rolling stock vehicles being substituted; and
 - (iii) an aggregate total capacity which is at least equal to the aggregate total capacity of the rolling stock vehicles being substituted or such higher amount of aggregate capacity as is specified by this Franchise Agreement.

- 2.2 In addition to paragraph 2.1(d), the Franchisee may at any time substitute rolling stock vehicles for any Specified Additional Rolling Stock provided that any such substitute rolling stock vehicles comply (unless otherwise agreed by the Secretary of State and subject to compliance with all other relevant provisions of this Franchise Agreement including in relation to Rolling Stock Related Contracts) with paragraph 2.1(d).
- 2.3 **NOT USED.**
- 2.4 The Passenger Carrying Capacity of any rolling stock vehicles shall be as set out in Tables 1 or 2 in Appendix 1 to Schedule 1.7 or as determined by the Secretary of State in accordance with paragraph 3.4 of this Schedule 1.7 (as applicable).
- 2.5 Without limiting paragraphs 2 and 3 of Schedule 2.2 (Security of Access Agreements and Rolling Stock Leases) or Schedule 14.3 (Key Contracts), the Franchisee shall, in respect of any Rolling Stock Lease which is to expire at any time during the Franchise Period, not less than one (1) year prior to such expiry date, enter into a new Rolling Stock Lease in respect of substitute rolling stock vehicles which meet the requirements of paragraph 2.1(d).
- 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 ensure that the rolling stock vehicles described in Tables 1 or 2 in Appendix 1 to Schedule 1.7, 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 1.7, the Secretary of State may, after consulting the Franchisee, notify the Franchisee of the Passenger Carrying Capacity of any rolling stock vehicles or class of rolling stock vehicles comprising the Train Fleet following such change.

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, 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.

APPENDIX 1 TO SCHEDULE 1.7

The Composition of the Train Fleet

1. Original Rolling Stock

| 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 | Passenger Carrying Capacity per unit | | | | Total Wheel-chair(s) per unit | Owner/ Lessor and Lease Type | Lease expiry date(s) |
| | | Standard Class (Std) | | | First Class Seats | | | |
| | | Seats | Standing | Total | | | | |
| 220 | 34/4 Car | 174 | 120 | 294 | 26 | 2 | Voyager Leasing Ltd (Dry) | 13 October 2019 |
| 221 | 1/4 Car | 174 | 120 | 294 | 26 | 2 | Voyager Leasing Ltd (Dry) | 13 October 2019 |
| 221 | 22/5 Car | 236 | 158 | 394 | 26 | 2 | Voyager Leasing Ltd (Dry) | 13 October 2019 |
| 221 | 2 spare end vehicles for future creation of 58th Voyager unit | 42 | n/a | 42 (in one of the two vehicles) | 26 (in one of the two vehicles) | 1 per vehicle | Voyager Leasing Ltd (Dry) | 13 October 2019 |
| 170/1 | 10/3 Car | 191 | 135 | 326 | 9 | 2 | Porterbrook Leasing Company Ltd (Soggy) | 13 October 2019 |
| 170/1 | 7/2 Car | 111 | 88 | 199 | 9 | 2 | Porterbrook Leasing Company Ltd (Soggy) | 13 October 2019 |
| 170/3 | 2/3 Car | 191 | 135 | 326 | 9 | 2 | Porterbrook Leasing Company Ltd (Soggy) | 13 October 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 | Passenger Carrying Capacity per unit | | | | Total Wheel-chair(s) per unit | Owner/ Lessor and Lease Type | Lease expiry date(s) |
| | | Standard Class (Std) | | | First Class Seats | | | |
| | | Seats | Standing | Total | | | | |
| 170/5 | 6/2 Car | 111 | 88 | 199 | 9 | 2 | Porterbrook Leasing Company Ltd (Soggy) | 13 October 2019 |
| 170/6 | 4/3 Car | 191 | 135 | 326 | 9 | 2 | Porterbrook Leasing Company Ltd (Soggy) | 13 October 2019 |
| HST Sets 1-3 (formed from vehicles listed below) | 3/8 Car + 2 Power Cars | 469 | 201 | 670 | 70 | 3 | See below | See below |
| HST Sets 4&5 (formed from vehicles listed below) | 2/8 Car + 2 Power cars | 474 | 201 | 675 | 70 | 3 | See below | See below |
| HST Power Car | 5 Vehicles | n/a | n/a | n/a | n/a | n/a | Porterbrook Leasing Company Ltd (Dry) | 13 October |
| HST Power Car | 5 Vehicles | n/a | n/a | n/a | n/a | n/a | Angel Trains Ltd (Dry) | 13 October 2019 |
| HST Trailer Vehicles 2 | 5 Vehicles | Used to form HST sets 1-5 shown above | | | | | Porterbrook Leasing Company Ltd (Dry) | 13 October 2019 |
| HST Trailer Vehicles | 14 Vehicles | Used to form HST sets 1-5 shown above | | | | | Angel Trains Limited (Dry) | 13 October 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 | Passenger Carrying Capacity per unit | | | | Total Wheel-chair(s) per unit | Owner/ Lessor and Lease Type | Lease expiry date(s) |
| | | Standard Class (Std) | | | First Class Seats | | | |
| | | Seats | Standing | Total | | | | |
| Mk3 Carriages | 21 Vehicles | Used to form HST sets 1-5 shown above | | | | | Porterbrook Leasing Company Ltd (Dry) | 13 October 2019 |

SCHEDULE 1.8

NOT USED

APPENDIX 1 TO SCHEDULE 1.8

NOT USED

1. Secure Stations Accreditation

NOT USED

2. Secure Car Parks Accreditation Scheme

NOT USED

APPENDIX 2 TO SCHEDULE 1.8

NOT USED

APPENDIX 3 TO SCHEDULE 1.8

NOT USED

APPENDIX 4 TO SCHEDULE 1.8

NOT USED

Appendix 2 to Schedule 1

Schedule 8.A (Franchise Payments)

SCHEDULE 8

PAYMENTS

Schedule 8.A

Franchise Payments

1. Definitions

For the purposes of this Schedule 8.A (Franchise Payments) 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 5.7 of Schedule 8.A (Franchise Payments); |
| “Accrued Disallowable Costs” | has the meaning given in paragraph 5.7 of Schedule 8.A (Franchise Payments); |
| “Accrued Revenue Foregone” | has the meaning given in paragraph 5.7 of Schedule 8.A (Franchise Payments); |
| “Actual Capex” | means the actual Capital Expenditure of the Franchisee in the relevant period; |
| “Actual Costs” | means the actual Costs of the Franchisee in the relevant period; |
| “Actual Revenue” | means the actual Revenue of the Franchisee in the relevant period; |
| “Aggregated Costs and Revenues Liabilities” | has the meaning given in paragraph 5.8 of Schedule 8.A (Franchise Payments); |
| “Base Cash Position” | means [REDACTED¹] or such other value as the Secretary of State may determine in accordance with paragraph 9.8 of Schedule 8.A (Franchise Payments); |
| “Budget” | means together: <ul style="list-style-type: none"> (a) the periodic cost and revenues budget; and (b) the periodic capex budget, |

¹ 22 June 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.

as such budget may be updated from time to time in accordance with paragraph 4 of Schedule 8.A (Franchise Payments);

“Budgeted Capex” means the Capital Expenditure budgeted to be incurred by the Franchisee in a Reporting Period and specified in the then current Budget as agreed or determined pursuant to paragraph 4 of this Schedule 8.A (Franchise Payments);

“Budgeted Costs” means the Costs budgeted to be incurred by the Franchisee in each Reporting Period and specified in the then current Budget as agreed or determined pursuant to paragraph 4 of this Schedule 8.A (Franchise Payments);

“Capital Expenditure” means costs of creating non-current or fixed assets which are not Costs (as defined in this Schedule 8.A) and which are properly accrued:

- (a) in relation to Reporting Period 13, during Reporting Period 13 and relating to the Franchisee's performance of the Franchise Agreement during Reporting Period 13; or
- (b) in relation to the term of the EMA, during such term of the EMA and relating to the Franchisee's Performance of the EMA;

“Ceiling Cash Position” means [REDACTED²] or such other value as the Secretary of State may determine in accordance with paragraph 9.8 of Schedule 8.A (Franchise Payments);

“Costs” means costs and expenses properly accrued:

- (a) in relation to Reporting Period 13, during Reporting Period 13 and relating to the Franchisee's performance of the Franchise Agreement during Reporting Period 13; or
- (b) in relation to the term of the EMA, during such term and relating to the Franchisee's Performance of the EMA;

and stated in the Franchisee's profit and loss account but excluding:-

- (a) Franchise Payments (which shall include (for the avoidance of doubt) the value of any Management Fee and Performance Payment);
- (b) corporation tax and deferred tax charge in the Franchisee's profit and loss account;

² 22 June 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.

- (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 where that depreciation is not a Disallowable Cost;
- (d) Capital Expenditure;

provided that:

- (i) if the Franchisee's profit and loss account includes any 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
- (ii) for the avoidance of doubt, 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;

| | |
|--|--|
| "Disallowable Costs" | means any Costs or Capital Expenditure which are described within Appendix 1 (Disallowable Costs) to this Schedule 8.A (Franchise Payments); |
| "EMA Start Date" | means 1 April 2020; |
| "Emergency Working Capital Payment" | has the meaning given in paragraph 9.5 of Schedule 8.A (Franchise Payments); |
| "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; |
| "Estimated Residual Components" | means the Residual Components estimated by the Secretary of State using available resources as is practicable at the time of the estimation; |

- "Estimated Revenue"** means the Revenue reasonably determined by the Secretary of State using available resources as is practicable at the time of the determination;
- "Final Reviewed Accounts"** means the audited accounts provided pursuant to paragraph 16 of Schedule 8.A (Franchise Payments);
- "Floor Cash Position"** means [REDACTED³] or such other value as the Secretary of State may determine in accordance with paragraph 9.8 of Schedule 8.A (Franchise Payments);
- "Forecast Closing Cash Position"** means, with respect to a Reporting Period, the Franchisee's forecast working capital position (excluding the aggregate of the Periodic Franchise Payment and Periodic Budgeted Capex Payment made in the following Reporting Period) 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 2.1 of this Schedule 8.A (Franchise Payments); and
 - (b) any component or element, described in the relevant provisions of this Schedule 8.A (Franchise Payments) and Schedule 8.B (Performance Payment), as the case may be, which is used in determining or calculating the value of those components described in paragraph (a) above;
- "Good and Efficient Operator"** means in the context of all other relevant provisions of this 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, for the avoidance of doubt, shall recognise the extraordinary impact of COVID-19, the existence of the EMA and the requirement for operators to act in the national interest in response to COVID-19), which is a party to a franchise agreement in equivalent terms to the Franchise Agreement, with performance targets and standards equivalent to those set out in Schedule 8.B (Performance Payment) of the Franchise Agreement, which complies with its obligations under such franchise agreement and the Licences in a timely, efficient and economical 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;

³ 20 June 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.

- “Management Fee and Performance Payment” or “MFPP”** means the Franchise Payment Component calculated in accordance with paragraph 11 of this Schedule 8.A (Franchise Payments);
- “Performance Period”** means the period commencing on the EMA Start Date and ending at 1.59 a.m. on 18 October 2020, or such earlier date of termination of the EMA;
- “Periodic Adjustment”** has the meaning given in paragraph 6.2 of Schedule 8.A (Franchise Payments);
- “Periodic Budgeted Capex Payment” or “PBCP”** means the Franchise Payment Component calculated in accordance with paragraph 2.1 of this Schedule 8.A (Franchise Payments);
- “Periodic Franchise Payment” or “PFP”** means the Franchise Payment Component calculated in accordance with paragraph 2.1 of this Schedule 8.A (Franchise Payments);
- “Periodic Finance Review Meeting”** has the meaning given in paragraph 5.1 of Schedule 8.A (Franchise Payments);
- “Reporting Period 13”** means 1 March 2020 to 31 March 2020 (inclusive);
- “Reporting Period Budget Forecast Review Meeting”** has the meaning given in paragraph 4.1 of Schedule 8.A (Franchise Payments);
- “Residual Components”** means the net value of the components of the Franchise Payments under Schedule 8.1 which:

 - (a) relate to any periods prior to Reporting Period 13; and
 - (b) become payable during the relevant period,

For the purposes of this Schedule 8.A (Franchise Payments), such net value shall be:

 - (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:

 - (a) in relation to Reporting Period 13, during Reporting Period 13 and relating to the Franchisee's performance of the Franchise Agreement during Reporting Period 13; or

- (a) in relation to the term of the EMA, during such term and relating to the Franchisee's performance of the EMA;

as stated in the Franchisee's profit and loss account but excluding:

- (a) Franchise Payments (which shall include (for the avoidance of doubt) the value of any Performance Payment and/or Management Fees (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 3.8 (No Double Recovery) of Schedule 8.A (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 (a) and (b) above, such revenue is not received or receivable as a result of the Franchisee acting in accordance with the instructions of the Secretary of State;

**“Reviewed 2019/20
Accounts”**

Has the meaning given to it in paragraph (g) of Appendix 2 to this Schedule 8.A (Franchise Payments);

“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 Agreement, 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 Agreement or any agreement ancillary to this Agreement, including the Supplemental Agreement

“Supporting Materials”

means any materials explaining or supporting the Budget which have been produced by the Franchisee and serve as a Supporting Materials;

**“Working Capital
Payment”**

means the Franchise Payment Component calculated in accordance with paragraph 9.3 of this Schedule 8.A (Franchise Payments); and

**“Working Capital
Repayment”**

means the Franchise Payment Component calculated in accordance with paragraph 10.2 of this Schedule 8.A (Franchise Payments).

2. Franchise Payments

2.1A The Parties acknowledge and agree that the provisions of Schedule 8.1 of the Franchise Agreement shall be suspended during the term of the EMA. Any Residual Components relating to Reporting Periods prior to the term of the EMA shall be dealt with in accordance with paragraph 2.1 and Appendix 2 of this Schedule 8.A (Franchise Payments).

2.1 The Franchise Payment for any Reporting Period during the term of the EMA shall be an amount equal to:

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|--------------|--|
| £FP = | $PFP + PBCP + PADJ + WCP - WCR + FADJ + MFPP - FWCA + RCP$ |
|--------------|--|

where:

| | | |
|--|---|--|
| PFP (Periodic Franchise Payment) | means an amount equal to: | |
| | $PFP_n = BC_n - ER_{n-1}$ | |
| | Where: | |
| | 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 Reporting Period _(n-1) (if any) provided such Reporting Period occurs after the EMA Start Date. ER_{n-1} may only be a positive number. |
| PFP may be a positive or negative number. | | |
| PBCP (Periodic Budgeted Capex Payment) | means an amount equal to the Budgeted Capex for the current Reporting Period (if any). PBCP may only be a positive number. | |
| PADJ | means any Periodic Adjustment, determined in accordance with paragraph 6 of Schedule 8.A (Franchise Payments), 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. | |
| FADJ | means any Final Adjustment, determined in accordance with paragraph 7 of Schedule 8.A (Franchise Payments), to be made on that Reporting Period's Payment Date. FADJ may be a positive or negative number. | |
| MFPP | means the Management Fee and Performance Payment for the term of the EMA (and, in the case of the Management Fee, for Reporting | |

| | |
|-------------|---|
| | Period 13), determined in accordance with paragraph 11.1 of Schedule 8.A (Franchise Payments) and to be paid on the first Payment Date following the determination of the Management Fee and Performance Payment in accordance with Paragraph 11 of Schedule 8.A (Franchise Payments) which the Parties acknowledge will be after the expiry of the term of the EMA. Subject to paragraph 11.2, MFPP may only be a positive number. |
| FWCA | means the Final Working Capital Adjustment, determined in accordance with paragraph 10.3 of Schedule 8.A (Franchise Payments), to be made on that Reporting Period's Payment Date. FWCA may be a positive or negative number. |
| RCP | means an amount equal to the Residual Components for the preceding Reporting Period, other than any amounts which are payable under Appendix 2 to this Schedule 8.A (Franchise Payments) relating to Residual Components for Reporting Period 13. RCP may be a positive or negative number. |

2.2 Not Used.

2.3 Not Used.

2.4 The Parties agree that:

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

3. Payment of Franchise Payments

3.1 The Secretary of State shall notify the Franchisee, no less than seven (7) days prior to the start of each Reporting Period (or, in the case of the first Reporting Period following the EMA Start Date, as soon as reasonably practicable), of the amount of the Franchise Payment payable in respect of that Reporting Period.

3.2 Each such notification shall set out in reasonable detail how the Franchise Payment has been calculated.

3.3 The Payment Date for a Reporting Period shall be the first Weekday of that Reporting Period.

3.4 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 3.1 on the Payment Date of the Reporting Period to which it relates.

3.5 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.

Interest

- 3.6 If:
- (c) the Franchisee fails to pay any amount to the Secretary of State on its due date; or
- (d) 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.

Disputes under Schedule 8

- 3.7 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 9 (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.A.

No Double Recovery

- 3.8 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, no amount shall be categorised as both Capital Expenditure and as a Cost for the purpose of this Schedule 8.A, 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.
- 3.8A In the event that the Franchisee is successful in obtaining any UK Government support that is offered in relation to the impact of COVID-19, this shall be taken into account in relation to the relevant payment and adjustments in this Schedule 8A such that the Franchisee does not benefit from double recovery or double counting.

Force Majeure and Payments

- 3.9 Following the occurrence of a Force Majeure Event, the payment of Franchise Payments shall continue to be calculated in accordance with this Schedule 8.A (Franchise Payments) and the payment of such Franchise Payments shall continue unaffected.

4. Revisions to the Budget

- 4.1 Without limiting the requirement for any other meeting, the Parties shall, subject to paragraph 5.10, hold a forecast Budget review meeting in each Reporting Period (a "**Reporting Period 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 4.2. The purpose of the meeting shall be to review and seek to agree:
- (a) revisions (if any) to the then current Budget for the remaining Reporting Periods of the Budget;

- (b) the content of any necessary or desirable corresponding addendum to the Supporting Materials; and
- (c) any new contracts which the Franchisee proposes to enter into with an Affiliate.

The Franchisee shall ensure that the representatives of the Franchisee at the Reporting Period 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.

- 4.2 The Franchisee shall, prior to the date of each Reporting Period Budget Forecast Review Meeting have provided to the Secretary of State the relevant information required pursuant to paragraph 3.2 of Schedule 13 in relation to the previous Reporting Period, together with a draft periodic budget prepared using the cost and revenue categories within P&L2 of the Financial Model, updated to reflect Actual Costs and Actual Revenues as reflected in the latest Management Accounts and revised Budgeted Costs for the remainder of the term of the EMA, 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 4, within such time as the Secretary of State may reasonably specify for that purpose (and this paragraph shall continue to apply such that the number of requests which the Secretary of State may make is not limited).
- 4.3 If the Parties fail to agree the matters referred to in paragraphs 4.1(a) to 4.1(c) the relevant Reporting Period Budget Forecast Review Meeting, the Secretary of State shall reasonably determine such matters.
- 4.4 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 Reporting Period 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 10 Weekdays after those revisions and addenda are agreed or determined.
- 4.5 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 and the Audited Annual Accounts.

- 4.6 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 himself (or procure this is done on his 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.
- 4.7 The Franchisee shall not enter into any contract with an Affiliate unless the Secretary of State has, in his absolute discretion (and for this purpose Clause 5.4 of the Franchise Agreement shall not apply) first consented to the terms of such contract and to it being entered into on those terms, whether at or following a Reporting Period Budget Forecast Review Meeting (where such contract forms part of the agenda for that meeting) or otherwise.
- 4.8 For the purpose of this paragraph 4, 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 4. 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.
- 4.9 Subject to the Secretary of State's rights set out in paragraph 4.7, 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.

5. **Review of Franchisee's performance against Budget**

Finance Review Meeting

- 5.1 Without limiting the requirement for any other meeting, the Parties shall, subject to paragraph 5.10, 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 provision of the information referred to in paragraph 5.2 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 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;
 - (ii) a review and discussion regarding any Actual Costs with respect to payments made by the Franchisee under contracts with Affiliates which exceed either the Budgeted Costs stated in the then current Budget or the level of payments made under the contracts with Affiliates for equivalent periods prior to the EMA Start Date;

- (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 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, Revenue Foregone and SoS Claims (and/or in accordance with paragraph 5.9, relevant Initial SoS Claim Amounts, as applicable) which have been identified pursuant to (vi) above in previous Report Period 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, Revenue Foregone and/or SoS Claims (and/or in accordance with paragraph 5.9, relevant Initial SoS Claim Amounts, as applicable) are to be considered as part of any Reporting Period Finance Review Meeting,

and, for the avoidance of doubt, the purpose of the Periodic Finance Review Meeting held in the first Reporting Period of the term of the EMA shall be to discuss the financial performance of the Franchisee during Reporting Period 13.

5.2 The Franchisee shall, prior to the date of each Periodic Financial Review Meeting have provided to the Secretary of State the relevant information required pursuant to paragraph 3.2 of Schedule 13 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 5.1, within such time as the Secretary of State may reasonably specify for that purpose (and this paragraph shall continue to apply such that the number of requests which the Secretary of State may make is not limited).

5.3 [Not used]

5.4 The Secretary of State shall be entitled to consider any information provided to him 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 5. The Franchisee shall provide the information within such time as the Secretary of State may

reasonably specify for the purpose (and this paragraph shall continue to apply such that the number of requests which the Secretary of State may make is not limited).

5.4A If, within 10 Weekdays following the relevant Reporting Period Finance Review Meeting:

- (a) the Parties have failed to agree the matters referred to in paragraph 5.1(a)(vii); and
- (b) such matters either individually or in the aggregate exceed [REDACTED⁴]; then

each Party will respectively procure that such matter or matters (as the case may be) will 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 will meet at the earliest convenient time and in any event within 20 Weekdays of the date of the relevant Reporting Period Finance Review Meeting and negotiate in good faith and attempt to agree the relevant matters.

5.5 If:

- (a) the Parties fail to agree the matters referred to in paragraph 5.1(a) at the relevant Reporting Period Finance Review Meeting, in circumstances where paragraph 5.4A does not apply;
- (b) the representatives of the Parties fail to agree the matters referred to in paragraph 5.1(a)(vii) within 10 Weekdays of first meeting to agree such matters in accordance with paragraph 5.4A, in circumstances where that paragraph applies; or
- (c) the Franchisee fails to provide the relevant information required pursuant to Schedule 11 (Agreement Management Provisions) and Schedule 13 (Information and Industry Initiatives), in accordance with the timescales set out therein, or otherwise in accordance with this paragraph 5,

the Secretary of State shall (without prejudice to his other rights) be entitled (but not obliged) to determine the relevant matters in accordance with this paragraph 5 and all other applicable provisions of this Schedule 8.A 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 Accrued SoS Claims

5.6 Without prejudice to paragraphs 5.4 to 5.5, if subsequent to any Reporting Period Finance Review Meeting the Secretary of State later identifies any item (applicable to that period to which the relevant Reporting Period 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 or Final Reviewed 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 5.4 and paragraphs 5.6A to 5.6C. The

⁴ 22 June 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.

Franchisee shall provide the information within such time as the Secretary of State may reasonably specify for the purpose.

5.6A 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 5.9, relevant Initial SoS Claim Amounts, as applicable) identified by the Secretary of State pursuant to paragraph 5.6 within 20 Weekdays of the later of the Secretary of State's notice referred to in paragraph 5.6(a) and the date specified by the Secretary of State for the delivery of further information in accordance with paragraph 5.6(b) (the "**Escalation Trigger Date**").

5.6B If:

- (a) the parties fail to agree the matters referred to in paragraph 5.6A; and
- (b) such matters either individually or in the aggregate exceed [REDACTED⁵]; then

each Party will respectively procure that such matter or matters (as the case may be) will 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 will meet at the earliest convenient time and in any event within 20 Weekdays of the Escalation Trigger Date and negotiate in good faith and attempt to agree the relevant matters.

5.6C If:

- (a) the Parties fail to agree the matters referred to in paragraph 5.6A in circumstances where paragraph 5.6B does not apply;
- (b) the representatives of the Parties fail to agree the matters referred to in paragraph 5.6A within 10 Weekdays of first meeting to agree such matters in accordance with paragraph 5.6B, in circumstances where that paragraph applies; or
- (c) the Franchisee fails to provide the relevant information required pursuant to paragraph 5.6(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 5.9, relevant Initial SoS Claim Amounts, as applicable).

5.7 The value of any Disallowable Costs and/or Revenue Foregone and/or any SoS Claims (and/or in accordance with paragraph 5.9, relevant Initial SoS Claim Amounts as applicable) as agreed or determined whether pursuant to paragraph 5.4A, paragraph 5.5, paragraph 5.6A, paragraph 5.6B, paragraph 5.6C or paragraph 5.9 shall be referred to as "**Accrued Disallowable Costs**" and "**Accrued Revenue Foregone**" and "**Accrued Claims**" (as applicable).

5.8 Subject to paragraph 5.8A, the value of any Accrued Disallowable Costs and/or Accrued Revenue Foregone and/or Accrued Claims on each occasion accumulated pursuant to paragraph 5.7 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**".

5.8A The value of the Aggregated Costs and Revenues Liabilities shall be limited to:

⁵ 22 June 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.

- (a) in the event that there has been no extension to the term of EMA, the sum of (i) the maximum potential Management Fee payable for the term of the EMA (which, for the avoidance of doubt, shall take account of any early expiry or termination of the EMA) calculated pursuant to paragraph 11.1; and (ii) the sum of all of the Performance Payments for the term of the EMA calculated in accordance with Schedule 8.B (Performance Payment); or
- (b) in the event that there has been an extension to the term of the EMA, the sum of the (i) the maximum potential Management Fee payable for the term of the EMA (which, for the avoidance of doubt, shall take account of any early expiry or termination of the EMA) calculated pursuant to paragraph 11.1; and (ii) the sum of all of the Performance Payments for the term of the EMA calculated in accordance with Schedule 8.B (Performance Payment).

5.9 To the extent that any SoS Claim is a contingent or unliquidated claim (a "**Contingent SoS Claim**"), the parties shall, pursuant to paragraph 5.4A, paragraph 5.6A or paragraph 5.6B (as applicable) seek to agree (or in the absence of agreement, the Secretary of State may for the purposes of paragraph 5.5 and shall for the purposes of paragraph 5.6C, 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 5.7. 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 MFPP, 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 EMA;
 - (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 this 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 MFPP, 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.

5.10 The Secretary of State shall have the discretion (acting reasonably) to decrease (and subsequently increase) the required frequency of the Reporting Period Budget Forecast Review Meetings and/or the Periodic Finance Review Meetings, provided they shall be no more frequent than once a Reporting Period.

5.11 Any Reporting Period Budget Forecast Review Meeting or Period Finance Review Meeting (or part thereof) may be held remotely with the prior agreement of the Parties.

6. **Periodic Adjustments**

6.1 The value of PADJ for the current Reporting Period (n) shall be equal to the following

| | |
|---------------------------------------|---|
| PADJ for Reporting Period(n) = | $(ACRP_{n-2} - BCRP_{n-2}) + (ACAP_{n-2} - BCAP_{n-2}) - (ARRP_{n-2} - ERRP_{n-2})$ |
|---------------------------------------|---|

Where:

| | |
|---------------------------|---|
| ACRP_{n-2} | means the total Actual Costs in the second preceding Reporting Period (n-2) as set out in the Management Accounts for that preceding Reporting Period, provided that any Reporting Periods prior to the EMA Start Date shall be disregarded. ACRP _{n-2} may only be a positive number |
| BCRP_{n-2} | means the total Budgeted Costs in respect of the second preceding Reporting Period (n-2) 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-2), provided that any Reporting Periods prior to the EMA Start Date shall be disregarded. BCRP _{n-2} may only be a positive number. |
| ACAP_{n-2} | means the total Actual Capex for the second preceding Reporting Period (n-2), provided that any Reporting Periods prior to the EMA Start Date shall be disregarded. ACAP _{n-2} may only be a positive number |
| BCAP_{n-2} | means the Budgeted Capex in respect of the second preceding Reporting Period (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-2)), provided that any Reporting Periods prior to the EMA Start Date shall be disregarded. BCAP _{n-2} may only be a positive number |
| ARRP_{n-2} | means the total Actual Revenue for the second preceding Reporting Period (n-2), provided that any Reporting Periods prior to the EMA Start Date shall be disregarded. ARRP may only be a positive number. |
| ERRP_{n-2} | means the total Estimated Revenue in respect of the second preceding Reporting Period (n-2), provided that any Reporting Periods prior to the EMA Start Date shall be disregarded. ERRP may only be a positive number. |

6.2 The value of PADJ in respect of a Reporting Period shall be made as an adjustment to the next Franchise Payment payable after that calculation of PADJ is determined ("**Periodic Adjustment**"). For the avoidance of doubt a Periodic Adjustment shall be calculated on the basis that no interest is due pursuant to paragraph 3.6 of this Schedule 8.A.

6.3 The Secretary of State agrees that, provided the Management Accounts (in a form consistent with the obligations of the Franchisee under Schedule 13 (Information and Industry Initiatives))

are received from the Franchisee within the timescale specified in paragraph 3.2 of Schedule 13 (Information and Industry Initiatives), the Secretary of State will provide the Franchisee with the value of PADJ in sufficient time for the Periodic Adjustment to be included in the Franchise Payment for the Reporting Period immediately following the Reporting Period to which the Periodic Adjustment relates.

6.4 If the Franchisee fails to provide the Management Accounts in accordance with its obligations under Schedule 13 (Information and Industry Initiatives), the Secretary of State shall (without prejudice to his other rights) be entitled (but not obliged) to determine the amount of any Periodic Adjustment in accordance with this paragraph 6 but by reference to the relevant information available to the Secretary of State at the time of such determination.

7. **Final Adjustments**

7.1 FADJ shall be equal to the following:

| | |
|---------------------------|--|
| FADJ for the EMA = | $(TotalAC - TotalAR) + TotalACAP - (TotalPFP + TotalPBCP) - TotalPADJ$ |
|---------------------------|--|

Where:

| | |
|------------------|--|
| TotalAC | means the total Actual Costs of the Franchisee for the term of the EMA as set out in the Final Reviewed Accounts for the term of the EMA. TotalAC may only be a positive number. |
| TotalAR | means the total Actual Revenue for the term of the EMA as set out in the Final Reviewed Accounts for the term of the EMA. TotalAR may only be a positive number. |
| TotalACAP | means the total Actual Capex for the term of the EMA as set out in the Final Reviewed Accounts for the term of the EMA. TotalACAP may only be a positive number. |
| TotalPFP | means the aggregate value of all of the Periodic Franchise Payments paid to the Franchisee during the term of the EMA. TotalPFP may be positive or negative. |
| TotalPBCP | means the aggregate value of all of the Periodic Budgeted Capex Payments paid to the Franchisee during the term of the EMA. TotalPBCP may only be a positive number. |
| TotalPADJ | means the total net value of PADJ paid in respect of each Reporting Period during the term of the EMA. TotalPADJ may be positive or negative. |

7.2 The value of FADJ in respect of the term of the EMA (whether negative or positive) shall be made as an adjustment to the next Franchise Payment payable after the calculation of FADJ is determined (the "**Final Adjustment**") and the Parties acknowledge this will be payable as part of the Franchise Payments following the completion of the term of the EMA. For the avoidance of doubt the Final Adjustment shall be calculated on the basis that no interest is due pursuant to paragraph 3.6 of this Schedule 8.A.

7.3 If the Franchisee fails to provide the information required by paragraphs 3.9 and 3.9A of Schedule 13 (Information and Industry Initiatives) including Annual Audited Accounts, Final Reviewed Accounts and a reconciliation to the Management Accounts by the date specified in

that paragraph the Secretary of State shall (without prejudice to his other rights) be entitled (but not obliged) to determine the amount of any Final Adjustment in accordance with this paragraph 7 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.

8. **NOT USED**

9. **Working Capital Payments**

9.1 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 9.3.

9.2 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 5.2.

9.3 The Working Capital Payment, if payable in any Reporting Period, shall be equal to the following:

| | |
|--------------|------------|
| WCP = | BCP – FCCP |
|--------------|------------|

Where:

| | |
|-------------|--|
| BCP | the Base Cash Position. |
| FCCP | the Forecast Closing Cash Position applicable to the preceding Reporting Period. |

9.4 If during a Reporting Period, the Franchisee becomes aware that in its reasonable opinion 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 meets 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; and
- (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.

9.5 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.

9.6 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 9.5.

- 9.7 If the Franchisee fails to provide any information required by this paragraph 9, or any information in accordance with its obligations in Schedule 11 (Agreement Management Provisions) and/or Schedule 13 (Information and Industry Initiatives) 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 9 but by reference to the relevant information available to the Secretary of State at the time of such determination.
- 9.8 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.

10. Working Capital Repayment

- 10.1 Subject to paragraph 10.4, 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 10.2.
- 10.2 A Working Capital Repayment, if payable in any Reporting Period, shall be equal to the following:

| | | |
|------------|----------|-------------------|
| WCR | = | FCCP – BCP |
|------------|----------|-------------------|

Where:

| | |
|-------------|--|
| FCCP | the Forecast Closing Cash Position applicable to the preceding Reporting Period. |
| BCP | the Base Cash Position. |

Final Working Capital Adjustment

- 10.3 The value of FWCA shall equal:

| | | |
|-------------|----------|----------------------------|
| FWCA | = | TotalWCP – TotalWCR |
|-------------|----------|----------------------------|

Where:

| | |
|-----------------|--|
| TotalWCP | the aggregate of all Working Capital Payments and all Emergency Working Capital Payments paid to the Franchisee during the term of the EMA |
| TotalWCR | the aggregate of all Working Capital Repayments paid by the Franchisee during the term of the EMA |

- 10.4 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 EMA. FWCA may be positive or negative.

10.5 If the Franchisee fails to provide any information in accordance with its obligations in Schedule 11 (Agreement Management Provisions) and/or Schedule 13 (Information and Industry Initiatives) to enable the Secretary of State to calculate any Working Capital Repayment or the Final Working Capital Adjustment the Secretary of State shall (without prejudice to his other rights) be entitled (but not obliged) to determine the amount of WCR or FWCA (as the case may be) 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. Management Fee and Performance Payment

11.1 Subject to paragraphs 11.2 to 11.5 (inclusive), the value of MFPP shall equal:

| | |
|---------------|----------------------|
| MFPP = | MF+PP – PPADC |
|---------------|----------------------|

Where:

| | |
|--------------|--|
| MF | means the Management Fee for the term of the EMA and Reporting Period 13 which shall be [REDACTED ⁶] (exclusive of VAT) multiplied by the sum of the number of Reporting Periods in the term of the EMA and one. |
| PP | means the sum of all of the Performance Payments for the term of the EMA calculated in accordance with Schedule 8.B (Performance Payment). PP may only be a positive number. |
| PPADC | <p>means the sum of the total value of the Aggregated Costs and Revenues Liabilities:</p> <p>(a) calculated on the basis of the Franchisee’s Final Reviewed Accounts; and</p> <p>(b) as agreed or reasonably determined (in accordance with paragraphs 5.4 to 5.6 of Schedule 8.A (Franchise Payments)) at the Payment Date for MFPP pursuant to paragraph 11.3.</p> <p>Without limiting paragraph 11.2 of Schedule 8.A (Franchise Payments), PPADC may only be a positive number.</p> |

11.2 If the value of MFPP is a negative amount:

- (a) for the purposes of paragraph 2.1, MFPP shall be deemed to equal zero; and
- (b) the Secretary of State shall be entitled to claim the value of MFPP (expressed as a positive value) from the Franchisee as an adjustment to the Franchise Payments in the period following expiry of the Performance Period.

11.3 Subject to paragraph 11.4, the value of MFPP shall be made as an adjustment to the next Franchise Payment payable after:

⁶ 22 June 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.

- (a) the value of the Performance Payment has been finally calculated pursuant to Schedule 8.B (Performance Payment); and
- (b) the value of the Aggregate Costs and Revenue Liabilities have been agreed or determined for the purposes of this paragraph 11.

For the avoidance of doubt MFPP shall be calculated on the basis that no interest is due pursuant to paragraph 3.6 of this Schedule 8.A.

The Parties acknowledge that the adjustment referred to in 11.3 will occur following the expiry of the Performance Period and may occur after the expiry of the EMA.

11.4 Nothing in this paragraph 11 shall limit the rights and remedies of the Secretary of State in respect of any Disallowable Costs, Revenue Foregone and/or SoS Claims not taken into account in the calculation of PPADC.

12. Further Secretary of State's rights in relation to accounting matters

12.1 Where the Secretary of State reasonably considers that in calculating any matter which impacts 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.

12.2 Where the Final Reviewed Accounts are subject to adjustment or restatement the Secretary of State shall have a 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 Final Reviewed 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 Final Reviewed Accounts.

12.3 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.

13. Indexation

For the avoidance of doubt, it is agreed 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 13 is without prejudice to the adjustment of the Budget in accordance with paragraph 4 and/or the adjustment of the Franchise Payments in accordance with paragraphs 6 and 7 of this Schedule 8.A.

14. Further obligations of the Franchisee

14.1 Except to the extent otherwise agreed by the Secretary of State, the Franchisee will act as a Good and Efficient Operator in all respects in connection with the operation of this Schedule 8.A (Franchise Payments) and shall not act in a way that is contrary to the principles of the EMA by using the existence or cessation of the EMA to increase the profitability of the Franchisee.

14.2 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 party to any arrangement of any kind whatsoever 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 EMA or Reporting Period 13 (as relevant), which might otherwise be paid or accounted for in the periods preceding or following the term of the EMA or Reporting Period 13 (as relevant);
- (d) any amounts which the Franchisee might otherwise have received from a third party during the term of the EMA or Reporting Period 13 (as relevant) are recovered or accounted for in the periods preceding or following the term of the EMA or Reporting Period 13 (as relevant); and/or
- (e) Revenue is accounted for in the periods preceding or following the term of the EMA or Reporting Period 13 (as relevant) which should have been accounted for during the term of the EMA or Reporting Period 13 (as relevant).

14.3 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.A provides have been made and discharged in full; and/or
- (b) without the prior written consent of the Secretary of State.

14.4 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.

15. Survival

For the avoidance of doubt this Schedule 8.A (Franchise Payments) and Schedule 8.B (Performance Payment) and any other provisions of the Franchise Agreement reasonably required for the purpose of giving such Schedules full effect shall survive the termination or expiry of the EMA and the Franchise Term (however arising) and continue in full force and effect in accordance with their terms.

16. Review and Audit

The "**Final Reviewed Accounts**" are a set of financial statements prepared in accordance with GAAP and delivered to the Secretary of State in accordance with the requirements in paragraph 3.9A of Schedule 13 (Information and Industry Initiatives) 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 term of the EMA and Reporting Period 13, to a level of disaggregation which the Secretary of State may reasonably require.

Following the expiry of the term of the EMA, the Franchisee will commission an exercise to review the Final Reviewed Accounts, to a standard equivalent to a statutory audit to the extent that statutory audit procedures would reasonably be applied to a profit and loss account, balance sheet and cash flow statement, and will:

- (a) if required by the Secretary of State, use an external auditor;
- (b) if required by the Secretary of State, allow full access by their officials and/or representatives on an "open book" basis; and
- (c) if required by the Secretary of State, allow full access by the National Audit Office or other equivalent body on an "open book" basis.

17. **Capex Review**

At the end of the term of the EMA, the Secretary of State will review the funding of capital expenditure assumed for the calculation of the contracted Annual Franchise Payments in the Financial Model that is held in escrow. To the extent that the funding of such assumed capital expenditure through the Franchise Payments under Schedule 8.1 has been distorted by the implementation of the EMA, including by the implementation of the EMA in a part of the Franchisee Year in which the term of the EMA comes to an end, the Parties shall seek to agree an appropriate compensating amount. This amount may be payable either by the Department or by the Franchisee. In the event that this amount cannot be agreed, the Secretary of State will reasonably determine the amount and direction of this payment.

APPENDIX 1 TO SCHEDULE 8.A

Disallowable Costs

Any references in this Appendix 1 to Schedule 8.A 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; or
 - (iv) variations to existing contracts which have not been made in accordance with the Franchisee's usual procurement procedures;
- (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 his absolute 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 any Remedial Plan or agreements unless such costs are specifically approved in writing by the Secretary of State;
 - (ii) 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;
 - (iii) in relation to the inspection costs referred to in paragraph 5.4 of Schedule 11 (Agreement Management Provisions);

- (iv) in meeting Deutsche Bahn AG's audit requirements to the extent these are additional to audit costs which would otherwise be incurred by the Franchisee;
- (v) in relation to any reasonable enforcement costs incurred by the Secretary of State pursuant to clause paragraph 7 of Schedule 19 (Other Provisions);
- (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, to the extent 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 paragraph 4 of Schedule 10.3 (Events of Default and Termination Events);
- (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 PCS Bond (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, required by this Agreement, excluding such costs as approved by the Secretary of State, in the Secretary of State's absolute 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 3.6 of Schedule 8.A (Franchise Payments);
- (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 have 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 EMA which a Good and Efficient Operator would have usually have discharged in the period following the expiry of the term of the EMA;
- (s) Any costs incurred in relation to the discharge 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 EMA 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 31st March 2020;

After the expiry of the EMA, 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 EMA 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 EMA 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 EMA;
- (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 3.14A of Schedule 13 (Information and Industry Initiatives);
- (aa) Legal, accountancy and other costs and expenses incurred in connection with the preparation and implementation of the EMA and its associated heads of terms; and
- (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).

APPENDIX 2 TO SCHEDULE 8.A

Reporting Period 13 Payment

- (i) As soon as reasonably practicable following the EMA Start Date, the Secretary of State will make an "Estimated Reporting Period 13 Payment" to the Franchisee which shall be equal to:

| | |
|----------------|-------------------------------------|
| ERP13 = | $((EC - ER) + ECE) + (ERC13 - AAP)$ |
|----------------|-------------------------------------|

Where:

| | |
|--------------|--|
| EC | means the Estimated Costs for Reporting Period 13. EC may only be a positive number. |
| ER | means the Estimated Revenue for Reporting Period 13. ER may only be a positive number. |
| ECE | means the Estimated Capital Expenditure for Reporting Period 13. ECE may only be a positive number. |
| ERC13 | means an amount equal to the Estimated Residual Components for Reporting Period 13. ERC13 may be positive or negative. |
| AAP | means any amounts already paid in relation to the Franchise Payment for Reporting Period 13 under the Franchise Agreement prior to the implementation of the EMA. AAP may be positive or negative. |

- (ii) On the first day of the second Reporting Period of the term of the EMA, the "Initial Reporting Period 13 Payment" shall be payable to either the Secretary of State or the Franchisee and shall be equal to:

| | |
|----------------|---|
| IRP13 = | $((TotalACMA - TotalARMA) + TotalACEMA) + (RC13MA - AAP) - ERP13$ |
|----------------|---|

Where:

| | |
|------------------|--|
| TotalACMA | means the total Actual Costs of the Franchisee for Reporting Period 13 as set out in the Management Accounts for Reporting Period 13. TotalACMA may only be a positive number. |
| TotalARMA | means the total Actual Revenue of the Franchisee for Reporting Period 13 as set out in the Management Accounts for Reporting Period 13. TotalARMA may only be a positive number. |

| | |
|-------------------|--|
| TotalACEMA | means the total Actual Capex of the Franchisee for Reporting Period 13 as set out in the Management Accounts for Reporting Period 13. TotalACEMA may only be a positive number. |
| RC13MA | means an amount equal to the Residual Components for Reporting Period 13 as set out in the Management Accounts for Reporting Period 13. RC13MA may be positive or negative. |
| AAP | means any amounts already paid in relation to the Franchise Payment for Reporting Period 13 under the Franchise Agreement prior to the implementation of the EMA. AAP may be positive or negative. |
| ERP13 | means the Estimated Reporting Period 13 Payment calculated pursuant to paragraph (a) of this Appendix 2 to Schedule 8.A (Franchise Payments). ERP13 may be positive or negative. |

(iii) As soon as reasonably practicable after receipt by the Secretary of State of the Reviewed 2019/20 Accounts, the "Final Reporting Period 13 Payment" shall be payable to either the Secretary of State or the Franchisee and shall be equal to:

| | |
|----------------|--|
| FRP13 = | $((\text{TotalACRA} - \text{TotalARRA}) + \text{TotalACERA}) + (\text{RC13RA} - \text{AAP}) - \text{ERP13} - \text{IRP13}$ |
|----------------|--|

Where:

| | |
|-------------------|--|
| TotalACRA | means the total Actual Costs of the Franchisee for Reporting Period 13 as set out in the Reviewed 2019/20 Accounts. TotalACRA may only be a positive number. |
| TotalARRA | means the total Actual Revenue of the Franchisee for Reporting Period 13 as set out in the Reviewed 2019/20 Accounts. TotalARRA may only be a positive number. |
| TotalACERA | means the total Actual Capex of the Franchisee for Reporting Period 13 as set out in Reviewed 2019/20 Accounts. TotalACERA may only be a positive number. |
| RC13RA | means an amount equal to the Residual Components for Reporting Period 13 as set out in the Reviewed 2019/20 Accounts. RC13RA may be positive or negative. |
| AAP | means any amounts already paid in relation to the Franchise Payment for Reporting Period 13 under the Franchise Agreement prior to the implementation of the EMA. AAP may be positive or negative. |
| ERP13 | means the Estimated Reporting Period 13 Payment calculated pursuant to paragraph (a) of this Appendix 2 to Schedule 8.A (Franchise Payments). ERP13 may be positive or negative. |

| | |
|---------------------|---|
| <p>IRP13</p> | <p>means the Initial Reporting Period 13 Payment calculated pursuant to paragraph (b) of this Appendix 2 to Schedule 8.A (Franchise Payments). IRP13 may be positive or negative.</p> |
|---------------------|---|

- (iv) Where:
 - i) **£ERP13, £IRP13 or £FRP13 (as applicable) is a positive number**, the Secretary of State shall pay that amount to the Franchisee on the date set out in the relevant paragraph above;
 - ii) **£ERP13, £IRP13 or £FRP13 is a negative number**, the Franchisee shall pay the corresponding positive amount to the Secretary of State on the date set out in the relevant paragraph above.
- (v) The Parties acknowledge and agree that in determining either the Initial Reporting Period 13 Payment or the Final Reporting Period 13 Payment, the Secretary of State shall be entitled to review any relevant Franchisee information for the purpose of ensuring that costs accrued in Reporting Period 13 for the purposes the Management Accounts properly relate to that Reporting Period.
- (vi) As soon as reasonably practicable following the EMA Start Date, the Parties shall agree a methodology for determining how any adjustments required to the Management Accounts in preparing the Annual Audited Accounts would be identified and allocated to Reporting Period 13. The procedures agreed shall include a reconciliation of the Franchisee's net assets at the start of the Reporting Period 13 and at the end of the Reporting Period 13.
- (vii) The Management Accounts incorporating the adjustments identified for Reporting Period 13 pursuant to paragraph (f) of this Appendix 2 to Schedule 8.A (Franchise Payments) shall be the "Reviewed 2019/20 Accounts" for the purposes of this Schedule 8.A. If required by the Secretary of State, the Franchisee shall allow full access by their officials and/or representatives on an "open book" basis for the purposes of reviewing the incorporation of such adjustments; and
- (viii) Any PCS up to the amount drawn down during Reporting Period 13 may be repayable from the amounts paid to the Franchisee pursuant to this Appendix 2 of Schedule 8.A (Franchise Payments).

Appendix 3 to Schedule 1
Schedule 8.B (Performance Payment)

SCHEDULE 8.B

Performance Payment

1. DEFINITIONS

For the purposes of this Schedule 8.B (Performance Payment) only, the following words and expressions shall have the following meanings unless otherwise specified:

- "EMA Criterion"** means each of the criteria set out in Appendix 3 of this Schedule 8.B, in respect of which the Franchisee's performance shall be measured in an EMA Review and for which a score shall be awarded in the EMA Review Scorecard (and **"EMA Criteria"** means the plural of EMA Criterion);
- "EMA Performance Period"** means the period commencing on the EMA Start Date and ending at 1.59 a.m. on 18 October 2020, or such earlier date of termination of the EMA;
- "EMA Review"** means a review carried out (or to be carried out) in accordance with Appendix 1 of this Schedule 8.B;
- "EMA Review Checklist"** means, in respect of an EMA Review, a checklist completed (or, as the case may be, to be completed) substantially in the form of that set out in Appendix 2 of this Schedule 8.B;
- "EMA Review Meeting"** means, in respect of the EMA Review, a meeting held between the Parties to discuss the performance of the Franchisee during the relevant EMA Performance Period;
- "EMA Review Scorecard"** means, in respect of an EMA Review, a scorecard completed (or, as the case may be, to be completed) by the Secretary of State in accordance with paragraph 5 of Appendix 1 to this Schedule 8.B;

2. CALCULATION OF THE PERFORMANCE PAYMENT (PP)

2.1 The Performance Payment (PP) shall be the sum of the three amounts corresponding to the Franchisee's EMA Review score for the EMA Criteria as set out below:

| EMA Criterion | EMA Review Scorecard score for relevant EMA Criterion | PP £ |
|-------------------------|---|--------------------------|
| Operational performance | 3 | [REDACTED ⁷] |

⁷ 22 June 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.

| | | |
|---|---|--------------------------|
| | 2 | [REDACTED] |
| | 1 | 0 |
| Customer experience | 3 | [REDACTED ⁸] |
| | 2 | [REDACTED] |
| | 1 | 0 |
| Acting as a Good and Efficient Operator | 3 | [REDACTED ⁹] |
| | 2 | [REDACTED] |
| | 1 | 0 |

2.2 The Performance Payment for each EMA Performance Period assumes an EMA Performance Period of six (6) Reporting Periods. If the actual duration of an EMA Performance Period is less than six (6) Reporting Periods, the Performance Payment with respect to such EMA Performance Period shall be calculated on a pro rata basis.

⁸ 22 June 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 22 June 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 1 TO SCHEDULE 8.B**EMA Review****1. PURPOSE OF THE EMA REVIEW**

- 1.1 The purpose of an EMA 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 EMA Performance Period.
- 1.2 Not used.
- 1.3 The Secretary of State will carry out an EMA Review with respect to each EMA Performance Period.
- 1.4 At each periodic Franchise Performance Meeting, progress against the three EMA Criteria shall be discussed and reviewed by the Parties.
- 1.5 Each EMA Review shall be carried out in accordance with the process set out in this Schedule 8.B.

2. NOTICE OF EMA REVIEW MEETING

- 2.1 The Secretary of State shall notify the Franchisee of the date, time and location for the relevant EMA Review Meeting by no later than the end of the relevant EMA Performance Period, provided always that the EMA Review Meeting shall take place no earlier than the last day in the relevant EMA Performance Period and no later than 60 days after the end of the relevant EMA Performance Period.
- 2.2 For the avoidance of doubt, nothing in this Schedule 8.B shall prevent the Parties from discussing any matter relevant to an EMA Review outside of the relevant EMA Review Meeting.

3. EMA REVIEW CHECKLIST

- 3.1 Not less than 30 days prior to the end of the relevant EMA Performance Period, the Secretary of State, acting reasonably, shall notify the Franchisee in writing of any additional information that the Franchisee shall be required to submit at the same time as the completed EMA Review Checklist.
- 3.2 Not less than fifteen (15) days prior to end of the EMA Performance Period, the Franchisee shall notify the Secretary of State in writing of any matters in addition to those set out in the EMA Review Checklist or the information notified to the Franchisee by the Secretary of State in accordance with paragraph 3.1 of Appendix 1 to this Schedule 8.B, which the Franchisee considers to be relevant for the EMA 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 EMA Review.
- 3.3 As soon as reasonably practicable after the end of an EMA Performance Period, and in any event no later than 10 days after the end of an EMA Performance Period, the Franchisee shall deliver to the Secretary of State a duly completed copy of the EMA Review Checklist in respect of the EMA Performance Period.
- 3.4 The EMA Review Checklist delivered by the Franchisee in accordance with paragraph 3.3 of Appendix 1 to this Schedule 8.B shall include written commentary from the Franchisee in respect of the EMA Performance Period covering:
- (a) each of the matters listed in the EMA Review Checklist;

- (b) any other such matter notified by the Secretary of State to the Franchisee in accordance with paragraph 3.1 of Appendix 1 to this Schedule 8.B; and
- (c) any other matter which the Secretary of State has confirmed as relevant for the EMA Review in accordance with paragraph 3.2 of Appendix 1 to this Schedule 8.B.

3.5 The Secretary of State shall provide the Franchisee with:

- (a) written commentary on the completed EMA Review Checklist (including any commentary provided by the Franchisee under paragraph 3.4 of Appendix 1 to this Schedule 8.B); and
- (b) any information additional to that contained in the EMA Review Checklist which the Secretary of State has used or intends to use to assess the Franchisee's performance,

in each case, no later than ten (10) days prior to the EMA Review Meeting.

4. **EMA REVIEW MEETING**

4.1 The EMA Review Meeting shall take place at the date, time and location notified by the Secretary of State in accordance with paragraph 2.1 of Appendix 1 to this Schedule 8.B and shall be attended by representatives of each of the Secretary of State and the Franchisee.

4.2 The Franchisee shall ensure that the representatives of the Franchisee at the EMA Review Meeting include such:

- (a) appropriate and qualified personnel of the Franchisee;
- (b) directors and/or senior managers of the Franchisee; and
- (c) directors and/or senior managers of the Parent,

as the Secretary of State may reasonably require.

4.3 At the EMA Review Meeting the Parties shall discuss the Franchisee's performance by reference to the EMA Review Checklist, together with any supporting commentary, documents or evidence submitted by the Franchisee to the Secretary of State in accordance with paragraphs 3.3 and 3.4 of Appendix 1 to this Schedule 8.B and any commentary and/or information provided by the Secretary of State to the Franchisee in accordance with paragraph 3.5 of Appendix 1 to this Schedule 8.B.

5. **EMA REVIEW SCORING**

5.1 The Secretary of State shall provide to the Franchisee, no later than ten (10) days following the EMA Review Meeting, a duly completed EMA Review Scorecard setting out the Franchisee's performance in each of the EMA Criteria for the EMA Performance Period.

5.2 The Franchisee shall be scored 3, 2 or 1 in relation to each EMA Criterion.

5.3 The EMA Review shall be complete once the Secretary of State has sent a duly completed EMA Review Scorecard to the Franchisee in accordance with paragraph 5.1 of Appendix 1 to this Schedule 8.B.

5.4 Scores in the EMA Review Scorecard shall be awarded by the Secretary of State having regard to the matters set out in the EMA Review Scorecard. One single, integer, overall score shall be awarded in relation to each EMA Criterion based on the Secretary of State's assessment of the Franchisee's performance in respect of that EMA Criterion against the EMA Review Scorecard and taking into account:

- (a) the EMA Review Checklist provided to the Secretary of State by the Franchisee in accordance with paragraphs 3.3 and 3.4 of Appendix 1 to this Schedule 8.B;
 - (b) any commentary provided to the Franchisee by the Secretary of State in accordance with paragraph 3.5 of Appendix 1 to this Schedule 8.B; and
 - (c) any discussions between the Franchisee and the Secretary of State at the EMA Review Meeting.
- 5.5 The Franchisee shall receive a Performance Payment, in accordance with Schedule 8.A (Franchise Payments), if the Franchisee scores 2 or above with respect to one or more of the EMA Criteria.
- 5.6 The Franchisee shall not receive a Performance Payment if the Franchisee scores 1 in relation to all three of the EMA Criteria.
- 5.7 If the Franchisee:
- (a) is operating at a level that would, or would likely, be scored "1"; or
 - (b) has received a score of "1",

in relation to any of the EMA Criteria during an EMA Performance Period, then the Secretary of State may require a Remedial Plan and the provisions of Schedule 10.1 of the Franchise Agreement shall apply.

APPENDIX 2 TO SCHEDULE 8.B**EMA Review Checklist****1. OPERATIONAL PERFORMANCE**

A report on the Franchisee's operational performance, by reference to the Plan of the Day, including:

- (a) the level of performance achieved against the Plan of the Day, and an explanation of the level of performance achieved relative to the Plan of the Day;
- (b) an explanatory note setting out, if relevant, any act, omission or failure of a third party which has impacted performance and the extent of that impact, along with supporting evidence (except for where the impact exclusively relates to COVID-19); and
- (c) details and supporting evidence of any actions undertaken to mitigate any impacts on performance, including work with Network Rail regarding infrastructure.

2. CUSTOMER EXPERIENCE

A report on the customer experience delivered by the Franchisee, including:

- (a) evidence of train cleaning schedules;
- (b) details of complaints received relating to quality of service including cleanliness and upkeep of the trains, staff presence/helpfulness, accessibility and information provision; and
- (c) details of staff presence, including evidence of staffing rosters having been adhered to as far as possible.

3. GOOD AND EFFICIENT OPERATOR

A report detailing the extent to which the Franchisee has acted as a Good and Efficient Operator, including:

- (a) evidence of any ways in which the Franchisee has sought to identify ways to run the Franchise more efficiently and avoid nugatory costs, acting as a Good and Efficient Operator, including details of the level of supporting evidence to those proposals;
- (b) evidence of appropriate revenue protection being applied in the interests of the taxpayer and/or otherwise evidence that the Franchisee has followed government guidance prevailing at the time regarding revenue collection; and
- (c) evidence of plans in place to return the operations and business to pre-COVID-19 levels of operation, including encouraging the public to travel on public transport where appropriate.

APPENDIX 3 TO SCHEDULE 8.B

EMA Review Scorecard

| | Operational Performance | Customer Experience | Good and Efficient Operator |
|---------------|--|---|---|
| 3: Good | <p>The Franchisee has delivered the Passenger Services in accordance with the applicable Plan of the Day (with minor exceptions only).</p> | <p>The Franchisee has provided high levels of cleanliness on trains.</p> <p>The Franchisee has ensured that all trains have been staffed as required to enable service to continue at a good or very good standard.</p> <p>Trains have been maintained as appropriate.</p> <p>The Franchisee has provided a high quality journey experience for all passengers including providing information at all Franchisee Access Stations and trains at all times, where possible.</p> | <p>The Franchisee has continued to make every effort to grow the business, offering incentives for appropriate travel (for example, ensuring those who have a legitimate need to travel are encouraged to use the train where it is appropriate to do so).</p> <p>The Franchisee has worked collaboratively with other Train Operators and/other rail industry bodies (including Network Rail) to provide an appropriate service to passengers, ensuring that passengers have as much choice as desirable, whilst taking into account demand.</p> <p>The Franchisee has proactively made suggestions and developed plans for restoring service, operations and business to pre-COVID-19 levels as soon as possible after the expiry of the EMA.</p> <p>The Franchisee has been responsive to the Secretary of State's requests and fully cooperated in dealing with national emergencies.</p> |
| 2: Acceptable | <p>The Franchisee has delivered the</p> | <p>The Franchisee has ensured that trains</p> | <p>The Franchisee has sought to operate the</p> |

| | | | |
|-------------------------------------|--|---|---|
| | <p>Passenger Services in accordance with the applicable Plan of the Day (with some exceptions).</p> | <p>have continued to be cleaned to an acceptable standard.</p> <p>The Franchisee has deployed staff on the same or similar basis as usual, with an emphasis on provision of customer service throughout the period.</p> <p>Trains have been maintained to an acceptable level.</p> <p>The Franchisee has provided an acceptable level of journey experience for passengers including providing information at Franchisee Access Stations and trains at all times, where possible.</p> | <p>Franchise as far as possible as if they were still on revenue/cost risk, avoiding nugatory costs including ensuring revenue is protected throughout the duration of the EMA in accordance with the prevailing advice from the Secretary of State.</p> |
| <p>1: Below acceptable standard</p> | <p>The Franchisee has materially failed to deliver the Passenger Services in accordance with the applicable Plan of the Day.</p> | <p>The Franchisee has failed to maintain cleanliness of trains to an acceptable level.</p> <p>The Franchisee has failed to deploy staff in a way to enable services to be maintained for passengers.</p> <p>The Franchisee has failed to maintain the trains at an acceptable level.</p> <p>The Franchisee has failed to provide an acceptable level of journey experience for passengers and/or has failed to provide information at Franchisee Access Stations and trains.</p> | <p>The Franchisee has failed to mitigate nugatory costs or manage revenue loss throughout the term of the EMA in accordance with the prevailing advice from the Secretary of State.</p> <p>The Franchisee has failed to respond to the Secretary of State's requests and/or failed to cooperate in dealing with national emergencies.</p> |

Appendix 4 to Schedule 1

Schedule 11 (Agreement Management Provisions)

SCHEDULE 11**Agreement Management Provisions****1. NOT USED.****2. Identification of Key Personnel and Provision of Organisation Chart**

2.1 The Franchisee shall identify and provide to the Secretary of State a schedule of Key Personnel who shall be employed by the Franchisee in the performance of this 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 (Performance Benchmarks);
- (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 Final Reviewed Accounts and the provision of other financial data to Secretary of State.

2.2 The Franchisee shall nominate a board level director of the Franchisee (or at the Secretary of State's discretion, a director of the Parent or an Affiliate) within seven (7) days of the date of this Franchise 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 board level director shall be identified by job title in the organisation chart referred to in paragraph 2.3 and shall be deemed part of the Key Personnel.

2.3 On or before the Start Date the Franchisee shall provide to the Secretary of State an organisation chart detailing the responsibilities and reporting lines of each of the Key Personnel and shall update such chart (and provide a copy to the Secretary of State promptly thereafter) as and when any changes occur.

3. NOT USED.**4. Franchise Performance Meetings**

4.1 The parties shall hold a Franchise Performance Meeting at least once in every Reporting Period (or such other interval as the Secretary of State may notify to the Franchisee in writing) at a time and location notified to the Franchisee by the Secretary of State.

4.2 The Franchisee shall ensure that:

- (i) each of its representatives at all Franchise Performance Meetings have full power and authority delegated to them by the Franchisee to act and to make binding decisions on behalf of the Franchisee and shall include such directors and/or senior managers of the Franchisee as the Secretary of State may require; and
 - (ii) representatives of the Parent or the HoldCo attend every quarterly Franchise Performance Meeting. The representatives shall include such directors and/or senior managers of the Parent or the HoldCo where so directed by the Secretary of State.
- 4.3 The Franchisee shall prepare and present such reports to each Franchise Performance Meeting as the Secretary of State may reasonably request. The Franchisee's obligations under this paragraph 4.3 are subject to the Franchisee receiving at least 28 days' notice of the requirement to prepare and present any such report.
- 4.4 No comment or failure to comment nor any agreement or approval, implicit or explicit by the Secretary of State at such meetings will relieve the Franchisee of any of its obligations under this Franchise Agreement. The Franchisee shall only be relieved of any of its obligations under this Franchise Agreement through the signed written agreement of the Secretary of State.
- 4.5 **Periodic Update Reports**
 - (a) In addition to the obligation at paragraph 4.3 above, the Franchisee shall prepare and submit to the Secretary of State a periodic report in each Reporting Period containing such information as the Secretary of State may reasonably specify upon commencement of this Franchise Agreement or from time to time in accordance with paragraph 4.5(b) for the previous quarter, or such other period as may be reasonably required and disaggregated to the extent that the Secretary of State shall require).
 - (b) The Franchisee's obligations under this paragraph 4.5 are subject to the Franchisee receiving at least 28 days' notice of:
 - (i) the requirement to prepare any such report; and
 - (ii) any amendments required to the contents of such report.

5. Right of Assessment or Inspection

- 5.1 The Franchisee shall, if requested by the Secretary of State, allow the Secretary of State and his representatives and advisers:
 - (a) to inspect and copy any records referred to in Schedule 13 (Information and Industry Initiatives) or Schedule 8.A and the Secretary of State may verify any such records; and
 - (b) to inspect and copy at any reasonable time any books, records and any other material kept by or on behalf of the Franchisee and/or its auditors and any assets (including the Franchise Assets) used by the Franchisee in connection with the Franchise Services.

- 5.2 The Franchisee shall make available to the Secretary of State, his representatives and advisers the information referred to in paragraph 5.1 and grant or procure the grant of such access (including to or from third parties) as the Secretary of State, his representatives and advisers shall reasonably require in connection therewith. The obligation of the Franchisee under this paragraph 5.2 shall include an obligation on the Franchisee to grant or procure the grant of such access to premises (including third party premises) where the information referred to in paragraph 5.1 is kept by or on behalf of the Franchisee.
- 5.3 The Secretary of State, his representatives and advisers shall be permitted to take photographs, film or make a video recording, or make any other kind of record of any such inspection.
- 5.4 If any inspection reveals that information previously supplied to the Secretary of State was, in the reasonable opinion of the Secretary of State, inaccurate in any material respect or if such inspection reveals any other contravention of the Franchisee's obligations under this 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 to Schedule 8.A.

Appendix 5 to Schedule 1

Schedule 13 (Information and Industry Initiatives)

SCHEDULE 13

Information and Industry Initiatives

| | |
|--------------------|--|
| Schedule 13 | Information and Industry Initiatives |
| | Appendix 1: Environmental Information |
| | Appendix 2: Key Assets |
| | Appendix 3: Operational Information |
| | Appendix 4: Community Rail Partnerships |

SCHEDULE 13**Information and Industry Initiatives****1. General Information****Corporate Information**

1.1 The Franchisee shall provide the following information to the Secretary of State on or before the Start Date and shall notify the Secretary of State of any change to such information within 21 days of such change:

- (a) its name;
- (b) its business address and registered office;
- (c) its directors and company secretary;
- (d) its auditors;
- (e) its trading name or names; and
- (f) to the best of the Franchisee's knowledge and belief, having made due and diligent enquiry, the identity of all persons holding, separately or acting by agreement, directly or indirectly, the right to cast more than 20 per cent. of the votes at general meetings of the Franchisee.

1.2 The Franchisee shall inform the Secretary of State of any material change or proposed material change in its business (including the employment or the termination of employment of any Key Personnel, the termination of any Key Contract and any litigation or other dispute which may have a material effect on its business) and any material change in or restructuring of the capitalisation or financing of the Franchisee, the Parent or the Guarantor.

Operational and Performance-related Information to be provided by the Franchisee

1.3 The Franchisee shall provide to the Secretary of State the information specified in the Appendices to this Schedule 13 at the times specified therein.

1.4 The Appendices to this Schedule 13 shall be interpreted in accordance with any guidance issued by the Secretary of State from time to time for that purpose.

Maintenance of Records

1.5 The Franchisee shall maintain true, up to date and complete records of all of the information required to be provided by the Franchisee under this Franchise Agreement.

1.6 Each record required to be maintained by the Franchisee in accordance with this Schedule 13 shall be held for a period of six (6) years following the date on which such record was required to be created.

- 1.7 References to records in this Schedule 13 shall include records maintained under any previous franchise agreement to the extent that such records relate to the Franchise Services and the Franchisee has access to them (which it shall use all reasonable endeavours to secure).
- 1.8 The Franchisee shall not be responsible for any records maintained under any previous franchise agreement, as referred to in paragraph 1.7, being true, complete and up to date. As soon as reasonably practicable after becoming aware that any such records are not true, complete and up to date, the Franchisee shall take all reasonable steps to remedy any such deficiency, and shall thereafter maintain such records in accordance with paragraph 1.5.

Information to Passengers’ Council and Local Authorities

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

2. Business Plans

Initial Business Plan

- 2.1 **NOT USED**
- 2.2 **NOT USED**

Annual Business Plans

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

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

3. Financial And Operational Information

Accounting Records

- 3.1 The Franchisee shall prepare and at all times during the Franchise Term maintain true, up to date and complete accounting records as are required to be kept under Section 386 of the Companies Act 2006. Such records shall be prepared on a consistent basis for each Reporting Period. 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 the period during which the EMA is in force, and those which do not.

Reporting Period Financial Information

3.2 The Franchisee shall deliver to the Secretary of State, within two weeks of the end of each Reporting Period:

- (a) Management Accounts for such Reporting Period, setting out a cashflow statement, profit and loss account and balance sheet for that Reporting Period and cumulatively for the Franchisee Year to date ensuring that:
 - (i) 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 is 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; and
 - (ii) 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 and there shall be no netting off between those disaggregated areas;
- (b) written confirmation that the Management Accounts, to the best of the knowledge, information and belief of the board of directors of the Franchisee, contain a true and accurate reflection of the current 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 thereto; and
- (c) in circumstances where the Franchisee was in a Lock-up Period during such Reporting Period written confirmation from a statutory director of the Franchisee that the Franchisee has complied with the restrictions applicable during a Lock-up Period pursuant to paragraph 3 of Schedule 12 (Financial Obligations and Covenants).

3.3 The Management Accounts shall also set out:

- (a) sufficient information to enable the Secretary of State to calculate Actual Operating Costs and Modified Revenue on a cumulative basis for the previous thirteen (13) Reporting Periods;
- (b) the ratio of the Franchisee's:
 - (i) Total Modified Revenue to its Total Actual Operating Costs; and
 - (ii) Total Forecast Modified Revenue to its Total Forecast Operating Costs,

together with supporting information showing how the Franchisee has calculated such ratios including a breakdown of the Modified Revenue, Forecast Modified Revenue, Actual Operating Cost and Forecast Operating Costs for each of the Reporting Periods used for the purposes of the calculation of the ratios pursuant to this paragraph 3.3(b);

- (bA) the Franchisee's available cash balance on the final day of the Reporting Period to which the Management Accounts relate;
- (bC) 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 of Schedule 8.A in respect of the three (3) Reporting Periods following the Reporting Period to which the Management Accounts relate;
 - (C) payments to and from Affiliates of the Franchisee; and
 - (D) profit and loss, cash flow and balance sheet provided in accordance with the Initial Budget (together with a detailed and comprehensive written explanation as to any changes in such forecasts from the previous such forecasts provided pursuant to the provisions of this paragraph 9.2(b) for each of the following thirteen (13) Reporting Periods;
- (c)
 - (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;
 - (B) a comparison on a line by line basis of Actual Costs and Actual Revenue of the Franchisee compared to the Budgeted Costs 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 3.3(bC)(C);
- (d) a comparison of the Franchisee's cumulative financial performance during the Franchisee Year in which such period occurs against the forecast referred to in paragraph 3.3(bC);
- (e) a detailed statement and a detailed and comprehensive written explanation of any material differences between such Management Accounts and the forecast referred to in paragraph 3.3(bC) and a detailed explanation of the variances between Actual Costs and Budgeted Costs 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 Estimated Revenue shortfall and/or (2) which could otherwise be taken for that purpose;
- (f) where the level of financial performance reported in the Management Accounts is, in the reasonable opinion of the Secretary of State, materially worse than forecast by the Franchisee in its current Business Plan, the

Secretary of State may require the Franchisee to prepare and submit to him, as soon as reasonably practicable, a Financial Action Plan to ensure that the level of financial performance forecast in its current Business Plan for the remainder of the currency of that Business Plan is achieved and the Franchisee shall use all reasonable endeavours to implement such Financial Action Plan;

- (g) 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 (as defined in the Funding Deed); and
- (h) separate identification of payments to or from any Affiliate of the Franchisee.

- 3.3A 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.A (Franchise Payments)) and the Franchisee shall promptly provide such further information or analysis.

Quarterly Financial Information

- 3.4 Not used.
- 3.5 Not used.

Annual Financial Information

- 3.6 Within three weeks of the end of each Franchisee Year, the Franchisee shall deliver to the Secretary of State its Annual Management Accounts for that Franchisee Year, divided between Reporting Periods within the term of the EMA and Reporting Periods not within the term of the EMA. For Reporting Periods within the term of the EMA, line items should be disaggregated between a section in relation to Actual Costs and a section in relation to Actual Revenues, and Disallowable Costs, Revenue Foregone, Accrued Disallowable Costs and Accrued Revenue Foregone.
- 3.7 **NOT USED.**
- 3.8 **NOT USED.**
- 3.9 Within four Reporting Periods after the end of each Franchisee Year, the Franchisee shall deliver to the Secretary of State the following information:
 - (a) certified true copies of its annual report and Annual Audited Accounts for that Franchisee Year, together with copies of all related directors' and auditors' reports. The auditors' report shall certify that the accounting for any annual performance related bonuses paid to the directors and managers as referred to in paragraph 1.2(b)(vii) of Schedule 8.2 (Profit Share Mechanism) provides a true and fair view; and

- (b) a detailed reconciliation, disaggregating Actual Costs and Actual Revenues, and Disallowable Costs, Revenue Foregone, Accrued Disallowable Costs and Accrued Revenue Foregone in the Annual Audited Accounts, reconciled to: (1) each of the periodic Management Accounts within the term of the EMA within that Franchisee Year; (2) periodic Management Accounts in relation to all other Reporting Periods in that Franchisee Year (if any); (3) Annual Management Accounts in relation to the term of the EMA within that Franchisee Year; and (4) Annual Management Accounts in relation to all other Reporting Periods within that Franchisee Year (if any), all in a format to be from time to time reasonably specified by the Secretary of State (the "**Audited Accounts Reconciliation**"). The Audited Accounts Reconciliation shall:
 - (i) disaggregate the costs and revenues in the Annual Audited Accounts so as to report against (and show in a format consistent with that used in) the Management Accounts and Annual Management Accounts; and
 - (ii) facilitate the identification of Actual Costs and Actual Revenues as reported in the Management Accounts and easy comparison of Actual Costs with the Budget;
- (bA) 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 disaggregation required by the Audited Accounts Reconciliation in accordance with paragraph 3.9(b)(ii) has been undertaken accurately;
- (bB) a statement from the Franchisee’s auditors confirming that GAAP has been applied in a fair and consistent manner; and
- (c) a statement from the Franchisee’s auditors confirming compliance with the financial covenants in paragraph 2 of Schedule 12 (Financial Obligations and Covenants); and
- (d) a statement from the Franchisee (signed by a statutory director of the Franchisee) confirming compliance with the reporting requirements of paragraph 3.3(g).

3.9A Within two (2) Reporting Periods after the end of the last EMA Performance Period, the Franchisee shall deliver to the Secretary of State the following information:

- (a) certified true copies of its Final Reviewed Accounts for the EMA Performance Periods in aggregate, together with copies of all related reports provided by auditors or other reviewers (if any) pursuant to paragraph 16 of Schedule 8.A;
- (b) a detailed reconciliation disaggregating Actual Costs and Actual Revenues, and Disallowable Costs, Revenue Foregone, Accrued Disallowable Costs and Accrued Revenue Foregone of the Final Reviewed Accounts reconciled to the Management Accounts in relation to the period of the term of the EMA, in a format to be from time to time reasonably specified by the Secretary of State (the "**Final Reviewed Accounts Reconciliation**"). The Final Reviewed Accounts Reconciliation shall:

- (i) disaggregate the costs and revenues in the Final Reviewed Accounts so as to report against (and show in a format consistent with that used in) the Management Accounts within the EMA Performance Period(s); and
 - (ii) facilitate the identification of Actual Costs and Actual Revenues as reported in the Management Accounts within the EMA Performance Period(s) and easy comparison of Actual Costs with the Budget;
- (c) 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 disaggregation required by the Final Reviewed Accounts Reconciliation in accordance with paragraph 3.9A(b) has been undertaken accurately; and
- (d) a statement from the Franchisee's auditors confirming that GAAP has been applied in a fair and consistent manner.

Accounting Standards and Practices

3.10 Each set of Management Accounts and Annual Management Accounts shall:

- (a) be in the format as the Secretary of State may reasonably specify from time to time;
- (b) be prepared:
 - (i) in accordance with the Franchisee's obligations in clause 5.1 (General Obligations); and
 - (ii) consistently in accordance with the Franchisee's normal accounting policies, details of which shall be supplied on request to the Secretary of State; and
- (c) identify to the reasonable satisfaction of the Secretary of State, any changes in such accounting policies from those policies that were applied in preparing each of the profit and loss account, the cash flow projection and the balance sheet used for the purposes of preparing the Budget.

3.11 The Annual Audited Accounts shall:

- (a) be prepared and audited in accordance with GAAP, consistently applied and in accordance with the Companies Act 2006; and
- (b) give a true and fair view of:
 - (i) the state of affairs, profits and financial condition of the Franchisee for the period covered by such accounts; and
 - (ii) the amount of its total revenue (being all revenue whatsoever from any source obtained from any commercial or non-commercial activity or undertaking of the Franchisee, such revenue to be disaggregated by reference to revenue derived by the Franchisee from the sale of tickets, income received from Network Rail

pursuant to Schedule 4 and Schedule 8 to the Track Access Agreement and other income (including car park revenue).

Changes to accounting policies

3.11A 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 Reviewed Accounts.

Parent and Affiliate Accounts

3.12 The Franchisee shall, upon the request of the Secretary of State, promptly deliver to, or procure delivery to, the Secretary of State, certified true copies of the annual reports and audited accounts of each Parent and any Affiliate, together with copies of all related directors' and auditors' reports. If any of the Parents or any Affiliate is domiciled outside England and Wales, the equivalent documents in the jurisdiction of residence of the relevant Parent or Affiliate (as applicable) shall be delivered to the Secretary of State.

Secretary of State Audit

3.13 Without prejudice to paragraph 2.2 of Schedule 12 (Financial Obligations and Covenants) or to any other rights of the Secretary of State under this Franchise Agreement, the Secretary of State and his representatives shall be permitted to inspect at any time the books, records and any other material kept by or on behalf of the Franchisee in order to check or audit any item contained in or relating to the Management Accounts in so far as they relate to:

- (a) the statement of calculations required by paragraph 3.3(b) of this Schedule 13 and any other matter in connection with the Franchisee's obligations under paragraph 9 of Schedule 8.A; and
- (b) the calculation of the Franchise Payment (and each component thereto) in accordance with Schedule 8.A (Franchise Payments) and/or Schedule 8.B (Performance Payments).

3.14 The Franchisee shall make available to the Secretary of State and his representatives such information and grant such access or procure the grant of such access (including to or from third parties) as they shall reasonably require in connection with any audit to be carried out pursuant to paragraph 3.13.

3.14A If any audit carried out pursuant to paragraph 3.13 reveals, in the reasonable opinion of the Secretary of State, any material inaccuracy in the Management Accounts the Annual Management Accounts and/or the Annual Audited Accounts then:

- (a) the Secretary of State may exercise its rights as described in paragraphs 12.1 or 12.2 of Schedule 8.A (Franchise Payments); and
- (b) the Franchisee shall pay all reasonable costs of any such audit as a monitoring cost pursuant to paragraph 1.11 of Schedule 10.1 (Remedial Plans and Remedial Agreements) which shall, for the avoidance of doubt, be treated as Disallowable Costs pursuant to Appendix 1 to Schedule 8.A.

Adjustment and Restatement of the Annual Audited Accounts

3.15 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 Final Reviewed Accounts and shall deliver to the Secretary of State any such adjusted or restated Annual Audited Accounts or Final Reviewed Accounts as soon as such accounts are available. The Franchisee shall provide the Secretary of State (with a copy also being provided to the Franchisee’s Auditors) with a clear written commentary prepared by its finance director, giving reasons for the adjustment or restatement and, the Franchisee shall promptly update any calculations made pursuant to this Schedule 13 which are affected by the adjustment or restatement. The Franchisee shall, as applicable, provide the Secretary of State with a nil financial settlement return as evidence that any financial claims previously settled remain unimpacted by the adjustment or restatement.

4. Safety Information

Safety

4.1 The Franchisee shall co-operate with any request from any relevant competent authority for provision of information and/or preparation and submission of reports detailing or identifying compliance with safety obligations set out in the Safety Regulations including any breaches of the Safety Regulations.

4.2 The Franchisee shall notify the Secretary of State as soon as practicable of the receipt and contents of any formal notification relating to safety or any improvement or prohibition notice received from ORR. Immediately upon receipt of such notification or notice, the Franchisee shall provide the Secretary of State with a copy of such notification or notice.

4.3 The Franchisee shall participate in industry groups and committees addressing the domestic and European safety agenda of the Railway Group.

5. Further Information

5.1 The Franchisee shall:

(a) deliver to the Secretary of State, or procure the delivery to the Secretary of State of, such information, records or documents as he may request within such period as he may reasonably require and which relate to or are connected with the Franchisee’s performance of this Franchise Agreement; and

(b) procure that each Affiliate of the Franchisee complies with paragraph 5.1(a) in respect of any information, records or documents that relate to its dealings with the Franchisee in connection with the Franchisee’s performance of its obligations under this Franchise Agreement.

5.2 The information referred to in paragraph 5.1(a) shall include:

(a) any agreement, contract or arrangement to which the Franchisee is a party in connection with any rolling stock vehicles used in the operation of the Passenger Services;

- (b) in so far as the Franchisee has or is able to obtain the same, any other agreement contract or arrangement which may be associated with the procurement, leasing, financing or maintenance of any such rolling stock vehicles;
- (c) any agreement for the manufacture or supply of any rolling stock vehicles; or
- (d) any arrangements for the securitisation of any lease granted in respect of such rolling stock vehicles.

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

- (a) the information required to be provided under this Schedule 13 more frequently than set out in this Schedule 13;
- (b) the information required to be provided under this Schedule 13, or, in the Secretary of State's discretion, more detailed financial information, at any time in connection with the re-letting of the Franchise; and
- (c) such unaudited accounts under such accounting policies as may be prescribed by the Secretary of State, acting reasonably, from time to time.

6. Contraventions of this Franchise Agreement

6.1 The Franchisee shall notify the Secretary of State, so far as possible before it may occur and in any event as soon as reasonably practicable thereafter, of any contravention by the Franchisee of any provision of this Franchise Agreement. This includes where the Franchisee is under an obligation to use all reasonable endeavours to achieve a particular result by a particular time, where such result is not achieved by such time.

6.2 The Franchisee shall deliver to the Secretary of State, or procure the delivery to the Secretary of State of, such information, records or documents as the Secretary of State may request within such period as the Secretary of State may reasonably require for the purpose of determining the existence, likelihood, nature or scope of any contravention of, Event of Default or Termination Event under, this Franchise Agreement.

7. Information from Third Parties

7.1 The Franchisee shall, if the Secretary of State so requests, use all reasonable endeavours to ensure that the Secretary of State has direct access to any information, data or records relating to the Franchisee which is or are maintained by third parties and to which the Secretary of State is entitled to have access, or of which the Secretary of State is entitled to receive a copy under this Franchise Agreement.

7.2 The Franchisee shall, if the Secretary of State so requests, procure the provision by RSP to the Secretary of State of such information, data and records as the Franchisee is entitled to receive under the Ticketing and Settlement Agreement, in such form as the Secretary of State may specify from time to time.

- 7.3 The obligations of the Franchisee under this Schedule 13 to provide information to the Secretary of State shall not apply if the Secretary of State notifies the Franchisee that he has received the relevant information directly from any other person (including Network Rail or RSP). The Franchisee shall, if the Secretary of State so requests, confirm or validate any such information which is received from any such other person.
- 7.4 The Franchisee shall promptly advise the Secretary of State of any changes that are to be made to its systems or processes or the systems and processes of the RSP that will, in the reasonable opinion of the Franchisee, materially affect the continuity of any of the records that are provided pursuant to this Schedule 13. Any such advice shall include an assessment of the materiality of the relevant change.

8. Compatibility of Information

- 8.1 All financial, operational or other information, and any data and records required to be provided to the Secretary of State under this Franchise Agreement shall be provided, if so requested by the Secretary of State, in a form compatible with the Secretary of State's electronic data and records systems on the Start Date, as modified from time to time in accordance with paragraph 9.
- 8.2 The Franchisee shall ensure that the interconnection of such systems or the provision of such information, data and records to the Secretary of State under this Franchise Agreement will not result in any infringement of any third party intellectual property rights to which its systems or such information, data or records may be subject.

9. Development of Industry Systems

The Franchisee shall actively co-operate, in a manner consistent with it being a responsible Train Operator of the Franchise, with Network Rail, the Secretary of State, ORR and all other relevant railway industry bodies and organisations in relation to the development of anything that can reasonably be considered to be a railway industry system including systems in relation to the attribution of train delay, the allocation of revenue and the collection and dissemination of industry wide information.

10. Co-operation with Various Schemes

The Franchisee shall co-operate (in good faith) with the Secretary of State, the relevant Local Authority and/or any other affected railway industry parties in the development and the implementation of initiatives relating to its participation in multi-modal fares schemes and Traveline (the "**Industry Schemes**"), where such Industry Schemes relate to the Franchise.

11. Co-operation with Network Rail and Alliancing

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

- 11.2 Where the Franchisee considers pursuant to its obligations under paragraph 11.1 above that it is appropriate to enter into an Alliance Agreement with Network Rail it may make a proposal for the Secretary of State to consider. The Franchisee agrees that any such proposal (unless otherwise agreed by the Secretary of State) shall:
- (a) be for the purposes of improved delivery of some or all of the following:
 - (i) the efficient and cost effective operation of some or all of the network over which the Passenger Services operate;
 - (ii) the efficient and cost effective maintenance of some or all of the network over which the Passenger Services operate;
 - (iii) the efficient and cost effective renewal of some or all of the network over which the Passenger Services operate;
 - (iv) the efficient and cost effective delivery of some or all enhancement projects on the network over which the Passenger Services operate; and
 - (v) such other infrastructure enhancement projects as may be agreed by the Franchisee and Network Rail and approved by the Secretary of State during the Franchise Term; and
 - (b) be on terms which are commercially fair and reasonable so that:
 - (i) the incentives of the Franchisee and Network Rail are more effectively aligned in a way that gives a reasonable expectation that the matters subject to the alliance will be delivered in a more efficient and effective way;
 - (ii) the financial and operational risk of the Franchisee arising out of the operation of the Franchise is not unreasonably increased (including through the agreement of appropriate limitations of liability); and
 - (iii) the Secretary of State has rights to require the termination of the Alliance Agreement in appropriate circumstances including so that the term of the alliance is aligned with the Franchise Term and liabilities do not accrue to any Successor Operator.
- 11.3 The Franchisee shall provide such information, updates and reports on the progress of its negotiation with Network Rail as the Secretary of State shall reasonably require and meet with the Secretary of State to discuss the progress of the negotiations when reasonably requested to do so.
- 11.4 On reaching agreement in principle with Network Rail on the terms of an Alliance Agreement the Franchisee shall present the draft Alliance Agreement to the Secretary of State for approval and shall not enter into any such agreement without the prior written consent of the Secretary of State (which he shall have an unfettered discretion to withhold).

11.5 The Franchisee agrees that any approval of an Alliance Agreement shall (without prejudice to the unfettered discretion of the Secretary of State to refuse to consent to such an alliance) be conditional upon:

- (a) the Secretary of State being satisfied that such Alliance Agreement is consistent with the provisions of paragraph 11.2 above;
- (b) the Franchisee agreeing to a fair and reasonable allocation of the gain from such alliance being passed to the Secretary of State (whether through profit share or otherwise) consistent with the role of the Secretary of State in funding the railway network (which it is agreed shall be at least 25 per cent. of the gain from the alliance that is not allocated to Network Rail); and
- (c) the Franchisee entering into a deed of amendment to this Franchise Agreement in a form reasonably determined by the Secretary of State.

11.6 **NOT USED.**

11.7 References in this paragraph 11 to an **"Alliance Agreement"** are to a separate written agreement between Network Rail and the Franchisee (and possibly but not necessarily others) which establishes or amends or terminates arrangements of an alliancing nature which address all or any of the matters referred to in paragraph 11.2. An agreement shall not be treated as an **"Alliance Agreement"** if it is:

- (a) an Access Agreement or Property Lease or Service Recovery Plan or entered into in accordance with the National Stations Improvement Programme or the Access for All programme;
- (b) entered into under arrangements contemplated by, or to which it is required to be a party under, a Licence, an Access Agreement, Property Lease, Service Recovery Plan, the Network Code, the Independent Station Access Conditions, the National Station Access Conditions or the Railway Operational Code;
- (c) entered into as contemplated or permitted by paragraph 7 of Schedule 1.2 (Operating Obligations), paragraph 1.5 of SCHEDULE 1.4 (Passenger Facing Obligations), paragraph 5 of Schedule 1.6 (Franchise Services), paragraph 1 of Schedule 2.4 (Other Franchise Operations), paragraph 3 of Schedule 5.9 (Ticketing), paragraphs 9 or 15 (Community Rail Partnerships) of this Schedule 13 (Information and Industry Initiatives), or paragraph 2 of Schedule 15.4 (Provisions Applying on and after Termination); or
- (d) confirmed by the Secretary of State on application by the Franchisee not to be an Alliance Agreement,

provided that (subject as may be agreed under paragraph 11.7(d)) in the event that such an agreement does require any amendment to the terms of this Franchise Agreement it shall be treated as an Alliance Agreement.

11.8 **NOT USED**

12. Small and Medium-sized Enterprises

- 12.1 The Franchisee shall at all times keep accurate and complete records of its use of and interaction with SMEs in delivering the Franchise Services.
- 12.2 By no later than 31 January in each year (and within one month of the end of the Franchise Period) the Franchisee shall deliver to the Secretary of State a breakdown of the number of SMEs used by the Franchisee in providing the Franchise Services during the calendar year (or part thereof) which ended on the immediately preceding 31 December or at the end of the Franchise Period (as applicable).

13. Apprenticeships

- 13.1 The Franchisee shall at all times keep accurate and complete records of the training and apprenticeships offered by the Franchisee and/or its immediate UK-based supply chain in delivering the Franchise Services.
- 13.2 By no later than 31 January in each year (and within one month of the end of the Franchise Period) the Franchisee shall deliver to the Secretary of State a breakdown of the number of training and apprenticeships offered by the Franchisee and/or its supply chain in providing the Franchise Services during the calendar year (or part thereof) which ended on the immediately preceding 31 December or at the end of the Franchise Period (as applicable).

14. British Transport Police

- 14.1 The Franchisee shall give due consideration to any request by the British Transport Police to provide suitable accommodation (including additional or alternative accommodation) or facilities at Stations to enable the British Transport Police to effectively perform the services owed to the Franchisee under any contract or arrangement entered into between the British Transport Police and the Franchisee.
- 14.2 The Franchisee shall:
 - (a) work with the British Transport Police to:
 - (i) reduce crime and anti-social behaviour on the railway;
 - (ii) reduce minutes lost to police-related disruption;
 - (iii) increase passenger confidence with personal security on train and on station;
 - (b) work in partnership with the British Transport Police and conduct an annual assessment of the security and crime risk at all Stations and across the Franchise generally;
 - (c) co-operate with the British Transport Police to provide it with access to records and/or systems maintained by the Franchisee which relate to lost property to enable the British Transport Police to have access to such information when dealing with items reported to them as lost; and

- (d) consult with the British Transport Police as to its requirements in relation to records and/or systems and shall ensure that the British Transport Police has access to such records and/or systems within fifteen (15) Weekdays of the Start Date and in any event within five (5) Weekdays of the notification of a crime by the British Transport Police.

14.3 The Franchisee shall consult with the British Transport Police in relation to plans to develop any part of the land within a Property Lease which could affect staff or customers and give the British Transport Police an opportunity to advise on and/or provide comments on any opportunities for the enhancement of safety and reduction in crime.

15. Community Rail Partnerships

15.1 The Franchisee shall become a member of and shall continue to participate in the Community Rail Partnerships relevant to the Passenger Services, including but not limited to the Community Rail Partnerships listed in the table in Appendix 4 to this Schedule 13 (and any successor Community Rail Partnerships). As part of such participation the Franchisee shall identify a senior Franchisee Employee whose duties shall include:

- (a) supporting Community Rail Partnerships;
- (b) ensuring managerial focus within the Franchisee's organisation to enable the Franchisee to meet its Community Rail Partnerships obligations; and
- (c) leading on the Franchisee's development of community rail projects.

15.2 The Franchisee shall, at the request of the Secretary of State:

- (a) co-operate with the Secretary of State, Network Rail, ACoRP, local transport authorities and/or any other person as the Secretary of State may nominate for the purposes of developing and furthering the success of Community Rail Partnerships;
- (b) co-operate with, establish and/or participate in any Community Rail Partnership;
- (c) provide technical support in respect of timetable specification for Community Rail Partnerships, including providing appropriate journey and revenue data; and

- (d) co-operate in the development of the Secretary of State's initiatives to examine:
 - (i) options for a more cost effective delivery of the railway passenger services operated on any Community Rail Route (such options to include changes in working practices of the relevant Franchise Employees, reducing rolling stock lease costs and maximising opportunities for obtaining local funding of development at relevant stations and developing new ways of maintaining and renewing relevant railway infrastructure); and
 - (ii) the actual costs incurred in operating, maintaining and renewing the infrastructure relevant for such Community Rail Route.

- 15.3 The Franchisee shall use reasonable endeavours to develop and implement Community Rail Partnership initiatives in order to increase the use of the Passenger Services by non-users of the Passenger Services and tourists including, where appropriate, the development of and implementation of marketing strategies.

- 15.4 The Secretary of State may at any time, by proposing a Variation pursuant to paragraph 1.1(a) of Schedule 9.5 (Variations to this Franchise Agreement and Incentivising Beneficial Changes), require the Franchisee to develop and/or implement any changes to the Franchise Services and/or the transfer of any Franchise Services to another Train Operator in order to deliver either of the initiatives that were examined pursuant to paragraph 15.2(d).

- 15.5 The Franchisee shall:
 - (a) become a member and shall continue to participate in the National Community Rail Steering Group;
 - (b) pay £170,000 in aggregate in each Franchisee Year to the Community Rail Partnerships identified in Appendix 4 to this Schedule 13 (save that where a Franchisee Year is less than 13 Reporting Periods such amount shall be reduced pro-rata on a Reporting Period basis) to invest on projects, payment of the salary for the partnership officer and other administrative costs; and
 - (c) without prejudice to paragraph 15.5(b), spend a minimum of £170,000 in each Franchisee Year (save that where a Franchisee Year is less than 13 Reporting Periods such amount shall be reduced pro-rata on a Reporting Period basis) (the "**CRP Project Sum**") on projects proposed by the Community Rail Partnerships identified in Appendix 4 to this Schedule 13 subject to:
 - (i) ACoRP:
 - (A) administering the CRP Project Sum on the Franchisee's behalf and working in partnership with the Franchisee in this regard;
 - (B) liaising with the Business Community Manager (as specified in paragraph 11 of Part 1 of Schedule 6.1) as

reasonably required by the Franchisee in order to provide sufficient information about any proposed project; and

- (ii) the Secretary of State's consent, the Community Rail Partnership making such changes to any proposed project, as the Franchisee may reasonably require.

The projects and the amounts to be spent on each of them shall be subject to the advance approval of the Secretary of State. If and to the extent that at the end of any Franchisee Year the Franchisee has spent less than the CRP Project Sum which it was required to spend in that Franchisee Year, the Franchisee may on notice to the Secretary of State carry forward the unspent amount of the CRP Project Sum from that Franchisee Year (excluding any amount previously carried forward in respect of any CRP Project Sum to that Franchisee Year) to the following Franchisee Year, but not to any later period.

- 15.6 Within three (3) months of the Start Date in respect of the first Franchisee Year and no later than three (3) months before the start of each subsequent Franchisee Year, the Franchisee shall provide to the Secretary of State a report ("**Community Rail Report**") setting out the distribution of the CRP Amount in full amongst the Community Rail Partnerships identified in paragraphs 15.1 and 15.2.
- 15.7 The Community Rail Report shall contain the following information:
- (a) a statement confirming that the Franchisee's distribution of funds to the Community Rail Partnerships takes account of the Secretary of State's then current published Community Rail Strategy;
 - (b) a statement confirming that the Franchisee has discussed the funding of the Community Rail Partnerships with ACoRP and has taken sufficient account of ACoRP's views;
 - (c) confirmation that the Franchisee has discussed with all Community Rail Partnerships the aims and needs of such partnerships and the funding required to achieve these;
 - (d) a table setting out the relevant portions of the CRP Amount which are to be paid to each Community Rail Partnership (on a non-indexed basis) over the next three (3) years (it being acknowledged that these amounts are likely to be different for each Community Rail Partnership) and to the projects referred to at paragraph 15.5(c);
 - (e) a report on the activities undertaken by the Franchisee pursuant to paragraph 15.3 of this Schedule 13; and
 - (f) such further information as the Secretary of State may from time to time request.
- 15.8 The Franchisee shall within thirty (30) days of the commencement of each Franchisee Year, make the relevant payments totalling the CRP Amount to each of the Community Rail Partnerships identified in the Community Rail Report for that year.

- 15.9 The Franchisee shall hold an annual conference for Community Rail Partnership officers and station adopters in conjunction with ACoRP to encourage the spread of best practice and to communicate plans for franchise development. The first such conference shall be held within six (6) months of the Start Date.
- 15.10 The Franchisee shall devise and implement in collaboration with relevant Community Rail Partnerships a "station adopters scheme" under which members of the local community can "adopt" a local Station and engage in activities such as:
 - (a) promotion of the Passengers Services calling at the Station;
 - (b) monitoring and reporting faults, damage and anti-social and criminal behaviour;
 - (c) carrying out minor Station cleaning and maintenance tasks and the development and cultivation of station gardens.

The Franchisee shall take reasonable steps to promote the station adopters scheme and provide safety and other training and support to participants.

- 15.11 In collaboration with relevant Community Rail Partnerships and other Stakeholders the Franchisee shall use reasonable endeavours to identify sources of third party funding for Community Rail Partnerships and encourage such third parties to make funding commitments.
 - (a) the Franchisee agreeing to a fair and reasonable allocation of the gain from such alliance being passed to the Secretary of State (whether through profit share or otherwise) consistent with the role of the Secretary of State in funding the railway network; and
 - (b) the Franchisee entering into a deed of amendment to this Franchise Agreement in a form reasonably determined by the Secretary of State.

16. Route Efficiency Benefit Share Mechanism/REBS Mechanism

- 16.1 Where participation in a Route Efficiency Benefit Share Mechanism is made available under a Track Access Agreement, the Franchisee must elect not to participate in such a mechanism for all its Routes.

17. Sustainability and other related initiatives

17.1 Sustainable Development Strategy

- (a) By no later than six (6) months following the Start Date, the Franchisee shall consult with the RSSB and such other Stakeholders as agreed between the Secretary of State and the Franchisee (or, in the absence of agreement, such Stakeholders as the Secretary of State shall determine) in order to agree:
 - (i) key priority sustainable development areas;
 - (ii) the outcomes associated with such key priority and sustainable development areas;

- (iii) the annual traction carbon trajectory (CO₂E/vehicle km) for the duration of the Franchise Term; and
 - (iv) target levels according to the Rail Safety and Standards Board Sustainable Development Self-Assessment Framework that will be reached by the end of two (2) Franchisee Years.
- (b) The Franchisee shall develop the Sustainable Development Strategy to reflect such consultation and the Franchisee shall propose and agree a final version of the Sustainable Development Strategy with the RSSB and the Secretary of State by no later than twelve (12) months after the Start Date for the purposes of this Franchise Agreement. Such agreed strategy shall be the Sustainable Development Strategy for the purposes of this Franchise Agreement, provided that in the absence of agreement between the parties of the Sustainable Development Strategy shall be the strategy determined by the Secretary of State (acting reasonably).
- (c) The Franchisee shall at all times comply with the Sustainable Development Strategy. Any amendments to the Sustainable Development Strategy must be agreed by the Secretary of State.
- (d) By no later than three (3) months following the end of the two (2) Franchisee Years, the Franchisee shall procure a suitably qualified independent body (such independent body to be appointed only with the prior written approval of the Secretary of State) to undertake an assessment of performance against the Rail Safety and Standards Board's Sustainable Development Self-Assessment Framework and produce a report in respect of such assessment, such assessment to review performance against the targets set out in the Sustainable Development Strategy.
- (e) The Franchisee shall submit a copy of the assessment report produced by the independent body pursuant to paragraph 17.1(d) to the Secretary of State within six (6) months following the end of the two (2) Franchisee Years.
- (f) Where the assessment report identifies a significant shortfall against the targets set out in the Sustainable Development Strategy, the Franchisee must as soon as reasonably practicable and in any event within two (2) months, produce an improvement plan which, in the reasonable opinion of the Secretary of State, is capable of achieving the targets set out within the Sustainable Development Strategy.
- (g) The Franchisee shall use all reasonable endeavours to implement the improvement plan referred to in paragraph 17.1(f) and improve its performance against the targets set out in the Sustainable Development Strategy against the agreed timeframes for performance as set out in the revised Sustainable Development Strategy.
- (h) The Franchisee shall, within three (3) months following the end of each Franchisee Year, provide to the Secretary of State a report showing:
- (i) progress against the outcomes in key priority sustainable development areas;

- (ii) progress on development of Franchisee Employees to ensure they have the skills and knowledge required to deliver a sustainable franchise; and
 - (iii) proposed revisions to the Sustainable Development Strategy (such revisions to include those revisions reflecting feedback and advice from Stakeholders, and which have been consulted on with RSSB).
- (i) The Franchisee shall obtain the Secretary of State's consent to any amendments to the Sustainable Development Strategy proposed pursuant to paragraph 17.1(h)(iii) before such amendments are adopted and the Sustainable Development Strategy updated.
 - (j) On request by the Secretary of State, the Franchisee shall publish (in such form as the Secretary of State may reasonably determine):
 - (i) all or any part of its Sustainable Development Strategy; and/or
 - (ii) all or any of the information described in paragraphs 17.1(h)(i) to (h)(iii).

17.2 Environmental Management and Sustainability Accreditation

- (a) The Franchisee shall, by no later than the date which is eighteen (18) months after the Start Date, attain and, at all times thereafter, maintain certification pursuant to ISO14001:2004 and ISO50001:2011 or equivalent standards.
- (b) The Franchisee shall provide the Secretary of State with copies of the certification audit reports and a copy of their ISO50001 Energy Review within four (4) weeks of their certification and each subsequent recertification during the Franchise Period.

17.3 Sustainable Construction

For construction projects (including building refurbishment or fit out):

- (a) which are either being funded by the Franchisee or in respect of which the Franchisee has design responsibility; and
- (b) in respect of which the total capital cost exceeds one million pounds (£1,000,000) (indexed by the Retail Prices Index in the same way as variable costs are indexed in Appendix 1 (Annual Franchise Payments) to Schedule 8.1 (Franchise Payments)),
- (c) the Franchisee shall use reasonable endeavours to achieve at least an **“excellent”** rating from an accredited assessor using a recognised standard such as the SKA Rating Standard at both the design stage and the post-construction stage unless the Secretary of State (acting reasonably) agrees that the relevant project is not of a suitable scale or type to be so assessed and the Franchisee shall provide to the Secretary of State such information in relation to any construction project as the Secretary of State may reasonably request.

18. National Joint ROSCO Project

- (a) The Franchisee shall co-operate in good faith with the relevant third parties involved in the implementation of the National Joint ROSCO Project (including Network Rail and the relevant NJRP ROSCOs) with the intention of ensuring the timely, efficient and cost effective implementation of the National Joint ROSCO Project and, in particular where required assisting in the development, installation, testing, commissioning and implementation of the relevant ERTMS equipment on the first in class units for which the Franchisee is identified as the "Lead TOC" under the National Joint ROSCO Project.
- (b) The parties agree and acknowledge that Network Rail shall be responsible for the capital costs for the design and fitment of the relevant ERTMS equipment on each first in class unit and the National Joint ROSCO Project.
- (c) If requested by the Secretary of State, the Franchisee shall provide an update on their engagement with the National Joint ROSCO Project at the Franchise Performance Meetings.

19. NOT USED.

20. NOT USED.

21. Environmental Information

21.1 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 13.

21.2 **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 21 in accordance with the applicable granularity and regularity specified in paragraph 1 of Appendix 1 (Environmental Information) to this Schedule 13 (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 21.2(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 21.2 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 21.2(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 21.2(a) above.
- (e) Where the Environmental Impact Monitoring Audit highlights errors, discrepancies or concerns with any of the items described in paragraphs 21.2(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.

22. Publication of Performance Data

22.1 The Franchisee shall in accordance with paragraph 22.2 of this Schedule 13 (and in such format as the Secretary of State may reasonably require) publish on the Franchisee's web site in relation to each Reporting Period during the 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.

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

22.2 The Franchisee shall ensure that the data published by it pursuant to paragraph 22.1 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 30 minutes and 59 minutes;
 - (B) by between 60 minutes and 119 minutes; and
 - (C) by 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.

22.3 As part of each Customer Report to be provided by the Franchisee pursuant to paragraph 10.1 of Schedule 7.2 (National Rail Passenger Surveys and Customer Report), 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 first (1st) Customer Report, since the Start Date);
- (b) the latest PPM Figures, CaSL 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 22.3(a) and 22.3(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 22.3(a) and 22.3(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 22.3(a) and 22.3(b).

23. Publication of Complaints and Faults Handling Data

23.1 As part of each Customer Report to be provided by the Franchisee pursuant to paragraph 10.1 of Schedule 7.2 (National Rail Passenger Surveys and Customer Report), the Franchisee shall publish (in such format as the Secretary of State may reasonably require) in relation to the Reporting Periods that have elapsed since the last Reporting Period reported on in the previous Customer Report or, in the case of the first (1st) 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.

APPENDIX 1 TO SCHEDULE 13

Environmental Information

1. Environmental Impact Monitoring Dataset

| Subject | Unit | Granularity | Regularity |
|---------------------------------------|---|------------------------------|---------------------------------|
| TRACTION | | | |
| | 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 Schedule 1317.3Schedule 1317.3(b) (Sustainable Construction) of Schedule 13 | Total | Per project |
| WATER | Mains Water consumption (m ³) | Total | Annual |
| | Water recycling initiatives | Narrative | Annual |
| WASTE | Waste generated (tonnes) | Total | Annual |
| | Waste recycled (tonnes) | Total | Annual |
| | Waste subject to other recovery (tonnes) | Total | Annual |
| | Waste to landfill (tonnes) | Total | Annual |
| | Hazardous waste | Total | Annual |
| ENVIRONMENTAL MANAGEMENT SYSTEM (EMS) | Enforcement/information Notices | Total | Annual |
| | Environmental fines or prosecutions | Total | Annual |
| | Environmental incidents reported through the EMS | Total | Annual |
| | Environmental training records % personnel briefed/trained | Total | Annual |

APPENDIX 2 TO SCHEDULE 13**Key Assets****1. Information About Assets Used In The Franchise**

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

- (a) for each Primary Franchise Asset or other asset which is the subject of, or operated under, a Key Contract:
 - (i) the progress and completion of all work described in the maintenance schedules and manuals;
 - (ii) all operating manuals (including any safety related regulations); and
 - (iii) all permits, licences, certificates or other documents required to operate such asset;
- (b) a printed or electronic list of all assets owned by the Franchisee from time to time (excluding, unless otherwise requested by the Secretary of State, any office furniture and consumable items); and
- (c) each capital asset acquired by the Franchisee during the term of the EMA with a value of over £50,000, including the Franchisee's source of funding for such asset.

APPENDIX 3 TO SCHEDULE 13

Operational Information

1. Information about the Performance of the Franchisee

- 1.1 The Franchisee shall at all times during the Franchise Term maintain records in relation to its operational performance under this Franchise Agreement, covering the areas and the information described in this Appendix 3. Such information shall include details as to whether or not any curtailment, diversion, delay or failure to attain any connection is attributable, in the Franchisee’s opinion, to either a Force Majeure Event or the implementation of a Service Recovery Plan.
- 1.2 The Franchisee shall, subject to paragraph 1.3, provide to the Secretary of State the information set out in the following tables at the frequency specified in the column of each such table headed “When information to be provided”.
- 1.3 When so requested by the Secretary of State, the Franchisee shall, within such reasonable period as the Secretary of State may specify, make such information available for review by the Secretary of State by reference to:
 - (a) such level of disaggregation (including by Route or Service Group) as is reasonably specified by the Secretary of State; and
 - (b) any particular day, week or other longer period as is reasonably specified by the Secretary of State.
- 1.4 The following key shall apply to the table in this Appendix 3:

| | |
|------------|--|
| A = | Information to be provided on or before any Passenger Change Date; |
| B = | Information to be provided for every Reporting Period within 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. |

| Table 1 - Operational Information | | |
|---|-----------------------------|--|
| Information to be provided | Information (format) | When information to be provided |
| Number of Passenger Services | | |
| Number of Passenger Services in the Timetable | [number] | B |
| Number of Passenger Services in the Enforcement Plan of the Day | [number] | B |

| Table 1 - Operational Information | | |
|--|----------------------|---------------------------------|
| Information to be provided | Information (format) | When information to be provided |
| Number of Cancellations and Partial Cancellations | | |
| Number of Passenger Services in the Enforcement Plan of the Day which were the subject of a Cancellation | [number] | B |
| Number of Passenger Services in the Enforcement Plan of the Day which were the subject of a Partial Cancellation | [number] | B |
| Number of Passenger Services in the Enforcement Plan of the Day which were the subject of a Cancellation attributable to the Franchisee's implementation of a Service Recovery Plan | [number] | B |
| Number of Passenger Services in the Enforcement Plan of the Day which were the subject of a Partial Cancellation attributable to the Franchisee's implementation of a Service Recovery Plan | [number] | B |
| Number of Passenger Services in the Enforcement Plan of the Day which were the subject of a Network Rail Cancellation | [number] | B |
| Number of Passenger Services in the Enforcement Plan of the Day which were the subject of a Network Rail Partial Cancellation | [number] | B |
| Number of Passenger Services in the Enforcement Plan of the Day which were the subject of a Disputed Cancellation | [number] | B |
| Number of Passenger Services in the Enforcement Plan of the Day which were the subject of a Disputed Partial Cancellation | [number] | B |
| Number of Disputed Cancellations and Disputed Partial Cancellations for the twelve (12) preceding Reporting Periods for which the attribution remains in dispute between Network Rail and the Franchisee | [number] | B |

| Table 1 - Operational Information | | |
|--|-----------------------------|--|
| Information to be provided | Information (format) | When information to be provided |
| 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 pursuant to paragraph 2.1 of Schedule 7.1 (Performance Benchmarks) including whether each relevant Disputed Cancellation and/or Disputed Partial Cancellation was attributed to Network Rail or to the Franchisee | [number] | B |
| 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 Day had been the same as the Enforcement Plan of the Day | [number] | B |
| 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 |

| Table 1 - Operational Information | | |
|---|-----------------------------|--|
| Information to be provided | Information (format) | When information to be provided |
| 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 Formation Passenger Services | | |
| Number of Short Formation Passenger Services that have less than the required Passenger Carrying Capacity specified in the Train Plan | [number] | B |
| Number of Short Formation 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 Short Formation 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 Short Formation Passenger Services scheduled (excluding Cancellations or Partial Cancellations) | [number] | B |
| Minutes Delay and Punctuality | | |
| Number of Minutes Delay attributable to the Franchisee | [minutes] | B |
| Number of Minutes Delay attributable to Network Rail; | [minutes] | B |
| Number of Minutes Delay attributable to any other Train Operator | [minutes] | B |
| Number of Minutes Delay for such Reporting Period for which the attribution is in dispute between Network Rail and the Franchisee | [minutes] | B |
| Number of Minutes Delay for the twelve (12) preceding Reporting Periods for which the attribution remains in dispute between Network Rail and the Franchisee | [minutes] | B |

| Table 1 - Operational Information | | |
|--|----------------------|---------------------------------|
| Information to be provided | Information (format) | When information to be provided |
| 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 pursuant to paragraph 9.1 (Information provisions relating to TOC Minute Delay Benchmarks and Annual TOC Minute Delay Benchmarks) of Schedule 7.1 (Performance Benchmarks) and the number of such Minutes Delay attributed to each of the Franchisee and Network Rail as a result of such resolution or determination | [minutes] | B |
| Number of Minutes Delay attributed to the occurrence of a Force Majeure Event | [minutes] | B |
| Train Mileage | | |
| Planned Train Mileage | [mileage] | A |
| Actual Train Mileage | [mileage] | B |

APPENDIX 4 TO SCHEDULE 13

Community Rail Partnerships

| | XC Station | Community Rail Partnership | Route |
|-----|-------------------|----------------------------|--|
| 1. | Bristol Parkway | Severnside | Bristol - Gloucester |
| 2. | Bristol TM | Severnside | Bristol - Gloucester |
| 3. | Bristol TM | Severnside | Bristol - Pilning |
| 4. | Bristol TM | Severnside | Bristol – Severn Beach |
| 5. | Bristol TM | Severnside | Bristol – Weston / Taunton |
| 6. | Bristol TM | Heart of Wessex | Bristol - Weymouth via Bath and Westbury |
| 7. | Brockenhurst | Solent | Brockenhurst - Lymington |
| 8. | Crewe | North Staffs | Crewe - Derby via Stoke |
| 9. | Crewe | Crewe-Manchester | Crewe - Manchester via Wilmslow & Stockport |
| 10. | Darlington | Bishop Line | Darlington - Bishop Auckland |
| 11. | Dawlish | Devon & Cornwall RP | Exeter - Paignton |
| 12. | Derby | North Staffs | Crewe - Derby via Stoke |
| 13. | Derby | Derwent Valley | Derby - Matlock |
| 14. | Ely | Hereward Line | Peterborough - Ely |
| 15. | Exeter St David's | Devon & Cornwall RP | Exeter – Barnstaple |
| 16. | Exeter St David's | Devon & Cornwall RP | Exeter – Exmouth |
| 17. | Exeter St David's | Devon & Cornwall RP | Exeter – Paignton |
| 18. | Gloucester | Severnside | Bristol – Gloucester |
| 19. | Leamington Spa | Heart of England | Stratford-upon-Avon – Leamington Spa – Coventry – Nuneaton |

| | XC Station | Community Rail Partnership | Route |
|-----|-----------------------|----------------------------|---|
| 20. | Leeds | Leeds-Lancaster-Morecambe | Leeds - Morecambe via Lancaster |
| 21. | Liskeard | Devon & Cornwall RP | Liskeard - Looe |
| 22. | Manchester Piccadilly | High Peak & Hope Valley | Manchester - Buxton via Stockport |
| 23. | Manchester Piccadilly | High Peak & Hope Valley | Manchester - Glossop / Hadfield |
| 24. | Manchester Piccadilly | Crewe-Manchester | Crewe - Manchester via Wilmslow & Stockport |
| 25. | Manchester Piccadilly | SE Manchester | Manchester - Rose Hill / Strines / Hattersley & Hazel Grove via Stockport |
| 26. | Manchester Piccadilly | High Peak & Hope Valley | Manchester - Sheffield via Hope Valley |
| 27. | Manchester Piccadilly | Bolton | Manchester - Bolton - Preston |
| 28. | March | Hereward Line | Peterborough - Ely |
| 29. | Newcastle | Tyne Valley | Newcastle - Carlisle |
| 30. | Newquay | Devon & Cornwall RP | Par - Newquay |
| 31. | Newton Abbott | Devon & Cornwall RP | Exeter - Paignton |
| 32. | Nottingham | Nottingham-Skegness | Nottingham - Skegness |
| 33. | Paignton | Devon & Cornwall RP | Exeter - Paignton |
| 34. | Par | Devon & Cornwall RP | Par - Newquay |
| 35. | Peterborough | Hereward Line | Peterborough - Ely |
| 36. | Plymouth | Devon & Cornwall RP | Plymouth - Gunnislake |
| 37. | Sheffield | Penistone Line Partnership | Sheffield - Huddersfield |
| 38. | Sheffield | High Peak & Hope Valley | Manchester - Sheffield via Hope Valley |

| | XC Station | Community Partnership | Rail | Route |
|-----|------------------------|------------------------------|-------------|--|
| 39. | Southampton | Three Rivers | | Salisbury - Eastleigh - Southampton - Romsey |
| 40. | Southampton Airport | Three Rivers | | Salisbury - Eastleigh - Southampton - Romsey |
| 41. | St Erth | Devon & Cornwall RP | | St Erth – St Ives |
| 42. | Stockport | High Peak & Hope Valley | | Manchester - Buxton via Stockport |
| 43. | Stockport | Mid Cheshire | | Manchester - Chester via Northwich |
| 44. | Stockport | Crewe-Manchester | | Crewe - Manchester via Wilmslow & Stockport |
| 45. | Stockport | High Peak & Hope Valley | | Manchester - Sheffield via Hope Valley |
| 46. | Stoke on Trent | North Staffs | | Crewe - Derby via Stoke |
| 47. | Taunton | Severnside | | Bristol - Weston / Taunton |
| 48. | Teignmouth | Devon & Cornwall RP | | Exeter – Paignton |
| 49. | Torquay | Devon & Cornwall RP | | Exeter – Paignton |
| 50. | Truro | Devon & Cornwall RP | | Truro – Falmouth |
| 51. | Wilmslow | Crewe-Manchester | | Crewe - Manchester via Wilmslow & Stockport |
| 52. | Worcestershire Parkway | Worcestershire | | Great Malvern – Honeybourne/ Barnt Green |