

RAIL PUBLIC REGISTER COPY

REDACTED IN ACCORDANCE WITH FOIA 2000

Dated: 10 September 2014

- (1) The Secretary of State for Transport
- (2) London & South Eastern Railway Limited

FRANCHISE AGREEMENT – SOUTH EASTERN

Withdrawn April 2022

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THIS AGREEMENT is dated

2014

BETWEEN

2. **THE SECRETARY OF STATE FOR TRANSPORT**, whose principal address is at 33 Horseferry Road, London SW1P 4DR (the "**Secretary of State**"); and
3. **LONDON & SOUTH EASTERN RAILWAY LIMITED** (Company Number 04860660), whose registered office is at 3rd Floor, 41-51 Grey Street, Newcastle-upon-Tyne, Tyne and Wear NE1 6EE trading as Southeastern (the "**Franchisee**").

WHEREAS

- (A) The Secretary of State wishes to appoint a franchisee to provide railway passenger services within the Franchise and expects his franchisee, on the terms of the Franchise Agreement, actively to seek, in all reasonable business ways, greatly improved performance over the Franchise Term from its employees, its Train Fleet and other assets, and from the Infrastructure Manager and its other suppliers, so as to deliver to the passenger the best railway passenger service that can be obtained from the resources that are available to it.
- (B) The Franchisee wishes to be appointed as the Secretary of State's franchisee for the Franchise and intends, on the terms of this Agreement, actively to seek, in all reasonable business ways, greatly improved performance over the Franchise Term from its employees, its Train Fleet and other assets, and from the Infrastructure Manager and its other suppliers, so as to deliver to the passenger the best railway passenger service that can be obtained from the resources that are available to it.
- (C) ¹ ² **The Franchise Agreement has been amended pursuant to contract change letter agreements dated 4 December 2014, 9 December 2014, 18 December 2014, 1 January 2015, 19 February 2015, 3 June 2015, 29 June 2015, 30 September 2015, 4 December 2015, 1 January 2016, 26 February 2016, 16 March 2016, 28 July 2016, 7 September 2016, 9 December 2016, 16 March 2017, 11 April 2017, 21 June 2017, 29 June 2017, 23 November 2017, 13 December 2017, deeds of amendment dated 8 December 2016, 9 December 2016, 8 September 2017, 18 September 2017, 6 December 2017 and 23 March 2018, contract change letter agreements dated 19 December 2018 and 14 March 2019 and most recently a deed of amendment dated 13 June 2019 to extend the Franchise Term and to effect various other consequential and related amendments.**

1. INTERPRETATION

- 1.1 In the Franchise Agreement, except to the extent the context otherwise requires:
 - (a) words and expressions defined in Part I of the Act have the same meanings when used therein provided that, except to the extent expressly stated, "railway" shall not have the wider meaning attributed to it by Section 81(2) of the Act;

¹ 23 March 2018 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

² 13 June 2019 (Date of DOA) – Contract variation agreed by the Secretary of State and Franchisee.

- (b) words and expressions defined in the Interpretation Act 1978 have the same meanings when used in the Franchise Agreement;
- (c) the words "include", "including" and "in particular" are to be construed without limitation;
- (d) references to any person include its successors, transferees or assignees;
- (e) the words "subsidiary", "subsidiary undertaking", and "parent undertaking" each have the same meaning in the Franchise Agreement as in Section 1162 of the Companies Act 2006;
- (f) references to documents "in the agreed terms" are references to documents initialled by or on behalf of the Secretary of State and the Franchisee. As at the date of this Agreement the documents "in the agreed terms" are as follows:
- | | | |
|---------|-------------------------|--|
| (i) | CFD | Commuter Fares Document; |
| (ii) | CSES | Customer and Stakeholder Engagement Strategy; |
| (iii) | DL | Depot Lease; |
| (iv) | FF | Financial Formats; |
| (v) | FM2³ | Financial Model; |
| (vi) | MOIRA | MOIRA; |
| (vii) | OM | Operational Model; |
| (viii) | PC | Passenger's Charter; |
| (ix) | PFD | Protected Fares Document; |
| (x) | POA | Power of Attorney; |
| (xi) | ROA2⁴ | Record of Assumptions 2; |
| (xii) | SL | Station Lease; |
| (xiii) | SLC1-5 | Service Level Commitment; |
| (xiv) | STNRCS | STNR Costs Schedule⁵ |
| (xv) | STNRP | STNR Programme⁶ |
| (xvi) | STNRRR | STNR Reporting Requirements⁷ |
| (xvii) | STNRSOW | STNR Scope of Work⁸ |
| (xviii) | TP | Train Plan, |
- (g) references in any of the agreements comprising the Franchise Agreement to Recitals, clauses, Schedules, Parts, paragraphs and Appendices are to Recitals, clauses, Schedules, Parts of Schedules, paragraphs of Schedules and Appendices of Schedules of that agreement, unless expressly specified to the contrary, and the Schedules and Appendices form part of the agreement in which they appear;
- (h) references in any Schedule in any of the agreements comprising the Franchise Agreement to a Part, paragraph or Appendix are references to a Part, paragraph or Appendix of that Schedule (or the

³ 13 June 2019 (Date of DOA) – Contract variation agreed by the Secretary of State and Franchisee.

⁴ 13 June 2019 (Date of DOA) – Contract variation agreed by the Secretary of State and Franchisee.

⁵ 06/12/2017 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

⁶ 06/12/2017 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

⁷ 06/12/2017 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

⁸ 06/12/2017 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

- relevant Part of a Schedule), unless expressly specified to the contrary;
- (i) headings and references to headings shall be disregarded in construing this Franchise Agreement;
 - (j) references to any enactment include any subordinate legislation made from time to time under such enactment and are to be construed as references to that enactment as for the time being amended or modified or to any enactment for the time being replacing or amending it and references to any subordinate legislation are to be construed as references to that legislation as for the time being amended or modified or to any legislation for the time being replacing or amending it;
 - (k) references to an agreement or any other document shall be construed as referring to that agreement or document as from time to time supplemented, varied, replaced, amended, assigned or novated;
 - (l) references to any particular provisions of any agreement or any other document shall be construed to include any other provisions of, or incorporated in, that agreement or other document which the Secretary of State reasonably considers have an equivalent effect or are intended to fulfil the same function;
 - (m) words importing the masculine gender include the feminine and vice-versa, and words in the singular include the plural and vice-versa;
 - (n) wherever provision is made for the giving or issuing of any notice, endorsement, consent, approval, waiver, certificate or determination by any person, unless otherwise specified, such notice, endorsement, consent, approval, waiver, certificate or determination shall be in writing and the words "notify", "endorse", "consent", "approve", "waive", "certify" or "determine" and other cognate expressions shall be construed accordingly;
 - (o) references to materials, information, data and other records shall be to materials, information, data and other records whether stored in electronic, written or other form;
 - (p) references to the Franchisee bidding for Train Slots or a Timetable shall mean the final action incumbent on the Franchisee under the Network Code to confirm to the Infrastructure Manager its interests in the Train Slots to which that confirmation relates, and "bid" shall be construed accordingly;
 - (q) references to the period of validity of any Fare are references to its period of validity excluding any rights of any purchaser thereof to extend such period under the Passenger's Charter, any equivalent document, or the terms and conditions attaching to such Fare (including any applicable conditions of carriage) in the event of the cancellation or delay of any of the railway passenger services for which such Fare is valid;

- (r) references to stations at which any train calls include stations at which such train commences or terminates its journey;
- (s) references to "railway passenger services" are to be construed subject to Section 40 of the Railways Act 2005;
- (t) references to the provision of railway passenger services include the organisation of the relevant train movements and making the necessary arrangements with the Infrastructure Manager or any other relevant Facility Owner;
- (u) references in lower case letters to terms defined in clause 2 shall be construed, where relevant, as being references to the terms defined as such in the franchise agreement or relevant agreement made under Section 30 of the Act or Section 6 of the Railways Act 2005 with any other Train Operator;
- (v) amendments to or variations of contracts or arrangements include assignments, novations or other transfers of rights and/or obligations (in whole or in part) under such contracts or arrangements;
- (w) references to sums of money being expended by the Franchisee shall be to such sums exclusive of Value Added Tax;
- (x) the words "shall not be liable" are to be construed as meaning that no contravention of the Franchise Agreement and no Event of Default shall arise as a result of the occurrence of the matter to which such words relate;
- (y) references to a "contravention of the Franchise Agreement" (and cognate expressions) are to be construed as meaning a breach of this Franchise Agreement; and
- (z) wherever provision is made for the Franchisee to "procure" or "ensure" the delivery of an obligation under the Franchise Agreement, unless otherwise specified, that provision shall be construed as a primary obligation on the Franchisee to deliver that obligation.

1.2 This Agreement and the Conditions Precedent Agreement together constitute a single agreement which is a "franchise agreement" for the purposes of the Act.

2. DEFINITIONS

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

"16 to 25 Railcard" means a Discount Card issued under the Discount Fare Scheme referred to in paragraph (a)(ii) of the definition of Discount Card Fare Scheme;

"2013 Nominal Ticket Sales" has the meaning given to it in paragraph 3 of Schedule 5.4 (Regulation of Fares Basket Values);

"2013 Ticket Revenue"	has the meaning given to it in paragraph 4.1 of Schedule 5.4 (Regulation of Fares Basket Values);
"2017 Capacity Enhancement Deed of Amendment"⁹	means the Deed of Amendment to the Franchise Agreement dated 7 September 2017 entitled "Deed of Amendment in relation to Class 377 capacity enhancements" made between the parties;
"2017 Cascade"¹⁰	means in relation to each Class 377 (2017 Capacity Enhancement) Unit, its delivery from the TSGN Operator to the Franchisee under the Class 377 (2017 Capacity Enhancement) Sub-Lease and "Cascaded" and "2017 Cascaded Unit" shall be construed accordingly;
"Access Agreement"	has the meaning given to the term "access agreement" in Section 83(1) of the Act;
"Act"	means the Railways Act 1993 and any regulations or orders made thereunder;
"Actual Operating Costs"	means: <ul style="list-style-type: none"> (a) the Franchisee's total operating expenses for the period being reviewed as stated in its profit and loss account, including any of the following operating expenses that are payable during that period: <ul style="list-style-type: none"> (i) amounts payable to the Secretary of State and the Infrastructure Manager; (ii) taxation; (iii) shareholder distributions including dividends; (iv) interest; (v) capital expenditure (net of grants received); and (vi) lease payments in relation to on-balance sheet leased assets, <p style="margin-left: 40px;">but excluding any of the following expenses that are payable in that period:</p>

⁹ 08/09/2017 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

¹⁰ 08/09/2017 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

- (A) interest relating to on-balance sheet leased assets;
- (B) depreciation;
- (C) amortisation; and
- (D) bad debt provisions; and

either:

- (b) plus any reduction in the total amount owing by the Franchisee to creditors over that period; or
- (c) less any increase in the total amount owing by the Franchisee to creditors over that period,

where creditors:

- (A) include any persons owed amounts by the Franchisee in respect of operating expenses, including the types of expenses set out in paragraphs (a)(i) to (iv) inclusive, provisions and deferred income balances; but
- (B) exclude persons owed amounts by the Franchisee in respect of season ticket liabilities, lease liabilities in relation to on-balance sheet leased assets and liabilities in relation to grants received for the purchase of fixed assets;

"Actual Passenger Demand" has the meaning given to it in paragraph 1 of **Error! Not a valid result for table.** (Information about Passengers);

"Actuary" has the meaning given to it in the Pension Trust;

"Additional Expenditure" has the meaning given to it in paragraph 2.8 of Schedule 7.2 (National Rail Passenger Surveys);

"Additional Passenger Services" means such of the Passenger Services as the Franchisee is neither required to secure in the Timetable for purposes of complying with the Service Level Commitment nor required to operate pursuant to paragraph 6.1(a) of Schedule 1.2 (Operating Obligations);

"Additional Timetable Development Rights" means any Timetable Development Rights that the Franchisee does not require for purposes of securing a Timetable that complies with the

Service Level Commitment and to operate the services contemplated thereby;

"Administration Fee"

has the meaning given to it in paragraph 4.3 of Schedule 10.3 (Events of Default and Termination Event);

"Advance Purchase Train-specific Fares"

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

"Affiliate"¹¹

means,

((a) in respect of any person ("A")):

(i) any person which A Controls or which Controls A; or

(ii) any person which is Controlled by any other Affiliate of A; and

(b) for the purposes of paragraph 3 of Schedule 8.1 (Franchise Payments) only, any person which directly or indirectly (including as a shareholder in any immediate parent undertaking):

(i) holds any share capital in the Franchisee;

(ii) in the event of the winding-up or other analogous event in respect of the Franchisee would be entitled to any share or receive any assets of the Franchisee which are available for distribution; or

(iii) has any voting power in the Franchisee,

and for the purpose of this definition none of Network Rail or HS2 Limited shall be construed as being an affiliate of the Secretary of State;

"[REDACTED¹²]"¹³

means the licence granted to the Franchisee [REDACTED¹⁴] in respect of the

¹¹ 13 June 2019 (Date of DOA) – Contract variation agreed by the Secretary of State and Franchisee.

¹² **29/01/2018 (Date of Redactions Approval) – Where text has been omitted from the document this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.**

¹³ **06/12/2017 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.**

¹⁴ **29/01/2018 (Date of Redactions Approval) – Where text has been omitted from the document this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.**

[REDACTED¹⁵] (as amended and supplemented from time to time);

"Aggregated Qualifying Change"

means two or more Changes which:

- (a) are notified or agreed (in the case of a Change which is a Variation pursuant to paragraph 1.1 of Schedule 9.5 (Variations and Incentivising Beneficial Changes) or
- (b) a party has become aware of (in the case of any other kind of Change)

in a Franchisee Year (the "**Aggregation Year**") which individually do not exceed the Threshold Amount for the Aggregation Year taken alone but do exceed it when taken together. For the avoidance of doubt, where the Changes arise in different Franchisee Years, for the purposes of determining whether in aggregate they exceed the Threshold Amount:

- (c) the net present value of the adjustment in Franchise Payments which would result from a Run of the Financial Model in respect of each Change shall be calculated in accordance with the process described in the definition of Qualifying Change; and
- (d) there will be an Aggregated Qualifying Change where the aggregate of the net present values of those Changes exceeds the Threshold Amount for the Aggregation Year;

"Alliance Agreement"

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

"Alternative NRPS"

has the meaning given to such term in paragraph 1.4 of Schedule 7.2 (National Rail Passenger Surveys);

"Alternative SLC"

has the meaning given to such term in paragraph 1.2 of Schedule 1.1 (Service development);

"Ancillary Service"

means any service specified in paragraph 5 of **Error! Not a valid result for table.** (Franchise Services);

¹⁵ 29/01/2018 (Date of Redactions Approval) – Where text has been omitted from the document this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

- "Annual Audited Accounts"** means the accounts of the Franchisee which:
- (a) comply with paragraph 3.11 of Schedule 13 (Information and Industry Initiatives); and
 - (b) are delivered to the Secretary of State by the Franchisee in accordance with paragraph 3.9 of Schedule 13 (Information and Industry Initiatives) and certified by the Franchisee's auditors as true and fair;
- "Annual Benchmark"** means either the Annual Cancellations Benchmark or the Annual TOC Minute Delay Benchmark;
- "Annual Benchmark Table"** means in relation to:
- (a) any Annual Cancellations Benchmark, the Annual Cancellations benchmark Table; and
 - (b) any Annual TOC Minute Delay Benchmark, the Annual TOC Minute Delay Benchmark Table;
- "Annual Business Plan"** means the plan to be provided by the Franchisee to the Secretary of State in accordance with paragraph 2.3 of Schedule 13 (Information and Industry Initiatives);
- "Annual Cancellations Benchmark"** means for each Performance Calculation Year, each of the benchmarks specified in the Annual Cancellations Benchmark Table for that Performance Calculation Year provided that where a Performance Calculation Year is shorter than 13 Reporting Periods then the Annual Cancellations Benchmark for that Performance Calculation Year shall be as determined pursuant to paragraph 5.1(a) of Schedule 7.1 (Performance Benchmarks);
- "Annual Cancellations Benchmark Table"** means the table set out in Part 2 (Annual Cancellations Benchmark Table) of Appendix 1 (Cancellations Benchmarks and Annual Cancellations Benchmarks) of Schedule 7.1 (Performance Benchmarks);
- "Annual Cap Performance Level"** means, in relation to an Annual Benchmark for any Performance Calculation Year, the number set out in column 2 of the Annual Benchmark Table relating to that Annual Benchmark and in the row of that table for that Performance Calculation Year;

[Deleted]¹⁶

"Annual Floor Performance Level"	means, in relation to an Annual Benchmark for any Performance Calculation Year, the number set out in column 4 of the Annual Benchmark Table relating to that Annual Benchmark and in the row of that table for that Performance Calculation Year;
"Annual Franchise Payment"	means, in relation to any Franchisee Year, the amount determined in accordance with Schedule 8.2 (Annual Franchise Payments);
"Annual Franchise Payment Components"	means the values of "FXD", "VCRPI", "VCAWE", "PRPI" and "RRPI" specified for each Franchisee Year in the table set out in the Appendix (Figures for Calculation of Annual Franchise Payments) to Schedule 8.2 (Annual Franchise Payments);
"Annual Management Accounts"	means the management accounts of the Franchisee which: <ul style="list-style-type: none"> (a) comply with paragraph 3.11 of Schedule 13 (Information and Industry Initiatives); and (b) are delivered to the Secretary of State by the Franchisee in accordance with paragraph 3.7 of Schedule 13 (Information and Industry Initiatives);
"Annual Season Ticket"	means a Season Ticket Fare which is valid in Standard Class Accommodation from (and including) the day on which it first comes into effect until (but excluding) the day which falls 12 months after such day;
"Annual Target Performance Level"	means, in relation to an Annual Benchmark for any Performance Calculation Year, the number set out in column 3 of the Annual Benchmark Table relating to that Annual Benchmark and in the row of that table for that Performance Calculation Year;
"Annual TOC Minute Delay Benchmark"	means for each Performance Calculation Year, each of the benchmarks specified in the Annual TOC Minute Delay Benchmark Table for the that Performance Calculation Year provided that where a Performance Calculation Year is shorter than 13 Reporting Periods then the Annual TOC Minute Delay Benchmark for that Performance Calculation Year shall be as determined

¹⁶ Date of deletion 16/03/2016

	pursuant to paragraph 5.1(b) of Schedule 7.1 (Performance Benchmarks);
"Annual TOC Minute Delay Benchmark Table"	means the table set out in Part 2 (Annual TOC Minute Delay Benchmark Table) of Appendix 3 (TOC Minute Delay Benchmark and Annual TOC Minute Delay Benchmark) of Schedule 7.1 (Performance Benchmarks);
"Asset Condition Survey"	shall have the meaning given to such term in paragraph 6.5 of Schedule 6.1 (Committed Obligations);
"Assisted Passenger Reservation System"	means the system known as the Assisted Passenger Reservation System as described in the Code of Practice as published in September 2010 (version 2 – valid from 1 September 2010);
"ATOC"¹⁷	means the Association of Train Operating Companies whose functions are discharged by RDG from 24 October 2016;
"Automatic Ticket Gate Consents"	shall have the meaning given to such term in paragraph 9.6 of Part 1 of Schedule 6.1 (Committed Obligations);
"Average Driver Number Per Reporting Period"	shall have the meaning given to such term in paragraph 14.1 of Part 1 of Schedule 6.1 (Committed Obligations);
"Average Weekly Earnings"	means the United Kingdom average weekly earnings measure excluding bonuses as published from time to time by the Office for National Statistics or, if such measure shall cease to be published or if, in the reasonable opinion of the Secretary of State, there is a material change in the basis of such measure, such other alternative index as the Secretary of State may, after consultation with the Franchisee, determine to be appropriate in the circumstances;
"Back Fill Rolling Stock Head-Lease"	shall have the meaning given to such term paragraph 5.10(a) of Schedule 6.2 (South Eastern Franchise Specific Provisions);
"Back Fill Rolling Stock Sub-Lease"	shall have the meaning given to such term paragraph 5.10(b) of Schedule 6.2 (South Eastern Franchise Specific Provisions);
"Back Fill Rolling Stock Period"	shall have the meaning given to such term paragraph 5.10 of Schedule 6.2 (South Eastern Franchise Specific Provisions);

¹⁷ 23 March 2018 (Date of DOA) – Contract variation agreed by the Secretary of State and Franchisee

"Back Fill Rolling Stock Head-Lease Payments"	shall have the meaning given to such term paragraph 8.1(b) of Schedule 8.5 (London Bridge and Other Potential Payment Adjustments);
"Back Fill Rolling Stock Sub-Lease Payments"	shall have the meaning given to such term paragraph 8.1(a) of Schedule 8.5 (London Bridge and Other Potential Payment Adjustments);
"Bank"	means a person which has a permission under Part 4A of the Financial Services and Markets Act 2000 to carry on the regulated activity of accepting deposits thereunder and which is reasonably acceptable to the Secretary of State;
"Bank Holiday"	means any day other than a Saturday or Sunday on which banks in the City of London are not open for business;
"Benchmark"	means any of the Cancellations Benchmark, Capacity Benchmark and TOC Minute Delay Benchmark;
"Benchmark Table"	means, in relation to: <ul style="list-style-type: none">(a) any Cancellations Benchmark, the Cancellations Benchmark Table;(b) any Capacity Benchmark, the Capacity Benchmark Table; and(c) any TOC Minute Delay Benchmark, the TOC Minute Delay Benchmark Table;
"Bid Profit Stream"	means the estimated total operating profit of the Franchisee from the date that the Change of Control (pursuant to paragraph 2.3 of Schedule 10.3 (Events of Default and Termination Sum) is to occur until the Expiry Date as shown in the profit and loss forecast in the Initial Business Plan (without taking into account any Annual Business Plan) calculated in real terms as at the date of the Change of Control and applying the prevailing discount rate per annum (in real terms) stated in HM Treasury's "Green Book Appraisal Guidelines" (such rate being 3.5 per cent per annum (in real terms) as at the date of the Franchise Agreement);
"Bond Provider"	means any person or persons who may provide or be an obligor under a Performance Bond or Season Ticket Bond from time to time and who shall, unless the Secretary of State otherwise agrees, be a Bank;

- "Bond Year"** means the period beginning on the Start Date and ending on the 31 March 2015 and any subsequent period of 13 Reporting Periods beginning on the day after the end of the preceding Bond Year provided that:
- (a) the Franchisee and the Secretary of State may agree to vary the Reporting Period in which a Bond Year ends from time to time; and
 - (b) the last Bond Year shall expire on the expiry of the Franchise Period and may be a period of less than 13 Reporting Periods;
- "Brand Licence"** means a licence between the Secretary of State (or any company wholly owned by the Secretary of State) and the Franchisee in respect of any registered or unregistered trade marks;
- "Breach Performance Level"** means, in relation to a Benchmark for any Reporting Period, the number set out in column 4 of the Benchmark Table relating to that Benchmark and in the row of that table for that Reporting Period;
- "British Transport Police"** means the British Transport Police created pursuant to Section 18 of the Railways and Transport Safety Act 2003 (or any successor or successors to its statutory policing functions);
- "Business Action Plan"** means an action plan produced by the Franchisee in relation to the delivery of any aspect of the Franchise Services (including in respect of any outcome anticipated by its Business Plan, in accordance with paragraph 2.7 of Schedule 13 (Information and Industry Initiatives));
- "Business Continuity Plan" and "BCP"** means a business continuity and disaster recovery plan (including a Force Majeure Events recovery plan) required to be produced, maintained and implemented by the Franchisee in accordance with paragraph 3.3 of Schedule 10.4 (Force Majeure);
- "Business Plan"** means the Initial Business Plan or any Annual Business Plan, as the context requires, to be delivered in accordance with paragraphs 2.1 and 2.3 of Schedule 13 (Information and Industry Initiatives);
- "Cancellation"** means a Passenger Service:
- (a) which is included in the Enforcement Plan of the Day and which is cancelled

and attributed to the Franchisee pursuant to its Track Access Agreement; or

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

"Cancellations Benchmark"	means any of the performance levels in respect of Cancellations and Partial Cancellations set out in the Cancellations Benchmark Table;
"Cancellations Benchmark Table"	means the table set out in Appendix 1 (Cancellations Benchmark Table) of Schedule 7.1 (Performance Benchmarks);
"Cancellations Performance Sum"	means an amount determined in accordance with paragraph 3.2 of Schedule 7.1 (Performance Benchmarks);
"Capacity Benchmark"	means any of the performance levels in respect of the capacity operated in delivering the Passenger Services in the Peak set out in the Capacity Benchmark Table;
"Capacity Benchmark Table"	means the table set out in Appendix 2 (Capacity Benchmark Table) to Schedule 7.1 (Performance Benchmarks);
"Capacity Mitigation Plan"	has the meaning given to it in paragraph 7.1(a) of Schedule 1.1 (Service Development);
"Capital Expenditure"	has the meaning given to it in paragraph 2.4 of Schedule 9.5 (Variations and Incentivising Beneficial Changes);
"Cascaded Rolling Stock"	has the meaning given to it in paragraph 2.5 of Schedule 2.2 (Security of Access Agreements, Rolling Stock Leases, Station and Depot Leases);
"Certificate of Commencement"	means the certificate to be issued by the Secretary of State pursuant to the Conditions Precedent Agreement;
"Change"	means if and whenever any of the following occurs: <ul style="list-style-type: none"> (a) an event set out in Schedule 9.3 (Secretary of State Risk Assumptions);

- (b) the Secretary of State and the Franchisee agree or the Secretary of State serves written notice on the Franchisee, exercising the Secretary of State's right to call any Priced Option:
 - (i) on different terms from those specified in respect of that Priced Option in Part 2 (List of Priced Options) of Schedule 3 (Priced Options); and/or
 - (ii) at any time after the last date for exercise of such Priced Option,

in each case, only to the extent of the difference from the price quoted in Part 3 (Price in respect of the Priced Option) to Schedule 3 (Priced Options) caused by the difference in terms and/or the late timing of the agreement or call;

- (c) a Charge Variation;
- (d) a Change of Law (excluding any Change of Law to the extent that it results in an adjustment to the Franchise Payments pursuant to Schedule 8.4 (Track Access Adjustments and Station Charge Adjustments));
- (e) a change to the Service Level Commitment previously in force pursuant to the issue of an amended or new Service Level Commitment in accordance with paragraph 4.12 of Schedule 1.1 (Service Development);
- (f) the exercise by the Secretary of State of his rights pursuant to paragraph 19.2 of Schedule 13 (Information and Industry Initiatives);
- (g) the Franchisee is required to take any action pursuant to paragraph 13.2 (a) and/or paragraph 13.2 (b) of Schedule 1.1 (Service Development);
- (h) a change effected pursuant to paragraph 6.1 of Schedule 1.2 (Operating Obligations), including as a result of any action that the Franchisee is required to take pursuant to paragraph 8.1(b) of Schedule 1.2 in respect of any Strategy or plan referred to in paragraph 8.1(b) of Schedule 1.2 published, endorsed or varied by the

Secretary of State after the Start Date, except where that change is effected pursuant to paragraph 6.2 of Schedule 1.2 in respect of any Additional Passenger Services;

- (i) a change to the Secretary of State's standards in respect of alternative transport arrangements, as referred to in paragraph 8.2(a) of Schedule 1.2, from the Secretary of State's standards which are current as at the date of the Franchise Agreement;
- (j) not used;
- (k) not used;
- (l) not used;
- (m) not used;
- (n) not used;
- (o) the Secretary of State effects an amendment to a Discount Fare Scheme, introduces a new Discount Fare Scheme or ceases to approve a Discount Fare Scheme for the purposes of Section 28 of the Act;
- (p) the Secretary of State approves an amendment or proposed amendment to an Inter-Operator Scheme, as referred to in paragraph (a) of the definition of Inter-Operator Scheme to the extent and only to the extent that the Franchisee makes a saving as a consequence of such amendment or proposed amendment;
- (q) the imposition, subject to the provisions of paragraph 2.6 of Schedule 4 (Persons with Disabilities and Disability Discrimination), of any increased access charges in respect of EA Requirements at Franchisee Access Stations;
- (r) the Secretary of State exercises his power pursuant to paragraph 5 of Schedule 5.7 (Changes to Fares and Fares Regulation) to alter the obligations of and restrictions on the Franchisee under Schedule 5 (Fares);

- (s) the Franchisee is obliged to charge Value Added Tax on a Fare or there is an increase or decrease in the rate of Value Added Tax which it must charge on such Fare, in either case due to a change in the Value Added Tax treatment of the provision of Passenger Services;
- (t) not used;
- (u) the issue of any SLC (TDR) Amendments pursuant to paragraph 9.7 of Schedule 1.1 (Service Development) or, subject to paragraph 9.10(b) of Schedule 1.1, any SLC (TDR) Amendments ceasing to have effect in accordance with paragraph 9.9 of Schedule 1.1;
- (v) the circumstances set out in paragraph 2.6 of Schedule 2.2 (Security of Access, Rolling Stock, Leases, Station and Depot Leases) occur;
- (w) a Variation to the terms of the Franchise Agreement pursuant to paragraph 1 of Schedule 9.5 (Variations and Incentivising Beneficial Changes);
- (x) the exercise by the Secretary of State of his rights pursuant to paragraph 1.6 of Schedule 7.1 (Performance Benchmarks);
- (y) the Start Date is a date that is later than 0200 on 12 October 2014 for reasons solely attributable to any act or omission by the Secretary of State except where:
 - (i) the Secretary of State exercises his rights pursuant to Clauses 4.2 or 4.3 of the Conditions Precedent Agreement to alter such Start Date; or
 - (ii) the relevant acts or omissions of the Secretary of State arise as a result of or in connection with any failure by the Franchisee to satisfy any of the conditions precedent set out in the Conditions Precedent Agreement;

- (z) the Secretary of State does not, during the Franchise Term, require a successor operator to the TSGN Operator to become a party to a Thameslink KO0 Trading Agreement in place of the TSGN Operator or to enter into a new agreement with the Franchisee on substantially the same terms as such Thameslink KO0 Trading Agreement as a condition of and upon that successor operator becoming the successor operator of the TSGN Franchisee;
- (aa) the Secretary of State directs the Franchisee to agree and implement an amendment to, or terminate any Thameslink KO0 Trading Agreement pursuant to paragraphs 5.9 (b) or 5.9 (c) of Schedule 6.2 (South Eastern Franchise Specific Provisions);
- (bb) the Secretary of State exercises his right under paragraph 5.6 of Schedule 6.2 (South Eastern Franchise Specific Provisions) to require the Franchisee to surrender, novate or assign the Thameslink Station Lease (as the case may be) on a date that is earlier or later than the Thameslink Transfer Date;
- (cc) any two or more of the foregoing that the Secretary of State groups together in accordance with any procedures issued by him pursuant to paragraph 1.4 of Schedule 9.5 (Variations and Incentivising Beneficial Changes);

"Change of Control"

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

"Change of Law"

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

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

the terms of which apply only to the railway industry, a particular section of the railway industry or the provision of services to the railway industry and not to other transport

modes or to industries other than the railway industry, and without limitation:

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

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

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

"Charge Variation"

means a variation:

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

"Charging Review"

means:

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

any of the powers referred to in paragraphs (a) or (b) in relation to any Relevant Agreement provided that, without limitation, the exercise by ORR of any of its approval rights under Condition F12 of the Station Access Conditions shall not be considered to have an equivalent effect to or fulfil the same function as any of the powers referred to in paragraphs (a) or (b). For this purpose, Relevant Agreement includes any

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

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

"Charter Service"

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

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

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

"Child Price"

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

"CL377LA"

shall have the meaning given to such term in paragraph 8.1 of Schedule 8.5 (London Bridge and Other Potential Payment Adjustments);

"CL377(RS)LA"¹⁸	<i>shall have the meaning given to such term in paragraph 8.2 of Schedule 8.5 (London Bridge and Other Potential Payment Adjustments);</i>
"Class 377 (2017 Capacity Enhancement) Sub-Lease"¹⁹	means the sub-lease for the Class 377 (2017 Capacity Enhancement) Units between the TSGN Operator and the Franchisee dated 7 September 2017;
"Class 377 (2017 Capacity Enhancement) Units"²⁰	means the 17 x 4-car units of Class 377 rolling stock (being unit numbers 377509 to 377523 and 377163 to 377164 that are, or are due to be, sublet by the TSGN Operator to the Franchisee pursuant to the Class 377 (Capacity Enhancement) Sub-Lease, and "Class 377 (Capacity Enhancement) Unit" shall mean any one of the Class 377 (Capacity Enhancement) Units;
"Class 377 Lease Payment"	shall have the meaning given to such term in paragraph 8.1 of Schedule 8.5 (London Bridge and Other Potential Payment Adjustments);
"Class 377 OHA"	shall have the meaning given to such term paragraph 5.10(c) of Schedule 6.2 (South Eastern Franchise Specific Provisions);
"Class 377 (Revised Solution) OHA"²¹	<i>means the operating hire agreement for Class 377 passenger rolling stock dated 19 December 2014 between the TSGN Operator and the Franchisee as amended and restated on or around 9 December 2016;</i>
"Class 377 (Revised Solution) Units"²²	<i>means the units of Class 377 rolling stock that are let by the TSGN Operator to the Franchisee pursuant to the Class 377 (Revised Solution) OHA, and "Class 377 (Revised Solution) Unit" shall mean any one of the Class 377 (Revised Solution) Units;</i>
"Closed Scheme Employees"	has the meaning given to it in paragraph 2.2 of Schedule 16 (Pensions);
"Closure"	means a discontinuance or closure under Part 4 of the Railways Act 2005 of any of the Passenger Services or of any network on which the

¹⁸ **Date of contract insertion 09/12/2016** – Agreed by the Secretary of State and Franchisee.

¹⁹ **08/09/2017 (Date of DOA)** – Contract insertion agreed by the Secretary of State and Franchisee.

²⁰ 08/09/2017 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

²¹ Date of contract insertion 09/12/2016 – Agreed by the Secretary of State and Franchisee.

²² Date of contract insertion 09/12/2016 – Agreed by the Secretary of State and Franchisee.

Passenger Services may be operated or of any of the Stations or of any part of such network or Station;

- "Code of Practice"** means the code of practice for protecting the interests of users of railway passenger services or station services who have disabilities, as prepared, revised from time to time and published by the Secretary of State pursuant to Section 71B of the Act;
- "Collateral Agreement"** means an agreement which is required to be entered into by the Franchisee with Network Rail, HS1 Limited or any other franchisee as a condition to any Access Agreement of which the Franchisee is the beneficiary;
- "Committed Obligations"** means any of the Franchisee's obligations listed in Part 1 (Committed Obligations and Related Provisions) to Schedule 6.1 (Committed Obligations and Related Provisions);
- "Community Rail Partnership"** means any not-for-profit organisation of the same name that has an interest in the development of responsive and good quality railway passenger services;
- "Community Rail Route"** means any Route in respect of which the Secretary of State determines that any relevant Community Rail Partnership has an interest;
- "Commuter Fare"** means any:
- (a) Weekly Season Ticket, Monthly Season Ticket, Quarterly Season Ticket and Annual Season Ticket (and their equivalent ITSO products) between each London Station and any other such station or other station;
 - (b) unrestricted Single Fare and unrestricted Return Fare (and their equivalent ITSO products) between each London Station; and
 - (c) unrestricted Single Fare and unrestricted Return Fare (and their equivalent ITSO products) from each Suburban Station to each London Station (but not in the other direction); and
 - (d) PAYG Peak Fare or PAYG Off-Peak Fare (and their equivalent ITSO products) between each London Station and any other such station, (and, if and when CPAY is introduced, the CPAY

equivalent Peak and Off-Peak fares);
and

- (e) Any Flexi Season Ticket that may be offered for unlimited travel between each London Station and any other such station or other station but which has restrictions on the permitted times of use or the volume of travel allowed. These restrictions may include permitting travel only on fewer than five days a week or outside Peak Hours,

for which the Franchisee is entitled to be allocated all or part of the revenue therefrom pursuant to the Ticketing and Settlement Agreement;

"Commuter Fares Basket"

means the grouping of Commuter Fares:

- (a) determined by the Secretary of State pursuant to Schedule 5.3 (Allocation of Fares to Fares Baskets);
- (b) for the purposes of regulating aggregate Prices or Child Prices, as the case may be, in accordance with Schedule 5.4 (Regulation of Fares Basket Values);
- (c) amended by the Secretary of State from time to time in accordance with Schedule 5.7 (Changes to Fares and Fares Regulation); and
- (d) set out in the Commuter Fares Document;

"Commuter Fares Document"

means the document in the agreed terms marked **CFD** as the same may be amended from time to time in accordance with Schedule 5.7 (Changes to Fares and Fares Regulation);

"Completion of 2017 Cascade Milestone"²³

means the date that the Franchisee (acting reasonably) notifies the Secretary of State that:

- (a) the 2017 Cascade of all the Class 377 (2017 Capacity Enhancement) Units has been duly completed; and**
- (b) that the Class 377 (2017 Capacity Enhancement) Units are deployed in**

²³ 08/09/2017 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

service in accordance with the Updated Train Plan;

"Compulsory Inter-available Flow"	has the meaning given to it in the Ticketing and Settlement Agreement;
"Computer System"	means computer hardware and computer software, including licensed third party software and data protocols;
"Conditions Precedent Agreement"	means the agreement between the Secretary of State and Franchisee of even date herewith specifying certain conditions to be satisfied or waived by the Secretary of State prior to the issue of a Certificate of Commencement;
"Confidential Information"	has the meaning given to it in paragraph 1 of Schedule 17 (Confidentiality and Freedom of Information);
"Connection"	means a connection (however described) between any of the Passenger Services provided by the Franchisee and any other railway passenger service provided by it or any other Train Operator or any bus, ferry or shipping service and cognate phrases shall be construed accordingly;
"Connection Agreement"	means any agreement entered into by the Franchisee and Network Rail or HS1 Limited on or before the Start Date relating to the connection of a Depot to the relevant part of the network;
"Contingency Plan"	has the meaning given to it in paragraph 1(a)(iv) of Schedule 10.4 (Force Majeure);
"Contract Manager"	means a person appointed from time to time by the Franchisee to fulfil certain duties including to manage the Franchise Agreement on behalf of the Franchisee and to facilitate the performance by the Franchisee of its obligations under the Franchise Agreement;
"Control"	means, in respect of a person, that another person (whether alone or with others and whether directly or indirectly and whether by the ownership of share capital, the possession of voting power, contract or otherwise): <ul style="list-style-type: none"> (a) has the power to appoint and/or remove all or the majority of the members of the board of directors or other governing body of that person or

of any other person which Controls that person;

- (b) controls or has the power to control the affairs and policies of that person or of any other person which Controls that person;
- (c) is the parent undertaking of that person or of any other person which Controls that person; or
- (d) possesses or is, or will be at a future date, entitled to acquire:
 - (i) 30 per cent or more of the share capital or issued share capital of, or of the voting power in, that person or any other person which Controls that person;
 - (ii) such part of the issued share capital of that person or any other person which controls that person as would, if the whole of the income of such person were distributed, entitle him to receive 30 per cent or more of the amount so distributed; or
 - (iii) such rights as would, in the event of the winding-up of that person or any other person which controls that person or in any other circumstances, entitle him to receive 30 per cent or more of the assets of such person which would then be available for distribution;

"CPAY"

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

"Creating"

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

"CRM Data"²⁴

means Personal Data (including any or all of name, address, e-mail address, full IP address and ticket purchasing history, credit and debit card details) collected by

²⁴ 08/12/2016 (Date of DOA) – Contract variation agreed by the Secretary of State and Franchisee.

or on behalf of the Franchisee relating to persons travelling on or purchasing tickets for travel on the Passenger Services or other services for the carriage of passengers by railway including On-Train Wi-Fi Services and shall for the avoidance of doubt include such Personal Data that is collected, input, processed by or on behalf of the Franchisee and/or held on the On-Train Wi-Fi Solution and/or via the provision of the On-Train Wi-Fi Services;

"CRM Data Processor"

means any Data Processor who, from time to time, is processing or has processed CRM Data on behalf of the Franchisee;

"CRM System"

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

"Crossrail Business Transfer Agreement"

means a business transfer agreement between the Franchisee and the Crossrail Operator to be entered into pursuant to the obligations of the Franchisee under paragraph 1.5(a) of Schedule 6.2 (South Eastern Franchise Specific Provisions) being substantially in the form of the Appendix (Form of Business Transfer Agreement) to Schedule 6.2 (South Eastern Franchise Specific Provisions), but subject to such amendments as the Secretary of State may reasonably make thereto as a result of any change of circumstances (including any Change of Law) affecting such business transfer agreement between the date of the Franchise Agreement and the date on which the Franchisee is required to enter into the Crossrail Business Transfer Agreement;

"Crossrail Operator"

means any person who is appointed to provide railway passenger services on the railway transport system to be constructed and maintained as specified in the Crossrail Act 2008;

"Crossrail Programme"

means the programme of planning, preparatory, construction, tunnelling, station building, rebuilding and enhancement and engineering activities and works and the procurement of rolling stock and other assets and equipment being undertaken for the purposes of building the east west cross London railway system specified in the Crossrail Act 2008;

"Crossrail Transfer Arrangements"	means the Crossrail Business Transfer Agreement and other agreements and documents ancillary thereto or reasonably required for the purpose of transferring Abbey Wood Station to the Crossrail Operator;
"Crossrail Transfer Date"	10 December 2017 (or such other date as the Secretary of State shall specify);
"Current Franchisee Accounting Year"	has the meaning given to it in paragraph 3.4 of Schedule 8.1 (Franchise Payments);
"Customer and Stakeholder Engagement Strategy"	means the Customer and Stakeholder Engagement Strategy in the agreed terms marked "CSES" and any replacement Customer and Stakeholder Engagement Strategy revised in accordance with paragraph 8.4 of Schedule 6.2 (South Eastern Franchise Specifics);
"Customer Report"	means a report in the format and providing the information specified in the Customer and Stakeholder Engagement Strategy published in accordance with paragraph 8.3 of Schedule 6.2 (South Eastern Franchise Specifics);
"Customer Service and Information NRPS Measure"	<p>means each of the following factors measured by the Passengers' Council as part of the National Rail Passenger Survey (or such other factors as the Secretary of State and/or the Passengers' Council may determine from time to time):</p> <ul style="list-style-type: none"> (a) "C1 Station - Provision of information about train times/platforms"; (b) "C4 Station - Overall satisfaction with how request to station staff was handled"; (c) "C5 Train - Provision of information during the journey"; (d) "C6 Train - The helpfulness and attitude of the staff on the train"; (e) "C8 Train - How well train company dealt with delays", <p>each separately a "Customer Service and Information NRPS Measure Factor";</p>
"Customer Service and Information NRPS Measure Factor"	shall have the meaning given to such term in the definition of "Customer Service and Information NRPS Measure";

"DAC3 Assets"²⁵**means:**

- (a) **any assets purchased by the Franchisee as a result of fit out of the New Head Office up to the aggregate capital sum of [REDACTED²⁶] specified for Fit-Out in Table 63 of the Record of Assumptions 2; and**
- (b) **any assets purchased by the Franchisee as a result of server virtualisation up to the aggregate capital sum of [REDACTED²⁷] specified for Fit-Out in Table 63 of the Record of Assumptions;**

"Data Controller"

has the same meaning as in the Data Protection Act;

"Data Processor"

has the same meaning as in the Data Protection Act;

"Data Protection Act"

means the Data Protection Act 1998 and any guidance issued from time to time by the Information Commissioner's Office;

"Data Site Information"

has the meaning given to it in paragraph 2.2(e) of Schedule 15.1 (Reletting Provisions);

"Data Subject"

has the same meaning as in the Data Protection Act;

"Dataset"

means Appendix 1 (Environmental Impact Monitoring Dataset) to Schedule 13 (Information and Industry Initiatives) as the same may be amended from time to time by the Secretary of State (acting reasonably);

"Deep Clean"

shall have the meaning given to such term in paragraph 6.2 of Part 1 of Schedule 6.1 (Committed Obligations);

"Default Performance Level"

means, in relation to a Benchmark for any Reporting Period, the numbers set out in the relevant column of the Benchmark Table relating

²⁵ 13 June 2019 (Date of DOA) - Contract insertion agreed by the Secretary of State and Franchisee.

²⁶ **5 August 2019 (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.**

²⁷ **5 August 2019 (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.**

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

"Delayed Cascade Mitigation Plan"	has the meaning given to it in paragraph 2.7(c) of Schedule 2.2 (Security of Access Agreements, Rolling Stock Leases, Station and Depot Leases);
"Departure Station"	has the meaning given to it in paragraph 2(b) of Appendix 2 (Alternative Transport) to Schedule 4 (Persons with Disabilities and Disability Discrimination);
"Depot"	means a depot in respect of which the Franchisee has entered into a Depot Lease;
"Depot Lease"	means: <ul style="list-style-type: none"> (a) any lease of a depot to which the Franchisee is a party as at the Start Date; or (b) any other lease of a depot in relation to which the Franchisee becomes the Facility Owner at any time during the Franchise Period;
"Designated Employer"	has the meaning given to it in the Pension Trust;
"Destination Station"	has the meaning given to it in paragraph 2(b) of Appendix 2 (Alternative Transport) to Schedule 4 (Persons with Disabilities and Disability Discrimination);
"Digital Signage" ²⁸	means an operational information system screen used to provide enhanced customer information including station safety messages, planned engineering works and disruption information;
"Direct Agreement"	means any agreement made, or to be made, from time to time between the Secretary of State and the counterparty of a Key Contract in relation to such Key Contract, including any agreement entered into by the Secretary of State under Schedule 14.3 (Key Contracts);
"Disabled People's Protection Policy"	means the Franchisee's policy for the protection of persons with disabilities which the Franchisee is required to establish and review from time to time in accordance with the conditions of its Licences in respect of the operation of railway passenger services and/or stations;

²⁸ Date of change: 04/12/2014

- "Disabled Person"** is a reference to a person who has a disability in the EA;
- "Disaster"** means, other than those specified in paragraph 1(a) and 1(b) of Schedule 10.4 (Force Majeure), any unplanned interruption or event which significantly prevents or impairs the ability of the Franchisee to provide the Franchise Services (in part or in whole) or the ability of the Franchisee to operate systems or equipment relevant to the provision of the Franchise Services (in part or in whole);
- "Discount Card"** has the meaning given to it in the Ticketing and Settlement Agreement;
- "Discount Fare Scheme"** means:
- (a) each of the following discount fare schemes:
 - (i) ATOC Disabled Persons Railcard Scheme dated 23 July 1993 between the participants therein;
 - (ii) ATOC Young Persons Railcard Scheme dated 23 July 1993 between the participants therein; and
 - (iii) ATOC Senior Railcard Scheme dated 23 July 1993 between the participants therein; or
 - (b) any other discount fare scheme approved from time to time by the Secretary of State for the purposes of Section 28 of the Act,
- in each case until such time as it may cease to be approved by the Secretary of State for the purposes of Section 28 of the Act;
- "Dispute Resolution Rules"** means the procedures for the resolution of disputes known as "The Railway Industry Dispute Resolution Rules", as amended from time to time in accordance with the terms thereof;
- "Disputed Cancellation"** means a Passenger Service:
- (a) which is included in the Enforcement Plan of the Day and which is cancelled; or
 - (b) which is included in the Enforcement Plan of the Day and which operates less

than 50 per cent. of its scheduled mileage (as prescribed in the Enforcement Plan of the Day),

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

"Disputed Partial Cancellation"

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

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

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

"Disputes Secretary"

means the person appointed as Disputes Secretary from time to time in accordance with the Dispute Resolution Rules;

"Driver Employment Commitment Period"

shall have the meaning given to such term in paragraph 14.1 of Part 1 of Schedule 6.1 (Committed Obligations);

"Driver Inputs"

means the rows with the setting out the values in respect of the following headings in the worksheet titled "Inputs A4" of the Financial Model:

Area	
Numbers	Drivers
	Trainees
Pay	Drivers
	Trainees
Overtime etc	Drivers
	Trainees
Pension Contributions	Drivers
	Trainees

"Driver Number Target"	shall have the meaning given to such term in paragraph 14.1 of Part 1 of Schedule 6.1 (Committed Obligations);
"EA"	means the Equality Act 2010;
"EA Claim"	has the meaning given to it in paragraph 3.1 of Schedule 4 (Persons with Disabilities and Disability Discrimination);
"EA Requirements"	means the duties of a provider of services under Sections 20(3), 20(5) and Sections 20(9)(a) and 20(9)(b) in relation to Section 20(4), of the EA;
"eCMS"	shall have the meaning given to such term in paragraph 17.1 of Part 1 of Schedule 6.1 (Committed Obligations);
"Emergency Event"	has the meaning given to it in paragraph 1.2(e) of Schedule 10.4 (Force Majeure);
"EMV"	means contactless payment cards that conform to the international standards issued by EMV Co (owned by American Express, Discover, JCB, MasterCard, UnionPay and Visa) which manages, maintains and enhances the EMV 1 integrated circuit card specifications;
"Enforcement Plan of the Day"	<p>means the Plan of the Day excluding any:</p> <ul style="list-style-type: none"> (a) additions to such Plan of the Day of any railway passenger services which are not included in the Timetable; (b) omissions from such Plan of the Day of any Passenger Services included in the Timetable; and/or (c) rescheduling in such Plan of the Day of any Passenger Services from their scheduling in the Timetable, <p>in each case:</p> <ul style="list-style-type: none"> (i) as proposed by the Franchisee in breach of its obligations in paragraph 5 of Schedule 1.2 (Operating Obligations); or (ii) as agreed by the Franchisee in breach of its obligations in paragraph 4 of Schedule 1.2 (Operating Obligations);
"Enhanced Compensation"	means (at the passenger's choice) either, two free journeys anywhere on the Franchise valid

	for not less than 12 months or national rail travel vouchers to the value of a Single Fare for a journey between the Stations for which the relevant passenger's Season Ticket Fare is valid;
"Environmental Data Implementation Plan"	has the meaning given in paragraph 19.1(c) of Schedule 13 (Information and Industry Initiatives);
"Environmental Information Regulations"	means the Environmental Information Regulations 2004;
"Environmental Scheme"	shall have the meaning given to such term in paragraph 11.1 of Part 1 of Schedule 6.1 (Committed Obligations);
"Equivalent Fare"	has the meaning given to it in paragraph 6.1 of Schedule 5.7 (Changes to Fares and Fares Regulation);
"Equivalent Flow"	has the meaning given to it in paragraph 6.1(b) of Schedule 5.7 (Changes to Fares and Fares Regulation);
"Escrow Documents"	means those documents and other items referred to in paragraphs 1.1 and 1.2 of Schedule 9.2 (Identity of the Financial Model etc.);
"Estimated One-Off Cost Amount"²⁹	means for each One-Off Cost Item the amount as specified in Column 4 of the table at Appendix 3 to Schedule 8.5 Schedule 8.5 (London Bridge and Other Potential Payment Adjustments) of the Franchise Agreement;
"Estimated Profit Stream"	means estimated total operating profit of the Franchisee from the date that the Change of Control (pursuant to paragraph 2.3 of Schedule 10.3 (Events of Default and Termination Sum) is to occur until the Expiry Date as reasonably determined by the Secretary of State. In reasonably determining the Estimated Profit Stream the Secretary of State shall: <ul style="list-style-type: none"> (a) take into account all relevant circumstances and have due regard to the Financial Model, the profit and loss forecast in the Initial Business Plan and the most recent Annual Business Plan and the assumptions in the Record of Assumptions;

²⁹ 08/09/2017 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

- (b) use the accounting policies and standards set out in the Record of Assumptions and applied through the Financial Model;
- (c) estimate profit:
 - (i) before taking into account:
 - (A) interest, finance income and finance charges (other than finance items recognised in respect of retirement benefits) and dividends and other distributions of profit;
 - (B) any taxation on profits including corporation tax;
 - (C) shares of the profit of any Affiliate of the Franchisee, except dividends received in cash;
 - (D) non cash entries in respect of the Franchise Sections and any other pension schemes to the extent connected with the Franchise, excluding accruals or prepayments of any normal pension contributions due; and
 - (ii) after taking into account:
 - (A) Franchise Payments;
 - (B) all extraordinary and exceptional items, as defined under GAAP;
 - (C) the Franchisee's normal pension contributions in relation to the Franchisee Sections and any other pension schemes to the extent connected with the Franchise;
 - (D) any payments to Affiliates of the Franchisee (including management fees and royalty fees) except to the extent that such payments exceed the

amount determined in accordance with the formula set out in paragraph (a)(v) of the definition of "Relevant Profit" in paragraph 3 of Schedule 8.1 (Franchise Payments); and

(E) any sums capitalised in relation to maintenance expenditure on rolling stock or other capital equipment; and

(d) calculate amounts in real terms as at the date of the Change of Control and apply the prevailing discount rate per annum (in real terms) stated in HM Treasury's "Green Book Appraisal Guidelines" (such rate being as at the date of the Franchise Agreement 3.5 per cent. per annum (in real terms));

"Estimated Revisions" has the meaning given to it in paragraph 9 of Schedule 9.1 (Financial and Other Consequences of Change);

"Evening Peak" means, in relation to any Passenger Service other than High Speed Domestic Services, the period between 1600 and 1859 (inclusive) during a Weekday or such other continuous evening three hour period between 1200 and 2359 (inclusive) as the Secretary of State may specify from time to time and, in the case of the High Speed Domestic Services, the period between 1630 and 1830 during a weekday, or such continuous evening two hour period as the Secretary of State may specify from time to time;

"Event of Default" means any of the events set out in paragraph 2 of Schedule 10.3 (Events of Default and Termination Event);

"Excluded Data" has the meaning given in paragraph 19.1(a) of Schedule 13 (Information and Industry Initiatives);

"Existing Expenditure" has the meaning given to it in paragraph 2.9(a) of Schedule 7.2 (National Rail Passenger Surveys);

"Expiry Date"^{30 31}**means the later of:**

- (a) **0159 on 10 November 2019;**
- (b) **the time and date to which the Franchise Agreement is continued in accordance with paragraph 1.2 of Schedule 18 (Additional Reporting Periods);**

"Extensions"

has the same meaning as in the Service Level Commitment;

"Facilitation Fee"

has the meaning given to it in paragraph 4.2 of Schedule 10.3 (Events of Default and Termination Event);

"Facility Owner"

has the meaning given to the term facility owner in Section 17(6) of the Act;

"Fare"

means:

- (a) the right, exercisable against one or more Train Operators, subject to any applicable rights or restrictions and the payment of the relevant price, to make one or more journeys on the network or to carry on such a journey an item of luggage or an animal (where this right does not arise under the relevant conditions of carriage except on the payment of a fee) and, where applicable, to obtain goods or services from a person; and
- (b) for the purposes only of Schedules 5.3 (Allocation of Fares to Fares Baskets) to 5.8 (Fares Regulation Information and Monitoring) (inclusive) and the definitions of Commuter Fare, Protected Fare, Return Fare, Single Fare, Protected Weekly Season Ticket, Protected Return Fare and paragraph (b) of the definition of Season Ticket Fare, a Fare as defined under paragraph (a) that is:
 - (i) valid for a journey or journeys on the Passenger Services included in the Timetable or other railway passenger services which are required to be included in another relevant Train Operator's

³⁰ 23 March 2018 (Date of DOA) – Contract variation agreed by the Secretary of State and Franchisee

³¹ 13 June 2019 (Date of DOA) - Contract variation agreed by the Secretary of State and Franchisee.

	passenger timetable by the Secretary of State;
	(ii) sold under the Travelcard Agreement;
	(iii) a Cross London Ticket (as defined in the Through Ticketing (Non Travelcard) Agreement); or
	(iv) sold under the Pay As You Go Agreement utilising TTL Smartmedia as defined in that agreement;
"Fare Year"	means the period from 1 January in any year to 31 December in the same year;
"Fares Basket"	means either the Commuter Fares Basket or the Protected Fares Basket;
"Fares Document"	means any of the Commuter Fares Document and the Protected Fares Document;
"Fares Setting Round"	has the meaning given to it in the Ticketing and Settlement Agreement;
"FCC Franchisee"	means the franchisee under the franchise agreement dated 17 February 2014 (as amended from time to time) and made between the Secretary of State and First Capital Connect Limited (Company Number 5281077);
"Financial Action Plan"	means any action plan produced by the Franchisee pursuant to paragraph 3.3(f) of Schedule 13 (Information and Industry Initiatives), where the level of its financial performance specified in the Management Accounts is worse than forecast by the Franchisee in its current Business Plan;
"Financial Conduct Authority"	means the UK Financial Conduct Authority with company registered number 01920623 or such other regulatory body which may succeed or preplace it from time to time;
"Financial Model"³²	means the Franchisee's financial model in the agreed terms marked FM2 deposited with the Secretary of State on the date of the Franchise Agreement in accordance with Schedule 9.2 (Identity of the Financial Model etc.) as may be subsequently revised in accordance with Schedules 9.1 (Financial and Other Consequences of

³² 13 June 2019 (Date of DOA) – Contract variation agreed by the Secretary of State and Franchisee.

Change) and 9.2 (Identity of the Financial Model etc.);

"First Expenditure Franchisee Year"	has the meaning given to it in paragraph 2.9(a) of Schedule 7.2 (National Rail Passenger Surveys);
"First Profit Share Threshold"	has the meaning given to it in paragraph 3 of Schedule 8.1 (Franchise Payments);
"Flow"	has the meaning given to it in the Ticketing and Settlement Agreement;
"Force Majeure Event"	means any of the events described as such in paragraph 1 of Schedule 10.4 (Force Majeure) where the conditions specified in paragraph 2 of Schedule 10.4 (Force Majeure) are satisfied;
"Forecast Modified Revenue"	means, in relation to any Reporting Period, the items specified in the definition of Modified Revenue, as most recently forecast for that Reporting Period pursuant to paragraph 3.3 of Schedule 13 (Information and Industry Initiatives);
"Forecast Operating Costs"	means, in relation to any Reporting Period, the items specified in the definition of Actual Operating Costs, as most recently forecast for that Reporting Period pursuant to paragraph 3.3 of Schedule 13 (Information and Industry Initiatives);
"Forecast Passenger Demand"	<p>means the forecast by the Franchisee pursuant to paragraph 4.1(a) of Schedule 1.1 (Service Development) and paragraph 1.4 of Schedule 1.5 (Information about Passengers) in respect of:</p> <ul style="list-style-type: none"> (a) the number of passengers travelling in each class of accommodation: <ul style="list-style-type: none"> (i) on each Passenger Service; (ii) on each Route; and/or (iii) at any station or between any stations; and (b) the times of day, week or year at which passengers travel, <p>for the period in respect of which the next Timetable is to apply and for five years following the date of the forecast, even if such five year period extends beyond the Franchise Term;</p>

- "Franchise"** means the rights proposed by the Secretary of State in the request for proposal to operate railway passenger services over the routes prescribed in paragraph 2.2 of **Error! Not a valid result for table.** (Franchise Services);
- "Franchise Agreement"** means this Agreement and the Conditions Precedent Agreement which together constitute a single agreement which is a "franchise agreement" for the purposes of the Act;
- "Franchise Assets"** means the property, rights and liabilities designated as such pursuant to paragraph 1 of Schedule 14.4 (Designation of Franchise Assets) but excluding such property, rights or liabilities as shall, in accordance with the terms of the Franchise Agreement, cease to be so designated;
- "Franchise Documents"** means:
- (a) the Franchise Agreement;
 - (b) Service Level Commitment;
 - (c) Funding Deed;
 - (d) Collateral Agreement;
 - (e) Conditions Precedent Agreement;
 - (f) any agreement entered into by the Secretary of State in accordance with the Conditions Precedent Agreement; and
 - (g) any other agreements signed as part of the award of the Franchise as notified by the Secretary of State to the Franchisee as being required for publication;
- "Franchise Employee"** means:
- (a) any employee of the Franchisee from time to time; and
 - (b) any other person who is an employee of any of its Affiliates or is an employee of any party to whom the Franchise Services or services which are in support of or ancillary to the Franchise Services have been subcontracted (at any tier) or delegated by the Franchisee; and
 - (c) in the case of (a) or (b), whose contract of employment would (subject to the exercise of such person's right to

object to the transfer) be transferred to a Successor Operator following the expiry of the Franchise Period by virtue of the operation of Law (including the Transfer of Undertakings (Protection of Employment) Regulations 2006) or in respect of whom liabilities arising from a contract of employment or employment relationship may be so transferred;

"Franchisee Owned RV Asset"³³

means each of the assets listed in Column 1 of table 1 set out in Appendix 2 to Schedule 14.4 (Designation of Franchise Assets) which:

- (a) are not annotated in Column 8 of such table as Network Rail Fixture Assets; and**
- (b) are designated as Primary Franchise Assets in accordance with paragraph 2.1(i) of Schedule 14.4 (Designation of Franchise Assets) such that they can be transferred to a Successor Operator at the applicable value specified in Column 7 of table 1 in Appendix 2 to Schedule 14.4 (Designation of Franchise Assets) (as such value may be amended during the Franchise Term in accordance with the provisions of paragraphs 13.4 or 13.6);**

"Franchise Letting Process Agreement"

means the agreement so entitled dated 27 September 2013 between the Secretary of State and the Franchisee entered into by the Franchisee as part of its proposal to secure the provision and operation of the Franchise Services;

"Franchise Manager"

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

"Franchise Payment"

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

³³ 19/09/2017 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

"Franchise Performance Meeting"	means a meeting between the Secretary of State and the Franchisee to be held in accordance with paragraph 4 of Schedule 11 (Agreement Management Provisions);
"Franchise Period"	means the period commencing on the Start Date and ending on the Expiry Date or, if earlier, the date of termination of the Franchise Agreement pursuant to Clauses 4.2(b) or 4.3(b) of the Conditions Precedent Agreement or pursuant to Schedule 10 (Remedies, Termination and Expiry);
"Franchise Sections"	has the meaning given to it in paragraph 1 of Schedule 16 (Pensions);
"Franchise Services"	means such of the Passenger Services, the Light Maintenance Services, the Station Services and the Ancillary Services as the Franchisee may provide or operate from time to time, including any of such services as the Franchisee may delegate or subcontract or otherwise secure through any other person from time to time in accordance with the Franchise Agreement;
"Franchise Term"	means the period commencing on the Start Date and expiring on the Expiry Date;
"Franchisee Access Station"	means any station at which the Passenger Services call (other than any Station);
"Franchisee Accounting Year"³⁴	<p>means any period of 12 months during the Franchise Period, beginning on 1 April and ending on 31 March, except that:</p> <ul style="list-style-type: none"> (a) the first Franchisee Accounting Year may be for a period of less than 12 months and shall begin on the Start Date; (b) the ten Reporting Periods commencing on 1 April 2018 shall be a Franchisee Accounting Year; (c) the three Reporting Periods commencing on 6 January 2019 shall be a Franchise Accounting Year; (d) the three Reporting Periods commencing on 1 April 2019 shall

³⁴ 13 June 2019 (Date of DOA) - Contract variation agreed by the Secretary of State and Franchisee.

**be a Franchisee Accounting Year;
and**

- (e) **the last Franchisee Accounting Year shall begin on 23 June 2019 and shall end on the last day of the Franchise Period;**

"Franchisee Year"^{35 36}

means any period of 12 months during the Franchise Period, beginning on 1 April and ending on 31 March, except that:

- (a) **the first and last Franchisee Years may be for a period of less than 12 months and the first Franchisee Year shall begin on the Start Date and the last Franchisee Year shall end on the last day of the Franchise Period; and**
- (b) **(where the expression is used within and in relation to Schedules 8.1 (Franchise Payments), 8.2 (Annual Franchise Payments) and 9 (Changes) only but excluding where it is used in the definition of Half Franchisee Year) the following periods shall be deemed to be a Franchisee Year:**
- (i) **the period commencing on 6 January 2019 and ending on 31 March 2019;**
- (ii) **the period commencing on 1 April 2019 and ending on 22 June 2019;**
- (iii) **the period commencing on 23 June 2019 and ending on 9 November 2019; and**
- (iv) **the period commencing on 10 November 2019 and ending on the last day of the Franchise Period; and**

³⁵ 23 March 2018 (Date of DOA) – Contract variation agreed by the Secretary of State and Franchisee

³⁶ 13 June 2019 (Date of DOA) - Contract variation agreed by the Secretary of State and Franchisee.

- (c) **where the expression is used within and in relation to paragraph 2.7 of Schedule 4 (Persons with Disabilities and Disability Discrimination) and the definition of "Minor Works' Programme" at clause 2.1 of this Agreement only the following periods shall be deemed to be a Franchisee Year:**
- (i) **the period commencing on 23 June 2019 and ending on 9 November 2019; and**
 - (ii) **the period commencing on 10 November 2019 and ending on the last day of the Franchise Period;**

"Freedom of Information Act"

means the Freedom of Information Act 2000;

"Funding Deed"

means the deed made between the Secretary of State, the Franchisee and the Parent dated the date of the Franchise Agreement specifying arrangements relating to the funding for the Franchise by the Parent and giving rights to the Secretary of State in relation to such funding;

"Funding Deed Guarantee"

means the deed entered into between the Secretary of State and the Ultimate Parents on or about the date hereof under which the Ultimate Parents provide to the Secretary of State a joint and several guarantee in respect of the obligations of the Parent under the Funding Deed;

"GAAP"

means generally accepted accounting principles in the United Kingdom, as derived from and including the accounting requirements of the Companies Act 2006, 'Statements of Standard Accounting Practice', 'Financial Reporting Standards', abstracts issued by the Urgent Issues Task Force of the Accounting Standards Board and, where appropriate, International Financial Reporting Standards and the listing rules of the Financial Services Authority, in each case, as amended from time to time;

"Gateline Tablet"

shall have the meaning given to such term in paragraph 3.1 of Part 1 of Schedule 6.1 Committed Obligations;

"Gross Revenue"	means, in relation to any period and any Fare, the gross revenue to the Franchisee (or any relevant predecessor of the Franchisee) attributable to such Fare over the relevant period, excluding any applicable Value Added Tax, costs, commissions or other expenses which may be paid or incurred in connection with such Fare;
"Half Franchisee Year"³⁷	<p>means any period of six or seven Reporting Periods during the Franchisee Year as follows:</p> <p>(a) Reporting Periods one to six in any Franchisee Year beginning on 1 April; and</p> <p>(b) Reporting Periods seven to thirteen in any Franchisee Year,</p> <p>except that the first and last Half Franchisee Year may be for a period of less than six or seven Reporting Periods and the first Half Franchisee Year shall begin on the Start Date and the last Half Franchisee Year shall end on the last day of the Franchise Period;</p>
"Handover Package"	means a package containing the information and objects specified in the Appendix (Form of Handover Package) to Schedule 15.3 (Handover Package) and such other information and objects as the Secretary of State may reasonably specify from time to time;
"High Speed One" or "HS1"	means the High Speed One network;
"High Speed Domestic Services"	means Passenger Services which use the HS1 for some part of their route;
"High Speed DS Rolling Stock"	means those rolling stock vehicles used by the Franchisee to provide High Speed Domestic Services;
"Hot Standby"	<p>means any rolling stock vehicle specified in the Train Plan which:</p> <p>(a) is operationally ready to provide the Passenger Services in the Timetable;</p> <p>(b) is not already assigned to the delivery of any Passenger Service in the Timetable; and</p>

³⁷ 08/12/2016 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

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

"HS1 Fare"

means a Fare for a journey where all or part of the journey is undertaken between St. Pancras and Stratford International, Ashford International, Ashford International or Ebbsfleet International;

"HS1 Limited"³⁸

means High Speed One (HS1) Limited, a company registered in England with registered number 06045862 whose registered office is at 5th Floor, Kings Place, 90 York Way, London N1 9AG;

"HY On-Train Wi-Fi Solution Balancing Amount"³⁹

means an amount determined pursuant to the formula in respect of "HYOTWSPBar" at paragraph 4.1 of Schedule 8.1 (Franchise Payments);

"HY On-Train Wi-Fi Solution Balancing Amount Date"⁴⁰

means:

- (a) **in the case of any HY On-Train Wi-Fi Solution Balancing Amount determined pursuant to paragraph 4.2 of Schedule 8.1 (Franchise Payments) the first Payment Date falling no less than seven days after that determination; or**
- (b) **in the case of any HY On-Train Wi-Fi Solution Balancing Amount falling due in respect of the final Half Franchisee Year and which has not been made during the Franchise Period, the date determined in accordance with paragraph 4.4 of Schedule 8.1 (Franchise Payments);**

"Improvement Plan"

has the meaning given to it in paragraph 2.22 of Schedule 7.1 (Performance Benchmarks);

³⁸ 23 March 2018 (Date of DOA) – Contract variation agreed by the Secretary of State and Franchisee

³⁹ 08/12/2016 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

⁴⁰ 08/12/2016 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

"Improvement Plan Performance Level"	means, in relation to a Benchmark for any Reporting Period, the number set out in column 3 of the Benchmark Table relating to that Benchmark and in the row of that table for that Reporting Period;
"Incremental Output Statement Charge"	means the charge to which that description is commonly given, first introduced into Relevant Agreements in April 2001;
"Independent Station"	has the meaning given to it in paragraph 4.7 of Schedule 8.4 (Track Access Adjustments and Station Charge Adjustments);
"Independent Station Access Conditions"	has the meaning given to it in the Access Agreement to which it relates;
"Individual Station Charge Adjustment"	has the meaning given to it in paragraph 4 of Schedule 8.4 (Track Access Adjustments and Station Charge Adjustments);
"Industrial Action"	has the meaning given to it in paragraph 1.2(f) of Schedule 10.4 (Force Majeure);
"Industry Schemes"	has meaning given to it in paragraph 10 of Schedule 13 (Information and Industry Initiatives);
"Infrastructure Manager"	means Network Rail in relation to the National Rail Network and, in relation to HS1, HS1 Limited;
"Infrastructure Manager Cancellation"	<p>means a Passenger Service:</p> <ul style="list-style-type: none"> (a) which is included in the Enforcement Plan of the Day and which is cancelled; or (b) which is included in the Enforcement Plan of the Day and which operates less than 50 per cent. of its scheduled mileage (as prescribed in the Enforcement Plan of the Day), <p>in either case in circumstances where responsibility for the same is attributed to the relevant Infrastructure Manager pursuant to the Track Access Agreement;</p>
"Infrastructure Manager Partial Cancellation"	<p>means a Passenger Service which is included in the Enforcement Plan of the Day and which:</p> <ul style="list-style-type: none"> (a) misses a stop; (b) completes 50 per cent. or more, but less than 100 per cent. of its scheduled

journey as prescribed in the Enforcement Plan of the Day; or

in circumstances where responsibility for the same is attributed to the relevant Infrastructure Manager pursuant to the Track Access Agreement;

- "Initial Business Plan"** means the business plan to be provided by the Franchisee to the Secretary of State as described in paragraph 2.1 of Schedule 13 (Information and Industry Initiatives);
- "Initial Dataset"** has the meaning given in paragraph 19.1 of Schedule 13 (Information and Industry Initiatives);
- "Initial Permanent Fare"** has the meaning given to it in the Ticketing and Settlement Agreement;
- "Initial Period"** has the meaning given to it in paragraph 7.5 of 9.1 (Financial and Other Consequences of Change);
- "Integrated Transport Schemes"** means those schemes which relate to the integration of any form of transport with the Franchise Services;
- "Intellectual Property Rights"⁴¹** means any patent, know-how, trade mark or name, service mark, design right (in each case whether registered or unregistered), copyright, rights in passing off, database right, rights in commercial or technical information, any other rights in any invention, discovery or process and any other intellectual property rights, whether registered or unregistered and including applications for the grant of any such rights and all rights or forms of protection having equivalent or similar effect in each case in the United Kingdom and anywhere else in the world;
- "Interest Rate"** means a rate equivalent to two per cent per annum above the base lending rate published by Royal Bank of Scotland plc (or such other bank as the Secretary of State may, after consultation with the Franchisee, determine from time to time) during any period in which an amount payable under the Franchise Agreement remains unpaid;
- "Inter-Operator Schemes"** means:

⁴¹ 06/12/2017 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

- (a) each of the following schemes which relate to arrangements between the Franchisee and other participants in the railway industry:
- (i) ATOC Staff Travel Scheme dated 23 July 1995 between the participants named therein;
 - (ii) Ticketing and Settlement Agreement;
 - (iii) ATOC LRT Scheme dated 23 July 1995 between the participants named therein;
 - (iv) Travelcard Agreement dated 15 October 1995 between London Regional transport and the parties named therein;
 - (v) Through Ticketing (Non Travelcard) between London Regional transport and the parties named therein;
 - (vi) National Rail Enquiry Scheme dated 11 June 1996 between the participants named therein; and
 - (vii) the Pay As You Go Agreement;
 - (viii) ⁴²**any scheme, agreement and/or contract, introduced on or about 1 September 2019, to enable 16 and 17 year olds to obtain a Child Price in respect of any Fare; and**
- b) any other scheme, agreement and/or contract of a similar or equivalent nature as may from time to time during the Franchise Period amend, replace or substitute, in whole or in part, any of such schemes, agreements and/or contracts; and
- (c) any Discount Fare Scheme;

⁴² 2 October 2019 (Date of DOA) – Contract variation agreed by the Secretary of State and Franchisee.

"IOP"	means ITSO on Prestige;
"IOP Acceptance Date"	means the date that IOP is accepted under the provisions of the IOP Agreement;
"IOP Agreement"	means an agreement between the Secretary of State and Transport for London for the acceptance of ITSO Certified Smartmedia;
"IOP London Products"	means ITSO products equivalent to products currently accepted, retailed or fulfilled under the Travelcard Agreement and the Through Ticketing (Non-Travelcard) Agreement;
"ITSO"	means (as the context may require) both: <ul style="list-style-type: none">(a) the non profit distributing organisation run by its members for the benefit of members and users of smartcards, supported by the Department for Transport (DfT); and(b) the common specification it has created to enable the use of interoperable smartcards in transport and other areas;
"ITSO Equipment"	means all of the equipment and services required to be provided for the purposes of a smartmedia flexible ticketing schme;
"ITSO Certified Smartmedia"	means the contactless smartcards, devices or other information with the monetary or other value encoded which have been fully certified by ITSO;
"ITSO Host Operating or Processing System" or "HOPS"	means an ITSO Host Operating or Processing System which has been certified compliant with ITSO version 2.1.4;
"ITSO Certified Smartmedia"	means the contactless smartcards, devices or other media designed to hold fare and travel information with the monetary or other value encoded and which have been fully certified by ITSO;

"Joint Performance Improvement Plan"

has the meaning given to it in the Network Code;

"Journey Rate"⁴³

means no less than:

- (a) for an Annual Season Ticket: 1/464 x total ticket price;**
- (b) for a Quarterly Season Ticket: 1/120 x total ticket price;**
- (c) for a Monthly Season Ticket: 1/40 x total ticket price; and**
- (d) for a Weekly Season Ticket: 1/10 x total ticket price;**

"Key Contacts List"

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

"Key Contract"

means:

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

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

"Key Personnel"

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

⁴³ 13 June 2019 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

"Last Franchisee Accounting Year"⁴⁴	means the Franchisee Accounting Year that begins on 23 June 2019 and ends on the last day of the Franchise Period;
"Law"	includes any enactment, subordinate legislation, rule, regulation, order, directive or other provision, including those of the European Community, and any judicial or administrative interpretation or application thereof, which has, in each case, the force of law in the United Kingdom or any part of it (including the Act, the Transport Act, the Transport Safety Act 2003 and the Railways Act 2005);
"LBCP End Date"	shall have the meaning given to such term in paragraph 1.1 of Schedule 8.5 (London Bridge and Other Potential Payment Adjustments);
"LBCP Start Date"	shall have the meaning given to such term in paragraph 1.1 of Schedule 8.5 (London Bridge and Other Potential Payment Adjustments);
"Lead Operator"	has the meaning given to it in the Ticketing and Settlement Agreement;
"Legislation"	means any enactment or subordinate legislation, rule, regulation, order, directive or other provision including those of the European Community, which has, in each case, the force of Law in the United Kingdom or any part of it, but excluding any order under Section 1 of the Transport and Works Act 1992;
"Licences"	means such licences and/or statements of national regulatory provisions granted or to be granted under applicable law as the Franchisee may be required from time to time to hold under the Act or under the Railway (Licensing of Railway Undertakings) Regulations 2005 in order to provide or operate the Franchise Services;
"Light Maintenance Service"	means any service specified in paragraph 4 of Error! Not a valid result for table. (Franchise Services) which may be provided by the Franchisee at the Depots and Stations;
"Local Authority"	means: <ul style="list-style-type: none"> (a) in England, a county council, a district council, a unitary authority, a passenger transport executive, a combined authority, a London borough council, the common council of the City of London, or a council which is

⁴⁴ 13 June 2019 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

established under the Local Government Act 1992 and which is either an authority responsible for expenditure on public passenger transport services within the meaning of Section 88 of the Transport Act 1985 or a local authority for the purposes of Section 93 of the Transport Act 1985;

- (b) in Wales, a county council, a district council or a council which is established under the Local Government Act 1972 or the Local Government (Wales) Act 1994;
- (c) in Scotland, the Strathclyde Passenger Transport Executive, or a district council or a unitary authority which is established under the Local Government (Scotland) Act 1973 or the Local Government, etc. (Scotland) Act 1994;
- (d) in London, the Mayor of London and Transport for London established under the Greater London Authority Act 1999;
- (e) any other body or council replacing any of the above from time to time; and
- (f) any other body or instrument of local or regional government specified by the Secretary of State from time to time;

"Lock-up Period"

has the meaning given to it in paragraph 3.2 of Schedule 12 (Financial Obligations and Covenants);

"London Bridge Communications Plan"

means the Communications Plan as defined in, and produced pursuant to, the London Bridge Compensation Agreement;

"London Bridge Compensation Agreement"

means the agreement entered into between the Franchisee and Network Rail in respect of some of the impacts on the Franchisee of infrastructure works undertaken by Network Rail at London Bridge Station, dated on or about the date of this Agreement;

"London Underground"

means London Underground Limited (company number 01900907) whose registered office is at Windsor House, 42-50 Victoria Street, London SW1H 0TL;

"London Station"	means any station served by the Railway Passenger Services in the Zones and any Zone to or from which a passenger may travel from or to such station;
"London Terminals"	has the meaning given to it in paragraph 7.3(d) of Schedule 8.5 (London Bridge and Other Potential Payment Adjustments);
"Major Flow Operator"	has the meaning given to it in the Ticketing and Settlement Agreement;
"Managed Station"	means Cannon Street, Charing Cross, London Bridge, Victoria, St Pancras International, Stratford International, Ebbsfleet International and Ashford International or any other station used in connection with the provision of the Franchise Services where the Infrastructure Manager becomes the Facility Owner during the Franchise Period;
"Managed Station Area"	means the premises comprising part or parts of a Managed Station to be occupied by the Franchisee on or after the Start Date and to be used for or in connection with the provision of the Franchise Services;
"Managed Station Area Lease"	<ul style="list-style-type: none"> (a) any lease of a Managed Station Area that the Franchisee is a party to at the Start Date; (b) a lease of any other Managed Station Area to which the Franchisee becomes party to during the Franchise Period;
"Management Accounts"	<p>means, in relation to any Reporting Period, the Franchisee's management accounts which:</p> <ul style="list-style-type: none"> (a) comply with paragraph 3.10 of Schedule 13 (Information and Industry Initiatives); and (b) are required to be delivered to the Secretary of State by the Franchisee in accordance with paragraphs 3.2 and 3.3 of Schedule 13 (Information and Industry Initiatives);
"Mandatory Modification"	means a modification or addition to any rolling stock vehicle which is required to be made under any applicable Law or any directive of the Rail Safety and Standards Board Limited or any government authority;
"Marks"	means such trade marks as the Franchisee may apply to any Primary Franchise Asset or other asset used by it under a Key Contract, which are

applied on the expiry of the Franchise Period and are not the subject of a Brand Licence;

"Minor Works"

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

"Minor Works Budget"⁴⁵

means £300,000 for each Franchisee Year allocated by the Franchisee for the purpose of facilitating Minor Works at Stations to improve accessibility of the Stations to persons with disabilities, save that:

- (a) **subject to paragraphs (c) and (d), for any Franchisee Year which is shorter than 12 months, the amount shall be reduced pro rata;**
- (b) **subject to paragraphs (c) and (d), for each Franchisee Year after the first Franchisee Year, the amount shall be subject to adjustment as follows:**

Minor Works Budget x RPI

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

- (c) **the amount shall be nil for the period from 0159 on 1 April 2019 to 0159 on 23 June 2019; and**
- (d) **for each of:**
 - (i) **the period from 0159 on 23 June 2019 to 0159 on 9 November 2019 (inclusive); and**
 - (ii) **the period commencing on 10 November 2019 to 31 March 2020 (inclusive),**

the amount shall be:

£125,000 x RPI

⁴⁵ 13 June 2019 (Date of DOA) - Contract variation agreed by the Secretary of State and Franchisee.

where RPI has the meaning given to it in Schedule 8.2 (Annual Franchise Payments), and such amount shall be pro rated to the extent that such period is less than five (5) Reporting Periods;

- "Minor Works' Programme"** means the Franchisee's programme of Minor Works at Stations to improve accessibility of the Stations to persons with disabilities, developed prior to the start of each Franchisee Year pursuant to paragraph 2.7(b) of Schedule 4 (Persons with Disabilities and Disability Discrimination);
- "Minutes Delay"** means the minutes of delay to the Passenger Services that are attributed to the Franchisee or the Infrastructure Manager (or in the case of HS1, any other relevant third party) (as the case may be) pursuant to the Track Access Agreement and disregarding any minutes of delay that are imputed to Passenger Services that were cancelled;
- "Model Changes"** has the meaning given in paragraph 4.3 of Schedule 9.1 (Financial and Other Consequences of Change);
- "Modified Revenue"** means:
- (a) the sum of:
 - (i) the Franchisee's total revenue for the period being reviewed as stated in its profit and loss account:
 - (A) including any amounts receivable from the Secretary of State, the Infrastructure Manager and any interest; but
 - (B) excluding the proportion of income recognised in the profit and loss account in relation to grants received in respect of capital expenditure; and
 - (ii) the opening cash balance for the period being reviewed, excluding:
 - (A) any cash held for the exclusive purpose of the

provision of the Performance Bond; and

(B) the amount equivalent to:

(1) any cash that is held pursuant to any restrictive terms under any agreement and that, consequently, cannot be used for general operating purposes;

(2) any cash capable of being drawn down but not actually received,

in both cases from an Affiliate pursuant to any loan or funding agreement or arrangements including the Funding Deed; and

(C) the amount of the opening season ticket liabilities which relate to Passenger Services yet to be delivered; and

(b) either:

(i) plus any reduction in total debtors over that period; or

(ii) less any increase in total debtors over that period,

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

"MOIRA"

means the model in the agreed terms which comprises the timetable/revenue tool used to provide inputs into the revenue model;

"Monthly Season Ticket"

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

"Morning Peak"

means, in relation to any Passenger Service other than High Speed Domestic Services, the period between 0700 and 0959 (inclusive)

during a Weekday or such other continuous morning three hour period as the Secretary of State may specify from time to time and, in the case of High Speed Domestic Services, the period between 0700 and 0859, or such continuous morning two hour period as the Secretary of State may specify from time to time;

- "Moving Annual Average"** has the meaning given to it in Paragraph 19.9 of Schedule 13 (Information and Industry Initiatives);
- "National Rail Passenger Survey"** means a passenger satisfaction survey in respect of the Franchise Services to be carried out by the Passengers' Council as described in paragraph 1 of Schedule 7.2 (National Rail Passenger Surveys) and carried out in respect of each train operating company within each NRPS Service TOC Category;
- "National Rail Enquiry Scheme"** means the telephone information scheme run by ATOC, providing information to callers regarding rail journeys throughout the country;
- "National Rail Network"** means the Network in respect of which Network Rail is the Facility Owner and which is situated in England, Wales and Scotland;
- "National Rail Timetable"** means the passenger timetable published by Network Rail (currently twice per annum) specifying the timings and stopping patterns of all passenger railway services in Great Britain, including the High Speed Domestic Services;
- "Network"** means:
 (a) any railway line, or combination of two or more railway lines, and
 (b) any installations associated with any of the track comprised in that line or those lines,
 together constituting a system of track and other installations which is used for and in connection with the support, guidance and operation of trains;
- "Network Agreements"** has the meaning given to it in paragraph 3.2 of the Appendix (Conditions Precedent) to the Conditions Precedent Agreement;
- "Network Change"** has the meaning given to it in the Network Code;
- "Network Code"** means the document known as the Network Code and formerly known as the Railtrack Track Access Conditions 1995 (as subsequently replaced or amended from time to time) or any

equivalent code or agreement and, in the case of HS1 Limited in respect of HS1, any equivalent code which applies to HS1;

"Network Rail"

means in respect of:

- (a) the network or any relevant facility (other than HS1):
 - (i) Network Rail Infrastructure Limited, a company registered in England with registered number 02904587 whose registered office is at Kings Place, 90 York Way, London N1 9AG; and
 - (ii) any successor in title to the network or any relevant railway facility; or
- (b) any new or other sections of network or any relevant new or other railway facilities, the owner (if different);

"Network Rail Fixture Asset"⁴⁶

means a tangible asset annotated as such in Column 8 of table 1 in Appendix 2 to Schedule 14.4 (Designation of Franchise Assets) which is:

- (a) **funded by the Franchisee and affixed to a Station or Depot (as the case may be) such that it is regarded as a fixture to and part of such Station or Depot (as the case may be); and**
- (b) **designated as a Primary Franchise Assets in accordance with paragraph 2.1(i) of Schedule 14.4 such that it can be transferred as the unencumbered property of the Franchisee to a Successor Operator at the applicable value specified in Column 7 of table 1 in Appendix 2 to Schedule 14.4 (as such value may be amended during the Franchise Term in accordance with the provisions of paragraphs 13.4 or 13.6);**

"Networker Fleet"

shall have the meaning given to such term in paragraph 1.6 (a) (ii) (B) of Schedule 1.5 (Information about Passengers);

"New Head Office"⁴⁷

shall have the meaning given to it in paragraph 28.1(a) of Part 1 of Schedule 6.1 (Committed Obligations and Related Provisions);

⁴⁶ 19/09/2017 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

"New Insurance Arrangements"

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

"New Results"

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

"New Station"

means:

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

"Non-Fares Basket Fare"

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

"NRPS Benchmark"

means in relation to any Franchisee Year, each of the benchmarks relating to each NRPS Measure in respect of each NRPS Service Group as set out in the relevant columns of the NRPS Benchmark Table;

"NRPS Benchmark Table"

means the table set out in Appendix 1 (NRPS Benchmark Table) of Schedule 7.2 (National Rail Passenger Surveys);

⁴⁷ 13 June 2019 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

"NRPS Measure"	means each of the Stations Services NRPS Measure, Train Criteria NRPS Measure and Customer Service and Information NRPS Measure;
"NRPS Service Group"	means each of <ul style="list-style-type: none"> (a) Metro being journeys on Routes within London; (b) Mainline being journeys on main line routes from London to Kent; and (c) High Speed being journeys on HS1 to/from St Pancras International;
NRPS Service TOC Category	means: <ul style="list-style-type: none"> (a) in respect of limb (a) of the definition of NRPS Service Group, the categorisation used by the Passengers' Council entitled "NRPS Short Commute"; (b) in respect of limb (b) of the definition of NRPS Service Group, the categorisation used by the Passengers' Council entitled "NRPS Long Commute"; and (c) in respect of limb (c) of the definition of NRPS Service Group, the categorisation used by the Passengers' Council entitled "NRPS High Speed"; <p>as such categories may be updated from time to time by the Passengers' Council;</p>
"Off-Peak"	means, in relation to any Passenger Service, the period of time outside of the Peak;
"Off-Peak Passenger Services"	means Passenger Services other than Peak Passenger Services;
"Old Results"	means in relation to any Change, the following as produced in accordance with Schedule 9.1 (Financial and Other Consequences of Change) by or following the Run of the Financial Model in respect of the immediately preceding Change (or, in relation to the first Change only, the following as at the date hereof: the values of "FXD", "VCRPI", "VCAWE", "PRPI" and "RRPI" to be specified for each Franchisee Year in the Appendix (Figures for Calculation of Annual Franchise Payments) to Schedule 8.2 (Annual Franchise Payments);
"One-Off Costs" and	means each of the one-off cost items and associated costs as set out in the table at

"One-Off Cost Items" ⁴⁸	Appendix 3 to Schedule 8.5 (London Bridge and Other Potential Payment Adjustments);
"On Train Wi-Fi Solution Payment" ⁴⁹	means in relation to any Reporting Period the adjustment to Franchise Payments determined pursuant to paragraph 4.1 of Schedule 8.1 (Franchise Payments);
"Operating Assets"	has the meaning given to it in paragraph 1.1 of Schedule 14.2 (Maintenance of Operating Assets);
"Operational Model"	<p>means the following models in the agreed terms marked OM:</p> <ul style="list-style-type: none"> (a) the revenue model; (b) the performance model; (c) all cost models; and (d) any other relevant models that have generated input to the Financial Model;
"ORR" ⁵⁰	means the Office of Rail and Road established by Section 15 of the Railways and Transport Safety Act 2003 and having duties and obligations as set out in the Act;
"Parent"	means Govia Limited (Company Number 03278419) whose registered office is at 3rd Floor, 41-51 Grey Street, Newcastle upon Tyne NE1 6EE;
"Partial Cancellation"	<p>means a Passenger Service which is included in the Plan of the Day and which Passenger Service:</p> <ul style="list-style-type: none"> (a) misses a stop; or (b) completes 50 per cent. or more, but less than 100 per cent. of its scheduled journey;
	in each case, for reasons which are attributed to the Franchisee pursuant to its Track Access Agreement;
"Participating Employer"	has the meaning given to it in the Pension Trust;

⁴⁸ 08/09/2017 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

⁴⁹ 08/12/2016 (Date of DOA) – Contract variation agreed by the Secretary of State and Franchisee.

⁵⁰ 23 March 2018 (Date of DOA) – Contract variation agreed by the Secretary of State and Franchisee

"Passenger Carrying Capacity"	means, in relation to a Passenger Service, the capacity of the rolling stock vehicles (as stated in Schedule 1.7 (The Train Fleet)) from which the Passenger Service is formed;
"Passenger Change Date"	means a date upon which significant changes may be made to the Timetable in accordance with or by virtue of the Network Code;
"Passenger Journeys"	means travel by a passenger from the station where such passenger joins the Passenger Services to the station where such passenger exits the Passenger Services as derived from 'Lennon' or such other industry systems as the Secretary of State may from time to time reasonably determine;
"Passenger Services"	means the Franchisee's railway passenger services as specified in any Timetable and/or Plan of the Day including those railway passenger services which the Franchisee may delegate or subcontract or otherwise secure through any other person from time to time in accordance with the Franchise Agreement;
"Passenger's Charter"	means the Franchisee's service commitments to its passengers in the agreed terms marked PC , as amended or replaced from time to time with the prior written consent of the Secretary of State in accordance with paragraph 4 of Schedule 1.4 (Passenger Facing Obligations);
"Passenger's Charter Guidance"⁵¹	means the document called "Guidance on Passenger's Charter compensation for LSER", dated 7 June 2019 and provided by the Secretary of State;
"Passengers' Council"	means the passengers' council established under Section 19 of the Railways Act 2005;
"Pay As You Go Agreement"	means an agreement dated 16 October 2009 between Transport Trading Limited and train operators operating in London enabling joint ticketing and the acceptance of each other's tickets using smartmedia technology under the name "Pay as You Go";

⁵¹ 13 June 2019 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

"PAYG Peak Fare"	means a Fare which is a Permanent Fare and which entitles the purchaser to make a single journey under the Pay As You Go Agreement in Standard Class Accommodation between and within the PAYG Zones for which the fare is valid, at any time;
"PAYG Off-Peak Fare"	means a Fare which is a Permanent Fare and which entitles the purchaser to make a single journey under the Pay As You Go Agreement in Standard Class Accommodation between and within the PAYG Zones for which the fare is valid, at any time on Saturdays and Sundays and at such times as the Franchisee may designate on Mondays to Fridays (where such Fare need not be valid between 6.30am and 9.30am or between 4.00pm and 7.00pm but must be valid at all other times) and which may take into account the different directions of travel;
"PAYG Zone"	shall have the same meaning as "Zone" with the addition of the following stations: Rickmansworth; Carpenders Park; Chorleywood; Chalfont and Latimer; Amersham; Bushey; Watford Junction; and Watford High Street but excludes Stratford International Station;
"Payment Date"	means the date for the payment of Franchise Payments in accordance with paragraph 2.3 of Schedule 8.1 (Franchise Payments);
"Peak"	means the Morning Peak and the Evening Peak;
"Peak Passenger Service"	means any Passenger Service which is operated within the Peak;
"Pension Trust"	means the pension trust governing the Railways Pension Scheme;
"Pensions Committee"	has the meaning given to it in the Railways Pension Scheme;

"Percentage Allocation"	has the meaning given to such term under the Ticketing and Settlement Agreement;
"Performance Bond"	means the performance bond to be provided to the Secretary of State in the form set out in Appendix 1 (Form of Performance Bond) to Schedule 12 (Financial Obligations and Covenants), as replaced or amended from time to time in accordance with Schedule 12 (Financial Obligations and Covenants);
"Performance Calculation Year"	means: <ul style="list-style-type: none"> (a) the period of 13 Reporting Periods starting on the Start Date (that day inclusive); or (b) each subsequent and non-overlapping period of 13 Reporting Periods during the Franchise Period commencing the day after the last day of the preceding Performance Calculation Year, <p>provided that the last such period may be shorter than 13 Reporting Periods and shall end on the last day of the Franchise Period;</p>
"Performance Sum Adjustment Date"	means in the case of each Cancellations Performance Sum or TOC Minute Delay Performance Sum determined pursuant to paragraph 3 of Schedule 7.1 (Performance Benchmarks) and payable by the Secretary of State, the first Payment Date falling no less than seven days after that determination;
"Period of Sustained Poor Performance"	means any 28 day period during which passengers are entitled to claim compensation under the Passenger's Charter following a delay to their journey of more than 30 minutes, in respect of 12 or more days;
"Permanent Fare"	has the meaning given to it in the Ticketing and Settlement Agreement;
"Permitted Aggregate Increase"	has the meaning given to it in paragraph 4.2 of Schedule 5.4 (Regulation of Fares Basket Values);
"Permitted Individual Increase"	has the meaning given to it in paragraph 2.2 of Schedule 5.5 (Regulation of Individual Fares);
"Personal Data"	has the same meaning as in the Data Protection Act and includes Sensitive Personal Data as defined therein;

"Personal Data Legislation" has the meaning given to it in paragraph 5 of **Error! Not a valid result for table.** (Information about Passengers);

"Placed in Escrow" means:

- (a) in respect of the Financial Model, delivery of the Financial Model:
 - (i) dated the date of the Franchise Agreement; and
 - (ii) adjusted to the extent necessary to reflect any time elapsed between the actual Start Date and the date assumed to be the Start Date in the Initial Business Plan; and

audited following a Run of the Financial Model and updated with any Revised Inputs; and
- (b) in respect of the Operational Model, delivery of:
 - (i) the Operational Model dated the date of the Franchise Agreement;
 - (ii) the Operational Model adjusted to the extent necessary to reflect any time elapsed between the actual Start Date and the date assumed to be the Start Date in the Initial Business Plan; and
- (c) the inputs to the Financial Model derived therefrom following an audit of a Run of the Financial Model; and
- (d) in respect of the Record of Assumptions, delivery thereof;

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

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

"PO2 Assets" ⁵²	means (if Priced Option 2 is called or deemed to have been called) any assets purchased by the Franchisee as a result of Priced Option 2 up to the aggregate capital sum of [REDACTED⁵³] specified in paragraph 30.3 of Schedule 6.1 (Committed Obligations and Related Provisions) to the Franchise Agreement;
"Power of Attorney"	means the power of attorney granted by the Franchisee in favour of the Secretary of State in the agreed terms marked POA ;
"Preceding 13 Reporting Periods"	has the meaning given to it in paragraph 2.1(c) of Schedule 12 (Financial Obligations and Covenants);
"Preceding Year Ticket Price"	has the meaning given to it in paragraph 2.1 of Schedule 5.5 (Regulation of Individual Fares);
"Previous Franchise Agreement"	means any franchise agreement under which services equivalent to the Franchise Services (or a material proportion thereof) were provided by a Train Operator on or about the day prior to the Start Date;
"Previous Passenger Services"	means: <ul style="list-style-type: none"> (a) any railway passenger services operated under a Previous Franchise Agreement that is the same or substantially the same as any Passenger Service in terms of departure and arrival times and stopping patterns; and (b) if no such railway passenger service is found under paragraph (a) such other railway passenger services operated under a Previous Franchise Agreement which is similar in terms of departure and arrival times and stopping patterns to the Passenger Services as the Secretary of State may reasonably determine;
"Previous Performance Level"	means the level of performance actually achieved in relation to the Previous Passenger Services;
"Price"	means, in respect of any Fare, the price of such Fare before the deduction of any applicable

⁵² 13 June 2019 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

⁵³ **5 August 2019 (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.**

discount to which a purchaser may be entitled, as notified to RSP in accordance with Schedule 5 to the Ticketing and Settlement Agreement;

"Priced Option"

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

"Primary Franchise Assets"

means:

- (a) the property, rights and liabilities of the Franchisee listed in the Appendix (List of Primary Franchise Assets) to Schedule 14.4 (Designation of Franchise Assets); and
- (b) any other property, rights and liabilities of the Franchisee which is or are designated as such pursuant to Schedule 14.4 (Designation of Franchise Assets),

but excluding such property, rights or liabilities as may, in accordance with the terms of the Franchise Agreement, cease to be so designated;

"Prior Train Operator"

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

"PRM Modifications"

shall have the meaning given to such term in paragraph 12.1 of Part 1 of Schedule 6.1 (Committed Obligations);

"PRM Rolling Stock"

shall have the meaning given to such term in paragraph 12.1 of Part 1 of Schedule 6.1 (Committed Obligations);

"Process"

has the same meaning as in the Data Protection Act 1998;

"profit"

means profit before corporation tax, determined in accordance with GAAP;

"Projected Revenue"

means the revenue in any Fare Year which is projected to be attributable to any Fare, determined in accordance with paragraph 3 of Schedule 5.4 (Regulation of Fares Basket Values);

"Promoter"

means the Local Authority or other third party which is promoting a relevant Priced Option;

"Property Lease"

means any Depot Lease, Managed Station Area Lease, any lease in respect of Shared Facilities

or Station Lease and any agreement or lease of a similar or equivalent nature (whether in respect of any such facility or otherwise) which the Franchisee may enter into with a person who has an interest in a network or a railway facility which is to be used for or in connection with the provision or operation of the Franchise Services;

"Protected Fare"

means a Protected Return Fare or a Protected Weekly Season Ticket or a HS1 Fare;

"Protected Fares Basket"

means the grouping of Protected Fares:

- (a) determined by the Secretary of State pursuant to Schedule 5.3 (Allocation of Fares to Fares Baskets);
- (b) for the purposes of regulating their aggregate Prices or Child Prices, as the case may be, in accordance with Schedule 5.4 (Regulation of Fares Basket Values);
- (c) amended by the Secretary of State from time to time in accordance with Schedule 5.7 (Changes to Fares and Fares Regulation); and
- (d) set out in the Protected Fares Document;

"Protected Fares Document"

means the document in the agreed terms marked **PF**, as the same may be amended from time to time in accordance with Schedule 5.7 (Changes to Fares and Fares Regulation);

"Protected Proposal"

has the meaning given to it in paragraph 1.8 of Schedule 9.5 (Variations and Incentivising Beneficial Changes);

"Protected Return Fare"

means in respect of a Fare for a Flow:

- (a) for which there was a Saver Return Fare in February 2003, a Return Fare for each such Flow in respect of which the Franchisee is entitled or obliged from time to time to set the Price or Child Price under the Ticketing and Settlement Agreement, subject to the following additional rights and restrictions:
 - (i) it shall be valid for no less than one month;

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

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

"Protected Weekly Season Ticket"

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

"Public Sector Operator"

means any person (other than a franchisee or franchise operator in relation to the services provided or operated under its franchise agreement) who provides railway passenger services or operates any station or light maintenance depot pursuant to or under Section 30 of the Act or Section 6 of the Railways Act 2005;

"PVA"	shall have the meaning given to such term in paragraph 19.1(a) of Part 1 of Schedule 6.1 (Committed Obligations);
"Q Movements"⁵⁴	<i>shall have the meaning given to such term in paragraph 8.2 of Schedule 8.5 (London Bridge and Other Potential Payment Adjustments);</i>
"Qualifying Change"	means a Change which: <ul style="list-style-type: none"> (a) following a Run of the Financial Model in accordance with Schedule 9 (Changes) results in adjustments in Franchise Payments over the remaining life of the Franchise Agreement that have a net present value as at the date of the Change in excess of the Threshold Amount for the Franchisee Year during which the relevant Change arises. For the purposes of ascertaining a net present value of the amount of any adjustment in any Franchise Payment, the amount of the adjustment shall be discounted at the prevailing discount rate per annum (in real terms) stated in HM Treasury's "Green Book Appraisal Guidelines", counting back from the date of receipt of that adjusted Franchise Payment to the date of the Change. As at the date of the Franchise Agreement that rate is 3.5 per cent; or (b) the Franchise Agreement expressly provides shall be a Qualifying Change;
"Quarterly Season Ticket"	means a Season Ticket Fare which is valid in Standard Class Accommodation from (and including) the day it first comes into effect until (but excluding) the day which falls three months after such day;
"Rail for London"	means Rail for London Limited (registered number 05965930) whose ultimate holding company is Transport for London;
"Rail Safety and Standards Board"⁵⁵	means Rail Safety and Standards Board Limited, a company registered in England with registered number 04655675 whose registered office is at The Helicon, 1 South Place, London EC2M 2RB;

⁵⁴ Date of contract insertion 09/12/2016 – Agreed by the Secretary of State and Franchisee.

⁵⁵ 23 March 2018 (Date of DOA) – Contract variation agreed by the Secretary of State and Franchisee

"Railway Group"	means the committee responsible for cross industry co-ordination in respect of rail safety legislation and industry safety standards chaired by the Rail Safety and Standards Board;
"Railway Operational Code"	has the meaning given to it in Condition H of the Network Code;
"Railway Passenger Services"	means, for the purposes of Schedule 5 (Fares) only, services for the carriage of passengers by railway which are provided by a person who is bound by the Ticketing and Settlement Agreement, or any part of it, and including the Franchisee and any other Train Operator from time to time;
"Railways Pension Scheme"	means the pension scheme established by the Railways Pension Scheme Order 1994 (No. 1433);
RDG⁵⁶	has the meaning given to it in paragraph 1 of Appendix 1 to Schedule 5.9 (ITSO Certified Smartmedia);
"Reconciliation Amount"	has the meaning given to it in paragraph 9.9 of Schedule 9.1 (Financial and Other Consequences of Change);
"Record of Assumptions"⁵⁷	<p>means a document in the agreed terms marked ROA2 prepared by the Franchisee or as may be revised in accordance with Schedule 9 (Changes)) and Placed in Escrow providing:</p> <ul style="list-style-type: none"> (a) detailed assumptions, explanations of assumptions and parameters underlying the Financial Model; (b) details of how Franchise Payments have been calculated (including by reference to a defined annual profit margin); (c) a description of the functionality, operation and structure of the Financial Model; and (d) a description of each input cell, its requirements and its inter-relationship with the Financial Model;

⁵⁶ 23 March 2018 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee

⁵⁷ 13 June 2019 (Date of DOA) – Contract variation agreed by the Secretary of State and Franchisee.

"Reference Fare"	has the meaning given to it in paragraph 6.1(a) of Schedule 5.7 (Changes to Fares and Fares Regulation);
"Reference Flow"	has the meaning given to it in paragraph 6.1(a) of Schedule 5.7 (Changes to Fares and Fares Regulation);
"Reference Revenue"	means the aggregate Gross Revenue recorded by RSP as attributable to sales of all Commuter Fares or Protected Fares for the period of 12 months which ended 31 March 2013 or such other reference period as the Secretary of State may require pursuant to paragraph 3.1(a) of Schedule 5.7 (Changes to Fares and Fares Regulation);
"Regulated Child Price"	means the Child Price that is permitted to be charged by the Franchisee in respect of any Fare in any Fare Year, determined in accordance with paragraph 2.1 of Schedule 5.5 (Regulation of Individual Fares);
"Regulated Price"	means the Price that is permitted to be charged by the Franchisee in respect of any Fare in any Fare Year, determined in accordance with paragraph 2.1 of Schedule 5.5 (Regulation of Individual Fares);
"Regulated Value"	means the Value of any Fares Basket that is permitted in any Fare Year, determined in accordance with paragraph 4.1 of Schedule 5.4 (Regulation of Fares Basket Values);
"Relevant Agreement"	means any Property Lease or Access Agreement in relation to any stations or network which may be used from time to time by the Franchisee in connection with the Franchise Services, as replaced or amended from time to time. If and to the extent that: <ul style="list-style-type: none">(a) following the effective date of any Charge Variation, the Franchisee enters into any Replacement Agreement;(b) the effect of that Charge Variation is reflected in the terms of the Replacement Agreement; and(c) the Secretary of State has consented to such Replacement Agreement being entered into and constituting a

Replacement Agreement for the purposes of this definition,

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

"Relevant Delay"	has the meaning given to it in paragraph 2.5 of Schedule 2.2 (Security of Access Agreements, Rolling Stock Leases, Station and Depot Leases);
"Relevant Profit"	has the meaning given to it in paragraph 3 of Schedule 8.1 (Franchise Payments);
"relevant Reporting Period"	has, for the purposes of paragraph 5.3 of Schedule 12 (Financial Obligations and Covenants) only, the meaning given to it in that paragraph;
"Relevant Rolling Stock"	has the meaning given to it in paragraph 2.5 of Schedule 2.2 (Security of Access Agreements, Rolling Stock Leases, Station and Depot Leases);
"Relevant Term"	has the meaning given to it in paragraph 1.2 of Schedule 10.1 (Remedial Plans and Remedial Agreements);
"Remedial Agreement"	has the meaning given to it in paragraph 1.5 of Schedule 10.1 (Remedial Plans and Remedial Agreements);
"Remedial Plan"	has the meaning given to it in paragraph 1.2 of Schedule 10.1 (Remedial Plans and Remedial Agreements);
"Remedial Plan Notice"	has the meaning given to it in paragraph 1.1 of Schedule 10.1 (Remedial Plans and Remedial Agreements);
"Renewable Energy Scheme"	shall have the meaning given to such term in paragraph 19.1 of Part 1 of Schedule 6.1 (Committed Obligations);
"Renewables Programme"	shall have the meaning given to such term in paragraph 19.2 of Part 1 of Schedule 6.1 (Committed Obligations);
"Replacement Agreement"	means an agreement entered into as a replacement for any Relevant Agreement;
"Replacement Copy"	has the meaning given to it in paragraph 2.2(b) of Schedule 9.2 (Identity of the Financial Model etc.);
"Reporting Period"	means:

- (a) for the purposes of the Season Ticket Bond, any consecutive seven-day period or any other period, each within a Reporting Period (as defined in paragraph (b)) agreed in accordance with paragraph 5.12 of Schedule 12 (Financial Obligations and Covenants); or
- (b) for all other purposes, a period of 28 days, provided that:
 - (i) the first such period during the Franchise Period shall exclude any days up to but not including the Start Date;
 - (ii) the first and last such period in any Reporting Year may be varied by up to seven days by notice from the Secretary of State to the Franchisee;
 - (iii) each such period shall start on the day following the last day of the preceding such period; and
 - (iv) the last such period during the Franchise Period shall end at the end of the Franchise Period;

"Reporting Year"	means a period normally commencing on 1 April in each calendar year, comprising 13 consecutive Reporting Periods;
"Request for Information"	means a request for information or an apparent request under the Freedom of Information Act or the Environmental Information Regulations;
"Request for Proposal"	means the Request for Proposal issued by the Secretary of State as part of the procurement process pursuant to which the Franchise Agreement was entered into;
"Required Improvement"	has the meaning given to it in paragraph 2.9 of Schedule 7.2 (National Rail Passenger Survey);
"Required Performance Improvement"	has the meaning given to it in paragraph 3.7 of Schedule 7.1 (Performance Benchmarks);
"Retail Prices Index"	means the retail prices index for the whole economy of the United Kingdom and for all items as published from time to time by the Office for National Statistics or, if such index shall cease to be published or there is, in the reasonable opinion of the Secretary of State, a material change in the basis of the index or if, at any

relevant time, there is a delay in the publication of the index, such other retail prices index as the Secretary of State may, after consultation with the Franchisee, determine to be appropriate in the circumstances;

"Return Fare"

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

"Review Date"

means:

- (a) 26 September 2014; or
- (b) such later date as may be notified to the Franchisee by the Secretary of State pursuant to clause 4.2 or clause 4.3 of the Conditions Precedent Agreement;

"Revised Inputs"

has the meaning given to it in paragraph 4.2 of Schedule 9.1 (Financial and Other Consequences of Change);

"Revised RV Asset Transfer Values"⁵⁸

means each of the RV Asset Transfer Values as adjusted by the Secretary of State in accordance with the provisions of paragraph 13.4 of Schedule 14.4 (Designation of Franchise Assets);

"Rolling Stock Lease"

means any agreement for the leasing of rolling stock vehicles to which the Franchisee is a party as at the Start Date and any agreement of a similar or equivalent nature (including, any agreement or arrangement for the subleasing, hiring, licensing or other use of rolling stock vehicles) to which the Franchisee is a party from time to time during the Franchise Term whether in addition to, or replacement or substitution for, in whole or in part, any such agreement;

"Rolling Stock Related Contract"

means any Rolling Stock Lease, Maintenance Contract or Technical Support Contract;

"Rolling Stock Unit"

means the smallest number of rolling stock vehicles which are normally comprised in a train used by the Franchisee in the provision of the Passenger Services;

⁵⁸ 19/09/2017 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

- "Route"** means any route specified in the Timetable which the Franchisee has permission to operate the Passenger Services over pursuant to any Track Access Agreement;
- "Route Efficiency Benefit Share Mechanism" or "REBS"** means the route-level efficiency benefit sharing mechanism introduced by the ORR in its determination for the control period commencing on 1 April 2014 or any similar arrangement under which the benefits of any outperformance (or downsides of failure to achieve efficiency targets) are to be shared between Network Rail and train operators at route level;
- "Route Utilisation Strategy"** means any route utilisation strategy or any document of a similar or equivalent nature notified to the Franchisee by the Infrastructure Manager on or before the Start Date or as developed by the Infrastructure Manager from time to time and notified to the Franchisee for the purposes of the Franchise Agreement;
- "RSP"** means Rail Settlement Plan Limited;
- "Run of the Financial Model"** means an operation of the Financial Model with the Revised Inputs and which complies with the requirements of Schedule 9.1 (Financial and Other Consequences of Change);
- "RV Asset"⁵⁹** **means:**
- (a) a Franchisee Owned RV Asset; or**
 - (b) a Network Rail Fixture Asset;**
- "RV Asset Transfer Values"⁶⁰** **means each of the transfer values relating to the RV Assets as specified in Column 7 of table 1 in Appendix 2 to Schedule 14.4 (Designation of Franchise Assets);**
- "Safety Authorisation"** means the authorisation(s) issued by the ORR under the Safety Regulations authorising the Franchisee's safety management system (as defined in those regulations) and the provisions adopted by the Franchisee to meet the requirements that are necessary to ensure safe design, maintenance and operation of the relevant infrastructure on the Routes (including HS1);

⁵⁹ 19/09/2017 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

⁶⁰ 19/09/2017 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

"Safety Certificate"	means the certificate(s) issued by the ORR under the Safety Regulations, certifying its acceptance of the Franchisee's safety management system (as defined in those regulations) and the provisions adopted by the Franchisee to meet the requirements that are necessary to ensure safe operation on the Routes (including HS1);
"Safety Regulations"	means The Railways and Other Guided Transport Systems (Safety) Regulations 2006;
"Saver Return Fare"	means a return fare which is shown as a saver fare in the fares manuals and systems of the RSP as at the date of such manuals;
"Season Ticket Bond"	means the season ticket bond to be provided to the Secretary of State in respect of the Franchisee's liabilities under certain Fares and Season Ticket Fares in the form set out in Appendix 2 (Form of the Season Ticket Bond) to Schedule 12 (Financial Obligations and Covenants) and such other bond as may replace it from time to time under Schedule 12 (Financial Obligations and Covenants);
"Season Ticket Fare"	means: <ul style="list-style-type: none"> (a) for the purposes of Schedule 12 (Financial Obligations and Covenants) and the definition of Season Ticket Bond only, a Fare which entitles the purchaser to make an unlimited number of journeys in any direction during the period for which, and between the stations and/or the zones for which, such Fare is valid; and (b) for all other purposes, a Fare which entitles the purchaser to make, without further restriction except as to class of accommodation, an unlimited number of journeys in any direction during the period for which, and between the stations and/or the zones for which, such Fare is valid;
"Second Profit Share Threshold"	has the meaning given to it in paragraph 3 of Schedule 8.1 (Franchise Payments);
"Secretary of State Risk Assumptions"	means those assumptions set out in Schedule 9.3 (Secretary of State Risk Assumption);
"Security Breach"	has the meaning given to it in paragraph 5.3(c)(i) of Error! Not a valid result for table. (Information about Passengers);

- "Security Interest"** means any mortgage, pledge, lien, hypothecation, security interest or other charge or encumbrance or any other agreement or arrangement having substantially the same economic effect;
- "SEFT Deed"** means any deed entered into with the Secretary of State in respect of the implementation of the SEFT Programme;
- "SEFT Programme"** means the programme for the roll out of smartcards in the South East of England including the procurement, installation and integration of certain equipment required for the purposes of facilitating the use of ITSO Certified Smartmedia in relation to the provision of the Franchise Services;
- "Service Group"** has the meaning given to it in the Track Access Agreement, or as specified by the Secretary of State from time to time;
- "Service Level Commitment"** means the service level commitment more particularly described in paragraph 1 of Schedule 1.1 (Service Development) as it may subsequently be amended or replaced in accordance with Schedule 1.1;
- "Service Recovery Plan"** means, in the event of a prevention or restriction of access to the track or a section of the track (howsoever caused) which results in any Cancellation, Partial Cancellation, and/or any Passenger Service being operated with less passenger carrying capacity than the passenger carrying capacity specified for such Passenger Service in the Train Plan, a plan implemented by the Franchisee:
- (a) to minimise the disruption arising from such prevention or restriction of access by operating, during such period of disruption, the best possible level of service given such disruption, including by:
 - (i) keeping service intervals to reasonable durations;
 - (ii) keeping extended journey times to reasonable durations; and
 - (iii) managing any resulting overcrowding;
 - (b) to:

- (i) return the level of service to that level specified in the Timetable as soon as reasonably practicable; and
- (ii) prior to the attainment of the level of service specified in paragraph (b)(i), operate any reduced level of service agreed with the Infrastructure Manager for the purpose of minimising such disruption pursuant to paragraph (a);
- (c) in accordance with the principles of service recovery set out in the ATOC "Approved Code of Practice: Contingency Planning for Train Service Recovery - Service Recovery 2009" or any document of a similar or equivalent nature; and
- (d) where the particulars of such plan in relation to the requirements of paragraphs (a) and (b) have been:
 - (i) agreed at an initial and, where required, subsequent telephone conference between the Franchisee, the Infrastructure Manager and any other affected Train Operator; and
 - (ii) on each occasion, recorded in an official control log by the relevant Region Control Manager of the Infrastructure Manager,

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

"SETML Payment"

shall have the meaning given to such term in paragraph 5 of Schedule 8.5 (London Bridge and Other Potential Payment Adjustments);

"Settlement Proposal"

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

"Shared Cost Arrangement"

has the meaning given to it in the Railways Pension Scheme;

"Shared Facilities"	means those facilities in respect of which the Franchisee and the Infrastructure Manager carry out their respective activities concurrently;																
"Single Fare"	means a Fare which entitles the purchaser to make, without further restrictions as to the time of day for which the Fare is valid, on any one day, one journey in Standard Class Accommodation between the stations and/or the zones for which the Fare is valid;																
"SLC (TDR) Amendment"	has the meaning given in paragraph 9.7 of Schedule 1.1 (Service Development);																
"Small and Medium-sized Enterprises ("SMEs")"	<p>means any individual micro, small or medium sized enterprise meeting the requirements set out in EU Recommendation 2003/36 and broadly falling into one of three categories, based on a combination of:</p> <p>(a) the number of employees; and</p> <p>(b) either its turnover or its balance sheet total.</p> <p>The three categories are:</p> <table border="1" style="margin-left: 40px;"> <thead> <tr> <th style="text-align: left;">Company category</th> <th style="text-align: left;">Employees</th> <th style="text-align: left;">Turnover <u>or</u></th> <th style="text-align: left;">Balance sheet total</th> </tr> </thead> <tbody> <tr> <td>Medium</td> <td><250</td> <td>≤ €50m</td> <td>≤ €43m</td> </tr> <tr> <td>Small</td> <td><50</td> <td>≤ €10m</td> <td>≤ €10m</td> </tr> <tr> <td>Micro</td> <td><10</td> <td>≤ €2m</td> <td>≤ €2m</td> </tr> </tbody> </table>	Company category	Employees	Turnover <u>or</u>	Balance sheet total	Medium	<250	≤ €50m	≤ €43m	Small	<50	≤ €10m	≤ €10m	Micro	<10	≤ €2m	≤ €2m
Company category	Employees	Turnover <u>or</u>	Balance sheet total														
Medium	<250	≤ €50m	≤ €43m														
Small	<50	≤ €10m	≤ €10m														
Micro	<10	≤ €2m	≤ €2m														
"Southern"	shall have the meaning given to such term in paragraph 5.10 (b) of Schedule 6.2 (South Eastern Franchise Specific Provisions);																
"Southern Trading Agreement"	means a train crew trading agreement (Southern buying) in respect of Tonbridge to Redhill services entered into between the Franchisee and Southern dated 12 December 2008;																
"Spares"	means parts and components of rolling stock vehicles which are available for the purpose of carrying out maintenance services on rolling stock vehicles;																
"Specifically Included Change of Law"	has the meaning given to it in the definition of Change of Law;																
"Stakeholder"	means the Passengers' Council and any relevant Local Authority and organisations who can reasonably be considered to have a legitimate and proper interest in the Passenger Services including Community Rail Partnerships																

representing Community Rail Routes designated as such by the Secretary of State;

"Standard Class Accommodation"

means, in respect of any train or service, accommodation which is available to the purchaser of any Fare which, taking into account any rights or restrictions relating to that Fare (other than restrictions relating to accommodation on that train or service), entitles such purchaser to make a journey on that train or service (provided that any accommodation on such train which may have been reserved by such purchaser shall be deemed to have been made so available if, had it not been so reserved, it would have been available for use by such purchaser);

"Staplehurst Car Parking Works Agreement"⁶¹

has the meaning given in paragraph 13.9 of Schedule 14.4 (Designation of Franchise Assets);

"Staplehurst Delivery Date"⁶²

has the meaning given in paragraph 22.1 of Part 1 of Schedule 6.1 (List of Committed Obligations);

"Staplehurst RV Asset"⁶³

means an asset to be delivered pursuant to paragraph 22 of Part 1 to Schedule 6.1 (List of Committed Obligations);

"Start Date"

means

- (a) the time and date stated in the Certificate of Commencement as being the time at and date on which the Franchisee is to commence operating the Franchise Services, which shall be 0200 on 12 October 2014; or
- (b) such later time and date as may be notified to the Franchisee by the Secretary of State pursuant to Clause 4.2 or Clause 4.3 of the Conditions Precedent Agreement;

"Station"

means:

- (a) any station in respect of which the Franchisee has entered into a Station Lease; or

⁶¹ 19/09/2017 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

⁶² 19/09/2017 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

⁶³ 19/09/2017 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

- (b) any New Station at which the Franchisee becomes the Facility Owner;

"Station Access Conditions" has the meaning given to it in the relevant Station Lease or Access Agreement (as the case may be) to which it relates;

"Station Charge Adjustment" means any adjustment to payments under an Access Agreement in relation to the National Rail Network determined in accordance with paragraph 4 of Schedule 8.4 (Track Access Adjustments and Station Charge Adjustments);

"Station Improvement Programme" shall have the meaning given to such term in paragraph 6.6 of Part 1 of Schedule 6.1 (Committed Obligations);

"Station Improvement Works" means any works and/or maintenance to improve the condition and appearance of the Stations including but not limited to:

- (a) the introduction of and/or refurbishment of waiting rooms, waiting shelters, booking halls and toilets;
- (b) the replacement of lighting;
- (c) painting;
- (d) the introduction of help points at Stations; and
- (e) general landscaping and vegetation clearance,

but excluding any works or maintenance which forms part of a brand refresh;

"Station Lease" means:

- (a) any lease of a station that the Franchisee is a party to as at the Start Date; or
- (b) a lease of any other station to which the Franchisee becomes the Facility Owner at any time during the Franchise Period;

"Station Service" means any service specified in paragraph 3 of **Error! Not a valid result for table.** (Franchise Services) which may be provided by the Franchisee at the Stations;

"Stations Services NRPS Measure"

means each of the follow factors measured by the Passengers' Council as part of the National Rail Passenger Survey (or such other factors as the Secretary of State and/or the Passengers' Council may determine from time to time):

- (a) "S1 Station – Overall satisfaction with the station";
- (b) "S2 Station – Ticket buying facilities";
- (c) "S3 Station – The upkeep/repair of the station buildings/platforms";
- (d) "S4 Station – Cleanliness of the station";
- (e) "S10 Station – Your personal security whilst using";

each separately a **"Stations Services NRPS Measure Factor"**;

"Stations Services NRPS Measure Factor"

shall have the meaning given to such term in the definition of "Stations Services NRPS Measure";

"Station Sublease"

means a lease or sub lease of premises comprising part or parts of a Station exclusively occupied by another Train Operator;

"STNR Contract"⁶⁴

means any of the contracts or arrangements (excluding any licences to be obtained as required by paragraph 3.1(b) of Appendix 1 of Schedule 5.9 (ITSO Certified Smartmedia) and the [REDACTED⁶⁵]) entered into or to be entered into, varied or supplemented by the Franchisee for the purposes of the implementation, operation and maintenance of the STNR System including each of the Franchisee's contracts with the following (as amended, varied or supplemented in accordance with paragraph 3.7):

[REDACTED⁶⁶]

⁶⁴ 06/12/2017 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

⁶⁵ 29/01/2018 (Date of Redactions Approval) – Where text has been omitted from the document this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

⁶⁶ 29/01/2018 (Date of Redactions Approval) – Where text has been omitted from the document this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

"STNR Project" ⁶⁷	has the meaning given to it in Appendix 1 of Schedule 5.9 (ITSO Certified Smartmedia);
"STNR System" ⁶⁸	has the meaning given to it Appendix 1 of Schedule 5.9 (ITSO Certified Smartmedia);
"Stored Credit Balance"	means any monetary amount held by the Franchisee which a passenger can apply at a future date to the purchase of a Fare (and stored in any medium);
"Suburban Station"	means any station which is not a London Station and which is listed below or which is closer to London than (and on the same line as) the following stations: Shoeburyness, Southend Victoria, Southminster, Marks Tey (excluding Sudbury branch), Audley End (but not including Stansted Airport), Ashwell & Morden, Arlesey, Harlington, Bletchley (excluding Bedford branch), Aylesbury, Haddenham & Thame Parkway, Twyford (including Henley branch), Earley, Fleet, Alton, Whitley, Christ's Hospital, Brighton (excluding Coastway), Windsor & Eton Riverside, East Grinstead, Crowborough, Wadhurst, Paddock Wood (including the line between Strood and Paddock Wood), Maidstone East, Canterbury East, Margate;
"Successor Operator"	means a Train Operator succeeding or intended by the Secretary of State to succeed (and whose identity is notified to the Franchisee by the Secretary of State) the Franchisee in the provision or operation of all or any of the Franchise Services including, where the context so admits, the Franchisee where it is to continue to provide or operate the Franchise Services following termination of the Franchise Agreement;
"Successor Operator Timetable"	has the meaning given to it in paragraph 8(a) of Schedule 14.1 (Maintenance of Franchise);
"Supplemental Agreement"	means a supplemental agreement between the Franchisee and a Successor Operator to be entered into pursuant to a Transfer Scheme, being substantially in the form of Appendix 2 (Form of Supplemental Agreement) to Schedule 15.4 (Provisions Applying on and after Termination), but subject to such amendments as the Secretary of State may reasonably make thereto as a result of any change of

⁶⁷ 06/12/2017 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

⁶⁸ 06/12/2017 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

circumstances (including any Change of Law) affecting such supplemental agreement between the date of the Franchise Agreement and the date on which the relevant Transfer Scheme is made and subject further to paragraph 3.2 of Schedule 15.4 (Provisions Applying on and after Termination);

"Survey" shall have the meaning given to such term in the Travelcard Agreement;

"Target Passenger Demand" means the higher of Actual Passenger Demand and Forecast Passenger Demand or any other level of passenger demand specified by the Secretary of State not being greater than the higher of Actual Passenger Demand or Forecast Passenger Demand;

"Taxation" means any kind of tax, duty, levy or other charge whether or not similar to any in force at the date of the Franchise Agreement and whether imposed by a local, governmental or other competent authority in the United Kingdom or elsewhere;

"Technical Support Contract" means a contract for technical support to which the Franchisee is a party, relating to the rolling stock vehicles used in the provision of the Passenger Services;

"Tendering/Reletting Process" means either of the processes described in paragraphs 1.1 and 1.2 of Schedule 15.1 (Reletting Provisions);

"Termination Event" has the meaning given to it in paragraph 3 of Schedule 10.3 (Events of Default and Termination Event);

"Termination Notice" means a notice from the Secretary of State to the Franchisee terminating the Franchise Agreement following an Event of Default or a Termination Event in accordance with Schedule 10.2 (Termination and Expiry);

"Thameslink KOO Trading Agreement" means in relation to the period of operation of the SLC1 only:

- (a) the operating hire agreement of 6 x Class 377 units entered into between the Franchisee and the FCC Franchisee dated 20 March 2009;
- (b) the train crew trading agreement (FCC Franchisee buying) entered into between the Franchisee and the FCC Franchisee dated 14 July 2008;

- (c) the train crew trading agreement (Franchisee buying) entered into between the Franchisee and the FCC Franchisee dated 14 July 2008;
- (d) the operating hire agreement entered into between the FCC Franchisee and the Franchisee in respect of Class 319 units dated 14 July 2008;
- (e) the driver training agreement entered into between the Franchisee and the FCC Franchisee dated 23 December 2008;

all as may be amended from time to time and in each case as such were transferred to the TSGN Operator pursuant to the "**Start Date Transfer Scheme**" of the TSGN Franchise Agreement (as such is defined therein);

"Thameslink Passenger Services"

means the Passenger Services with the following "Train Service Codes":

- (a) 6560 - London Blackfriars to Sevenoaks via Catford;
- (b) 6520 - Those services in Train Service Code 6520 which operate between London Blackfriars and Orpington via Herne Hill;

"Thameslink Programme"

means the scheme promoted by Network Rail formerly known as "Thameslink 2000" as described in its 2005 Transport and Works Act 1992 application, to enhance the network and relevant stations to allow for the operation of up to 12-car trains and up to 24 trains per hour between Midland Mainline/Great Northern and London Bridge/Elephant & Castle or such other capacity derived from the specification as is agreed by the Secretary of State. Network Rail and all relevant stakeholders;

"Thameslink Station"

means the following stations which are intended to transfer to the TSGN Operator:

- (a) Beckenham Hill;
- (b) Bellingham;
- (c) Catford;
- (d) Crofton Park;
- (e) Denmark Hill;

(f) Nunhead; and

(g) Ravensbourne;

Thameslink Station Leases shall have the meaning given to such term in paragraph 5.6 of Schedule 6.2 (South Eastern Franchise Specific Provisions);

"Thameslink Transfer Date" means the 21 December 2014;

"Third Profit Share Threshold" has the meaning given to it in paragraph 3 of Schedule 8.1 (Franchise Payments);

"Threshold Amount" means, for any Franchisee Year:

(a) in respect of the alteration or discontinuance of any Additional Passenger Services in accordance with the terms of paragraph 13.2 of Schedule 1.1 (Service Development), zero;

(b) where paragraph 1.2(B) of Schedule 1.1 (Service Development) applies, RTA; and

(c) in respect of any other circumstance, an amount, whether positive or negative, which is determined in accordance with the following formula:

$$TA = FAT \times RPI$$

where:

TA is the Threshold Amount for any Franchisee Year;

FAT is the amount for the relevant Franchisee Year specified in column 2 of the table in Schedule 9.4 (Component of FAT: Definition of Threshold Amount); and

RPI is ascertained as follows:

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

where:

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

ORPI means the Retail Prices Index for February 2014,

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

"Through Ticketing (Non-Travelcard) Agreement"

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

"Ticketing and Settlement Agreement"

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

"Timetable"

means the timetable which reflects the working timetable issued by the Infrastructure Manager at the conclusion of its timetable development process, containing the departure and arrival times of:

- (a) all Passenger Services which call at Stations and Franchisee Access Stations; and
- (b) principal Connections at those stations and other stations;

"Timetable Development Rights"

means all or any of the rights of the Franchisee under any Track Access Agreement to:

- (a) operate Passenger Services and ancillary movements by virtue of that Track Access Agreement;
- (b) any required notification and/or declaration to the Infrastructure Manager in respect of its intention to exercise any rights;
- (c) or refrain from making any bids for Train Slots, in each case before any relevant priority dates provided for in, and in accordance with, the Network Code (or in the case of HS1, any equivalent code);
- (d) surrender any Train Slots allocated to the Franchisee by the Infrastructure Manager in accordance with the Network Code;
- (e) object to, make representations, appeal or withhold consent in respect of any actual or proposed act or omission by the Infrastructure Manager; and

- (f) seek from the Infrastructure Manager additional benefits as a condition to granting any consent to any actual or proposed act or omission by the Infrastructure Manager ;

"Timetabling and Train Planning Compliance Investigation"	has the meaning set out in paragraph 3.1 of Schedule 1.2 (Operating Obligations);
"TOC Minute Delay Benchmark"	means any of the performance levels in respect of Minutes Delay attributable to the Franchisee set out in the TOC Minute Delay Benchmark Table;
"TOC Minute Delay Benchmark Table"	means the table set out in Appendix 3 (TOC Minute Delay Benchmark Table) to Schedule 7.1 (Performance Benchmarks);
"TOC Minute Delay Performance Sum"	means an amount determined in accordance with paragraph 3.3 of Schedule 7.1 (Performance Benchmarks);
"Total Actual Operating Costs"	means the sum of the Actual Operating Costs for the relevant Reporting Period and each of the 12 preceding Reporting Periods during the Franchise Term (or the sum of the Actual Operating Costs for the relevant Reporting Period and all of the Reporting Periods that have elapsed since the Start Date where insufficient Reporting Periods have elapsed to enable the former calculation to be made);
"Total Forecast Modified Revenue"	means the sum of the Forecast Modified Revenue for each of the 13 Reporting Periods following the relevant Reporting Period (or, where there are less than 13 Reporting Periods remaining in the Franchise Term, the remaining Reporting Periods);
"Total Forecast Operating Cost"	means the sum of the Forecast Operating Cost for each of the 13 Reporting Periods following the relevant Reporting Period (or, where there are less than 13 Reporting Periods remaining in the Franchise Term, the remaining Reporting Periods);
"Total Modified Revenue"	means the sum of the Modified Revenue for the relevant Reporting Period and each of the 12 preceding Reporting Periods during the Franchise Term (or the sum of the Modified Revenue for the relevant Reporting Period and all of the Reporting Periods that have elapsed since the Start Date where insufficient Reporting Periods have elapsed to enable the former calculation to be made);

- "Total Travelcard Revenue"** has the meaning given to it in the Travelcard Agreement;
- "Track Access Adjustment"** means any adjustment to payments under a Track Access Agreement between the Franchisee and Network Rail in respect of the National Rail Network determined in accordance with paragraph 1 of Schedule 8.4 (Track Access Adjustments and Station Charge Adjustments);
- "Track Access Agreement"** means each Access Agreement between either Network Rail or HS1 Limited and the Franchisee which permits the Franchisee to provide the Passenger Services on track operated by Network Rail or by or on behalf of HS1 Limited;
- "Train Crew Tablet"** shall have the meaning given to such term in paragraph 4.1 of Part 1 of Schedule 6.1 (Committed Obligations);
- "Train Criteria NRPS Measure"** means each of the following factors measured by the Passengers' Council as part of the National Rail Passenger Survey (or such other factors as the Secretary of State and/or the Passengers' Council may determine from time to time):
- (a) "T1 Train – Overall satisfaction with the train";
 - (b) "T10 Train – Your personal security on board";
 - (c) "T11 Train - The cleanliness of the inside of the train";
 - (d) "T6 Train – The toilet facilities";
 - (e) "T0 Overall satisfaction with journey",
- each separately a **"Train Criteria NRPS Measure Factor"**;
- "Train Criteria NRPS Measure Factor"** shall have the meaning given to such term in the definition of "Train Criteria NRPS Measure Factor";
- "Train Fleet"** means:
- (a) the rolling stock vehicles specified in or required by Schedule 1.7 (The Train Fleet);
 - (b) substitute rolling stock vehicles referred to in paragraph 3 of Schedule 1.7 (The Train Fleet); and

- (c) any other rolling stock vehicles the Secretary of State consents to in accordance with paragraph 4 of Schedule 1.7 (the Train Fleet) from time to time;

"Train Mileage"

means, in relation to any period, the aggregate train mileage covered during such period by each train used in the provision of the Passenger Services (excluding, any train mileage covered as a result of positioning or other movements of rolling stock vehicles outside the Timetable) and **"Train Miles"** shall be construed accordingly;

"Train Operator"

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

"Train Plan"

means the plan and/or diagram of the Franchisee for the operation of trains and train formations under the Timetable set out in the document in the agreed terms marked **TP** and any other Train Plan developed in accordance with Schedule 1.1 (Service Development) except that when used in Schedule 7.1 (Performance Benchmarks), it shall have the meaning given to it in paragraph 2.18 of Schedule 7.1 (Performance Benchmarks);

"Train Slots"

shall have the meaning given to it in the Network Code (or, in the case of HS1, any equivalent code);

"Training Days"

shall have the meaning given to such term in paragraph 17.1.4 of Part 1 of Schedule 6.1 (Committed Obligations);

"Transfer Scheme"

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

"Transport Act"

means the Transport Act 2000;

"Transport Direct"	means the website offering free information for door to door travel for both public transport and car journeys around Great Britain;
"Transport for London" or "TfL"	means Transport for London as established under the Greater London Authority Act 1999;
"Transport Trading Limited" or "TTL"	means Transport Trading Limited (registered number 03914810) a wholly owned subsidiary of Transport for London;
"Travelcard"	means a Travelcard as defined in the Travelcard Agreement;
"Travelcard Agreement"	means the agreement of that name referred to in paragraph (a)(iv) of the definition of Inter-Operator Schemes;
"Travelcard Apportionment Methodology Amendment"	<p>means any amendment to the Travelcard Apportionment Methodology pursuant to clause 8, paragraph 2.7 of Schedule 4 or paragraph 2.8 of Schedule 4 of the Travelcard Agreement which:</p> <ul style="list-style-type: none"> (a) involves the apportionment of Total Travelcard Revenue amongst rail, bus and London Underground operators other than by reference to the Survey; (b) directly or indirectly uses or references information derived from PAYG and the PAYG System (each as defined in the Pay As You Go Agreement), the Oyster system and/or the CPAY system; or (c) is initiated by TfL, London Underground, any Affiliate of TfL, any Affiliate of London Underground or any concessionaire or franchisee of TfL;
"Travelcard Apportionment Methodology"	<p>means the methodology for apportionment of Total Travelcard Revenue amongst rail, bus and London Underground operators as at the date of this Franchise Agreement and which:</p> <ul style="list-style-type: none"> (a) is by reference to the Survey and otherwise as set out at Schedule 4 of the Travelcard Agreement (as at the date of this Franchise Agreement); (b) does not use information derived from PAYG and the PAYG System (each as defined in the Pay As You Go Agreement), the Oyster system and/or the CPAY system; and

- (c) adopts apportionment factors in relation to particular categories of Total Travelcard Revenue (as defined in the Travelcard Agreement);
- "Traveline"** means the telephone enquiry service providing information on all public transport across the United Kingdom;
- "Trustee"** has the meaning given to it in paragraph 3.1 of Schedule 16 (Pensions);
- "TSGN Franchise Agreement"** shall have the meaning given to such term in the definition of TSGN Operator;
- "TSGN Operator"** means the franchisee under the franchise agreement dated 11 June 2014 (as amended from time to time) and made between the Secretary of State and Govia Thameslink Railway Limited (company number 07934306) whose registered office is at 3rd Floor, 41-51 Grey Street, Newcastle upon Tyne, NE1 6EE ("**TSGN Franchise Agreement**") or any successor operator to such franchisee;
- "TSI"** means any Technical Standard for Interoperability with which the Franchisee is required to comply pursuant to Directives EU 96/48 and EU 2001/16 and related legislation;
- "Turnaround Time"** means the time specified in the Train Plan between the completion of a Passenger Service in accordance with the Timetable and the commencement of the next Passenger Service in accordance with the Timetable on the same day using some or all of the same rolling stock vehicles;
- "Turnover"** means, in relation to any period, the aggregate revenue (excluding any applicable Value Added Tax) accruing to the Franchisee from the sale of Fares and the receipt of Franchise Payments during such period;
- "TVM Consents"** shall have the meaning given to such term in paragraph 9.1 of Part 1 to Schedule 6.1 (Committed Obligations);
- "Ultimate Parents"** means:
- (a) The Go-Ahead Group PLC (registered number 02100855 and having its registered office at 3rd Floor, 41-51 Grey Street, Newcastle Upon Tyne NE1 6EE); and

- (b) Keolis S.A. (registered in France under number 552 111 809 and having its registered office at 20-22 rue Le Peletier, 75009, Paris, France),

who are parties to the Funding Deed Guarantee and any reference to the "**Ultimate Parent**" shall may mean either of the above;

"Underspend"

shall have the meaning given to such term in paragraph 8.1 of Part 2 to Schedule 6.1 (Committed Obligations);

"Updated Train Plan"⁶⁹

means the updated Train Plan developed pursuant to Clause 5 of the 2017 Capacity Enhancement Deed of Amendment which is effective from the completion of the 2017 Cascade;

"Value"

means at any time the aggregate of the Projected Revenue of each Fare in a Fares Basket at that time;

"Value Added Tax"

means value added tax as provided for in the Value Added Tax Act 1994;

"Variation"

means a variation to the terms of the Franchise Agreement pursuant to paragraph 1 of Schedule 9.5 (Variations and Incentivising Beneficial Changes);

"Weekday"

means any day other than a Saturday, a Sunday or a Bank Holiday;

"Weekly Season Ticket"

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

"Yield Management Data"

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

- (a) the number of passengers travelling upon any particular Passenger Service;
- (b) the ticket types held by such passengers;

⁶⁹ 08/09/2017 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

(c) the prices paid by such passengers for such tickets; and

(d) the dates and/or times between which such tickets were made available to purchase at such prices;

"Weekday" means any day other than a Saturday, a Sunday or a Bank Holiday;

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

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

(a) the number of passengers travelling upon any particular Passenger Service;

(b) the ticket types held by such passengers;

(c) the prices paid by such passengers for such tickets; and

(d) the dates and/or times between which such tickets were made available to purchase at such prices;

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

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

3. COMMENCEMENT

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

(a) paragraph 13 of Schedule 1.1 (Service Developments) to the extent that the Secretary of State is exercising relevant rights in relation to

the implementation of the Crossrail Programme and the operation of the Crossrail Services by the Crossrail Operator;

- (b) paragraph 2 of Schedule 2.2 (Security of Access Agreements, Rolling Stock Leases, Station and Depot Leases);
- (c) paragraph 2 of Schedule 2.3 (Third Party Delivery of Passenger Services and Other Franchisees);
- (d) paragraph 4.3 of Schedule 4 (Persons with Disabilities and Disability Discrimination);
- (e) Schedule 5.1 (Purpose, Structure and Construction);
- (f) Schedule 5.3 (Allocation of Fares to Fares Baskets);
- (g) Schedule 5.7 (Changes to Fares and Fares Regulation);
- (h) paragraphs 1, 5 and 6 of Schedule 6.2 (South Eastern Franchise Specific Provisions);
- (i) Schedule 9 (Changes);
- (j) Schedule 10 (Remedies, Termination and Expiry);
- (k) paragraph 2 of Schedule 11 (Agreement Management Provisions);
- (l) paragraph 4 of Schedule 12 (Financial Obligations and Covenants);
- (m) paragraphs 1, 5, 6, 7 and 8 of Schedule 13 (Information and Industry Initiatives);
- (n) Schedule 14.3 (Key Contracts);
- (o) Schedule 17 (Confidentiality and Freedom of Information); and
- (p) Schedule 19 (Other Provisions).

- 3.2 The other provisions of this Agreement shall take effect and become binding upon the parties on the Start Date, as stated in the Certificate of Commencement issued pursuant to the Conditions Precedent Agreement.

4. TERM

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

5. GENERAL OBLIGATIONS

- 5.1 The Franchisee shall perform its obligations under this Franchise Agreement in accordance with its terms and with that degree of skill, diligence, prudence and foresight which would be exercised by a skilled and experienced Train Operator of the Franchise.
- 5.2 Any obligation on the part of the Franchisee to use all reasonable endeavours shall extend to consequent obligations adequately to plan and resource its

activities, and to implement those plans and resources, with all due efficiency and economy.

- 5.3 The Franchisee shall co-operate with the Secretary of State and act reasonably and in good faith in and about the performance of its obligations and the exercise of its rights pursuant to this Franchise Agreement.
- 5.4 The Secretary of State shall act reasonably and in good faith in and about the performance of his obligations and the exercise of his rights pursuant to this Franchise Agreement.

6. RELATIONSHIP WITH PREVIOUS FRANCHISE AGREEMENT

- 6.1 Anything done or omitted to be done by the Franchisee under or in relation to or during the term of the Previous Franchise Agreement shall be regarded for the purpose of this Franchise Agreement as if it had been done or omitted to be done by the Franchisee under or in relation to and (only to the extent necessary to give effect to this clause) during the term of this Franchise Agreement.
- 6.2 Without limiting the generality of clause 6.1 any breach or contravention of the Previous Franchise Agreement shall be a breach or contravention of this Franchise Agreement, in so far as necessary to ensure that the Secretary of State shall have the same rights under and in respect of this Franchise Agreement in respect of that breach or contravention as it would have had under or in respect of the Previous Franchise Agreement had the Previous Franchise Agreement continued in force.
- 6.3 The Secretary of State agrees that he will not take any action to terminate the Franchise Agreement in respect of any "Event of Default" (as such is defined under the terms of the Previous Franchise Agreement) which may have existed or been alleged to exist at the Start Date pursuant to the terms of the Previous Franchise Agreement.

7. COMPLIANCE WITH LAWS

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

8. ENTIRE AGREEMENT

- 8.1 This Franchise Agreement contains all the terms which the parties have agreed in relation to the subject matter of this Franchise Agreement and supersedes all prior written or oral agreements, representations or understandings between the parties in relation to such subject matter.
- 8.2 The Franchisee hereby acknowledges that this Franchise Agreement has not been entered into wholly or partly in reliance on, nor has the Franchisee been given any warranty, statement, promise or representation other than as expressly set out in this Franchise Agreement. To the extent that any such warranties, statements, promises or representations have been given the Franchisee unconditionally and irrevocably waives any claims, rights or remedies which it might otherwise have had in relation to them.
- 8.3 Nothing in this clause 8 will exclude any liability which one party would otherwise have to the other party in respect of any statements made fraudulently.

- 8.4 The Franchisee hereby acknowledges and agrees with the Secretary of State (for himself and as trustee for each of the other persons referred to therein) to the disclaimer of liability which is contained in the section entitled "Important Notice" of the Request for Proposal.
- 8.5 The Franchisee represents and warrants to the Secretary of State subject only to the matters fairly disclosed to the Secretary of State in writing (and accepted by him) or expressly provided for under the terms of this Franchise Agreement that all information, representations or other matters of fact communicated in writing to the Secretary of State and/or his advisers by the Franchisee, its directors, officers, employees, servants or agents in connection with or arising out of the Franchisee's proposals in connection with entering into this Franchise Agreement were (at the date submitted to the Secretary of State) and remain, in all material respects true, accurate and not misleading.

9. GOVERNING LAW

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

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

SEAL REF No.

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

)
)
)

Authenticated by authority of the
Secretary of State for Transport

Executed as a deed by **LONDON &
SOUTH EASTERN RAILWAY LIMITED**
by a director in the presence of a
witness:

)
)
)
)

Signature

Name (block
capitals)
Director

Witness
signature

Witness name
(block capitals)

Witness address

.....

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SCHEDULE 1

Passenger Service Obligations

Schedule 1.1: Service Development

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SCHEDULE 1.1**Service Development****1. Service Level Commitment - Purpose And Responsibility**

- 1.1 A Service Level Commitment is the means by which the Secretary of State specifies the level, frequency, maximum journey times and stopping patterns of the railway passenger services that the Franchisee is to:
- (a) seek Train Slots for from the Infrastructure Manager; and
 - (b) operate pursuant to the working timetable issued by the Infrastructure Manager at the end of its timetable development process.
- 1.2 The Service Level Commitment as at the date of the 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 20 December 2014;
 - (b) SLC2 being the Service Level Commitment applicable from the 21 December 2014 until 10 January 2015;
 - (c) SLC3 being the Service Level Commitment applicable from the 11 January 2015 until 29 August 2016;
 - (d) SLC4 being the Service Level Commitment applicable from the 30 August 2016 until 1 January 2018;
 - (e) SLC5 being the Service Level Commitment applicable from the 2 January 2018 until the end of the Franchise Term,

and for the purpose of this Schedule 1.1, such Service Level Commitment shall remain in force unless and until amended or replaced pursuant to this Schedule 1.1. The Service Level Commitment does not in any way limit the Franchisee's obligations pursuant to paragraph 6.2 of this Schedule 1.1. The Secretary of State and Franchisee agree that the replacements of:

- (i) SLC1 by SLC2; or
- (ii) SLC2 by SLC3; or
- (iii) SLC3 by SLC4; or
- (iv) SLC4 by SLC5,

at the time and for the period specified in this paragraph 1.2 shall not constitute a Change for the purposes of paragraph (e) of the definition of Change unless from the relevant date from which such Service Level Commitment is to apply the Secretary of State issues a replacement Service Level Commitment which is different from such Service Level Commitment (the "**Alternative SLC**") in which case a Change under paragraph (e) of the definition of Change shall occur provided that:

- (A) such Change shall only apply in respect of the differences between the Alternative SLC and the relevant Service Level Requirement which would otherwise be in force;
- (B) where either (i) the time and period specified for the replacement of SLC4 by SLC5 is different to that set out in this paragraph 1.2 and/or (ii) the Secretary of State issues an Alternative SLC to SLC5, the parties agree and acknowledge that for the purpose of determining whether the Change is a Qualifying Change the Threshold Amount for any relevant Franchisee Year shall be determined in accordance with the following formula:

$$RTA = TA \times N/X$$

where:

TA shall be calculated in accordance with the formula set out in the definition of Threshold Amount;

N equals the number of Reporting Periods remaining in the relevant Franchisee Year from the date the Change is to be implemented; and

X equals the number of Reporting Periods in the relevant Franchisee Year.

- 1.3 A Service Level Commitment may be expressed in whole or in part at any level of generality or to any level of detail the Secretary of State considers appropriate.
- 1.4 The Franchisee may review SLC4 and provide a revised SLC based on SLC4 to the Secretary of State which seeks to deliver a more optimal range of passenger services relative to Target Passenger Demand and which addresses (or seeks to mitigate), amongst others, the following issues:
 - (a) the inclusion of direct Passenger Services during the Morning Peaks to London Bridge Station from the Stations between Slade Green station and Charlton Station via Woolwich Arsenal Station and during Evening Peak from London Bridge Station to the Stations between Charlton Station and Slade Green Station via Woolwich Arsenal Station; and
 - (b) amendments to reflect that the scheduled phasing of the infrastructure works at London Bridge Station prevents Passenger Services to and from Cannon Street Station from calling at London Bridge Station,

("SLC4A").
- 1.5 SLC4A shall be issued to the Secretary of State in accordance with paragraph 4.2 and the Parties agree and acknowledge that paragraph 4.2 and the relevant provisions of paragraph 4 and 5 shall apply in the same manner to SLC4 as if an amendment was being proposed to the current SLC.
- 1.6 Where the implementation of SLC4A (as may be amended pursuant to the process in paragraph 4 and 5) constitutes a Change all references to SLC4 in this agreement shall be deemed to be references to SLC4A.

2. Train Plan - Purpose And Responsibility

- 2.1 A Train Plan is the means by which the Franchisee expresses its proposed allocation of the passenger carrying capacity of its Train Fleet to meet passenger demand for the railway passenger services it is to operate.
- 2.2 The Franchisee shall submit to the Secretary of State a Train Plan in respect of:
- (a) the Service Level Commitment and any Additional Passenger Services that it intends to operate; and
 - (b) subsequently, each Timetable in accordance with this Schedule 1.1.
- 2.3 In preparing any Train Plan, the Franchisee shall do so by reference to the timetable that it envisages operating in order to comply with the Service Level Commitment to which it relates.
- 2.4 The Train Plan for the Timetable as at the Start Date shall be submitted by the Franchisee to the Secretary of State by no later than the Start Date and, for the avoidance of doubt, the provisions of paragraphs 12.2 and 12.3 of this Schedule 1.1 shall apply in respect of such Train Plan.
- 2.5 Each Train Plan is to set out for each railway passenger service in the Timetable to which it relates:
- (a) its start point and departure time;
 - (b) its terminating point and arrival time;
 - (c) the number and class of rolling stock vehicles allocated to each such railway passenger service;
 - (d) the passenger carrying capacity that each such railway passenger service, as formed, is to have;
 - (e) the indicative formation of each such railway passenger service which has a Target Passenger Demand greater than 75 per cent. of its passenger carrying capacity;
 - (f) its Actual Passenger Demand most recently determined in accordance with Schedule 1.5 (Information about Passengers); and
 - (g) its Forecast Passenger Demand.
- 2.6 A Train Plan shall be in any format that the Secretary of State may reasonably specify for this purpose.

3. Not used**4. Franchisee Opinions, Amended and New Service Level Commitment**

- 4.1 As and when required whether for the purposes of considering alterations to the Service Level Commitment or otherwise, the Franchisee shall provide to the Secretary of State:
- (a) its informed estimate of Forecast Passenger Demand, in such format and to such level of disaggregation as the Secretary of State may

reasonably require in order to assist the Secretary of State's decision-making on future service level commitments, infrastructure, station and rolling stock vehicle investment, the best use of the network and the alleviation of overcrowding;

- (b) its informed opinion as to any changes to the current Service Level Commitment which:
 - (i) should be made in order to deliver an optimal range of railway passenger service patterns relative to Target Passenger Demand; and
 - (ii) could be implemented and operated without additional resources or an adjustment to the Franchise Payments;
- (c) its informed opinion as to any changes to the current Service Level Commitment which:
 - (i) would deliver an optimal range of railway passenger service patterns relative to Target Passenger Demand; and
 - (ii) could only be implemented and operated with additional resources and/or an adjustment to the Franchise Payments, together with an explanation as to:
 - (A) what additional resources and/or adjustments are necessary to make such changes; and
 - (B) why such additional resources and/or adjustments are necessary;
- (d) Not Used;
- (e) its informed opinion as to any changes that the Secretary of State ought to make to the Benchmarks and/or Annual Benchmarks pursuant to paragraph 5 of Schedule 9.1 (Financial and Other Consequences of Change) as a result of each set of proposed changes; and
- (f) a draft of the Train Plan that it considers that each set of proposed changes would require.

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

- (a) the Franchisee's reasons why it believes that the proposed amendment would optimise the delivery of railway passenger services relative to Target Passenger Demand or meet such other purpose as the Secretary of State may have specified in accordance with paragraph 4.2 (as applicable) and, unless the date is specified

by the Secretary of State, the date upon which it proposes that such amended Service Level Commitment should take effect;

- (b) its informed opinion with supporting reasons as to the changes to resources and adjustment to Franchise Payments (if any) which would be required in consequence of the proposed amendments;
- (c) its informed opinion with supporting reasons as to the changes (if any) to the Benchmarks and/or Annual Benchmarks that should in consequence be made pursuant to paragraph 5 of Schedule 9.1 (Financial and Other Consequences of Change);
- (d) a draft of the Train Plan that it considers that the proposed amendment would require;
- (e) its informed opinion as to the process required to implement the proposed amendment to the Service Level Commitment together with a plan for the implementation of the amendment to the Service Level Commitment (including all steps required to ensure that the Franchisee can deliver a Timetable compliant with such Service Level Commitment) prepared in accordance with procedural arrangements specified by the Secretary of State pursuant to paragraph 5.

- 4.3 The Secretary of State shall be permitted to carry out indicative Runs of the Financial Model for the purposes of considering the effects of amendments to the Service Level Commitment proposed by the Franchisee.
- 4.4 The Secretary of State will give consideration to proposals made by the Franchisee but shall be under no obligation to make any change to the Service Level Commitment in consequence. If the Secretary of State agrees the proposed amendment he shall issue an amended Service Level Commitment pursuant to paragraph 4.12. The Secretary of State shall be permitted to incorporate amendments to the Service Level Commitment suggested by the Franchisee in any amended or new Service Level Commitment that he may subsequently propose.
- 4.5 The Franchisee agrees to co-operate with the Secretary of State in developing any amended or new Service Level Commitment in accordance with this Schedule 1.1.
- 4.6 Prior to issuing any amended or new Service Level Commitment the Secretary of State shall provide to the Franchisee his draft of any proposed amended or new Service Level Commitment stating the date upon which he proposes that such amended or new Service Level Commitment should take effect along with the Secretary of State's view as to the changes (if any) that he proposes to make to the Benchmarks and/or Annual Benchmarks pursuant to paragraph 5 of Schedule 9.1 (Financial and Other Consequences of Change).

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

- (a) its informed opinion with supporting reasons as to the impact of the proposed amended or new Service Level Commitment on the delivery of an optimal range of railway passenger services patterns relative to Target Passenger Demand;

- (b) its informed opinion with supporting reasons as to the changes to resources and adjustment to Franchise Payments (if any) which would be required in consequence of the proposed amended or new Service Level Commitment;
 - (c) its informed opinion with supporting reasons as to changes (if any) to the Benchmarks and/or Annual Benchmarks that should in consequence be made pursuant to paragraph 5 of Schedule 9.1 (Financial and Other Consequences of Change);
 - (d) a draft of the Train Plan that it considers that the proposed amended or new Service Level Commitment would require; and
 - (e) its informed opinion of the process to be required to implement the proposed amendment to the Service Level Commitment together with a plan for the implementation of the amendment to the Service Level Commitment (including all steps required to ensure that the Franchisee can deliver a Timetable compliant with such amended or new Service Level Commitment) prepared in accordance with procedural arrangements specified by the Secretary of State pursuant to paragraph 5.
- 4.7 There may be iterations of drafts of the proposed amended or new Service Level Commitment and the Franchisee shall to the extent required by the Secretary of State have the obligations described in this paragraph 4 in respect of all such iterations.
- 4.8 The Secretary of State shall be permitted to carry out indicative Runs of the Financial Model for the purposes of considering the effects of his proposed amended or new Service Level Commitment.
- 4.9 Processes contained in this paragraph 4 shall take place in accordance with procedural arrangements and timescales stipulated by the Secretary of State pursuant to paragraph 5.2.
- 4.10 Any opinions of the Franchisee provided pursuant to this paragraph 4 shall be provided with due regard to:
- (a) any Route Utilisation Strategy and any strategy published by the Secretary of State;
 - (b) the additional factors set out in the Appendix (Service Development Additional Factors); and
 - (c) any other constraints or considerations (including affordability constraints and value for money considerations) that the Secretary of State has notified to it.
- 4.11 If and to the extent that the Franchisee reasonably considers that any Service Level Commitment issued by the Secretary of State pursuant to this Schedule 1.1 contains insufficient information to enable it to perform its obligations under this Schedule 1.1 it shall promptly notify the Secretary of State and the Secretary of State shall provide such further information as is reasonably required.
- 4.12 The Secretary of State may, in accordance with any stipulation made under paragraph 5.2, issue to the Franchisee any amended or new Service Level

Commitment that he requires the Franchisee to operate and notice of the changes (if any) to the Benchmarks and/or Annual Benchmarks that he will make pursuant to paragraph 5 of Schedule 9.1 (Financial and Other Consequences of Change). Such amended or new Service Level Commitment will be issued prior to the commencement of the timetable development process of the Infrastructure Manager for the Timetable in respect of which it is proposed to implement the change to Passenger Services arising from the amended or new Service Level Commitment. In the absence of the Secretary of State issuing any amended or new Service Level Commitment the existing Service Level Commitment will remain in full force and effect.

- 4.13 Prior to seeking any Additional Timetable Development Rights, if the Franchisee reasonably considers having undertaken an assessment of such, that any Additional Passenger Services for which such Additional Timetable Development Rights are required will:
- (a) impact the Franchisee's ability to deliver the current Service Level Commitment; and/or
 - (b) impact the level of performance that the Franchisee achieves in respect of the Passenger Services,

the Franchisee shall provide the Secretary of State details of its proposals and its assessment of such impact.

- 4.14 At the same time as the Secretary of State provides the Franchisee with a draft of any proposed amended or new Service Level Commitment pursuant to paragraph 4.6, the Secretary of State shall also provide to the Franchisee:
- (a) his opinion of the effect of any Additional Timetable Development Rights that the Franchisee has or (to the extent known by the Secretary of State) that the Franchisee intends to seek;
 - (b) his opinion on any changes that he reasonably considers are required to the Train Plan for such Train Plan:
 - (i) to satisfy the capacity requirements referred to in paragraph 6.2; or
 - (ii) to satisfy the capacity requirements referred to in paragraphs 6.3 and 6.4 if he reasonably considers that the capacity requirements referred to in paragraph 6.3 cannot be met; and
 - (c) his opinion of any changes that are required to the TOC Minute Delay Benchmarks and/or the Annual TOC Minute Delay Benchmark pursuant to paragraph 5 of Schedule 9.1 (Financial and Other Consequences of Change).

5. Procedure

- 5.1 The Franchisee agrees that the effective operation of the provisions of this Schedule 1.1, and of provisions addressing the same or similar matters in other franchise agreements, will require certain procedural arrangements and timescales to be followed to a common timescale by the Secretary of State, the Franchisee and others.

- 5.2 The Franchisee agrees that the Secretary of State may stipulate any reasonable procedural arrangements and timescales that are to be followed by the Secretary of State and the Franchisee for these purposes (which shall be consistent with any relevant standard railway industry processes for timetable development) and that the Secretary of State may amend any such stipulation from time to time.
- 5.3 The Secretary of State agrees to consult the Franchisee as far as reasonably practicable prior to stipulating or amending any such procedural arrangements and timescales in accordance with paragraph 5.2.
- 5.4 Any stipulation by the Secretary of State pursuant to paragraph 5.2:
- (a) shall be at the reasonable discretion of the Secretary of State;
 - (b) may contain procedural arrangements and timescales to be followed by the Franchisee in relation to other changes to the Franchise Services (pursuant to paragraph 1 of Schedule 9.5 (Variations 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.
- 5.5 Any procedural arrangements and timescales stipulated by the Secretary of State pursuant to paragraph 5.2 shall have contractual effect between the Franchisee and the Secretary of State in accordance with the terms of such stipulation.

6. Considerations and Planning

6.1 Considerations

The Franchisee shall:

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

with due regard to:

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

6.2 Capacity and Timetable Planning

The Franchisee shall, in preparing its Timetable and Train Plan shall use all reasonable endeavours to:

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

6.3 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 6.2(a) and (b), then the Timetable and/or the Train Plan shall specify the best allocation of Passenger Services and rolling stock vehicles to Passenger Services that is reasonably practicable with a view to:

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

6.4

- (a) Subject to paragraph 6.4(b) the Franchisee shall in preparing its Timetable and its Train Plan take full and proper account of its calculation of Forecast Passenger Demand and use all reasonable endeavours to ensure that the Train Fleet is deployed in an optimal manner for the purposes of complying with its obligations under sub paragraphs 6.2 and 6.3 above.
- (b) The Franchisee shall in preparing its Timetable and Train Plan deploy the entire Train Fleet (excluding reasonable planning requirements for the allocation of Hot Standbys or other rolling stock vehicles to

be out of service due to maintenance requirements, Mandatory Modifications or any other reason agreed with the Secretary of State (such agreement not to be unreasonably withheld or delayed)) in delivering the Passenger Services:

- (i) during each Peak; and
- (ii) at such times during each Off-Peak where such deployment of the entire Train Fleet is reasonably required to meet the Franchisee's obligations pursuant to sub paragraphs 6.2 and 6.3 above.

7. Capacity Mitigation Plan, Franchisee Informed Opinion and new or amended Train Service Requirement

7.1

- (a) If at any time the Franchisee is unable to prepare a Timetable and/or a Train Plan which meets the requirements of paragraph 6.2 (regardless of whether the Franchisee has used all reasonable endeavours to do so), the Secretary of State may serve a notice on the Franchisee requiring it to produce a plan to a reasonable specification provided with the notice to remedy or mitigate such inability ("**Capacity Mitigation Plan**"). Such specification may, without limitation, include measures to be implemented by the Franchisee to:
 - (i) remedy the circumstances leading to the Franchisee being unable to prepare a Timetable and/or a Train Plan which meets the requirements of paragraph 6.2; and/or
 - (ii) minimise, so far as is possible, the amount by which Target Passenger Demand exceeds the provision of Passenger Carrying Capacity on the affected Passenger Services;
 - (iii) ensure, so far as is possible, that such excess is not unduly concentrated on any particular Route or Passenger Service; and
 - (iv) minimise, so far as is possible, the extent to which passengers are required to stand:
 - (A) on boarding in the case of any Off-Peak Passenger Service; and
 - (B) 20 minutes after boarding (or such other time period as the Secretary of State may stipulate) in respect of any Peak Passenger Service,

in all such cases (unless the Secretary of State specifies to the contrary) taking into account both Actual Passenger Demand and Forecast Passenger Demand. Where the Secretary of State reasonably believes that future circumstances may lead to the Franchisee being unable to prepare a Timetable and/or a Train Plan which meets the requirements of paragraph 6.2 at any time within the next four years (including after the end of the Franchise Term) he shall have the right to serve notice on the Franchisee specifying those future circumstances and the date that the

Franchisee should assume that they will arise from and requiring it to produce a Capacity Mitigation Plan to remedy or mitigate such future circumstances on the basis of assumptions provided by the Secretary of State.

- (b) The Capacity Mitigation Plan shall (unless the Secretary of State specifies to the contrary) include the Franchisee's informed estimate of Forecast Passenger Demand, in such format and to such level of disaggregation as the Secretary of State may reasonably require. Without limitation such specification may require the Franchisee to present options to address relevant issues through:
 - (i) alterations to the SLC;
 - (ii) modification of rolling stock or the acquisition of additional or replacement rolling stock;
 - (iii) alterations to Fares; and/or
 - (iv) alterations or enhancements to any track, signalling, station, depot or other relevant railway infrastructure.
- (c) The Capacity Mitigation Plan shall provide a comprehensive analysis backed by relevant data and assumptions of:
 - (i) all cost and revenue and other financial implications of options contained within it including the potential implications for Franchise Payments;
 - (ii) the implications (if any) for the Benchmarks and/or the Annual Benchmarks; and
 - (iii) the likely impact of options within it for existing and future passenger journeys and journey opportunities.
- (d) The Franchisee shall meet with the Secretary of State to discuss the Capacity Mitigation Plan and provide such further information or analysis and further iterations of the Capacity Mitigation Plan as the Secretary of State shall reasonably require.

8. Indicative Timetable and Consultation

- 8.1 The Franchisee shall, as and when required pursuant to any stipulation made under paragraph 5.2, provide the Secretary of State with a summary (in such form as the Secretary of State may specify) of any material changes that it would expect there to be to the Passenger Services from the then current Timetable if any of the following were implemented:
 - (a) the Secretary of State's Service Level Commitment issued pursuant to paragraph 4.6 or 4.12 and the Franchisee's proposed Train Plan; and/or
 - (b) any amended Service Level Commitment proposed by the Franchisee pursuant to paragraph 4.2.
- 8.2 Notwithstanding any consultation the Secretary of State might separately undertake in respect of any amended or new draft Service Level Commitment

issued pursuant to paragraph 4, the Franchisee shall in respect of changes to the Passenger Services proposed in any Timetable:

- (a) as soon as reasonably practicable after:
 - (i) first providing a summary to the Secretary of State, give all Stakeholders notice and consult them in respect of the changes to the Passenger Services specified in such summary; and
 - (ii) sending or receiving any correspondence in respect of such notice or consultation, provide the Secretary of State with copies of such correspondence;
- (b) take due account of such bodies' views that are submitted to the Franchisee in accordance with the procedural stipulations pursuant to paragraph 5.2 and the guidance referred to in paragraph 8.2(c); and
- (c) 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 8.2.

9. Timetable Development Rights

- 9.1 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.
- 9.2 The Franchisee shall exercise its Timetable Development Rights; and/or so as to secure a Timetable that enables it to operate railway passenger services that comply with the Service Level Commitment in accordance with its obligations under paragraph 10.
- 9.3 Unless the Secretary of State otherwise directs, the Franchisee shall, for the purposes of securing a Timetable that complies with the Service Level Commitment, exercise its rights under the Track Access Agreement (including the Network Code) to object, to make representations and to withhold consent in respect of any actual or proposed act or omission by the Infrastructure Manager in relation to such agreement in respect of its Timetable Development Rights.
- 9.4 Subject to the Franchisee complying with its obligations under paragraph 9.3, it shall not be liable for any failure to secure a Timetable that enables the Franchisee to operate railway passenger services that comply with the Service Level Commitment, to the extent that such failure is caused by:
 - (a) the Franchisee's Timetable Development Rights being inadequate to enable it to secure the requisite Train Slots, provided that the Franchisee has exercised and, unless otherwise agreed by the Secretary of State, is continuing to exercise all reasonable endeavours to obtain the requisite timetable development rights in accordance with paragraph 9.1;

- (b) the Infrastructure Manager exercising its flexing rights from time to time under the Track Access Agreement or the Network Code in respect of such Train Slots;
 - (c) the Infrastructure Manager exercising its other rights from time to time under the Track Access Agreement or the Network Code; or
 - (d) the exercise by the ORR of its powers pursuant to Section 22C of the Act.
- 9.5 If the Secretary of State does not consider that the Franchisee has taken sufficient steps under paragraph 9.3, he may require the Franchisee to exercise its rights referred to in paragraph 9.3 in such manner as he reasonably considers appropriate in the circumstances, including:
- (a) disputing any actual or proposed act or omission by the Infrastructure Manager in respect of any Timetable Development Rights; and
 - (b) submitting such dispute to any relevant dispute resolution arrangements or procedures and appealing against any award or determination under such arrangements or procedures, including to the ORR.
- 9.6 The Secretary of State shall, to the extent reasonably practicable, allow the Franchisee a reasonable opportunity to make representations to him concerning the exercise by the Franchisee of any of its rights referred to in paragraph 8.3 before requiring the Franchisee to take any action referred to in paragraph 8.5.
- 9.7 If and to the extent that the Franchisee is not able to secure a Timetable enabling it to operate railway passenger services that comply with the Service Level Commitment as a result of it not being able to obtain the timetable development rights that it requires for that purpose, then the Secretary of State may issue (and, provided that the Franchisee:
- (a) has exercised all reasonable endeavours to obtain the requisite timetable development rights in accordance with paragraph 8.1; and
 - (b) is relieved from liability for such failure to secure a Timetable that enables the Franchisee to operate railway passenger services that comply with the Service Level Commitment pursuant to paragraph 9.4,
- the Secretary of State shall issue) to the Franchisee such amendments to the Service Level Commitment ("**SLC (TDR) Amendment**") as the Secretary of State considers necessary such that the Franchisee is able to secure a Timetable in compliance with the Service Level Commitment as amended by the SLC (TDR) Amendments by exercise of the Timetable Development Rights that the Franchisee does have or the timetable development rights that the Franchisee would have had the Franchisee properly performed its obligations under the Franchise Agreement.
- 9.8 Following issue of any SLC (TDR) Amendment pursuant to paragraph 8.7 the Franchisee shall, unless otherwise agreed by the Secretary of State, continue to use all reasonable endeavours to amend and/or enter into such Access Agreements as may be necessary or desirable from time to time to obtain the timetable development rights that it requires to secure a Timetable that enables

it to operate railway passenger services that comply with the Service Level Commitment without such SLC (TDR) Amendment.

- 9.9 Any SLC (TDR) Amendment issued pursuant to paragraph 8.7 shall:
- (a) unless otherwise required by the Secretary of State, cease to have effect on the date (if any) on which the first Timetable comes into effect after the Franchisee has obtained the Timetable Development Rights that it requires to secure a Timetable that enables it to operate railway passenger services that comply with the Service Level Commitment without any such SLC (TDR) Amendment; and
 - (b) amount to a Change unless the SLC (TDR) Amendment has been issued in consequence of the Infrastructure Manager exercising the rights referred to in paragraphs 9.4(b) and 9.4(c) in which case there shall not be a Change.
- 9.10 With effect from the date on which any SLC (TDR) Amendment ceases to have effect in accordance with paragraph 9.9:
- (a) the Service Level Commitment without such SLC (TDR) Amendment shall thereafter apply; and
 - (b) there shall be a further Change to the extent necessary so as, with effect from such date, to disapply the effect of the Change referred to in paragraph 9.9(b) in respect of such SLC (TDR) Amendment.
- 9.11 The Secretary of State shall be permitted to direct the Franchisee as to the manner in which it will exercise or not exercise Additional Timetable Development Rights for the purpose of altering, amending or deleting the Franchisee's proposals in respect of Additional Passenger Services where such Additional Passenger Services, if they were operated in the manner being proposed by the Franchisee, would be likely to result in the Secretary of State being required to increase payments to any other Train Operator under another franchise agreement or result in the Secretary of State receiving reduced payments from any other Train Operator under another franchise agreement if the Additional Passenger Services were operated in the manner proposed by the Franchisee.

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

- 10.1 Before exercising any Timetable Development Right to bid for Train Slots, the Franchisee shall provide a certificate addressed to the Secretary of State and signed by a statutory director of the Franchisee confirming that its proposed exercise of that Timetable Development Right will be compliant with its obligation specified in paragraph 5.3.
- 10.2 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 10.1 is a true and accurate confirmation of compliance with its obligation specified in paragraph 5.3.
- 10.3 The Franchisee shall:
- (a) keep the Secretary of State fully informed of any discussions with Infrastructure Manager in relation to the matters referred to in this

Schedule 1.1 which may, in the reasonable opinion of the Franchisee, have a material bearing on the ability of the Franchisee to deliver the SLC or meet the requirements of paragraph 6 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 10.3 and/or certification under paragraph 10.1 as soon as reasonably practicable, if at any time it elects or is required to modify any aspect of its exercise of its Timetable Development Rights following the Infrastructure Manager's proposed or actual rejection or modification of its bid or any part of it or for any other reason.

11. Obligations in relation to other Train Operators

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

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

12. Finalising the Train Plan

12.1 The Franchisee shall submit its Train Plan to the Secretary of State as soon as reasonably practicable after the Infrastructure Manager has published the working timetable on which the Timetable is to be based.

12.2 The Secretary of State may notify the Franchisee of:

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

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

- 12.3 If the Franchisee considers that any of the revisions that the Secretary of State requires pursuant to paragraph 12.2(b) are not required for the Train Plan to comply with this Schedule 1.1 then:
- (a) it shall nevertheless make such revisions;
 - (b) it may subsequently refer the question as to whether such revisions were so required for resolution in accordance with such dispute resolution procedure as the parties may agree or, in the absence of agreement, in accordance with the Dispute Resolution Rules; and
 - (c) following determination of any such dispute, the parties shall take such steps as are required to give effect to such determination.

13. Provisions relating to Access Agreements and Property Leases

- 13.1 The Franchisee shall be entitled to seek and/or exercise Additional Timetable Development Rights without the Secretary of State's consent, but it shall not seek and/or exercise any such rights where to do so would prevent or hinder it securing a Timetable that enables it to operate railway passenger services that comply with the Service Level Commitment.
- 13.2 Where the Secretary of State considers it requisite for the purposes of better securing the delivery of railway passenger services under the Franchise Agreement, or any other franchise agreement, or for the better achievement by him of any of his duties, functions and powers in relation to railways or the implementation of the Crossrail Programme and the operation of the Crossrail services by the Crossrail Operator, the Secretary of State may require the Franchisee:
- (a) to exercise or refrain from exercising any or all of its rights under any Access Agreement or any Property Lease, or any related rights under such other agreements as the Secretary of State may specify; and/or
 - (b) subject to the consent of the counterparty thereto, to assign, novate or surrender its rights under any Access Agreement or Property Lease.
- 13.3 Except to the extent that the Secretary of State otherwise indicates from time to time, the Franchisee shall notify the Secretary of State of its intention to enter into or amend any Access Agreement:
- (a) where the approval of the ORR is required under the Act, not less than 10 business days before the submission to the ORR; and
 - (b) where no such approval is required, not less than 10 business days prior to entering into such amendment or Access Agreement.
- 13.4 The Franchisee shall comply with its obligations under any Access Agreement or any Property Lease to which it is a party from time to time:
- (a) to notify or consult with the Secretary of State on any matter or proposal relating to that Access Agreement or Property Lease; and
 - (b) which are contingent on a particular course of action being taken by the Secretary of State or which are otherwise expressly included in

that Access Agreement or Property Lease for the benefit of the Secretary of State.

13.5 If and to the extent that:

- (a) the Secretary of State exercises his rights pursuant to paragraph 12.2;
- (b) the Franchisee's compliance with the Secretary of State's requirements pursuant to paragraph 12.2 would lead to the unavoidable consequence of the Franchisee contravening any other terms of the Franchise Agreement or the occurrence of an Event of Default; and
- (c) the Franchisee duly complies with such requirements,

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

14. The Timetable and the Working Timetable

- 14.1 Any specification of railway passenger services in a Service Level Commitment shall (unless the Secretary of State states to the contrary) be regarded as relating to how those services are to be provided for in the National Rail Timetable (or other applicable timetable) that the Infrastructure Manager publishes for passengers, and not how they are to be provided for in the working timetable that the Infrastructure Manager issues to industry parties at the conclusion of its timetable development process.
- 14.2 Accordingly, the Franchisee's obligations specified in paragraph 9.2 shall be construed as an obligation to secure the requisite Train Slots in the working timetable to be issued by the Infrastructure Manager at the conclusion of its timetable development process that will permit the Franchisee to operate railway passenger services that comply with the Service Level Commitment provided for in the relevant Timetable.
- 14.3 The Franchisee shall ensure, for each period between two consecutive Passenger Change Dates during the Franchise Term, that the Timetable for such period is not materially different from the relevant working timetable issued by the Infrastructure Manager at the conclusion of its timetable development process.

APPENDIX TO SCHEDULE 1.1**Service Development Additional Factors**

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

- (m) the likelihood of special events generating sufficient passenger demand to support the provision of railway passenger services by the Franchisee to or from such special events;
- (n) the impact of Restrictions of Use extending over the periods specified in condition D2.2.1 of the Network Code or other Restrictions of Use that may affect Forecast Passenger Demand; and
- (o) such other matters as the Secretary of State may notify to the Franchisee from time to time.

SCHEDULE 1.2**Operating Obligations****1. Daily Operating Obligations**

- 1.1 The Franchisee agrees to use all reasonable endeavours to operate on each day of the Franchise Term each of its Passenger Services as are set out in the Plan of the Day for that day, with at least the passenger carrying capacity specified in the Train Plan for that Passenger Service. 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 set out in the Plan of the Day for that day and with at least the Passenger Carrying Capacity specified in the Train Plan for that Passenger Service.
- 1.2 The Franchisee shall ensure that its performance in each Reporting Period, calculated as a moving annual average in accordance with Schedule 7.1 (Performance Benchmarks), does not exceed (that is, is neither equal to or worse than) each Breach Performance Level in respect of that Reporting Period. It shall be a contravention by the Franchisee of the terms of the Franchise Agreement if its performance exceeds (that is, is equal to or worse than) any Breach Performance Level in any Reporting Period.

2. Not Used**3. Capacity Compliance**

- 3.1 If the Secretary of State considers that the Franchisee may have breached any of its obligations under paragraphs 5.1, 5.3, 5.4, 5.5, 6.2 and 6.3 of Schedule 1.1 (Service Development) or paragraph 1.1 of this Schedule 1.2, he shall (in addition to his right to obtain further information pursuant to paragraph 1.1 of Schedule 1.5 (Information about Passengers) and without prejudice to any other rights of the Secretary of State under the Franchise Agreement or otherwise) have the right, by serving notice on the Franchisee, to instigate an investigation of the Franchisee's compliance with its obligations under paragraphs 5.1, 5.3, 5.4, 5.5, 6.2 and 6.3 of Schedule 1.1 (Service Development) and paragraph 1.1 of this Schedule 1.2 ("**Timetabling and Train Planning Compliance Investigation**").

Following the service of such a notice the Franchisee shall:

- (a) provide such information as the Secretary of State may reasonably require for the purposes of determining if the Franchisee has complied with its obligations under paragraphs 5.1, 5.3, 5.4, 5.5, 6.2 and 6.3 of Schedule 1.1 (Service Development) and paragraph 1.1 of this Schedule 1.2 including:
- (i) evidence of the steps taken by the Franchisee to amend and/or enter into Access Agreements, exercise Timetable Development Rights and exercise its rights under the Track Access Agreement to object, to make representations and to withhold consent in respect of any actual or proposed act or omission by the relevant Infrastructure Provider in

- relation to such agreement in respect of its Timetable Development Rights;
- (ii) evidence of the extent to which the Franchisee has operated on each day of the relevant Reporting Period each of its Passenger Services as are set out in the Plan of the Day for that day and with at least the Passenger Carrying Capacity specified in the Train Plan for that Passenger Service;
 - (iii) Forecast Passenger Demand and the way that it was calculated including all evidence taken into account and assumptions used (including any divergences from then existing industry modelling standards and the reasons for such divergences); and
 - (iv) the alternative solutions considered by the Franchisee before finalising the Timetable and Train Plan and the reasons why any such alternative solutions were not adopted.
- (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 Specification and paragraph 6 of Schedule 1.1 (Service Development) and fully co-operate with and provide all information needed to facilitate such audit.

3.2

- (a) The Franchisee shall be in contravention of the Franchise Agreement if following the completion by the Secretary of State of the Timetabling and Train Planning Compliance Investigation he concludes that the Franchisee breached any of its obligations under paragraphs 5.1, 5.3, 5.4, 5.5, 6.2 and 6.3 of Schedule 1.1 (Service Development) or paragraph 1.1 of this Schedule 1.2 including where the Franchisee:
- (i) failed to act reasonably in calculating Forecast Passenger Demand because it unreasonably assumed that there would be differences between Forecast Passenger Demand and Actual Passenger Demand at the time that the Forecast Passenger Demand calculation was made; or
 - (ii) made unreasonable assumptions about the timetables likely to be operated by other Train Operators serving some or all of the same stations as the Franchisee.
- (b) Where the Secretary of State does conclude pursuant to paragraph (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 3.1(b)).

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

4. Timetable changes proposed by the Infrastructure Manager

- 4.1 The Franchisee shall notify the Secretary of State promptly after being notified by the Infrastructure Manager that the Infrastructure Manager has decided or proposes to:

- (a) omit from the Plan of the Day Passenger Services that are included in the Timetable; or
- (b) reschedule in the Plan of the Day Passenger Services from their scheduling in the Timetable,

- 4.2 To the extent that any such decision or proposal may materially (having regard to both duration and scale) prejudice the Franchisee's ability to deliver the Timetable with the passenger carrying capacity stipulated in a Train Plan, the Franchisee shall explain in such notification the way in which, in its opinion, such omission or rescheduling may materially prejudice the Franchisee's ability to deliver the Timetable with the passenger carrying capacity stipulated in a Train Plan.

- 4.3 The Franchisee agrees to supply to the Secretary of State from time to time, in the format required by the Secretary of State, such details of any actual or proposed omission or rescheduling of Passenger Services by the Infrastructure Manager as the Secretary of State may reasonably require, including details of the steps which the Franchisee proposes to take pursuant to paragraph 4.4.

- 4.4 Where the actual or proposed omission or rescheduling of Passenger Services is one which may materially prejudice the Franchisee's ability to deliver the Timetable with the passenger carrying capacity stipulated in a Train Plan, the Franchisee agrees (unless the Secretary of State specifically agrees otherwise) to exercise its rights under the relevant Track Access Agreement (including the Network Code and in the case of HS1, any equivalent code) to:

- (a) object (including submitting its objection to any relevant dispute resolution arrangements or procedures and appealing against any award or determination under such arrangements or procedures, including to the ORR);
- (b) make representations; and
- (c) withhold consent,

in respect of any actual or proposed omission or rescheduling of Passenger Services by the Infrastructure Manager.

- 4.5 If the Secretary of State does not consider that the Franchisee has taken sufficient steps under paragraph 4.4, the Secretary of State may require the Franchisee to exercise its rights referred to in paragraph 4.4 in such manner as

the Secretary of State may consider appropriate in the circumstances, including:

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

4.6 The Secretary of State shall, to the extent reasonably practicable, allow the Franchisee a reasonable opportunity to make representations to the Secretary of State concerning the exercise of any of its rights referred to in paragraph 4.4 before requiring the Franchisee to take any action referred to in paragraph 4.5.

4.7 The provisions of this paragraph 4 shall apply to any actual or proposed omission or rescheduling of Passenger Services that originates from any person other than the Infrastructure Manager, as those provisions apply to the Infrastructure Manager.

5. Timetable changes proposed by the Franchisee

5.1 The Franchisee agrees, subject to paragraph 5.2, not to propose to the Infrastructure Manager:

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

without the Secretary of State's prior consent.

5.2 Paragraph 5.1 shall not apply to the proposed:

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

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

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

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

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

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

6. Timetable changes requested by the Secretary of State

6.1 Subject to paragraph 6.2, the Franchisee agrees, as and when requested by the Secretary of State, to use all reasonable endeavours to seek and to obtain:

- (a) the addition to the Plan of the Day of any railway passenger services that are not included in the Timetable. The Franchisee shall, following a request by the Secretary of State to operate additional railway passenger services under this paragraph 6.1(a), provide to the Secretary of State a train plan which complies with the requirements of paragraph 2.5 and 2.6 of Schedule 1.1 (Service Development);
- (b) the omission from the Plan of the Day of any Passenger Services that are included in the Timetable; and/or
- (c) the rescheduling in the Plan of the Day of any Passenger Services from their scheduling in the Timetable.

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

7. Additional Railway Passenger Services

- 7.1 The Franchisee agrees not to operate any railway passenger services other than those:
- (a) required or permitted pursuant to this Schedule 1.2; or
 - (b) operated on behalf of any other Train Operator where the Secretary of State has approved the subcontracting of the operation of such railway passenger services to the Franchisee.

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

- 8.1 In the event of any planned or unplanned disruption to railway passenger services operated on the Routes, or on other parts of the network which are reasonably local to the Routes, the Franchisee shall:
- (a) without prejudice to any other provision of this Schedule 1.2, notify the Secretary of State promptly where such disruption would materially (having regard to both duration and scale) prejudice the Franchisee's ability to deliver the Timetable or deliver the Timetable in accordance with the Train Plan;
 - (b) co-operate with the Infrastructure Manager 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 8.2.
- 8.2 The Franchisee shall use all reasonable endeavours to provide or secure the provision of alternative transport arrangements to enable passengers affected by any disruption referred to in paragraph 8.1 to complete their intended journeys in accordance with this paragraph 8.2. In particular, the Franchisee shall use all reasonable endeavours to:
- (a) ensure that such alternative transport arrangements are of reasonable quality, of a reasonably similar frequency to the Passenger Services included in the Timetable which such arrangements replace and reasonably fit for the purpose of the journey to be undertaken;
 - (b) 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.

9. Obligation to use all reasonable endeavours

9.1 Any obligation in this Schedule 1.2 on the part of the Franchisee to use all reasonable endeavours to operate railway passenger services shall include an obligation to:

- (a) ensure (so far as it is able to do so) the provision of the Passenger Services as set out in the Plan of the Day in ordinary operating conditions;
- (b) take reasonable measures to avoid and/or reduce the impact of any disruption to the Franchise Services having regard to all the circumstances, including the reasonably foreseeable risks arising from the matters referred to in paragraph 9.2; and
- (c) actively manage the performance by the Infrastructure Manager 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 the Infrastructure Manager by these means (including taking the steps referred to in paragraph 9.4), having regard to all the circumstances.

9.2 The matters to which the Franchisee is to have regard pursuant to paragraph 9.1(b) shall include:

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

train crew and the servicing or cleaning of any rolling stock vehicles;
and

- (g) failures of rolling stock vehicles in service and contingency arrangements (including Hot Standbys and rescue traction).

9.3 For the purpose of taking measures in respect of any disruption to the Franchise Services in accordance with paragraph 9.1(b) and assessing the extent of any risk referred to in paragraph 9.1(b) and any such risk's reasonable foreseeability, regard shall be had both:

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

9.4 The steps to which paragraph 9.1(c) refers include:

- (a) co-operating with the Infrastructure Manager in the development, agreement and implementation of:
 - (i) Joint Performance Improvement Plans; and
 - (ii) recovery plans in response to failures to achieve the performance levels specified in any Joint Performance Improvement Plans;
- (b) co-operating with the Infrastructure Manager in adopting the principles set out in any Service Recovery Plans agreed between the Infrastructure Manager and the Franchisee from time to time;
- (c) undertaking a weekly review of:
 - (i) the ten most common causes of delay to the Passenger Services; and
 - (ii) the ten causes of delay to the Passenger Services with the longest duration (to the extent not already reviewed in accordance with paragraph 9.4(c)(i)),

which have occurred during that week and which have been caused by the Franchisee, any other Train Operator or the Infrastructure Manager;

- (d) undertaking with the Infrastructure Manager a review of the time taken to recover the Passenger Services following the occurrence of any of the events specified in paragraphs 9.4(c)(i) and (c)(ii) and seeking to identify and implement actions that reduce the delay effect of such events;

- (e) setting up and holding regular and effective performance review meetings with the Infrastructure Manager, evidenced by meeting minutes and the closure of actions agreed between the parties;
 - (f) regularly monitoring (at least every Reporting Period) the delivery of local output commitments made by the Infrastructure Manager and using reasonable endeavours to specify and develop such local output commitments;
 - (g) as and when required by the Infrastructure Manager, co-operating with the Infrastructure Manager in improving the accuracy of future timetables by providing access to trains, other facilities and/or information;
 - (h) co-operating with the Infrastructure Manager in other delay management initiatives, including the use of virtual general managers and, where appropriate, the establishment of integrated control centres;
 - (i) regularly reviewing (at least every Reporting Period) the imposition and clearance of temporary speed restrictions;
 - (j) regularly reviewing (at least every Reporting Period) the timely and efficient handover and hand-back of possessions; and
 - (k) where appropriate and where the Infrastructure Manager fails to perform its obligations under the Track Access Agreement, enforcing the Franchisee's rights under such Track Access Agreement.
- 9.5 The Franchisee undertakes to reasonably co-operate with the Infrastructure Managers with regard to the Infrastructure Managers' management of the network, including in relation to the establishment of up to date Timetable Planning Rules (as such term is defined under the Network Code or in respect of HS1, any equivalent code which applies to HS1).
- 9.6 To the extent not already provided for in the Franchise Agreement, the Franchisee shall use all reasonable endeavours to ensure the performance by the Infrastructure Manager of its obligations under any relevant agreement including, where appropriate or where requested by the Secretary of State, enforcing its rights against the Infrastructure Manager under any such agreement.
- 9.7 When and to the extent reasonably requested by the Secretary of State, the Franchisee shall provide to the Secretary of State evidence of the steps taken by it in order to comply with its obligations under this paragraph 9.

SCHEDULE 1.3

Not Used

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

The Franchisee shall publish on the Start Date:

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

1.2 Timetable Revisions and Alterations^{i ii}

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

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

1.3 In addition, the Franchisee shall^{iii iv}:

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

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

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

1.4 **Other Train Operators' Timetables** ^v

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

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

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

The Franchisee shall use all reasonable endeavours to procure (including by virtue of any arrangements made from time to time between the Infrastructure Manager and RSP) that the National Rail Timetable (or any replacement or, in the case of HS1, any equivalent timetable), which the Infrastructure Manager is responsible for publishing from time to time in relation to the Passenger Services, incorporates or is consistent with its Timetable from time to time.

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

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

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

2. **Late Timetable Changes**

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

- 2.2 Such information shall be provided by:
- (a) revising or adding to the information displays referred to in paragraph 1.1;
 - (b) notifying the operators of the Franchisee Access Stations, as appropriate, including by providing such operators with revised posters; and
 - (c) updating the Franchisee's website.
- 2.3 The Franchisee shall revise or add to the information displays at the Stations promptly on receipt of any equivalent information relating to the railway passenger services of other Train Operators whose services call at the Stations.
- 2.4 Where the Franchisee is unable to provide the information specified in paragraph 2.1 because the relevant revisions are made on an emergency basis, the Franchisee shall notify passengers and publish the relevant revisions by way of the means contemplated by paragraph 2.2 as soon as reasonably practicable.
- 2.5 The Franchisee shall ensure that, so far as reasonably practicable (including by communication of the relevant information to persons likely to receive enquiries), passengers making enquiries regarding the Passenger Services are informed of the revised Timetable and any revised travel arrangements of the Franchisee as far in advance as is reasonably practicable.

3. Fares Selling Restrictions

3.1 Restrictions on Sales

The Franchisee shall ensure that the purchaser of any Commuter Fare or Protected Fare:

- (a) shall be entitled, without further charge, to such rights of access and egress and other similar rights at the commencement and end of the relevant intended journey or journeys as may be reasonably necessary for such purchaser to travel on the Passenger Services;
 - (b) shall not be required to incur any cost or take any action beyond the payment of an amount equal to the Price or Child Price (as the case may be) of such Commuter Fare or Protected Fare (as the case may be) and, in relation to the issue of a Season Ticket Fare, the completion of such identity card as the Franchisee may reasonably require; and
 - (c) shall not be required to pay an amount in respect of a seat reservation or other similar right which it may be compulsory for such purchaser to have in order to make a journey with such Commuter Fare or Protected Fare (as the case may be) on a Passenger Service.
- 3.2 The Franchisee shall procure that for any:
- (a) Protected Return Fare, Single Fare which is a Commuter Fare or Return Fare which is a Commuter Fare, each such Fare shall be offered for sale wherever and whenever any other Fare (not being a

Season Ticket Fare) for a journey between the same origin and destination stations is offered for sale; and

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

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

3.3 Where the Franchisee sets a limit on the number of Commuter Fares or Protected Fares that may be used on any particular train, such limit shall be the greater of:

- (a) the number of seats in Standard Class Accommodation on such train; and
- (b) the capacity of Standard Class Accommodation of the rolling stock vehicles comprising such train according to the tables set out in Schedule 1.7 (The Train Fleet).

3.4 The Franchisee shall not sell or offer to sell:

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

3.5 **Agents of the Franchisee**

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

- (a) for Fares in respect of which the:
 - (i) Prices are regulated under Schedules 5.4 (Regulation of Fares Basket Values) and 5.5 (Regulation of Individual

Fares), sell or offer to sell at prices no greater than the Prices set for such Fares from time to time in accordance with Schedule 5.4 (Regulation of Fares Basket Values) and Schedule 5.5 (Regulation of Individual Fares); and

- (ii) Child Prices are regulated under Schedule 5.4 (Regulation of Fares Basket Values) and Schedule 5.5 (Regulation of Individual Fares), sell or offer to sell at prices no greater than the Child Prices set for such Fares from time to time in accordance with Schedules 5.4 (Regulation of Fares Basket Values) and Schedule 5.5 (Regulation of Individual Fares);
- (b) for Fares in respect of which the Child Price has been set pursuant to paragraph 2.1 of Schedule 5.2 (Franchisee's Obligation to Create Fares), sell or offer to sell such Fares to any person under the age of 16 for an amount which is no greater than the lowest amount that would be paid if that person were the holder of a 16 to 25 Railcard with no minimum fare (as amended or replaced from time to time) and whose purchase was made without condition; and
- (c) for all Fares:
 - (i) do not sell or offer to sell any Fare or Discount Card with a validity of 13 or more months without the consent of the Secretary of State (such consent not to be unreasonably withheld); and
 - (ii) comply with the provisions of paragraph 3 of Schedule 15.2 (Last 12 or 13 Months of Franchise Period and other conduct of business provisions) to the extent they apply to the selling of Fares by the Franchisee.

3.6 **Additional Ancillary Services**

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

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

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

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

3.8 **Not used**

4. Passenger's Charter

4.1 Content

The Franchisee shall:

- (a) publish its Passenger's Charter:
 - (i) in substantially the same form as the document in agreed terms marked **PC**; and
 - (ii) in accordance with the requirements specified in paragraph 4.3;
- (b) state the date of publication clearly on the front cover of the Passenger's Charter;
- (c) ensure that its Passenger's Charter provides for Enhanced Compensation for holders of Season Ticket Fares as a result of a Period of Sustained Poor Performance; and
- (d) 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;
- (e) ⁷⁰**use all reasonable endeavours to procure that by no later than [REDACTED⁷¹], its Passenger's Charter provides for, following receipt of a valid claim, the payment of a minimum of the following compensation to holders of any type of ticket, for journey delays of between fifteen (15) minutes and twenty nine (29) minutes and fifty nine (59) seconds (inclusive):**
 - (i) **(in the case of a journey by a holder of a Single Fare) twenty five per cent (25%) of the cost of the Single Fare;**
 - (ii) **(in the case of a journey by a holder of a Return Fare) twelve point five per cent (12.5%) of the cost of the Return Fare; or**
 - (iii) **(in the case of a journey by a holder of a Season Ticket) twenty five per cent (25%) of the Journey Rate of the ticket held; and**

⁷⁰ 13 June 2019 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

⁷¹ **5 August 2019 (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.**

- (f) ⁷²**use reasonable endeavours to pay compensation to holders of any type of ticket for journey delays under the Passenger's Charter in accordance with the Passenger's Charter Guidance.**

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 Payment and Other Obligations**

The Franchisee shall:

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

⁷² 13 June 2019 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

- 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. Train and station cleaning

The Franchisee shall:

- 5.1 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;
- 5.2 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;
- 5.3 ensure that the nature and frequency of its planned and reactive programme for maintaining a reasonable standard of Station condition and passenger environment is such that all of the Stations are expected to be clean, free of litter and graffiti, painted to a reasonable standard and free from minor defects; and
- 5.4 use all reasonable endeavours to ensure that all Stations are clean, free of litter and graffiti, painted to a reasonable standard and free from minor defects throughout the Franchise Term.

6. Cycles

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

7. Not Used

8. Statutory Notices

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

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

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

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

(together, "**Actual Passenger Demand**").

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

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

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

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

- (a) using such systems, in such a format and to such level of disaggregation as the Secretary of State may reasonably require;
- (b) at a frequency and within timescales that the Secretary of State may reasonably request pursuant to paragraph 1.1; and

- (c) 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 service level commitments, infrastructure, station and rolling stock investment, the best use of the network and the alleviation of overcrowding.

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

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

1.5 **Manual Passenger Counts**

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

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

- (a) The technology to be used for the purpose of paragraph 1.2 shall be:
 - (i) a load-weigh system that monitors the air suspension pressure to determine passenger numbers;
 - (ii) fitted to:
 - (A) at least 60% of the entire Train Fleet from time to time; and
 - (B) 25% of the Class 465 and Class 466 rolling stock that forms part of the Train Fleet ("**Networker Fleet**"); and
 - (iii) in the case of each Passenger Service that is operated using rolling stock other than the Networker Fleet, deployed by

the Franchisee on each such Passenger Service (for the entire duration of that Passenger Service) at least twice on each Weekday, twice on a Saturday and twice on a Sunday (or such less frequent requirement as may be stipulated by the Secretary of State) in each period of not less than 12 weeks as the Secretary of State may from time to time specify for this purpose. This means that, for example, in relation to any individual Passenger Service, the passenger counting technology must have been deployed on that Passenger Service at least twice on a Monday, at least twice on a Tuesday and so on and so forth during the relevant period;

(iv) in the case of each Passenger Service that is operated using the Networker Fleet, deployed by the Franchisee on each such Passenger Service, at least once on each Weekday, once on a Saturday and once on a Sunday (or such less frequent requirement as may be stipulated by the Secretary of State) in each period of not less than 12 weeks as the Secretary of State may from time to time specify for this purpose.

(b) The Franchisee shall comply with its obligation under sub paragraph (a) above by no later than the Start Date.

2. Not Used

3. CRM Data

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

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

(b) the property of the Franchisee.

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

3.3 Any consent referred to in paragraph 3.2 shall be sought in such manner as shall from time to time be approved by the Secretary of State (such approval not to be unreasonably withheld or delayed) and shall be on terms such as shall permit, in each case in compliance with the Data Protection Act:

(a) the Franchisee to disclose such CRM Data to any Successor Operator and/or the Secretary of State; and

(b) any such Successor Operator to process such CRM Data in the manner contemplated by paragraph 3.2.

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

4. Yield Management Data

- 4.1 The Franchisee shall ensure that any Yield Management Data and Yield Management System are the property of the Franchisee or are licensed to the Franchisee on terms which have been approved by the Secretary of State (such approval not to be unreasonably withheld or delayed).
- 4.2 If and to the extent that the collection, use and/or processing of any Yield Management Data is subject to the Data Protection Act then paragraphs 3.1(a), 3.2, 3.3 and 5 of this shall apply in respect of Yield Management Data in the same way as they apply to CRM Data.

5. Personal Data - General Provisions

- 5.1 In respect of any Personal Data processed by the Franchisee, including CRM Data, the Franchisee agrees that it shall (i) comply with the Data Protection Act and all other legislation relating to the protection and use of personal information (including the Privacy and Electronic Communications (EC Directive) Regulations 2003) (all such legislation collectively being the "**Personal Data Legislation**") to the extent that such legislation applies to it and (ii) procure that its agents or subcontractors shall do the same.
- 5.2 Pursuant to paragraph 5.1, the Franchisee agrees to comply with the Personal Data Legislation in respect of its Processing of CRM Data and in particular, but without limitation, the Franchisee shall:
- (a) ensure that CRM Data is Processed fairly and lawfully (in accordance with part 1 of Schedule 1 of the Data Protection Act);
 - (b) ensure that CRM Data is obtained only for one or more specified and lawful purposes, and shall not be further Processed in any manner incompatible with that purpose or those purposes (in accordance with part 2 of Schedule 1 of the Data Protection Act); and
 - (c) obtain and maintain all appropriate notifications as required under the Data Protection Act.

- 5.3 In accordance with its capacity as Data Controller of CRM Data and in accordance with the ensuing obligations under the Data Protection Act:
- (a) the Franchisee shall procure that any CRM Data Processor which it appoints shall:
 - (i) prior to any disclosure of CRM Data to the CRM Data Processor, enter into written terms between itself and the Franchisee which are equivalent to those contained in this paragraph 5.3; and
 - (ii) Process CRM Data only on behalf of the Franchisee, only for the purpose(s) as defined by the Franchisee and only in accordance with instructions received from the Franchisee from time to time;
 - (b) the Franchisee shall, and shall procure that any CRM Data Processor which it appoints shall, at all times have in place appropriate technical and organisational measures against unauthorised or unlawful processing of CRM Data and against accidental loss or destruction of, or damage to, CRM Data and that such measures shall:
 - (i) reflect the level of harm, damage and /or distress that might be suffered by the Data Subject to whom the CRM Data relates in the event of a breach of the measures as set out herein; and
 - (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;
 - (iii) (in the case of the CRM Data Processor) include compliance with a schedule of minimum security measures pursuant to the written terms between the Franchisee and the CRM Data Processor;
 - (c) the Franchisee shall procure that any CRM Data Processor which it appoints shall:
 - (i) promptly notify the Franchisee of any actual or suspected, threatened or 'near miss' incident of accidental or unlawful destruction or accidental loss, alteration, unauthorised or accidental disclosure of or access to the CRM Data or other breach of this paragraph 5.3(c) ("**Security Breach**") and, pursuant to this the Franchisee shall promptly notify the Secretary of State of all Security Breaches by itself or by the CRM Data Processor (the Franchisee hereby acknowledges that whilst the Secretary of State is not 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);
 - (ii) promptly provide the Franchisee on request with all reasonable information, assistance and co-operation in

relation to its use of the CRM Data, including in relation to any audit by the Franchisee or by any person appointed on its behalf to permit an accurate and complete assessment of compliance with this paragraph 5;

- (d) the Franchisee shall, and shall procure that any CRM Data Processor which it appoints shall, at all times take reasonable steps to ensure the reliability of its/their personnel who have access to the CRM Data and ensure they are aware of the obligations of the Franchisee or the CRM Data Processor (as appropriate) in relation to the same;
- (e) the Franchisee shall, and shall procure that any CRM Data Processor which it appoints shall, not cause or permit the CRM Data to be transferred to any location outside the European Economic Area (as defined in the Data Protection Act or otherwise as appropriate) without the prior written permission of:
 - (i) (in the case of the Franchisee) the Secretary of State; or
 - (ii) (in the case of any Data Processor appointed by the Franchisee) the Franchisee provided that the Franchisee shall not give any such consent without the prior written permission of the Secretary of State;

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

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

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

2. Restrictions relating to Franchise Services

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

2.2 The Franchisee shall not without the prior written consent of the Secretary of State operate Passenger Services other than on the following routes (and in the event of disruption, the Diversionary Routes). For the purposes of this Schedule 1.6:

- (a) **"Core Routes"** means those Routes specified in paragraph 1 of the Appendix to Schedule 1.6; and
- (b) **"Ancillary Routes"** means those Routes specified in paragraph 3 of the Appendix to Schedule 1.6; and
- (c) the **"Discretionary Routes"** means those Routes specified in paragraph 2 of the Appendix to Schedule 1.6,

references to a Route include in relation to that Route any part of the track at or adjoining a station on the Route, all running lines on the Route, and loops and connecting lines associated with the Route.

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

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

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

any other arrangement designed to ensure or facilitate co-operation between such participants or between any such participants and any other person.

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

3. Station Services

- 3.1 The Station Services shall comprise:

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

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

4. Light Maintenance Services

- 4.1 Light Maintenance Services shall comprise:

- (a) the provision of access to any other person under an Access Agreement;
- (b) the carrying out of inspections of rolling stock vehicles;
- (c) the carrying out of maintenance work on rolling stock vehicles of a kind which is normally carried out at regular intervals of 12 months or less;
- (d) replacement of failed components and consumables on rolling stock vehicles;
- (e) the preparation of rolling stock vehicles for service;
- (f) the stabling or other temporary holding of rolling stock vehicles;

- (g) the refuelling of rolling stock vehicles;
- (h) the replenishment of water tanks; and
- (i) the cleaning of the exterior or the interior of rolling stock vehicles,

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

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

5. Ancillary Services

The Franchisee may carry out the following Ancillary Services:

- (a) the selling, lending or hiring of any goods or rights and the provision of any services (whether for a charge or not) on any train used in the provision of the Passenger Services where such goods or services are sold or provided principally for consumption or use on the relevant train, including the sale of any Fares, meals, light refreshments, newspapers, magazines, books, entertainment materials or phone cards;
- (b) the provision of any service at any station which, if provided on a train used in the provision of the Passenger Services, would fall within paragraph 5(a) or which, if provided at a Station, would fall within paragraph 3 and which, in each case, is made available only or principally to persons at such stations who either are about to travel or have recently travelled on a train used in the provision of the Passenger Services;
- (c) in any Reporting Period, the subleasing, hiring or licensing of up to 10 per cent of the rolling stock vehicles used in the provision of the Passenger Services (such percentage to be determined by reference to the aggregate period of time for which such rolling stock vehicles are sublet, hired or licensed and the aggregate period of time for which they are used in the provision of the Passenger Services);
- (d) the lending, seconding, hiring or contracting out during any Reporting Period to another person or persons (whether for a charge or not) of:
 - (i) up to one per cent of the number of Franchise Employees as at the Start Date, for over 90 per cent of their normal working hours during such Reporting Period (including on a full-time basis); and
 - (ii) five per cent of any other Franchise Employees as at the Start Date,

provided that this paragraph shall not apply to any employee lent, seconded, hired or contracted out under any of paragraphs 5(a) to (c) inclusive and (e) to (p) inclusive, or engaged in any other activity which is permitted under this

SCHEDULE 1.6;

- (e) any heavy maintenance of rolling stock vehicles which does not fall within the Light Maintenance Services, carried out on behalf of any other person at the following Depot(s), subject to the number of persons engaged or employed in such activity not exceeding by more than 10 per cent the number so engaged or employed on the Start Date:
 - (i) Victoria Grosvenor Road;
 - (ii) Grove Park;
 - (iii) Orpington;
 - (iv) Ashford;
 - (v) St Leonards West Mariner;
 - (vi) Ramsgate;
 - (vii) Gillingham; and
 - (viii) Slade Green;
- (f) the selling at any location of any Fare which is valid, in whole or in part, on the Passenger Services and the selling of any other Fare at any location where such Fares may be purchased from the Franchisee on or before the date of the Franchise Agreement or at any other location, provided that the majority of Fares sold at any such other location shall be Fares which are valid, in whole or in part, on the Passenger Services;
- (g) the selling, in conjunction with any Fare, of any other rights which entitle the purchaser thereof to:
 - (i) travel on any other train or light rail service;
 - (ii) travel on any aircraft;
 - (iii) travel on any shipping or ferry service;
 - (iv) travel on any bus; or
 - (v) attend any event or attraction or enter any location;
- (h) the lending, seconding, hiring or contracting out of Franchise Employees to other Train Operators in order to enable such Train Operators to provide services at the Stations to passengers travelling on any such operator's trains;
- (i) the provision of telephone information relating to railway passenger services within Great Britain to passengers;
- (j) the supervision, management and training of train crew of other Train Operators provided such activity is necessarily incidental to the

- provision of the Passenger Services and could not reasonably be carried out by or through an Affiliate of the Franchisee;
- (k) the subleasing, hiring, licensing, lending, selling of any rolling stock vehicles or other assets of the Franchisee or the lending, hiring or contracting out of any employees of the Franchisee or the provision of any other services to the Infrastructure Manager or any other Train Operator on an emergency basis;
 - (l) the licensing or permitting of any other person (including an Affiliate of the Franchisee) to carry out any activity or business, in connection with the provision of the Franchise Services, or otherwise, on any rolling stock vehicle operated by the Franchisee, at any station served by the Passenger Services, at any Depot, or otherwise (including the letting, leasing or licensing (on an exclusive basis or otherwise) of any part or all of a Station or Depot to such other person);
 - (m) such other activity or business as may be reasonably necessary for the purpose of providing any other Franchise Services or complying with the Franchise Agreement, provided that it could not reasonably be carried out by or through an Affiliate of the Franchisee;
 - (n) the subleasing to any other person of the property specified below for this purpose in this Franchise Agreement which is not comprised in a Station or Depot:
 - (i) Friar's Bridge Court, 41-45 Blackfriars Road, London SE1 8PG
 - (ii) International House, Dover Place, Ashford, Kent TN23 1HU;
 - (iii) The Waterloo Training Centre, Lincoln House, 75 Westminster Bridge Road, London SE1 7HZ;
 - (iv) South Eastern House, Station Approach, Orpington, Kent BR6 0SX;
 - (v) ⁷³**(subject to the Franchise entering a lease in respect of the same) the second floor at 4 More London Riverside, London SE1 2AU;**
 - (o) the provision or operation of Charter Services, subject to the Train Mileage of such Charter Services not exceeding in any Reporting Period two per cent of the scheduled Train Mileage of Passenger Services provided by the Franchisee in such Reporting Period;
 - (p) the provision of consultancy services reasonably ancillary to the provision of the other Franchise Services;
 - (q) ⁷⁴**any services or activity not falling within paragraphs 3, 4 or 5(a) to (p) or 5(r), 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**

⁷³ 13 June 2019 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

⁷⁴ Date of change 18/12/2014

item and in aggregate, £250,000 per annum in each Franchisee Year provided that in the second and each subsequent Franchisee Year, these amounts will be increased by "RPI", and "RPI" shall have the meaning given to it in Schedule 8.2 (Annual Franchise Payments); and

- (r) ⁷⁵***any services or activity provided to the TSGN Operator not falling within paragraphs 3, 4 or 5(a) to (p) relating to the ongoing provision of the Thameslink Passenger Services.***
- (s) ⁷⁶**the On-Train Wi-Fi Services (as defined in paragraph 20.1 of Part 1 (List of Committed Obligations) of Schedule 6.1 (Committed Obligations and Related Provisions)).**

6. Affiliates of the Franchisee

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

⁷⁵ **18/12/2014 (Date of contract change letter)** – Contract insertion agreed by the Secretary of State and Franchisee.

⁷⁶ **08/12/2016 (Date of DOA)** – Contract insertion agreed by the Secretary of State and Franchisee.

APPENDIX TO SCHEDULE 1.6

Franchise Services

1. Core Routes

The Core Routes comprise the Routes extending between the following points (all inclusive):

London Victoria and Ramsgate via Penge East and Chatham; Factory Junction and Crofton Road Junction via Atlantic Lines; Brixton Junction and Shortlands Junction via Catford; Nunhead and Lewisham; Bickley Junction and Petts Wood Junction; Swanley and Ashford International via Maidstone East; Otford Junction and Sevenoaks⁷⁷; Western Junction and Sheerness-on-Sea; Eastern Junction and Middle Junction; Faversham and Buckland Junction; Blackfriars, Smithfield Sidings⁷⁸ and Herne Hill; Loughborough Junction and Cambria Junction; London Charing Cross and Ramsgate via Grove Park, Orpington and Deal; London Cannon Street and London Bridge; North Kent East Junction and Rochester Bridge Junction via Greenwich; Slade Green and Perry Street Fork Junction; Crayford Spur A Junction and Crayford Spur B Junction; Strood and Paddock Wood; Tanners Hill Junction and Lewisham Vale Junction; St Johns and Charlton; Blackheath Junction and Crayford Creek Junction; Lewisham and Hayes; Courthill Loop Junction North and Courthill Loop Junction South; Parks Bridge Junction and Ladywell Junction; New Beckenham and Beckenham Junction; Hither Green and Dartford Junction; Grove Park and Bromley North; Chislehurst Junction and St Mary Cray Junction; Tonbridge and Ore via Wadhurst; Ashford International and Minster East Junction via Canterbury West; Minster South Junction and Minster West Junction; Ashford International to Ashford Western Junction; HS1 Routes⁷⁹; Ashford International and St Pancras International via Ebbsfleet International; Springhead Road Junction / Church Path Pit Sidings and Ebbsfleet International; York Way South Junction and Temple Mills Depot; Battersea Pier Junction (Chatham Lines) and Factory Junction via Stewarts Lane Junction.

2. Diversionsary Routes

The Diversionsary Routes comprise the Routes extending between the following points (all inclusive):

Stoats Nest Junction and Earlswood via Quarry Lines; Three Bridges and Bo-peep Junction via Plumpton and Eastbourne; London Bridge and Tonbridge via Forest Hill, Merstham and Leigh (Kent); London Victoria to East Croydon via Selhurst, Balham and Clapham Junction⁸⁰; Redhill and Three Bridges; Ashford International to Ashford Eastern Junction; HS1 Routes⁸¹; Fawkham Junction and Singlewell Loop; Ashford East Junction and Dollands Moor Yard.

⁷⁷ *DfT Note: This Core Route becomes a Diversionsary Route upon TSGN operating Sevenoaks – Bedford services from 21 December 2014*

⁷⁸ *DfT Note: This platform is a proposed possible turnaround in the event that platforms at Blackfriars are unavailable*

⁷⁹ *DfT Note: Separate TAC*

⁸⁰ *DfT Note: This Diversionsary Route is under consideration as an alternative Diversionsary Route to London Bridge Low Level*

⁸¹ *DfT Note: Separate TAC*

3. Ancillary Routes

The Ancillary Routes comprise the Routes between the Core Routes, the Diversionary Routes and the depots and stabling points located adjacent to them, and the Routes extending between the following points (all inclusive):

Canterbury Road Junction and Loughborough Junction; City Thameslink and Smithfield Sidings⁸²; London Blackfriars and London Cannon Street⁸³; Lee Spur Junction and Lee Loop Junction; Bo-peep Junction and St Leonards (West Marina) Depot; Keymer Junction and Lovers Walk Depot direct and via Brighton Station; Brighton and Lewes.

⁸² *DfT Note: This Ancillary Route applies to 377 units only*

⁸³ *DfT Note: This Ancillary Route may be removed post 2018*

SCHEDULE 1.7**The Train Fleet****1. The Composition of the Train Fleet**

The Train Fleet consists of:

- 1.1 the rolling stock vehicles set out in Table 1, with the capacity characteristics referred to there, until the lease expiry dates referred to there;
 - 1.2 from the dates set out in Table 2 until the lease expiry dates referred to there, the additional rolling stock vehicles referred to against those dates, having (unless otherwise agreed by the Secretary of State):
 - (a) in the case of any additional rolling stock vehicles of the same class as any original rolling stock vehicles:
 - (i) at least the capacity specified in respect of such original rolling stock vehicles or such greater capacity as may be set out in Table 2; and
 - (ii) reliability, capability and quality that is at least equal to the reliability, capability and quality of such original rolling stock vehicles; and
 - (b) in the case of any other additional rolling stock vehicles referred to in Table 2:
 - (i) at least the capacity specified in respect of any original rolling stock vehicles that are, in the reasonable opinion of the Secretary of State, most similar to such additional rolling stock vehicles; and
 - (ii) reliability, capability and quality that is, in the reasonable opinion of the Secretary of State, at least equal to the reliability, capability and quality of any original rolling stock vehicles that are, in the reasonable opinion of the Secretary of State, most similar to such additional rolling stock vehicles.
2. The passenger carrying capacity of any rolling stock vehicles shall be determined by the Secretary of State in accordance with paragraph 13.5 of Schedule 1.1 (Service Development) but for the purpose of determining the Franchisee's performance against the Capacity Benchmark in accordance with Schedule 7.1 any rolling stock vehicle which has PRM Modifications undertaken to such rolling stock vehicle shall be deemed to have the passenger carrying capacity of such rolling stock vehicle prior to such PRM Modifications having been undertaken.
 3. Without limiting paragraph 2 of Schedule 2.2 (Security of Access Agreements, Rolling Stock Leases, Station and Depot 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 Term, not less than one 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 12.2(b) of Schedule 1.1 (Service Development).

4. Changes to the Train Fleet

4.3 Subject to paragraph 4.2, the Franchisee shall maintain the composition of the Train Fleet during the Franchise Term, unless the Secretary of State otherwise agrees, such that there are no changes to the Train Fleet, including changes:

- (a) to the classes or types;
- (b) to the interior configurations; or
- (c) which may reduce the journey time capabilities,

of any rolling stock vehicles specified in the Train Fleet.

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

- (a) procure rolling stock vehicles in order to provide Additional Passenger Services provided that the total amounts payable pursuant to the terms of all Rolling Stock Related Contracts entered into pursuant to this paragraph 4.2(a) do not exceed five per cent. of the total amounts payable under the terms of Rolling Stock Related Contracts for the existing Train Fleet in respect of the unexpired Franchise Term; and/or
- (b) discontinue the arrangements (including the leasing, maintenance support services or technical support services) in respect of any rolling stock vehicles used in the provision of Additional Passenger Services.

4.5 The Franchisee shall procure that the rolling stock vehicles specified in the Tables contained in this Schedule 1.7 (The Train Fleet), with the capacity and other characteristics referred to there, are available for deployment in the provision of the Passenger Services during the periods referred to there.

4.6 During the Franchise Term, the Franchisee shall advise the Secretary of State of any rolling stock vehicles damaged beyond economic repair or likely to be unavailable for service for a period of three consecutive Reporting Periods or more.

4.7 If any change is made to the Train Fleet in accordance with this paragraph 4, 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.

Table 1 (Original Rolling Stock) ^{84 85 86}									
Column 1	Column 2	Column 3			Column 4		Column 5	Column 6	
Class of vehicle/unit	Number of vehicles in fleet and unit configuration	Standard Class Passenger Carrying Capacity per unit*			First Class Passenger Carrying Capacity per unit*		Owner/Lessor	Lease expiry date(s)	
		Seats	Wheelchair spaces	Standing	Seats	Wheelchair Spaces		Scheduled Lease Expiry Date	Early Redelivery Date (if any)
375/3	30-3 Cars/Unit	164	2	115	12	0	Eversholt Rail Leasing Limited	Expiry Date	
375/6	120-4 Cars/Unit	218	2	147	24	0	Eversholt Rail Leasing Limited	Expiry Date	
375/7	60-4 Cars/Unit	218	2	147	24	0	Eversholt Rail Leasing Limited	Expiry Date	
375/8	120-4 Cars/Unit	218	2	147	24	0	Eversholt Rail Leasing Limited	Expiry Date	
375/9	108-4 Cars/Unit	253	2	112	24	0	Eversholt Rail Leasing Limited	Expiry Date	
376/0	180-5 Cars/Unit	224	2	416	0	0	Eversholt Rail Leasing Limited	Expiry Date	
395	174-6 Cars/Unit	349	2	184	0	0	Eversholt Rail Leasing Limited	Expiry Date	
465/0	200-4 Cars/Unit	348	2	116	0	0	Eversholt Rail Leasing Limited	Expiry Date	
465/1	188-4 Cars/Unit	348	2	116	0	0	Eversholt Rail	Expiry Date	

⁸⁴ Date of contract change 28/07/2016 – Agreed by the Secretary of State and Franchisee.

⁸⁵ 23 March 2018 (Date of DOA) - Contract variation agreed by the Secretary of State and Franchisee.

⁸⁶ 13 June 2019 (Date of DOA) – Contract variation agreed by the Secretary of State and Franchisee.

Table 1 (Original Rolling Stock) ^{84 85 86}									
Column 1	Column 2	Column 3			Column 4		Column 5	Column 6	
Class of vehicle/unit	Number of vehicles in fleet and unit configuration	Standard Class Passenger Carrying Capacity per unit*			First Class Passenger Carrying Capacity per unit*		Owner/Lessor	Lease expiry date(s)	
		Seats	Wheelchair spaces	Standing	Seats	Wheelchair Spaces		Scheduled Lease Expiry Date	Early Redelivery Date (if any)
							Leasing Limited		
465/2	64-4 Cars/Unit	348	2	116	0	0	Angel Trains Limited	Expiry Date	
465/9	136-4 Cars/Unit	302	2	104	24	0	Angel Trains Limited	Expiry Date	
466	86-2 Cars/Unit	168	2	57	0	0	Angel Trains Limited	Expiry Date	

* The following aspects of the capacity per unit remain subject to review:

- the number of wheelchair spaces in each of Standard Class and First Class;
- the split in the number of seats between Standard Class and First Class; and
- any amendment to the capacities as a result of any modification to a unit.

Table 2 (Specified Additional Rolling Stock) ^{87 88 89}										
Column 1	Column 2	Column 3			Column 4		Column 5	Column 6	Column 7	Column 8
Class of vehicle/unit	Number of vehicles in fleet and unit configuration	Standard Class Passenger Carrying Capacity per unit*			First Class Passenger Carrying Capacity per unit*		Owner/Lessor	Lease start date(s)	Lease expiry date (s)	Identity of any unit in Table 1 (Original Rolling Stock) intended to be replaced by the Specified Additional Rolling Stock and the date of replacement
		Seats	Wheel chair spaces	Standing	Seats	Wheel chair spaces				
377/5	32-4 Cars/Unit	231	2	130	10	0	TSG N Operator	11 December 2016	Expiry Date	
377/5	60-4 Cars/Unit	231	2	130	10	0	TSG N Operator	From the date that each unit is Cascaded to the Franchise under the Class 377 (2017 Capacity Enhancement) SubLease	Expiry Date	
377/1	8-4 Cars/Unit	233	2	130	12	0	TSG N Operator	From the date that each unit is	Expiry Date	

⁸⁷ 08/09/2017 (Date of DOA) – Contract variation agreed by the Secretary of State and Franchisee.

⁸⁸ 23 March 2018 (Date of DOA) – Contract variation agreed by the Secretary of State and Franchisee.

⁸⁹ 13 June 2019 (Date of DOA) – Contract variation agreed by the Secretary of State and Franchisee.

Table 2 (Specified Additional Rolling Stock) ^{87 88 89}										
Column 1	Column 2	Column 3			Column 4		Column 5	Column 6	Column 7	Column 8
Class of vehicle/unit	Number of vehicles in fleet and unit configuration	Standard Class Passenger Carrying Capacity per unit*			First Class Passenger Carrying Capacity per unit*		Owner/Lessor	Lease start date(s)	Lease expiry date (s)	Identity of any unit in Table 1 (Original Rolling Stock) intended to be replaced by the Specified Additional Rolling Stock and the date of replacement
		Seats	Wheel chair spaces	Standing	Seats	Wheel chair spaces				
								Cascaded to the Franchise under the Class 377 (2017 Capacity Enhancement) Sub-Lease		

* The following aspects of the capacity per unit remain subject to review:

- the number of wheelchair spaces in each of Standard Class and First Class;
- the split in the number of seats between Standard Class and First Class; and
- any amendment to the capacities as a result of any modification to a unit.

SCHEDULE 2

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

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

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

- 1.1 The Franchisee shall not without the prior written consent of the Secretary of State (such consent not to be unreasonably withheld), whether generally or on a case-by-case basis:
- (a) enter into any new Property Lease; or
 - (b) effect any amendment to any Property Lease, except to the extent that the Franchisee is required to do so by virtue of any station or depot access conditions to which it is a party.
- 1.2 In respect of any new Property Leases with the Infrastructure Manager, the Franchisee shall enter into such Property Leases:
- (a) with the intent that Section 31 of the Act shall apply to such leases; and
 - (b) in the agreed terms marked **SL** and **DL** (as appropriate).
- 1.3 In respect of any assignment or amendment of any Property Lease to which Section 31 of the Act applied on its grant, each of the Secretary of State and the Franchisee acknowledge that it is their intention that Section 31 of the Act shall continue to apply to such assigned or amended lease.

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

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

(a) following receipt of a notice purporting to terminate any Access Agreement to which it is a party, in relation to such Access Agreement; or

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

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

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

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

(a) that the Franchisee shall not be released from any accrued but unperformed obligation, the consequences of any breach of the relevant agreement which is the subject of arbitration or litigation between the parties thereto or any liability in respect of any act or omission under or in relation to the relevant agreement prior to, or as at the date of, any such novation (except to the extent that the Secretary of State or his nominee agrees to assume responsibility for such unperformed obligation, such liability or the consequences of such breach in connection with the relevant novation); and

(b) that neither the Secretary of State nor his nominee shall be obliged, in connection with the novation, to agree to assume responsibility for any unperformed obligation, liability or consequences of a breach referred to in paragraph 1.3(a),

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

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

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

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

2. Rolling Stock Related Contracts and insurance arrangements

- 2.1 The Franchisee shall not:

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

without, in each case, the prior written consent of the Secretary of State (not to be unreasonably withheld) and shall supply a copy of all draft and all executed Rolling Stock Related Contracts (including any agreement amending any Rolling Stock Related Contract) together with such other information or documentation relating to such Rolling Stock Related Contract and/or the relevant rolling stock as the Secretary of State may request (which may include offer letters (original and final), the terms proposed by any person providing finance in relation to the relevant rolling stock (including cash flows), any agreement (in whatever form) to which the Franchisee (or an Affiliate of the Franchisee) is a party and which relates to the relevant rolling stock, information relating to capital allowances, details of any changes in the terms (including rentals) on which the relevant rolling stock is proposed to be leased compared to the terms on which such rolling stock was previously leased, a detailed justification of the Franchisee's proposed maintenance strategy for the relevant rolling stock and/or the Franchisee's analysis of the whole life costs of the relevant rolling stock) to the Secretary of State. Where the information or documentation so requested by the Secretary of State is not held by the Franchisee, the Franchisee shall use reasonable endeavours to obtain the relevant information or documentation from a third party (including any person from whom the Franchisee leases rolling stock)

- 2.2 The Franchisee shall not, without the prior written consent of the Secretary of State:

- (a) amend the terms of any insurance arrangements which relate to rolling stock vehicles used by it in the provision of the Passenger Services to which it is a party on the Start Date; or
- (b) enter into any new insurance arrangements after the Start Date which relate to rolling stock vehicles used or to be used by it in the provision of the Passenger Services ("**New Insurance Arrangements**").

- 2.3 Not Used.

- 2.4 The Franchisee shall, in addition, if it enters into any new insurance arrangements, use all reasonable endeavours to ensure that the relevant insurers waive their rights of subrogation against any Train Operator which may have equivalent insurance arrangements providing for a similar waiver of rights of subrogation against the Franchisee, whether on a reciprocal basis or otherwise.
- 2.5 Without limiting paragraph 2.1, where the rolling stock to be leased by the Franchisee under any Rolling Stock Lease is Cascaded Rolling Stock the Secretary of State may:
- (a) as a condition of giving his consent to the Franchisee executing such Rolling Stock Lease, require that such Rolling Stock Lease contains a provision whereby, in the event of a Relevant Delay, the Secretary of State may require that such Cascaded Rolling Stock can continue to be used by the Prior Train Operator during such period as the Secretary of State shall specify. Without limitation this may include the Franchisee subleasing the Cascaded Rolling Stock back to the Prior Train Operator and/or a delay to the date on which the Cascaded Rolling Stock is required to be delivered to the Franchisee under such Rolling Stock Lease; and
 - (b) where the Secretary of State requires such a provision to be included in the relevant Rolling Stock Lease, if a Relevant Delay occurs, require the Franchisee to make the Cascaded Rolling Stock available for use by the Prior Train Operator during such period as the Secretary of State may require.

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

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

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

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

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

2.6

- (a) Where the Secretary of State exercises his right pursuant to paragraph 2.5(b) to make Cascaded Rolling Stock available for use by the Prior Train Operator during a specified period there shall be a Change and where this is a Qualifying Change it shall be assumed that the period that the Prior Train Operator retains any Cascaded Rolling Stock shall not exceed 90 days and the only Revised Inputs shall be in relation to the difference between each of the rolling stock lease costs and variable track usage charge for the Cascaded Rolling

Stock and the rolling stock lease costs and variable track usage charge applicable in relation to whatever rolling stock is to be used by the Franchisee in place of the Cascaded Rolling Stock.

- (b) Where there is a Change pursuant to paragraph 2.6(a) and the period that the Prior Train Operator retains any Cascaded Rolling Stock is more than 90 days there shall be a further Change. Where such Change is a Qualifying Change the modifications to the methodology for calculating Revised Inputs provided for in paragraph 2.6(a) shall not apply.
- (c) Where there is a Change pursuant to paragraphs 2.6(a) or 2.6(b) and any such Change is a Qualifying Change there shall be a further Change (which shall be a Qualifying Change irrespective of whether such Change meets the requirements of the definition of Qualifying Change) on the date that the last Cascaded Rolling Stock ceases to be retained by the Prior Train Operator.

2.7

- (a) Where the Secretary of State exercises his right pursuant to paragraph 2.5(b) to make the Cascaded Rolling Stock available for use by the Prior Train Operator during a specified period the Franchisee shall not be liable for any failure to comply with its obligations under the Franchise Agreement to the extent that:
 - (i) such failure to comply arises directly as a result of the Franchisee being unable to use the Cascaded Rolling Stock; and
 - (ii) the Franchisee uses all reasonable endeavours to comply with the relevant obligations notwithstanding the unavailability of the Cascaded Rolling Stock.
- (b) The Franchisee shall notify the Secretary of State as soon as reasonably practicable if it becomes aware of any material risk that a Relevant Delay will occur. If a Relevant Delay does occur the Franchisee shall use all reasonable endeavours to mitigate the impact on the delivery of the Franchise Services of the unavailability of the Cascaded Rolling Stock at the expected time including by identifying and proposing value for money alternative sources of replacement rolling stock.
- (c) If a Relevant Delay has occurred or the Secretary of State believes that there is a material risk that a Relevant Delay will occur he may serve a notice on the Franchisee requiring it to produce a plan to a reasonable specification provided with the notice to remedy or mitigate the impact of the delayed availability of the Cascaded Rolling Stock ("**Delayed Cascade Mitigation Plan**"). Such specification may include measures to be implemented by the Franchisee to mitigate the direct or indirect impact of the Relevant Delay on the Prior Train Operator or any other affected Train Operator. The Delayed Cascade Mitigation Plan shall provide a comprehensive analysis backed by relevant data and assumptions of:

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

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

3. Assignment of Property Leases during the Franchise Term

- 3.1 The Franchisee shall (other than on termination of the Franchise Agreement, for which the provisions of paragraph 4.5 of Schedule 15.4 (Provisions Applying on and after Termination) shall apply) following receipt of a notice purporting to terminate a Property Lease or on becoming aware of any proceedings or any other steps having or purporting to have similar effect, if requested by the Secretary of State, assign its interest under all or any Property Leases to the Secretary of State or as he may direct, subject where applicable to the agreement of any other party to such Property Lease or the ORR.
- 3.2 Such assignment shall be on such terms as the Secretary of State may reasonably require, including:
- (a) that the Franchisee shall not be released from any accrued but unperformed obligation, the consequences of any antecedent breach of a covenant or obligation in the Property Leases or any liability in respect of any act or omission under or in relation to the Property Lease prior to, or as at the date of, any such assignment (except to the extent that the Secretary of State or his nominee agrees to assume responsibility for such unperformed obligation, such liability or the consequences of such breach in connection with the relevant assignment); and
 - (b) that neither the Secretary of State nor his nominee shall be obliged, in connection with such assignment, to agree to assume responsibility for any unperformed obligation, liability or consequences of a breach referred to in paragraph 3.2(a), and the Franchisee shall indemnify the Secretary of State or his nominee, as the case may be, on an after-tax basis against any costs, losses, liabilities or expenses suffered or incurred in relation thereto.
- 3.3 The Franchisee shall, on the occurrence of any of the circumstances specified in paragraph 3.1 in relation to any other Train Operator who is a party to a Property Lease to which the Franchisee is also party, agree to the assignment of such Train Operator's interest under the relevant Property Lease to the Secretary of State or as he may direct, subject, where applicable, to the consent of the Infrastructure Manager. The provisions of paragraph 3.2 shall apply to any such assignment.
- 3.4 The Franchisee shall notify the Secretary of State on becoming aware of any circumstances which might lead to the Secretary of State being able to require

the Franchisee to assign its interest or agree to the assignment of another Train Operator's interest under this paragraph 3.

4. Station and Depot Leases

- 4.1 The Franchisee shall at all times enforce its rights under each Station Lease and Depot Lease.
- 4.2 The Franchisee shall not:
- (a) terminate or agree to terminate in whole or in part, or take or omit to take any other action which might result in the termination of any Station Lease or Depot Lease;
 - (b) assign all or part of its interest under any Station Lease or Depot Lease; or
 - (c) sublet the whole or substantially the whole of the property comprised in any Station Lease or Depot Lease,

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

5. Station Subleases

- 5.1 Unless the Secretary of State agrees otherwise, the Franchisee shall not sublet to any of its Affiliates any part of the property comprised in any Property Lease except on terms that any such subletting:
- (a) (other than any subletting to an Affiliate which is a Train Operator) is terminable without compensation immediately upon the termination of the Franchise Agreement; and
 - (b) is excluded from the provisions of Part II of the Landlord and Tenant Act 1954 and the Tenancy of Shops (Scotland) Act 1949.
- 5.2 If so requested by the Secretary of State, the Franchisee shall:
- (a) extend each Station Sublease on the same terms for such period as the Secretary of State may request (including a period equivalent to the franchise term of the Train Operator who is the lessee under such Station Sublease); and
 - (b) if such Station Sublease terminates (which for the purposes of this paragraph 5.2(b) shall include the termination, at or around the time of termination of the Previous Franchise Agreement, of a station sublease in respect of which the Franchisee was the lessor), grant a new Station Sublease on the same terms to such Train Operator and for such period as the Secretary of State may request (including a period equivalent to the franchise term of the Train Operator who is the lessee under such Station Sublease),

subject, where required, to the consent of the Infrastructure Manager (and, if required, the relevant sublessee) and to the duration of the relevant Station Lease.

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

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

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

2. Other Franchisees

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

provided to any successor Train Operator or to the railway administrator.

- 2.2 The benefit of any arrangements of the type referred to in paragraph 2.1(b) shall be provided on substantially the same terms as previously obtained by the relevant franchisee, subject to paragraph 9 of Schedule 19 (Other Provisions) and paragraph 2.3, provided that the Secretary of State may exclude or modify any terms agreed or amended by such franchisee in the 12 months preceding the date on which such franchisee's franchise agreement was terminated or the date on which the relevant railway administration order was made which were, in the Secretary of State's reasonable opinion, to the material detriment of such franchisee's business. The benefit of such arrangements shall be provided for such period as the Secretary of State may reasonably require to allow the relevant Train Operator or railway administrator to renegotiate such arrangements or make alternative arrangements.
- 2.3 The Franchisee shall notify the Secretary of State of its intention to terminate any contract with any other Train Operator which is designated as a "Key Contract" under that Train Operator's franchise agreement and shall give that Train Operator sufficient notice to enable it to make suitable alternative arrangements for its passengers without causing disruption to the railway passenger services provided by such Train Operator.
- 2.4 If the franchise agreement of another franchisee terminates in contemplation of the entry into or entry into effect of a new franchise agreement with the same franchisee in respect of all or a material part of the relevant railway passenger services, the Franchisee shall waive any event of default or other right it may have to terminate any agreement with such franchisee arising out of such termination, provided that the entry into or entry into effect of such new franchise agreement takes place.
- 2.5 References in this paragraph 2 to a franchisee include references to any franchise operator of that franchisee.

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

- 1.1 The Franchisee shall, to the extent reasonably requested by the Secretary of State and subject to payment of the Franchisee's reasonable costs by the relevant third party, co-operate with any third party which the Secretary of State may specify (including a Successor Operator, a rolling stock vehicle manufacturer, the Infrastructure Manager or the Secretary of State) in connection with the testing and commissioning of new rolling stock vehicles (including High Speed DS Rolling Stock) or any new equipment to be fitted to rolling stock vehicles (whether such rolling stock vehicles are new or otherwise). Such co-operation shall not unreasonably disrupt the provision and operation of the Franchise Services and may include:
- (a) the movement of test trains within and around depots;
 - (b) making available suitably qualified personnel to operate test trains along the Routes and provide information on the Routes;
 - (c) making Train Slots available for such purposes;
 - (d) granting or procuring the grant of access to the third party and its representatives to any relevant facilities; and
 - (e) the delivery of rolling stock vehicles to specific locations.

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

- 2.1 Except to the extent that the Secretary of State agrees otherwise, the Franchisee shall not:
- (a) cease to operate;
 - (b) cease to secure the operation of; or
 - (c) propose to terminate the use of,
- any Station (or part of a Station) or any railway passenger service over a Route where such cessation or proposal might result in a Closure.
- 2.2 If any procedures are commenced under Part 4 of the Railways Act 2005 in relation to a Closure, the Franchisee shall, at its own cost and to the extent so requested by the Secretary of State, take such action as the Secretary of State may require in order to enable the Secretary of State to comply with any duty imposed on him under Part 4 of the Railways Act 2005 in relation to such Closure.

3. Not Used**4. Royal Train**

- 4.1 The Franchisee shall, if and to the extent requested by any person (including Rail Express Systems Limited) and subject to the payment by such person of any reasonable costs of the Franchisee, co-operate in the provision by such person of railway passenger services for Her Majesty Queen Elizabeth II or any successor head of state or members of the family or representatives of either of them.
- 4.2 The provision of railway services for Her Majesty Queen Elizabeth II or any successor head of state or members of the family or representatives of either of them may include:
- (a) running a "sweeper" train in front of the royal train;
 - (b) having spare locomotives on standby as rescue traction; and/or
 - (c) carrying out security requirements or co-operating with other persons in ensuring that security requirements are carried out prior to calling at any station on the Routes.

SCHEDULE 2.5**Transport, Travel and Other Schemes****1. Not Used****2. Local Authority Concessionary Travel Schemes**

2.1 The Franchisee shall:

- (a) subject to paragraph 2.2, participate in and comply with its obligations under:
 - (i) the concessionary travel schemes:
 - (A) the Scheme established by an agreement between Kent County Council and South Eastern dated 6 January 1996 for the sale of Scholar Season Tickets;
 - (ii) any other concessionary travel scheme which the Franchisee is required to participate in during the Franchise Term pursuant to paragraph 2.1(b); and
- (b) subject to paragraph 2.3, if so requested by the Secretary of State, participate in and comply with its prospective obligations under:
 - (i) any concessionary travel scheme listed in paragraph 2.1(a)(i) above, the terms of which have been amended since the date of the Franchise Agreement; and
 - (ii) such other concessionary travel schemes as any relevant Local Authority may require or request it to participate in.

2.2 Subject to the terms of the relevant concessionary travel scheme, the Franchisee shall be entitled to cease to participate in any scheme referred to in paragraph 2.1(a) where, in the reasonable opinion of the Secretary of State:

- (a) the Franchisee's continuing participation in such scheme; and/or
- (b) the obligations assumed by the relevant Local Authority in connection therewith;

each pursuant to Part II of the Travel Concession Schemes Regulations 1986 (SI 1986/77) (the Regulations), would fail to leave the Franchisee financially no worse off (within the meaning of the Regulations) than it was immediately following the Start Date.

2.3 The Secretary of State shall not require the Franchisee to participate in a scheme referred to in paragraph 2.1(b) where the Secretary of State is reasonably satisfied that:

- (a) the reimbursement arrangements with respect to the Franchisee's participation in any such scheme; and/or

- (b) the obligations to be assumed by such Local Authority in connection therewith,

each pursuant to the Regulations would fall to leave the Franchisee financially no worse off (within the meaning of the Regulations) as a result of such participation.

- 2.4 The Secretary of State shall consult the Franchisee before making any request of the Franchisee to participate in any amended or new concessionary travel scheme pursuant to paragraph 2.1(b) and shall allow the Franchisee a reasonable opportunity to make representations to him with respect to any such participation.
- 2.5 The Franchisee shall supply to the Secretary of State, in respect of any concessionary travel schemes referred to in paragraph 2.1, such information within such period as the Secretary of State may reasonably require for the purposes of determining whether or not the Franchisee is or will be financially no worse off (within the meaning of the Regulations) as a consequence of its participation in any such scheme, and/or the obligations assumed by such Local Authority in connection therewith.
- 2.6 If the Secretary of State and the Franchisee are unable to agree whether the Franchisee will be financially no worse off (within the meaning of the Regulations), the Secretary of State and the Franchisee may resolve such dispute in accordance with the Dispute Resolution Rules.

3. Not Used

4. Discount Fare Schemes

- 4.1 If the Secretary of State:
 - (a) effects, or proposes to effect, an amendment to a Discount Fare Scheme;
 - (b) introduces any new Discount Fare Scheme; or
 - (c) ceases to approve a Discount Fare Scheme,

for the purposes of Section 28 of the Act, such amendment, intended amendment, introduction or cessation of approval shall be a Change.

- 4.2 The Secretary of State shall provide a reasonable opportunity to the Franchisee to make representations to him before amending, introducing or ceasing to approve a Discount Fare Scheme pursuant to paragraph 4.1.
- 4.3 The Franchisee shall supply to the Secretary of State, in respect of any Discount Fare Scheme referred to in paragraph 4.1, such information within such period as the Secretary of State may reasonably require for the purposes of determining the financial effect of any such amendment, intended amendment, introduction or cessation of approval.

5. Inter-Operator Schemes

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

- 5.2 Without limiting paragraphs 5.1 and 5.3, the Franchisee agrees to be bound by Parts IV and V of Chapter 4 of the Ticketing and Settlement Agreement and shall not amend, or agree or propose to amend, the Ticketing and Settlement Agreement without the prior written consent of the Secretary of State.
- 5.3 The Franchisee shall not amend, or agree or propose to amend, any Inter-Operator Scheme other than in accordance with its terms.
- 5.4 The Franchisee shall:
- (a) provide reasonable notice to the Secretary of State of any proposal to amend any Inter-Operator Scheme which it intends to make or of which it receives notification and which, in its opinion, is reasonably likely materially to affect the provision of the Franchise Services; and
 - (b) have regard to the Secretary of State's views in respect of any such proposal.
- 5.5 If an amendment is effected or proposed to be effected to an Inter-Operator Scheme which requires the consent or approval of the Secretary of State in accordance with the terms thereof, such amendment shall be treated as a Change to the extent and only to the extent that the Franchisee makes a saving as a consequence of such amendment or proposed amendment.

SCHEDULE 3

Priced Options

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

Part 1 to Schedule 3

Priced Options

1. Definitions

"**Connection**" has the same meaning as in the Service Level Commitment for the purpose of this Schedule 3.

2. List of Priced Options

Part 2 (List of Priced Options) of this Schedule 3 contains a Priced Option agreed as at the date of the Franchise Agreement, and the terms upon which the Secretary of State may exercise each such Priced Option.

3. Terms on which Priced Option may be called

3.1 The Secretary of State may call any Priced Option by serving written notice on the Franchisee:

- (a) at any time on or prior to the last date for the call of such Priced Option and on terms of such Priced Option, in which case the terms of such Priced Option, including the agreed cost and revenue amounts for that Priced Option, shall apply and the Franchisee shall implement such Priced Option in accordance with those terms; or
- (b) at any time after the last date for the call of such Priced Option and/or on different terms to those specified within such Priced Option, in which case such call shall be a Change.

3.2 ⁹⁰If:

- (a) **the Secretary of State exercises his right to extend the Franchise Period such that the Expiry Date is on or after 1 January 2020; and**
- (b) **the Secretary of State has not notified the Franchisee of the details of the Successor Operator by 31 October 2019;**

then the Secretary of State shall be deemed to have called Priced Option 2, in which case the terms of Priced Option 2 shall apply and the Franchisee shall implement such Priced Option 2 in accordance with those terms.

3.3 ⁹¹**The Franchisee shall not be considered to be in contravention of any provision Clause 5, paragraphs 1, 2, 4 and 6 of Schedule 14.1 (Maintenance of Franchise), paragraph 1 of Schedule 14.2 (Maintenance of Operating Assets), paragraph 8 of Schedule 14.3 (Key Contracts) and/or paragraph 3 of Schedule 15.1 (Reletting Provisions) of the Franchise Agreement in relation to the**

⁹⁰ 13 June 2019 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

⁹¹ 13 June 2019 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

replacement of ticket issuing system terminals save to the extent that:

- (a) the Franchisee contravenes paragraph 27 of Part 1 of Schedule 6.1 (Committed Obligations and Related Provisions); and/or**
- (b) the Secretary of State exercises (or is deemed to have exercised) Priced Option 2 and the Franchisee contravenes paragraph 30 of Part 1 of Schedule 6.1 (Committed Obligations and Related Provisions).**

4. Cancellation of Priced Options after they are called

Priced Option 1 is if called subject to a value for money review after the relevant Passenger Services have been operated for a period determined by the Secretary of State. The Secretary of State may notify the Franchisee after such a review that it shall no longer be required to operate relevant Passenger Services from a specified date which shall be a Passenger Change Date occurring on or after the third anniversary of commencement of the relevant Passenger Services. In such circumstances, notwithstanding that there shall be an amendment to the SLC, there shall not be a Change and the financial impacts shall be addressed solely by reversing the incremental change to the figures for calculation of the Annual Franchise Payments set out in the Appendix (Figures for Calculation of Annual Franchise Payments) to Schedule 8.2 (Annual Franchise Payments) implemented when the relevant Priced Option was called in accordance with the relevant table in Part 3.

5. Priced Options and Station Departures provisions in the SLC

Where the Priced Option is called the Secretary of State shall reasonably determine consequential amendments to the provisions in the SLC in relation to the requirement to provide a minimum number of station departures. Such amendments to the minimum number of station departures shall be reasonably consistent with the other alterations to the SLC consequent upon the calling of the Priced Option and shall not be a Change.

6. Co-operation with Promoters of Priced Options

Where a Promoter is identified in relation to the Priced Option and such Priced Option is called by the Secretary of State the Franchisee shall co-operate with the Promoter and act reasonably and in good faith in its engagement with the Promoter for the purposes of ensuring that the outputs to be delivered in consequence of the Priced Option being called are effectively delivered in accordance with the relevant timescales.

7. Calling of a Priced Option to be a Significant Alteration

Where the Priced Option is called the Franchisee shall comply with the obligations in paragraph 4 of Schedule 1.1 (Service Development) and accordingly consult on requisite changes to the Timetable on the basis that significant alterations are proposed.

Part 2 to Schedule 3

List of Priced Options

1. SUB-LEASING OF ADDITIONAL CLASS 377 UNITS

Description, objective and specification

- 1.1 This Priced Option relates to the entry into a sub-lease by the Franchisee from the TSGN Operator for an additional ⁹² x 4 car Class 377 units.

Price for exercising this Priced Option (in £ base date)

- 1.2 Where this Priced Option is called in accordance with its terms, the price for this Priced Option shall be the price set out in Table 1 in Part 3 (Price in respect of the Priced Options) to this Schedule 3 and adjustments to Franchise Payments shall be made accordingly. The calling of this Priced Option by the Secretary of State on the terms specified in this paragraph 1 shall not constitute a Change for the purpose of Schedule 9 (Changes).

Timescale for implementing this Priced Option from the date it is called

- 1.3 The timescale for the implementation of this Priced Option will be the commencement of the sub-lease by the Franchisee from the TSGN Operator for an additional ⁹³ x 4 car Class 377 units by the Passenger Change Date in December 2017.

Other effects on the Franchise Agreement

- 1.4 The effects on the Franchise Agreement will be the inclusion in Schedule 6.1 (Committed Obligations and Related Provisions) of a new Committed Obligation in Part 1 (List of Committed Obligations) which reads:

20 Thameslink Rolling Stock Programme - Class 377 Units

- 20.1 *The Franchisee shall negotiate and enter into an agreement with the TSGN Operator for the subleasing by the Franchisee from the TSGN Operator of ⁹⁴ x 4 car Class 377/1 units ("**Additional Class 377 Units**") (not being the dual voltage units forming part of the train fleet of the TSGN Operator) (the "**Class 377 Sub-Lease**"). The Franchisee shall co-operate in good faith with the TSGN Operator to agree the terms of the Class 377 Sub Lease such that the Class 377 Sub Lease is executed and comes into full force and effect*

⁹² Where text has been omitted from the document, this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

⁹³ Where text has been omitted from the document, this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

⁹⁴ Where text has been omitted from the document, this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

on the Passenger Change Date occurring on or about December 2017 (or such earlier or later date as the Secretary of State may otherwise direct).

20.2 *The Class 377 Sub Lease shall be on terms to be agreed by the Franchisee and the TSGN Operator and shall as a minimum reflect the following principles:*

- (a) *the Franchisee shall be responsible for undertaking, or procuring the undertaking of, all heavy and light maintenance activities in relation to the Additional Class 377 Units to be subleased to it under the Class 377 Sub Lease;*
- (b) *if required by the Franchisee, the Franchisee will bear the costs of any maintenance services, technical support, spares supply and special tools supply to be procured by the Franchisee from the TSGN Operator under any maintenance agreement to be entered into between such parties in relation to the Class 377 Units;*
- (c) *the Additional Class 377 Units being interoperable with the Class 375 and Class 376 rolling stock that forms part of the Train Fleet; and*
- (d) *both the Franchisee and the TSGN Operator shall bear its own costs and expenses incurred in connection with or arising out of the negotiation, preparation and execution of the Class 377 Sub-Lease.*

20.3 *The Franchisee shall obtain the approval of the Secretary of State prior to entering into the Class 377 Sub Lease. If the Secretary of State does not approve the terms of Class 377 Sub Lease (as agreed by the TSGN Operator and the Franchisee) or the Secretary of State reasonably considers that the TSGN Operator and the Franchisee are not likely to agree and enter into the Class 377 Sub Lease by the Passenger Change Date occurring on or about December 2017, the Secretary of State may require the Franchisee to enter into a Class 377 Sub Lease on such terms as he may reasonably require.*

20.4 *The Franchisee may propose to the Secretary of State an alternative proposal for the maintenance of the Additional Class 377 Units (other than pursuant to a maintenance agreement between the Franchisee and the TSGN Operator), where such proposal:*

- (a) *may include (without limitation):*
 - (i) *the non-utilisation of the technical services and spares supply agreement between Bombardier Transportation UK Limited and the TSGN Operator (the "**TSGN TSSSA**") in relation to the maintenance of the Additional Class 377 Units;*
 - (ii) *the TSGN Operator not having any role in the maintenance of the Additional Class 377 Units; and/or*

(iii) *some or all of the maintenance of the Additional Class 377 Units being undertaken by the Franchisee at the Depots; and*

(b) *shall include a full cost breakdown of the cost of implementing such maintenance approach in comparison to the cost of maintenance of the Additional Class 377 Units by the TSGN Operator on the basis that the TSGN Operator utilises the TSGN TSSSA in relation to such maintenance of the Additional Class 377 Units,*

*(the "**Alternative Maintenance Proposal**").*

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

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

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

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

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

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

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

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

provisions within the Freedom of Information Act 2000.

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

20.7 *From the date upon which the Class 377 Sub Lease comes into full force and effect, the Franchisee shall:*

- (a) *observe and comply with all the conditions and obligations on its part contained in the Class 377 Sub Lease;*
- (b) *agree, and take all steps which may be required to implement, any amendment to the Class 377 Sub Lease as the Secretary of State may direct from time to time;*
- (c) *except as otherwise directed by the Secretary of State, not vary, agree to vary, waive performance of, terminate or in any other way deal with or change the terms of the Class 377 Sub Lease without the prior consent of the Secretary of State; and*
- (d) *enter into a replacement Class 377 Sub Lease on materially the same commercial terms with, as the case may be, any successor operator to the TSGN Operator, except to the extent that the Secretary of State otherwise directs.*

20.8 The parties agree and acknowledge that if the circumstances set out in limbs (cc) and/or (ee) of the definition of Change occur, such circumstances will constitute a Qualifying Change for the purpose of Schedule 9 (Change) irrespective of whether the Threshold Amount is exceeded.

20.9 From the later of the Passenger Change Date occurring on or about December 2017 (or such earlier or later date as the Secretary of State may otherwise direct pursuant to paragraph 20.1) and the date of delivery to the Franchisee of all of the Additional Class 377 Units, the Franchisee shall use the Additional Class 377 Units to support the achievement of the extra passenger capacity which the Secretary of State wishes to be delivered over the 5 year control period commencing on 1 April 2014 (as set out in the Secretary of State's High Level Output Specification published during July 2012) as follows:

	Passenger Services in the Peak	Passenger Services in the High-Peak
London	Extra capacity demand to be met by 2018/19	Extra capacity demand to be met by 2018/19
Victoria (Southeastern)	900	400
London Bridge Kent routes	13,600	8,000

1.5 The following definitions shall be added to Clause 2:

- (a) **"Additional Class 377 Units"** shall have the meaning given to such term in paragraph 20.1 of Part 1 of Schedule 6.1 (Committed Obligations);
- (b) **"Class 377 Sub-Lease"** shall have the meaning given to such term in paragraph 20.1 of Part 1 of Schedule 6.1 (Committed Obligations);
- (c) **"High Peak Hour"** means the period between 08.00 and 08.59 (inclusive) during a Weekday; and
- (d) **"TSGN TSSSA"** shall have the meaning given to such term in paragraph 20.4 of Part 1 of Schedule 6.1 (Committed Obligations).

1.6 In paragraph 5.10 of Schedule 6.2 (South Eastern Franchise Specific Provisions) the words "until the end of the Franchise Term" shall be deleted and for them shall be inserted "until the Passenger Change Date occurring on or about December 2017 (or such earlier or later date as the Secretary of State may otherwise direct pursuant to paragraph 20.1 of Part 1 of Schedule 6.1 (Committed Obligations and Related Provisions))".

1.7 The following amendments shall be made to Schedule 8.1:

- (a) "+ TTSSSA" shall be added to the formula at paragraph 1.1;
- (b) the following shall be added to the end of paragraph 1.1:

"TTSSSA"	means the payment of the TSGN TSSSA Payment to be made in accordance with paragraph [9] of Schedule 8.5 (London Bridge and Other Potential Payment Adjustments);" and
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- (c) in paragraph 1.3(a) the words "and LTEP" shall be deleted and for them shall be inserted ", LTEP and TTSSSA".

- 1.8 The following shall be inserted at the end of Schedule 8.5 (London Bridge and Other Potential Adjustments):

"[] TSGN TSSSA Payment

Where in any given Reporting Period there is a difference between the Modelled TSGN TSSSA Amounts and the Actual TSGN TSSSA Amounts, the TSGN TSSSA Adjustment (TTSSSA) to be made in respect of any Reporting Period shall be determined in accordance with the following formula:

$$TTSSSA = ATTA - MTTA$$

Where:-

"MTTA" (Modelled TSGN TSSSA Amounts) means the modelled amount set out in paragraph 6.5 of the Record of Assumptions as applicable as at the Start Date and assumed by the Franchisee as being borne in the Reporting Period for amounts payable by the TSGN Operator under the TSGN TSSSA in respect of the Additional Class 377 Units; and

"ATTA" (Actual TSGN TSSSA Amounts) means the actual amounts payable by the Franchisee in the Reporting Period to the TSGN Operator for amounts payable by the TSGN Operator under the TSGN TSSSA in respect of the Additional Class 377 Units."

- 1.9 The following amendments shall be made to the definition of "Change":

- (a) The following additional limbs shall be inserted before (cc):

"(cc) the Secretary of State directs the Franchisee to agree and implement an amendment to, or terminate the Class 377 Sub Lease pursuant to paragraph 20.6(b) of Schedule 6.1 (Committed Obligations);

(dd) the Secretary of State does not, during the Franchise Term, require a successor operator to the TSGN Operator to become a party to the Class 377 Sub-Lease in place of the TSGN Operator or to enter into a new agreement with the Franchisee on substantially the same terms as such the Class 377 Sub-Lease as a condition of and upon that successor operator becoming the successor operator of the TSGN Franchisee;

(ee) the Secretary of State directs that the Class 377 Sub Lease comes into full force pursuant to paragraph [20.1] of Schedule 6.1 (Committed Obligations) on a date earlier or later than the Passenger Change Date occurring on or about December 2017; and" and

(b) The limb lettered (cc) shall be relettered to (ff).

1.10 *Table 2 (additional vehicles) at Schedule 1.7 (The Train Fleet) shall be updated to reflect inclusion in the Train Fleet of the Additional Class 377 Units from the date of delivery to the Franchisee of all of the Additional Class 377 Units.*

1.11 The inclusion in the third column of the table at paragraph 1 of Appendix 2 to Schedule 8.1 (Franchise Payments) of the following:

<i>Franchisee Accounting Year</i>	
<i>Year 1 (part year)</i>	Where text has been omitted from the document, this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.
<i>Year 2</i>	
<i>Year 3</i>	
<i>Year 4</i>	
<i>Year 5 (Core)</i>	
<i>Year 5 (if there is an extension)</i>	

Latest date for calling this Priced Option to maintain the price in paragraph 1.2

1.12 The latest date on which the Secretary of State may call this Priced Option in order to maintain the price quoted at paragraph 1.2 is 1 May 2016.

2. ⁹⁵PRICED OPTION 2: Replacement of Ticket Issuing System Terminals

Description, objective and specification

2.1 This Priced Option relates to the Franchisee replacing, or procuring the replacement, of the existing ticket issuing system terminals (excluding the 7 live ticket office machines which are sublet to the TSGN Operator).

Price for exercising this Priced Option

2.2 Where this Priced Option is called (or shall have been deemed to have been called) in accordance with its terms, the price for this

⁹⁵ 13 June 2019 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

Priced Option shall be the price set out in new paragraph 30 of Part 1 of Schedule 6.1 (Committed Obligations and Related Provisions) (as inserted into the Franchise Agreement by paragraph 2.4 below) and adjustments to the Franchise Payments shall be made accordingly.

Timescale for implementing this Priced Option from the date it is called

2.3 The Franchisee shall procure that this Priced Option is implemented [REDACTED⁹⁶] provided that:

2.3.1 the Secretary of State has called (or shall have been deemed to have called) this Priced Option by no later than [REDACTED⁹⁷]; and

2.3.2 the Expiry Date is a time and date that is on or before the date that is [REDACTED⁹⁸] by the Secretary of State (or deemed to have been called).

The effects on the Franchise Agreement of calling this Priced Option

2.4 Where this Priced Option is called (or shall have been deemed to have been called) in accordance with its terms the effects on the Franchise Agreement will be:

2.4.1 a new paragraph 30 shall be inserted into Part 1 of Schedule 6.1 (Committed Obligations and Related Provisions) as follows:

"30. REPLACEMENT OF TICKET ISSUING SYSTEM TERMINALS

30.1 Subject to paragraph 30.2, the Franchisee shall by no later than [REDACTED⁹⁹] procure and deploy not less than 213 new ticket issuing system terminals for use by Franchise Employees working in the Franchisee's ticket offices at Stations and Managed Stations for the purpose of replacing the ticket issuing system terminals located in such ticket offices. Any ticket issuing terminals procured and deployed pursuant to the pilot required by paragraph 27 of this Part 1 of Schedule 6.1 shall count for the purposes of measuring compliance with this paragraph 30.1.

30.2 The Franchisee shall not be considered to be in contravention of paragraph 30.1 if the Secretary of State

⁹⁶ 5 August 2019 (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.

⁹⁷ 5 August 2019 (Date of Redactions Approval) – Where text has been omitted from the document this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

⁹⁸ 5 August 2019 (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.

⁹⁹ 5 August 2019 (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.

reasonably determines that any failure by the Franchisee to procure and deploy not less than 213 new ticket issuing system terminals (including any ticket issuing terminals procured and deployed pursuant to the pilot required by paragraph 27 of this Part 1 of Schedule 6.1) by no later than [REDACTED¹⁰⁰] is as a result of the Expiry Date being a time and date that is prior to the date that is [REDACTED¹⁰¹].

30.3 Subject to paragraph 30.4, the Secretary of State shall, on the Payment Date falling in the Reporting Period set out in column 1 of the table below, pay to the Franchisee by way of adjustment to Franchise Payments the amount specified for that Reporting Period in column 2 of the table below upon demonstration by the Franchisee that such costs have been incurred supported by reasonable evidence and the Secretary of State shall only be required to pay the Franchise Payment Adjustment set out in column 2 of the table below to the extent reasonably demonstrated by the Franchisee that such costs have been incurred.

[REDACTED ¹⁰²]	[REDACTED ¹⁰³]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]

30.4 If and to the extent that any adjustment to Franchise Payments for any Reporting Period specified in paragraph 30.3 shall not have been paid to the Franchisee because the Expiry Date is a time and date that is prior to the end of such Reporting Period, then the Secretary of State shall nonetheless pay such amounts to the Franchisee if and to the extent the Secretary of State reasonably determines that the Franchisee has incurred or is committed to expenditure in connection with this paragraph 30 that is in excess of the aggregate of adjustments to Franchise Payments paid by the Secretary of State to the Franchisee pursuant to paragraph 30.3."

Latest date for calling this Priced Option to maintain the price in paragraph 2.2

¹⁰⁰ 5 August 2019 (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.

¹⁰¹ 5 August 2019 (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.

¹⁰² 5 August 2019 (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.

¹⁰³ 5 August 2019 (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.

2.5 The latest date on which the Secretary of State may call this Priced Option is [REDACTED¹⁰⁴].

¹⁰⁴ **5 August 2019 (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.**

Part 3 to Schedule 3

Price in respect of the Priced Options

1. Sub-Leasing of Additional Class 377 Units

Table 1: Figures for Calculation of Annual Franchise Payments (Appendix to Schedule 8.2)

1.1 Subject to paragraphs 1.2 to 1.4, this table sets out the increment to the figures for calculation of the Annual Franchise Payments set out in the Appendix (Figures for Calculation of Annual Franchise Payments) to Schedule 8.2 (Annual Franchise Payments) where this Priced Option is to be implemented by the Passenger Change Date in December 2017:

Column 1	Column 2	Column 3	Column 4	Column 5	Column 6
Franchisee Year	<p style="color: blue; text-align: center;">Where text has been omitted from the document, this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.</p>				
Year 1 (part)					
Year 2					
Year 3					
Year 4					
Year 5 (core)					
Year 5 (if there is an extension)					

1.2 The Parties agree and acknowledge that the increment to the figures for calculation of the Annual Franchise Payments in table set out above excludes the costs set out at paragraph 20.6 in Part 1 (List of Committed Obligations) in Schedule 6.1 (Committed Obligations and Related Provisions ("**Class 377 Additional Costs**").

1.3 Where the Secretary of State calls the Priced Option, the Parties shall seek to agree the Class 377 Additional Costs as soon as reasonably practicable. Following agreement of the Class 377 Additional Costs, the Franchise Payment increments set out in the table at paragraph 1.1 shall be updated to include the Class 377 Additional Costs.

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

SCHEDULE 4

Persons with Disabilities and Disability Discrimination

1. Relationship with other obligations relating to persons with disabilities

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

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

1.2 This Schedule 4 sets out:

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

2. Physical Alterations and Accessibility of Stations

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

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

2.2 The Franchisee shall:

- (a) co-operate reasonably with and assist the Secretary of State in the development and furtherance by the Secretary of State of the programme described in paragraph 2.1(c) by providing to the Secretary of State:
 - (i) information concerning the usage of Stations (including, where and to the extent reasonably

- practicable, usage of Stations by Disabled Persons);
and
- (ii) advice as to the most economical way in which accessibility for Disabled Persons could, in the Franchisee's reasonable opinion, be improved at Stations;
- (b) co-operate reasonably with other Train Operators and/or the Infrastructure Manager to seek to ensure that, where it would be advantageous to do so, having regard to the needs of Disabled Persons, any planned work on the Stations to facilitate accessibility and use by Disabled Persons is, so far as reasonably practicable, co-ordinated with other work to be carried out at the Stations and/or other parts of the network; and
- (c) use all reasonable endeavours to secure sources of grant funding (other than from itself or an Affiliate) for improving accessibility for Disabled Persons at Stations (in addition to any funding secured through the Secretary of State pursuant to paragraph 2.5), including from Local Authorities, local development agencies and the Lottery Commission. The Franchisee shall notify the Secretary of State of:
- (i) any such additional funding which it secures; and
- (ii) the terms on which such additional funding has been granted.
- 2.3 In participating in any multi-modal fares scheme, the Franchisee shall use all reasonable endeavours to secure, through the planning and development of such scheme, improvements in disabled access to the entrances of any relevant station, including within and in the immediate proximity of such station.
- 2.4 If, during the Franchise Term:
- (a) the Franchisee has complied with its obligations in Section 20(4) and Section 20(9), as varied by paragraph 2(3) of Schedule 2, of the EA (to take such steps as are reasonable to provide a reasonable alternative method of making services at a Station accessible to a Disabled Person to avoid a Disabled Person being placed at a substantial disadvantage by a physical feature at a Station) and its obligations in paragraph 2.7 concerning Minor Works; and
- (b) notwithstanding such compliance, the Franchisee reasonably considers it is still required to carry out or procure physical works of alteration at a Station in order to comply with the EA Requirements in respect of that Station, and, in so carrying out or procuring, would incur expenditure which it would not otherwise have an obligation to incur,

the Franchisee may seek funding from the Secretary of State in respect of that expenditure.

2.5 If the Franchisee seeks funding from the Secretary of State under paragraph 2.4, and demonstrates to the Secretary of State's satisfaction that the criteria in paragraph 2.4 have been satisfied, then the Secretary of State may agree to adjust the amount of Franchise Payments in respect of some or all of the works and/or expenditure. In considering his response to any such request, the Secretary of State will have regard to the availability of funding and the priorities set out in the national programme described in paragraph 2.1(c), together with any other available sources of funding described in paragraph 2.2(c). If and to the extent the Secretary of State agrees to adjust Franchise Payments in accordance with this paragraph 2.5 in any Franchisee Year:

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

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

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

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

2.7 The Franchisee shall:

- (a) establish and manage the Minor Works' Budget to fund the carrying out of Minor Works. For the purposes of this paragraph 2.7, Minor Works means small scale physical alterations or additions to improve accessibility of Stations to Disabled Persons, not involving substantial works of construction or reconstruction. The Minor Works:
 - (i) may, but shall not necessarily include, the Minor Works described in Appendix 1 of this Schedule 4;
 - (ii) shall not include any works which the Infrastructure Manager, the Franchisee or any other person has a separate obligation to carry out, except where:
 - (A) such obligation is an obligation of the Franchisee under the EA; or

- (B) the inclusion of such works would lead to the acceleration of the timescale for their completion and the Secretary of State gives his consent pursuant to paragraph 2.7(a)(iii);
- (iii) shall only include works other than those permitted by paragraphs 2.7(a)(i) and (a)(ii) with the prior consent of the Secretary of State; and
- (iv) must comply with the standards provided for in the Code of Practice, unless otherwise agreed with the prior consent of the Secretary of State;
- (b) ^{vi} as soon as reasonably practicable (and in any event within four months) after the Start Date and thereafter before the start of each Franchisee Year:
 - (i) develop a Minor Works' Programme and consult with the Disabled Persons Transport Advisory Committee and relevant Passengers' Council in relation thereto;
 - (ii) in conjunction with its activities in paragraph 2.7(b)(i), and, consistent with its obligations under paragraph 2.2(b), liaise with the Infrastructure Manager and other Train Operators as necessary with regard to the determination and implementation of each Minor Works' Programme; and
 - (iii) following the consultation and liaison described in paragraphs 2.7(b)(i) and (b)(ii), obtain the Secretary of State's prior approval (such approval not to be unreasonably withheld) of each Minor Works' Programme;
- (c) carry out or procure the carrying out of the Minor Works' Programme in each Franchisee Year and in doing so, spend at least the amount of the Minor Works' Budget for the relevant Franchisee Year in such Franchisee Year (unless otherwise agreed by the Secretary of State);
- (d) report progress to the Secretary of State in determining and carrying out the Minor Works' Programme no less than once every three Reporting Periods; and
- (e) co-operate, as the Secretary of State may reasonably require, with the Infrastructure Manager or any other person seeking to carry out or procure Minor Works at the Stations or any other stations.

2.8 ^{105 106} The provisions set out in paragraphs 2.7(a) to 2.7(e) inclusive of this Schedule 4 shall not apply during the period from 0159 on 1 April 2019 until 0159 on 23 June 2019, but shall apply thereafter.

¹⁰⁵ 23 March 2018 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee

¹⁰⁶ 13 June 2019 (Date of DOA) – Contract variation agreed by the Secretary of State and Franchisee.

3. Dealing with Claims Relating to Stations

- 3.1 If the Franchisee receives notification of a claim under the EA in respect of any alleged non-compliance with the EA Requirements or otherwise in respect of any Station (an "**EA Claim**") then the Franchisee shall:
- (a) notify the Secretary of State within seven days of receiving notification of the EA Claim. The Franchisee shall at the same time notify the Secretary of State of any reasonable alternative methods of making services at the Station accessible to Disabled Persons that it has considered and/or put in place pursuant to Section 20(4) and Section 20(9), as varied by paragraph 2(3) of Schedule 2, of the EA;
 - (b) if required by the Secretary of State, defend the EA Claim or any aspect of the EA Claim (which may include appealing the judgment). The Secretary of State will, subject to paragraph 3.4, pay the Franchisee's reasonable costs of:
 - (i) any defence or appeal required by the Secretary of State; and/or
 - (ii) compliance with the Secretary of State's instructions in accordance with paragraph 3.1(c); and
 - (c) act in accordance with the reasonable instructions of the Secretary of State to defend the EA Claim (or any aspect of it) as required under paragraph 3.1(b) and shall not (without the prior consent of the Secretary of State) settle or enter into any compromise in relation to the EA Claim (or the relevant aspect of it), including by entering into mediation.
- 3.2 If, in the reasonable opinion of the Franchisee, it will be more cost effective to settle the EA Claim rather than act in accordance with the Secretary of State's requirement under paragraph 3.1, it shall produce for the Secretary of State's approval a settlement proposal, setting out the terms of the Franchisee's proposals to make an offer to the Disabled Person making the EA Claim and its reasons for making such offer (the "**Settlement Proposal**").
- 3.3 If the Secretary of State does not accept the Settlement Proposal and still requires the Franchisee to defend the EA Claim (or any aspect of it) then the Franchisee shall defend the EA Claim in accordance with paragraph 3.1.
- 3.4 If the Franchisee is required to defend an EA Claim where it has submitted a Settlement Proposal to the Secretary of State and an award is made in respect of the EA Claim in favour of the person bringing it which is higher than the figure set out in the Settlement Proposal, then, subject to paragraph 3.5, the Secretary of State shall pay to the Franchisee:
- (a) the difference between such an award and the figure set out in the Settlement Proposal; and

- (b) the further reasonable costs incurred or payable by the Franchisee in defending the EA Claim, to the extent that such costs have not already been paid by the Secretary of State under paragraph 3.1(b).
- 3.5 The Secretary of State shall not have any obligation to make the payments described in paragraphs 3.1(b) or 3.4 where it is determined or, if no declaration or determination by the court on this point has been sought or made, the Secretary of State, in his reasonable opinion, considers that the Franchisee has not taken such steps as it is reasonable, in all the circumstances of the case, for it to take to provide a reasonable alternative method of making services at the Station accessible to Disabled Persons.
- 4. Specific additional obligations relating to persons with disabilities**
- 4.1 Not used.
- 4.2 The Franchisee shall establish and implement procedures necessary to:
 - (a) record the making of reservations for seating accommodation for and/or the provision of assistance to, persons with disabilities which are made through the Assisted Passenger Reservation System (or whatever system may replace it from time to time for the purposes of the ORR's Guidance on Disabled People's Protection Policies) and where the Franchisee is responsible for making the reservation and/or delivering the seating accommodation or assistance reserved. Any helpline established by the Franchisee for the purposes of making reservations for seating accommodation for and/or the provision of assistance to, persons with disabilities shall be provided free of charge;
 - (b) record whether such seating accommodation and/or assistance is actually provided; and
 - (c) provide such records to the Secretary of State on his request.
- 4.3 Where the Franchisee's Disabled People's Protection Policy:
 - (a) has been established before the date of the Franchise Agreement; and
 - (b) has not been revised and approved by the ORR to take into account the ORR's most recent published Guidance on Disabled People's Protection Policies as at the date of the Franchise Agreement,

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

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

APPENDIX 1 TO SCHEDULE 4**Minor Works**

- 1.** Providing additional signage, where it does not currently exist, to allow better way finding around the station by Disabled Persons.
- 2.** Removing:
 - 2.1** thresholds (above 15 millimetres) which do not comply with the Code of Practice; or
 - 2.2** fewer than three steps,from the entrances to booking halls or platforms to enable those facilities to have step-free access.
- 3.** Providing contrasting manifestations on glazed areas where contrasting manifestations do not currently exist.
- 4.** Providing additional handrails around the station where handrails do not currently exist and where the Franchisee reasonably believes they may be required by a Disabled Person.
- 5.** Providing new accessible stair nosings where stair nosings do not currently exist.
- 6.** Providing new tactile surfaces, including at the top and bottom of flights of steps (but excluding at platform edges) where tactile surfaces do not currently exist.
- 7.** Providing additional seating that is accessible to Disabled Persons, but not replacing existing seating.
- 8.** Providing induction loops for ticket office windows where induction loops do not currently exist.
- 9.** Replacing non-standard fittings with fittings that are compliant with the Code of Practice in existing disabled toilets, which would include replacing non-standard fittings in respect of toilet bowls and sinks, but would not include making major changes to plumbing or to the dimensions of the toilet area.
- 10.** Providing dropped kerbs at drop off/set down points or station car parks to enable access/egress thereto where dropped kerbs do not currently exist.
- 11.** Marking out existing car-parking bays for use by persons with disabilities which comply with the Code of Practice, where such car parking bays do not currently comply.

APPENDIX 2 TO SCHEDULE 4**Alternative Transport**

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

the Franchisee shall provide alternative transport for that passenger in accordance with paragraph 3.

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

and, in any case, at no cost additional to the price of the Fare which would otherwise be payable for the passenger's rail journey.

4. The Franchisee's obligations under this Appendix are subject to:
 - (a) reasonable prior notice of the passenger's requirement for alternative transport; and
 - (b) the availability of suitable alternative transport (provided that the Franchisee has used all reasonable endeavours to ensure that it has arrangements in place to meet requirements for the provision of such alternative transport).

SCHEDULE 5

Fares

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

SCHEDULE 5.1

Purpose, Structure and Construction

1. Purpose of Schedule 5

Purpose of provisions relating to Creating Fares

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

Purpose of Fares Regulation

- 1.2 The purpose of Schedules 5.3 (Allocation of Fares to Fares Baskets) to 5.8 (Fares Regulation Information and Monitoring) (inclusive) is to provide for the regulation of Fares by the Secretary of State pursuant to Section 28 of the Act.
- 1.3 For the purpose of regulating Fares, each Fare that is to be regulated shall be allocated in accordance with this Schedule 5 to one of the following Fares Baskets:
- (a) the Commuter Fares Basket; or
 - (b) the Protected Fares Basket.
- 1.4 The Secretary of State's regulation of Fares places a limit on the Price or Child Price of each Fare that is allocated by the Secretary of State to a Fares Basket. The limit on the Price or Child Price of each Fare is set by reference to:
- (a) the overall increase of the Prices and the Child Prices of all Fares in a Fares Basket; and
 - (b) the individual increase in the Price or the Child Price of each Fare in a Fares Basket.
- 1.5 ¹⁰⁷ ***Subject to the more detailed provisions of Schedules 5.4 (Regulation of Fares Basket Values) and 5.5 (Regulation of Individual Fares):***
- (a) ***the overall increase of the Prices and the Child Prices of all Fares in a Fares Basket may not exceed the Retail Prices Index + k per cent per annum in respect of each Fare Year; and***
 - (b) ***the increase in the Price or the Child Price of any individual Fare in a Fares Basket may not exceed the***

¹⁰⁷ Change wef 01/01/2015

Retail Prices Index + k + f per cent per annum in respect of each Fare Year.

- (c) ***for the purpose of subparagraph (a) of this paragraph 1.5, k shall have the meaning ascribed to it in paragraph 4.2 of Schedule 5.4; and***
- (d) ***for the purpose of subparagraph (b) of this paragraph 1.5, k and f shall have the meaning ascribed to them in paragraph 2.2 of Schedule 5.5.***

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

2. Structure of Schedule 5

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

2.4 Schedule 5.3 (Allocation of Fares to Fares Baskets) sets out the allocation of Fares to Fares Baskets.

2.5 Schedule 5.4 (Regulation of Fares Basket Values) sets out the limits applicable to the overall increase in Prices and Child Prices of all Fares in a Fares Basket.

2.6 Schedule 5.5 (Regulation of Individual Fares) sets out the limits applicable to the increase in the Price or Child Price of any individual Fare in a Fares Basket.

2.7 Schedule 5.6 (Exceeding the Regulated Value, Regulated Price or Regulated Child Price) sets out the consequences of the Franchisee exceeding:

- (a) the Regulated Value of any Fares Basket; or
- (b) the Regulated Price or Regulated Child Price of any Fare.

2.8 Schedule 5.7 (Changes to Fares and Fares Regulation) sets out the Secretary of State's ability to vary the foregoing provisions.

2.9 Schedule 5.8 (Fares Regulation Information and Monitoring) sets out Fares regulation information and monitoring provisions.

2.10 Schedule 5.9 (ITSO Certified Smartmedia) sets out provisions relating to the introduction of ITSO ticketing and smartmedia technology.

3. Construction

References to "**Fare**"

3.3 For the purposes of:

- (a) Schedule 5.2 (Franchisee's Obligation to Create Fares), Fare shall have the wide meaning given to it in paragraph (a) of that definition; and

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

Fares Documents

- 3.5 In the event that, in the Secretary of State's reasonable opinion, there is an immaterial inconsistency between the Fares, the maximum Price or Child Price (as the case may be) for any Fare recorded by RSP in 2013 or the 2013 Nominal Ticket Sales:

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

the relevant Fares Document shall prevail.

- 3.6 In the event that, in the Secretary of State's reasonable opinion, there is a material inconsistency between the Fares, the maximum Price or Child Price (as the case may be) for any Fare recorded by RSP in 2013 or the 2013 Nominal Ticket Sales:

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

this Schedule 5 shall prevail.

Setting of Child Prices

- 3.7 Any requirement under this Schedule 5 to set a Child Price in respect of a Fare shall be satisfied by the Franchisee Creating either:

- (a) a Fare which is only valid for use by persons under the age of 16; or
 - (b) a Fare which is valid for use:
 - (i) by any person at a price; and
 - (ii) by persons under the age of 16 at a discounted price relative to the price set pursuant to paragraph 3.5(b)(i).

New Stations

- 3.8 Subject to paragraph 3.2, the Secretary of State may include within the definitions of:
- (a) Fares Basket;
 - (b) Commuter Fare; and
 - (c) Protected Fare,

Fares to or from any New Station, on such basis as he may, after consultation with the Franchisee, reasonably determine and references in this Schedule 5 to Fares Basket, Commuter Fare, Protected Fare and Fares and other relevant definitions shall be construed accordingly.

SCHEDULE 5.2**Franchisee's Obligation to Create Fares****1. Creation of Commuter Fares and Protected Fares**

The Franchisee shall ensure that each Commuter Fare and each Protected Fare has been Created, to the extent it is entitled or obliged to do so under the terms of the Ticketing and Settlement Agreement.

2. Restrictions on Creation of Fares

- 2.1 The Franchisee shall set the Child Price for any Fare that it Creates so that that Fare may be purchased by or for a person under the age of 16 for an amount which is no greater than the lowest amount that would be paid if that person were the holder of a 16 to 25 Railcard with no minimum fare (as amended or replaced from time to time) and whose purchase was made without condition.
- 2.2 The Franchisee shall not Create or agree to Create any 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).

SCHEDULE 5.3**Allocation of Fares to Fares Baskets****1. Allocation of Fares to Fares Baskets**

- 1.1 On or prior to the Start Date the Secretary of State shall allocate each Commuter Fare and each Protected Fare to the relevant Fares Basket in accordance with this Schedule 5.3.
- 1.2 Subject to paragraph 2, every Commuter Fare shall be allocated by the Secretary of State to the Commuter Fares Basket and every Protected Fare shall be allocated by the Secretary of State to the Protected Fares Basket.

2. Designation of Non-Fares Basket Fares

- 2.1 On or prior to the Start Date, the Secretary of State shall:
- (a) separately (or in aggregate with other Fares of the same type in the opposite direction or for similar journeys that have the same Price or Child Price as the case may be) rank, in descending order according to their Gross Revenue for the period of 12 months which ended 31 March 2013:
 - (i) all Commuter Fares; and
 - (ii) all Protected Fares;
 - (b) aggregate, following such ranking:
 - (i) those Commuter Fares with the lowest Gross Revenue, until the total of the aggregated Gross Revenue of such fares accounts for up to five per cent of the aggregate Reference Revenue of all Commuter Fares; and
 - (ii) those Protected Fares with the lowest Gross Revenue, until the total of the aggregated Gross Revenue of such fares accounts for up to five per cent of the aggregate Reference Revenue of all Protected Fares; and
 - (c) designate, following such aggregation:
 - (i) those Commuter Fares referred to in paragraph 2.1(b)(i) as Non-Fares Basket Fares; and
 - (ii) those Protected Fares referred to in paragraph 2.1(b)(ii) as Non-Fares Basket Fares.
- 2.2 Without prejudice to the Secretary of State's right to require the content of a Fares Basket to change at any time prior to the Start Date, or, thereafter, prior to the commencement of any Fares Setting Round, pursuant to paragraph 1 of Schedule 5.7 (Changes to Fares and Fares

Baskets), any Commuter Fare or Protected Fare that is also designated as a Non-Fares Basket Fare shall not be allocated to the relevant Fares Basket.

- 2.3 The Secretary of State may de-designate any Non-Fares Basket Fare pursuant to paragraph 1.1 of Schedule 5.7 (Changes to Fares and Fares Regulation).

SCHEDULE 5.4**Regulation of Fares Basket Values****1. Value of Fares Basket not to exceed Regulated Value**

Subject to paragraph 1.3 of Schedule 5.6 (Exceeding the Regulated Value, Regulated Price or Regulated Child Price) the Franchisee shall procure that the Value of a Fares Basket at any time in any Fare Year does not exceed its Regulated Value for that Fare Year.

2. Value

The Value of a Fares Basket at any time shall be the aggregate of the Projected Revenue of each Fare in that Fares Basket at that time.

3. Projected Revenue

The Projected Revenue of any Fare at any time shall be an amount equal to:

$P \times 2013 \text{ Nominal Ticket Sales}$

where:

P is the Price or Child Price (as the case may be) of that Fare at that time; and

2013 Nominal Ticket Sales is the number of nominal ticket sales of that Fare for 2013, ascertained as follows

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

where:

A is the aggregate Gross Revenue recorded by RSP as attributable to sales of that Fare and any other Fare with which it was aggregated under paragraph 2.1(a) of Schedule 5.3 (Allocation of Fares to Fares Baskets) for the period of 12 months which ended 31 March 2013; and

B is the Price or Child Price (as the case may be) for that Fare recorded by RSP in February 2013.

4. Regulated Value

4.1 The Regulated Value of a Fares Basket for any Fare Year shall be an amount equal to:

2013 Ticket Revenue x PPAI

where:

2013 Ticket Revenue is the aggregate Gross Revenue recorded by RSP as attributable to sales of all Fares in that Fares Basket for the period of 12 months which ended 31 March 2013;

PPAI is:

(a) in respect of the Fare Year commencing 1 January 2014, the Permitted Aggregate Increase for that Fare Year; and

(b) in respect of each Fare Year commencing on or after 1 January 2015, the product of the Permitted Aggregate Increase for each Fare Year between that Fare Year and the Fare Year which begins on 1 January 2014 (inclusively).

4.2 ^{108 109} **The Permitted Aggregate Increase in any Fare Year shall be an amount equal to:**

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

where:

PAI is the Permitted Aggregate Increase in that Fare Year;

RPI is an amount equal to:

$$\frac{RPI_{-1}}{RPI_{-2}}$$

where:

RPI₋₁ is the Retail Prices Index for the July of the calendar year preceding that Fare Year; and

¹⁰⁸ Change wef 01/01/2015

¹⁰⁹ Change wef 01/01/2016

RPI-2 *is the Retail Prices Index for the July of the calendar year preceding the calendar year referred in the definition of RPI-1; and*

k *is equal to 0 for the Fare Years commencing on 1 January 2014, 1 January 2015, 1 January 2016, 1 January 2017, 1 January 2018 and 1 January 2019.*

SCHEDULE 5.5

Regulation of Individual Fares

1. Price or Child Price not to exceed Regulated Price or Regulated Child Price

1.1 The Franchisee shall procure that the Price or Child Price (as the case may be) of:

(a) each Commuter Fare included in the Commuter Fares Basket;
and

(b) each Protected Fare included in the Protected Fares Basket,

in any Fare Year does not exceed the Regulated Price or Regulated Child Price (as the case may be) for such Fare in that Fare Year.

1.2 The Franchisee shall procure that the Price or Child Price (as the case may be) of any Season Ticket Fare shall be the same in both directions.

2. Regulated Price

2.1 ¹¹⁰The Regulated Price or the Regulated Child Price (as the case may be) for any Fare in any Fare Year shall be an amount equal to the greater of:

(a) **Preceding Year Ticket Price + £0.10p; and**

(b) **ROUND (Preceding Year Ticket Price x PII)**

where:

Preceding Year Ticket Price

for the Fare Year commencing 1 January 2015, is the maximum Price for that Fare recorded by RSP in 2014 and, for any subsequent Fare Year, is the maximum Price recorded by RSP in the Fare Year preceding that Fare Year, provided that such maximum Price complied with the requirements of this Schedule 5. If such maximum Price did not so comply, then such maximum Price shall be the last Price recorded by RSP which did so comply; and

PII

is the Permitted Individual Increase in any Fare Year, as determined in accordance with paragraph 2.2.

ROUND

if (Preceding Year Ticket Price x PII) ends in £0.05 or more (\Rightarrow £0.05), then (Preceding Year

¹¹⁰ 2 October 2019 (Date of DOA) – Contract variation agreed by the Secretary of State and Franchisee.

Ticket Price x PII) shall be rounded up to the nearest £0.10; or

if (Preceding Year Ticket Price x PII) ends in less than £0.05 (<£0.05), then (Preceding Year Ticket Price x PII) shall be rounded down to the nearest £0.10.

- 2.2 ^{111 112} **The Permitted Individual Increase in any Fare Year shall be determined in accordance with the following formula:**

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

where:

PII *is the Permitted Individual Increase in that Fare Year;*

RPI *is an amount equal to:*

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

where: RPI -1 *is the Retail Prices Index for the July of the calendar year preceding that Fare Year; and*

RPI -2 *is the Retail Prices Index for the July of the calendar year preceding the calendar year referred in the definition of RPI-1; and*

k *is equal to 0 for the Fare Years commencing on 1 January 2014, 1 January 2015, 1 January 2016, 1 January 2017, 1 January 2018 and 1 January 2019; and*

f *is equal to 0 for all Fare Years commencing on or after 1 January 2016.*

- 2.3 Where:

- (a) the Franchisee sets the Price or Child Price (as the case may be) of any Commuter Fare or Protected Fare in any Fare Year; and
- (b) the Secretary of State reasonably determines that the Price or Child Price (as the case may be) of such Commuter Fare or Protected Fare was set solely for the purpose of increasing the value of the Preceding Year Ticket Price in the next Fare Year,

¹¹¹ Change wef 01/01/2015

¹¹² Change wef 01/01/2016

the Preceding Year Ticket Price for the purposes of determining the Regulated Price or Regulated Child Price (as the case may be) pursuant to paragraph 2.1 in the next Fare Year shall be the maximum Price or Child Price (as the case may be) prior to such setting that complied with the requirements of this Schedule 5, as recorded by RSP in the relevant preceding Fare Year.

3. Compulsory Inter-available Flows

Where the Franchisee:

- (a) as Lead Operator for a Compulsory Inter-available Flow, is responsible for setting the Price or Child Price (as the case may be) of a Commuter Fare for that Flow; and
- (b) has notified RSP of the Price or Child Price (as the case may be) of that Commuter Fare in any Fares Setting Round,

the Franchisee shall not increase the Price or Child Price (as the case may be) of that Commuter Fare in the same Fares Setting Round without the consent of either the Secretary of State or each other Train Operator which provides railway passenger services for such Flow.

SCHEDULE 5.6**Exceeding the Regulated Value, Regulated Price or Regulated Child Price****1. Exceeding the Regulated Value**

- 1.1 If the Franchisee is in contravention of paragraph 1 of Schedule 5.4 (Regulation of Fares Basket Values) in respect of either the Commuter Fares Basket or the Protected Fares Basket:
- (a) it shall reduce the Price or Child Price of Fares in the relevant Fares Basket at the next available opportunity and, in any event, at the next Fares Setting Round, so as to comply with the requirements of paragraph 1 of Schedule 5.4 (Regulation of Fares Basket Values) from such date; and
 - (b) the Secretary of State may adjust Franchise Payments by an amount equivalent in his opinion to the sum of:
 - (i) any additional gross revenue accruing to the Franchisee or any person selling Fares on its behalf as a result of the Value of any Fares Basket exceeding its Regulated Value permitted under Schedule 5.4 (Regulation of Fares Basket Values); and
 - (ii) any costs incurred by the Secretary of State in determining the amount of such additional gross revenue.
- 1.2 Any adjustment to Franchise Payments by the Secretary of State pursuant to paragraph 1.1:
- (a) shall not be treated as a Change; and
 - (b) shall be without prejudice to any other rights or remedies of the Secretary of State under the Act or the Franchise Agreement in respect of such contravention.
- 1.3 It shall not be a contravention of paragraph 1 of Schedule 5.4 (Regulation of Fares Basket Values) if and to the extent that:
- (a) the Value of the Commuter Fares Basket exceeds its Regulated Value in any Fare Year;
 - (b) such excess is caused by the Price or Child Price of any relevant Commuter Fare being set pursuant to the terms of the Ticketing and Settlement Agreement by another person (other than an Affiliate); and
 - (c) the Franchisee does not have a reasonable opportunity, under any procedure for consulting or notifying Train Operators of alterations to the Prices and Child Prices of Fares under the Ticketing and Settlement Agreement or otherwise, to alter some or all of the other Commuter Fares

in the Commuter Fares Basket so as to avoid the Value of the Commuter Fares Basket exceeding its Regulated Value.

- 1.4 If and to the extent that the circumstances described in paragraph 1.3 prevail in any Fare Year, the Franchisee shall not subsequently increase during that Fare Year, or any subsequent Fare Year, the Price or Child Price of any Commuter Fare in the Commuter Fares Basket which it is entitled to set pursuant to the terms of the Ticketing and Settlement Agreement, unless, following such increase, the Franchisee would, otherwise than under paragraph 1.3, comply with the provisions of paragraph 1 of Schedule 5.4 (Regulation of Fares Basket Values) in relation to the Commuter Fares Basket.
- 1.5 Where circumstances described in paragraph 1.3 prevail in any Fare Year, the Franchisee shall not be required to reduce the Price or Child Price of any other Commuter Fare at any time during that Fare Year, or any subsequent Fare Year, where such Price or Child Price has previously been set in a Fares Setting Round.

2. Exceeding the Regulated Price or Regulated Child Price

- 2.1 If the Franchisee is in contravention of paragraph 1 of Schedule 5.5 (Regulation of Individual Fares):
- (a) it shall reduce the Price or Child Price of any relevant Fare at the next available opportunity and, in any event, at the next Fares Setting Round, so as to comply with the requirements of paragraph 1 of Schedule 5.5 (Regulation of Individual Fares) from such date; and
 - (b) the Secretary of State may adjust Franchise Payments by an amount equivalent in his opinion to the sum of:
 - (i) any additional gross revenue accruing to the Franchisee or any person selling Fares on its behalf as a result of the sale of Fares at Prices and/or Child Prices in excess of the relevant amounts permitted under Schedule 5.5 (Regulation of Individual Fares); and
 - (ii) any costs incurred by the Secretary of State in determining the amount of such additional gross revenue.
- 2.2 Any adjustment to Franchise Payments by the Secretary of State pursuant to paragraph 2.1:
- (a) shall not be a Change; and
 - (b) shall be without prejudice to any other rights or remedies of the Secretary of State under the Act or the Franchise Agreement in respect of such contravention.

SCHEDULE 5.7**Changes to Fares and Fares Regulation****1. Changes to Fares Baskets**

1.1 The Secretary of State may require the content of the Commuter Fares Basket or the Protected Fares Basket (as the case may be) to change in accordance with the following:

(a) where the Secretary of State is not satisfied that the Price or Child Price of any Non-Fares Basket Fare is reasonably constrained by the Price or Child Price of other Fares which:

(i) have been set in respect of the same, or part of the same, Flow as such Non-Fares Basket Fare, or a Flow which is reasonably proximate to the Flow on which such Non-Fares Basket Fare has been set; and

(ii) have been included in the relevant Fares Basket,

the Secretary of State may de-designate any Non-Fares Basket Fare and include such Non-Fares Basket Fare in the relevant Fares Basket;

(b) where any Commuter Fare for a Flow has been included in the Commuter Fares Basket, the Secretary of State may require the inclusion in the Commuter Fares Basket of any Weekly Season Ticket, Monthly Season Ticket, Quarterly Season Ticket, Annual Season Ticket, unrestricted Single Fare or unrestricted Return Fare that existed on that Flow in February 2013;

(c) where any Protected Fare for a Flow has been included in the Protected Fares Basket, the Secretary of State may require the inclusion in the Protected Fares Basket of any Protected Return Fare or Protected Weekly Season Ticket that existed on that Flow in February 2013; and/or

(d) where the Secretary of State changes the Reference Revenue and/or the Gross Revenue of any Fare pursuant to paragraph 3.1(a) and/or (b) then, in relation to the Fares Basket in which such Fare is or would be included, and without limiting paragraphs 1.1(a) to (c) inclusive, the Secretary of State may also:

(i) make any of the changes to such Fares Basket contemplated by this paragraph 1.1;

(ii) designate any Fare as a Non-Fares Basket Fare in accordance with the provisions (other than the requirement that such designation occurs on or prior to the Start Date) of paragraph 2 of Schedule 5.3 (Allocation of Fares to Fares Baskets); and/or

- (iii) de-designate any Non-Fares Basket Fare and include such Non-Fares Basket Fare in the relevant Fares Basket.

- 1.2 The Secretary of State shall serve notice in writing on the Franchisee:
 - (a) at any time prior to the Start Date; and
 - (b) thereafter, no later than the commencement of any Fares Setting Round,

to require any Fare to be included in a Fares Basket or to designate any Fare as a Non-Fares Basket Fare pursuant to paragraph 1.1.

2. Changes to the 2013 Nominal Ticket Sales

- 2.1 The Franchisee may, in the event of any significant change to the pattern of travel on the Passenger Services during the Franchise Term, apply to the Secretary of State for the value of factors A and/or B in the formula for determining 2013 Nominal Ticket Sales in paragraph 3 of Schedule 5.4 (Regulation of Fares Basket Values) to be adjusted to take account of such changes, such that:
 - (a) the value of factor A is re-calculated by using the Gross Revenue in respect of the sales of the relevant Fares for the most recently completed period of 12 months ending 31 March; and/or
 - (b) the value of factor B is recalculated by using the Price or Child Price (as the case may be) of the relevant Fares recorded by RSP in the month of February during such period.
- 2.2 The Secretary of State shall act reasonably in relation to any such application but shall not under any circumstances be obliged to accept any such application in whole or in part. The Secretary of State shall be entitled to impose conditions upon any such acceptance, including conditions requiring that the value of both factors A and B are adjusted and/or are adjusted in respect of any or all Fares in the relevant Fares Basket.

3. Changes to the Reference Revenue, Gross Revenue, 2013 Nominal Ticket Sales and/or 2013 Ticket Revenue

- 3.1 The Secretary of State may, by notice in writing served on the Franchisee no later than the date of commencement of any Fares Setting Round, require:
 - (a) the Reference Revenue of any Fares Basket to be calculated by reference to a different reference period for the purpose of paragraph 2 of Schedule 5.3 (Allocation of Fares to Fares Baskets) than the period of 12 months ended 31 March 2013; and/or
 - (b) the Gross Revenue of all Commuter Fares and Protected Fares to be re-calculated for the purpose of paragraph 2 of Schedule 5.3 (Allocation of Fares to Fares Baskets) by

reference to a different reference period than the period of 12 months ended 31 March 2013; and/or

- (c) the value of factor A in the formula for determining the 2013 Nominal Ticket Sales in paragraph 3 of Schedule 5.4 (Regulation of Fares Basket Values) to be re-calculated in respect of any Fare by reference to a different reference period than the period of 12 months ended 31 March 2013; and/or
 - (d) the value of factor B in the formula for determining the 2013 Nominal Ticket Sales in paragraph 3 of Schedule 5.4 (Regulation of Fares Basket Values) to be re-calculated in respect of any Fare by reference to a different reference date other than February 2013; and/or
 - (e) the 2013 Ticket Revenue in respect of any Fares Basket to be re-calculated for the purpose of paragraph 4 of Schedule 5.4 (Regulation of Fares Basket Values) by reference to a different reference period than the period of 12 months ended 31 March 2013.
- 3.2 Where, in accordance with paragraph 3.1(e), the 2013 Ticket Revenue in respect of any Fares Basket is re-calculated by reference to a different reference period, the value of "PPAI" in paragraph 4 of Schedule 5.4 (Regulation of Fares Basket Values) shall be determined solely by reference to the product of the Permitted Aggregate Increase for each Fare Year beginning after the end of such reference period.
- 3.3 Any revision pursuant to paragraph 3.1 or 3.2 shall take effect upon commencement of the next Fare Year to commence after the Fares Setting Round referred to in paragraph 3.1.

4. Changes to Prices

The Franchisee may request permission from the Secretary of State from time to time to increase any Prices or Child Prices beyond the levels permitted under Schedules 5.4 (Regulation of Fares Basket Values) and 5.5 (Regulation of Individual Fares) in connection with any proposed or actual improvement in any aspect of the Passenger Services relating to such Fares. The Secretary of State shall act reasonably in relation to any such request but shall not under any circumstances be obliged to accept any such request in whole or in part.

5. Changes to Fares Regulation

The parties agree that the Secretary of State shall have the power at any time and on more than one occasion during the Franchise Term to alter the obligations of, and restrictions on, the Franchisee under Schedules 5.1 (Purpose, Structure and Construction) to 5.8 (Fares Regulation Information and Monitoring) inclusive for any Fare Year, or part thereof (including alteration of the value of k under paragraph 4.2 of Schedule 5.4 (Regulation of Fares Basket Values) and/or paragraph 2.2 of Schedule 5.5 (Regulation of Individual Fares) and/or alteration of the value of f under paragraph 2.2 of Schedule 5.5 (Regulation of Individual Fares)). The exercise by the Secretary of State of his powers under this paragraph 5 shall be a Change.

6. Changes to Compulsory Inter-available Flows

6.1 Where:

- (a) pursuant to Clause 4 to 7 of the Ticketing and Settlement Agreement, the consent of the Secretary of State is requested for the abolition of a Compulsory Inter-available Flow (the "**Reference Flow**") in respect of which any Fare Created would be a Commuter Fare or a Protected Fare (the "**Reference Fare**"); and
- (b) a Flow exists, which, in the Secretary of State's opinion, is substantially similar to the Reference Flow (the "**Equivalent Flow**"),

the Secretary of State may, as a condition of granting his consent to the abolition of the Reference Flow, by written notice to the Franchisee, require any Fare Created in respect of the Equivalent Flow which has substantially the same characteristics as the Reference Fare to be included in a Fares Basket (the "**Equivalent Fare**").

6.2 The Secretary of State shall not issue any such notice in respect of an Equivalent Fare unless the provisions of such notice have first been approved by the Ticketing and Settlement Scheme Council (as defined in the Ticketing and Settlement Agreement) or a delegate of such council.

6.3 The Price and Child Price of any Equivalent Fare in the first Fare Year in which it is to be introduced shall be no greater than the maximum permitted Price or Child Price in that Fare Year of the relevant Reference Fare, as if such Reference Fare had not been abolished.

7. Change of Lead Operator/Major Flow Operator

7.1 The Franchisee shall not without the Secretary of State's prior approval, agree to any request under the Ticketing and Settlement Agreement that it cease to be Lead Operator in respect of any Flow.

7.2 The Franchisee shall inform the Secretary of State if it becomes the Lead Operator in respect of any Flow. Upon the Franchisee becoming the Lead Operator in respect of any Flow, the Secretary of State may without limiting paragraph 3, exercise his rights pursuant to paragraph 3 in relation to the relevant Fares Basket.

7.3 The Franchisee shall inform the Secretary of State if it ceases to be a Major Flow Operator in respect of any Flow.

8. Changes to Fares Documents

8.1 Following:

- (a) any allocation of Fares to any Fares Basket pursuant to Schedule 5.3 (Allocation of Fares to Fares Baskets); or
- (b) any subsequent adjustment thereof pursuant to this Schedule 5.7,

the Secretary of State shall set out in the Commuter Fares Document and/or the Protected Fares Document (as the case may be) all Fares then included in the relevant Fares Basket and, as soon as reasonably practicable thereafter, the Secretary of State shall issue or reissue (as the case may be) such Fares Document(s) to the Franchisee.

SCHEDULE 5.8**Fares Regulation Information and Monitoring****1. Information**

- 1.1 The Franchisee shall provide to the Secretary of State by no later than week 12 of each Fares Setting Round, a summary (to such level of detail or generality as the Secretary of State may reasonably require) of the Prices and Child Prices of the Commuter Fares or Protected Fares it is intending to set.
- 1.2 The Franchisee shall notify, or procure the notification to, the Secretary of State of any proposed increase to the Price or Child Price of any Commuter Fare or any Protected Fare and shall provide such details of any such proposal at such times (including before and during each Fares Setting Round) and in such form (including by electronic data transfer) as the Secretary of State may reasonably request from time to time.
- 1.3 The Franchisee shall make available, or procure that RSP makes available, to the Secretary of State, for any Fares Setting Round during the Franchise Term, such details (including the proposed Prices or Child Prices) of the Initial Permanent Fare of any Commuter Fare or Protected Fare for each such Fares Setting Round as the Secretary of State may reasonably request from time to time.

2. Monitoring

- 2.1 The Franchisee shall provide to the Secretary of State:
 - (a) such access as the Secretary of State may require to information pertaining to the Prices or Child Prices of Commuter Fares and Protected Fares from time to time; and
 - (b) such further information as the Secretary of State may require for the purpose of determining the Gross Revenue of the Franchisee in relation to any particular Fare or Fares or any particular period.
- 2.2 By no later than week 17 of each Fares Setting Round, the Franchisee will provide to the Secretary of State written confirmation from a statutory director of the Franchisee of whether the Franchisee has complied with its obligations under this Schedule 5 during each such Fares Setting Round. It shall be a contravention of the Franchise Agreement if any such written confirmation from a statutory director of the Franchisee is, in the reasonable opinion of the Secretary of State, in any material respect, untrue, inaccurate and/or misleading.
- 2.3 The Franchisee shall take such action as the Secretary of State may require following receipt of any details from the Franchisee pursuant to paragraph 1 in order to ensure that the Franchisee will comply with the provisions of Schedule 5.2 (Franchisee's Obligation to Create Fares) to this Schedule 5.8 (inclusive).

SCHEDULE 5.9**ITSO Certified Smartmedia****1. Smart Ticketing**

- 1.1 The Franchisee shall:
- (a) use all reasonable endeavours to join and comply with any ATOC approved smart ticketing related schemes relevant to the franchise operating area;
 - (b) use all reasonable endeavours to develop an approach to the use of smart ticketing to facilitate the roll out of more flexible ticket types and demand management over time;
 - (c) co-operate with Network Rail, other Train Operators and relevant local authorities in relation to the provision of smart ticketing equipment; and
 - (d) co-operate with other Train Operators and relevant local authorities in relation to proposals to:
 - (i) introduce new multi-modal fare schemes; and
 - (ii) convert any multi-modal fare schemes to use smart ticketing.
- 1.2 In relation to any ITSO Certified Smartmedia ticketing scheme the Franchisee shall ensure that on introduction or inheritance:
- (a) the Franchisee continues to provide, make available and promote (and where applicable effectively maintain) such a scheme (including any associated infrastructure) for the duration of the franchise; and
 - (b) all scheme components (and any amendment, extension or replacement thereof) inherited, used or introduced by the Franchisee (whether on a permanent or a trial basis) are at all times compliant with:
 - (i) version 2.1.4 of the ITSO specification and the ITSO operating licence; or
 - (ii) such subsequent versions as the Franchisee and the Secretary of State may agree; and
 - (c) further to 1.2 (b) any ITSO Certified Smartmedia readers introduced by the Franchisee (whether on a permanent or temporary basis) shall conform to EMV level 1 certification (hardware) and be capable of being upgraded whilst in operation to EMV level 2 (application).
- 1.3 The Franchisee shall undertake such actions as the Secretary of State may reasonably require in connection with the introduction of smart ticketing

on the network. The Secretary of State will reimburse the reasonable costs incurred by the Franchisee in complying with any such requirement provided that:

- (a) prior to incurring such costs, the Franchisee has obtained the Secretary of State's approval of the same; and
- (b) the Franchisee has not already recovered (or is able to recover) such costs through any Franchise Payment, pursuant to any SEFT Deed and/or pursuant to any other provision of this Agreement.

1.4 The Franchisee will co-operate with TfL, the Secretary of State and relevant Train Operators in making such reasonable changes to joint ticketing products as are reasonably required to permit TfL to generate sufficient additional revenue to meet the IOP operating and maintenance costs as set out in the IOP Agreement subject to:

- (a) TfL meeting the Franchisee's reasonable and demonstrable costs as agreed in advance by the Secretary of State that are directly associated with the changes to such joint ticketing products;
- (b) any necessary changes to, or derogations from, fares regulation being granted by the Secretary of State; and
- (c) the Franchisee not being obliged to make any payment or transfer of revenue to TfL to cover TfL's IOP operating and maintenance costs as defined in the scope of the IOP Agreement, except in the case of a change where the Franchisee has agreed to pay for all or part of TfL's operating and maintenance costs associated with that change.

2. CPAY Acceptance

- 2.1 Where, prior to the Start Date, the Train Operator under the previous Franchise Agreement entered into an agreement (which for the purposes of this paragraph 4 shall include participation in a pilot scheme) with TfL for the introduction and operation of CPAY then the Franchisee shall, to the extent required by TfL, enter into such agreement for the introduction or operation of CPAY on the same basis as the Train Operator under the previous Franchise Agreement.
- 2.2 Where, prior to the Start Date, the previous franchisee has not entered into any agreement for the introduction or operation of CPAY with TfL then the Franchisee shall co-operate in good faith with TfL to facilitate the introduction and operation of CPAY in connection with the provision of the Franchise Services.

3.¹¹³ The STNR Project

The provisions contained in Appendix 1 to this Schedule 5.9 shall apply in respect of the implementation of smart ticketing arrangements for the purposes of the Franchise. The Franchisee and the Secretary of State shall each comply with their respective obligations comprised in that Appendix.

¹¹³ 06/12/2017 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

Appendix 1 to Schedule 5.9¹¹⁴

1. Definitions

In this Appendix the words and expressions defined in this paragraph 1 shall (unless the context requires otherwise) have the meanings given to them below:

[REDACTED¹¹⁵]

[REDACTED¹¹⁶]

“Dependency Item” means an aspect of the STNR Scope of Work which is subject to a dependency on another train operator and/or RDG;

[REDACTED¹¹⁷]

[REDACTED¹¹⁸]

“Listed STNR Contracts” has the meaning given to it in paragraph 3.1(b);

[REDACTED¹¹⁹]

[REDACTED¹²⁰]

“RDG” means the Rail Delivery Group, the body responsible for discharging the functions of ATOC from 24 October 2016;

“Smart Ticket” has the meaning given to such term in the STNR Scope of Work;

“STNR Completion” means that:-

¹¹⁴ 06/12/2017 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

¹¹⁵ 29/01/2018 (Date of Redactions Approval) – Where text has been omitted from the document this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

¹¹⁶ 29/01/2018 (Date of Redactions Approval) – Where text has been omitted from the document this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

¹¹⁷ 29/01/2018 (Date of Redactions Approval) – Where text has been omitted from the document this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

¹¹⁸ 29/01/2018 (Date of Redactions Approval) – Where text has been omitted from the document this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

¹¹⁹ 29/01/2018 (Date of Redactions Approval) – Where text has been omitted from the document this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

¹²⁰ 29/01/2018 (Date of Redactions Approval) – Where text has been omitted from the document this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

- (a) all aspects of the STNR System have been fully delivered, installed and commissioned in accordance with the requirements set out in the STNR Scope of Work;
- (b) the testing and certification requirements set out in paragraph 6.2 of the STNR Scope of Work have been achieved; and
- (c) all aspects of the STNR System are available and functioning in public use;

"STNR Costs Report" has the meaning given to it in paragraph 6.2(a);

"STNR Costs Schedule" means the schedule of costs as detailed in the document in the agreed terms marked **"STNRCS"**;

[REDACTED¹²¹]

"STNR Obligations" means the Franchisee's obligations in respect of the STNR Project pursuant to this Appendix 1;

"STNR Programme" means the programme for the delivery and the implementation of the STNR System and delivery of the STNR Obligations as set out in the document in the agreed terms marked **"STNRP"**;

"STNR Project" means the project for implementing and operating an interoperable smart ticketing solution on the National Rail Network allowing passengers to make complete journeys on the National Rail Network using a smartcard as a ticket. For the purpose of this definition, **"National Rail Network"** has the meaning given to it in the National Rail Conditions of Travel;

"STNR Project Steering Committee" means the committee established by the Secretary of State and composed of his representatives, to oversee the implementation of the STNR Project or any such other person or body authorised by the Secretary of State for such purpose;

"STNR Quarter" means a period of 3 successive Reporting Periods provided that the first shall commence on 10 December 2017 and the last shall end on the last day of the Franchise Period;

"STNR Reporting Period" means any of the Reporting Periods specified in the STNR Costs Schedule, being the Reporting Periods in respect of which Forecast STNR Costs specified for such Reporting Period will be due and payable as specified in paragraph 6.

¹²¹ 29/01/2018 (Date of Redactions Approval) – Where text has been omitted from the document this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

“STNR Reporting Requirements” means the reporting requirements in respect of the STNR Project set out in the document in the agreed terms marked “STNRRR” ;

“STNR Scope of Work” means the scope of works, services and activities in respect of the STNR Project as set out in the document in the agreed terms marked “STNRSOW” and comprising:-

- (a) subject to paragraph (b) below, the generic specification for the STNR Project;**
- (b) Annex A which lists those elements of the generic specification for the STNR Project as are, or are not, to be delivered, performed and complied with by the Franchisee pursuant to this Appendix 1 and to the extent of any conflict or inconsistency between the generic specification and Annex A, Annex A shall take precedence over the generic specification;**
- (c) Annex B which lists equipment to be procured, delivered, commissioned and put into use by the Franchisee pursuant to this Appendix 1; and**
- (d) Annex C which lists software and/or other system upgrades to be procured, delivered, commissioned and put into use by the Franchisee pursuant to this Appendix 1;**

“STNR System” means collectively the IT systems (hardware and software) and associated services required for a smart ticketing solution as detailed in the STNR Scope of Work, including those items referenced in Annex B and Annex C of the STNR Scope of Work;

“Target Date” means the target date for STNR Completion as specified in the STNR Programme; and

[REDACTED¹²²]

2. Implementation and operation of STNR System

- 2.1 Subject to paragraphs 2.2 and 0 the Franchisee shall deliver and perform the STNR Obligations in accordance with the STNR Programme and the STNR Scope of Works. It being agreed that, subject to the Franchisee having complied with its obligations under paragraphs 2.2 and 0, the fact that the Franchise Term has expired prior to STNR Completion shall**

¹²² 29/01/2018 (Date of Redactions Approval) – Where text has been omitted from the document this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

not of itself constitute a breach by the Franchisee of the provisions of this paragraph 2.1.

2.2 In relation to each Dependency Item:

- (a) **the Franchisee shall use reasonable endeavours to deliver, perform and comply with that item notwithstanding the dependency on other train operators and/or RDG (as the case may be);**
- (b) **“reasonable endeavours” shall include:-**
- (i) **complying with the corresponding requirements of the Franchisee in respect of the relevant Dependency Item; and**
- (ii) **otherwise actively co-operating and engaging with the relevant other train operators and/or RDG as appropriate, including in establishing processes, business rules and necessary system changes in order to achieve the effective delivery of the Franchisee’s STNR Obligations and ensure the reciprocal operation of Smart Tickets,**

[REDACTED¹²³]

[REDACTED¹²⁴]

2.3 The Franchisee [REDACTED¹²⁵] STNR Completion is achieved by no later than the Target Date.

[REDACTED¹²⁶]

2.5 The Franchisee shall, following STNR Completion, at all times be responsible for the ongoing operation, maintenance, upkeep and repair of the STNR System (fair wear and tear

¹²³ 29/01/2018 (Date of Redactions Approval) – Where text has been omitted from the document this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

¹²⁴ 29/01/2018 (Date of Redactions Approval) – Where text has been omitted from the document this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

¹²⁵ 29/01/2018 (Date of Redactions Approval) – Where text has been omitted from the document this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

¹²⁶ 29/01/2018 (Date of Redactions Approval) – Where text has been omitted from the document this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

excepted) and continue to make available the deliverables in accordance with, and comply in all respects with, the STNR Scope of Work throughout the Franchise Period.

2.6 The Franchisee shall use reasonable endeavours to support other train operators and RDG to deliver the interoperable functionality of the STNR Project.

3. Further obligations in relation to items to be supplied

3.1 The Franchisee warrants and shall procure:

- (a) that it has and retains full title in:
- (i) any tangible asset comprised in the STNR System and any other hardware assets which are required to operate the STNR System from the date on which that part of the STNR System (or other assets) is delivered to the Franchisee; and
 - (ii) without limiting paragraph 3.1(a), any data processed or generated by the STNR System from the STNR Completion Date,

which shall be "Operating Assets" for the purposes of and as defined in Schedule 14.2 (Maintenance of Operating Assets); and

- (b) that it shall obtain a [REDACTED¹²⁷] licence to use the Intellectual Property Rights in:

[REDACTED¹²⁸]

for the purposes of the performance of its obligations under this Appendix 1 and the carrying out of the Franchise Services and so as to enable such licence to be a Franchise Asset provided that, subject to paragraph 3.2, this paragraph 3.1(b) shall not require the Franchisee to provide such a licence to use Intellectual Property Rights that belong to, or are licensed from, either a counterparty to an STNR Contract specifically listed in paragraphs (a)

¹²⁷ 29/01/2018 (Date of Redactions Approval) – Where text has been omitted from the document this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

¹²⁸ 29/01/2018 (Date of Redactions Approval) – Where text has been omitted from the document this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

to (e) of the definition of STNR Contract (“Listed STNR Contract”) or the counterparty to the [REDACTED¹²⁹].

3.2 The Franchisee shall use its reasonable endeavours, at the Secretary of State’s request, to:

- (a) procure from a counterparty to a Listed STNR Contract (including for these purposes the [REDACTED¹³⁰]), a licence to use the Intellectual Property Rights in the [REDACTED¹³¹], in each case, as relevant to that Listed STNR Contract (such licence to be on the same terms and conditions as specified in the Listed STNR Contract except as to the duration which shall be as notified to the Franchisee by the Secretary of State); and
- (b) enter into an arrangement providing for the source code applicable to any software licensed relating to the Intellectual Property Rights described in paragraphs 3.1(b) and/or 3.2(a) to be placed in escrow and released as necessary to allow the Franchisee and any Successor Operator to continue to utilise the licensed items.

[REDACTED¹³²]

[REDACTED¹³³]

3.4 It is acknowledged that the intention is for all STNR Contracts (including for the purposes of this paragraph 3.4, and on each occasion it is used in this paragraph 3.4, the [REDACTED¹³⁴]) to be entered into, varied or supplemented by

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¹³⁰ 29/01/2018 (Date of Redactions Approval) – Where text has been omitted from the document this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

¹³¹ 29/01/2018 (Date of Redactions Approval) – Where text has been omitted from the document this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

¹³² 29/01/2018 (Date of Redactions Approval) – Where text has been omitted from the document this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

¹³³ 29/01/2018 (Date of Redactions Approval) – Where text has been omitted from the document this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

¹³⁴ 29/01/2018 (Date of Redactions Approval) – Where text has been omitted from the document this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

the Franchisee as specified in paragraphs 3.7 and 3.8.
[REDACTED¹³⁵]

[REDACTED¹³⁶]

3.6 The Franchisee shall (unless it has the express prior written agreement of the Secretary of State (such agreement not to be unreasonably withheld or delayed) [REDACTED¹³⁷]

3.7 Subject to the requirements of paragraph 3.6, the Franchisee shall use its reasonable endeavours to:

(a) enter into such contracts as are required for the delivery and performance of the STNR Obligations including the supply of all components to the STNR System by no later than the relevant dates set out in the STNR Programme;

(b) vary or supplement any Listed STNR Contract (and for these purposes including the [REDACTED¹³⁸]) which does not comply with the requirements of paragraph 3.8 by no later than the date that is one (1) month prior to the specified date of termination of such STNR Contract. Where the Franchisee fails to vary or supplement a Listed STNR Contract as contemplated under this paragraph 3.7(b), the Franchisee shall immediately notify the Secretary of State and:

[REDACTED¹³⁹]

(ii) the provisions of paragraph 5.2 of Schedule 14.3 (Key Contracts) shall apply.

¹³⁵ 29/01/2018 (Date of Redactions Approval) – Where text has been omitted from the document this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

¹³⁶ 29/01/2018 (Date of Redactions Approval) – Where text has been omitted from the document this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

¹³⁷ 29/01/2018 (Date of Redactions Approval) – Where text has been omitted from the document this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

¹³⁸ 29/01/2018 (Date of Redactions Approval) – Where text has been omitted from the document this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

¹³⁹ 29/01/2018 (Date of Redactions Approval) – Where text has been omitted from the document this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

[REDACTED¹⁴⁰]

3.9 The Franchisee shall:

- (a) ensure that when Smart Tickets for relevant Fares and with respect to specific flows become available to passengers in accordance with the STNR Programme the availability of such Smart Ticket is promoted to passengers and potential passengers including through appropriate “launch events” in co-operation with the Secretary of State; and
- (b) in co-ordination with its suppliers [REDACTED¹⁴¹]

4. No Impact on the Franchisee’s other Franchise obligations

4.1 The provisions of this Appendix 1 shall not in any way reduce or otherwise relieve the Franchisee from the Franchisee’s other obligations in this Franchise Agreement and without limitation the Franchisee shall continue to comply with:

- (a) the Committed Obligations; and
- (b) its obligations under the SEFT Deed.

5. Reporting and auditing

5.1 The Franchisee shall (as applicable) submit to the Secretary of State for each Reporting Period, within five (5) Weekdays of the last day of the relevant Reporting Period, the project progress in the format set out in the STNR Reporting Requirements (the “Project Progress Report”) provided that the Franchisee shall be entitled to complete and submit the “Go Live Take Up Monitoring” element of the Project Progress Report only where reasonably requested by the Secretary of State and for these purposes:-

- (i) it shall be reasonable for the Secretary of State to make such requests at least twice per annum;

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¹⁴¹ 29/01/2018 (Date of Redactions Approval) – Where text has been omitted from the document this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

- (ii) **the report shall provide information regarding take up over the period from the STNR Completion Date or since the provision of the last report giving take-up information (whichever is the later); and**
 - (iii) **the Secretary of State shall give not less than five (5) Weekdays' notice of the request for the completion of the Smart Card Take-Up Report element; and**
 - (b) **any other information that the Secretary of State reasonably requests in relation to the STNR Project from time to time.**
- 5.2 **The Franchisee shall, as and when requested by the Secretary of State, provide such information as he may reasonably require in relation to:**
 - (a) **ticket sales and the medium upon which they are sold (including magnetic stripe, smart cards, bank cards), including, where reasonable, data that may not be available in LENNON;**
 - (b) **ticket usage by passengers of the Passenger Services (including data from databases of ticket usage, data collected from smart card readers, and gate-line data). This information may include any of the data fields collected, with the exception of information that can be used to identify individual passengers, railway employees or contractors working for the railway.**
- 5.3 **The rights of the Secretary of State pursuant to paragraph 5.1(b) of Schedule 11 (Agreement Management Provisions) extend to all records, data, books of account and other information relevant to the Franchisee's STNR Obligations. The remainder of paragraph 5 of Schedule 11 shall be interpreted accordingly.**

6. Payments

- 6.1 **In consideration of the performance by the Franchisee of the STNR Obligations and subject to the other terms of this paragraph 6, the Secretary of State shall, on the next Payment Date falling no less than 7 days before the beginning of each STNR Reporting Period, pay to the**

Franchisee by way of adjustment to Franchise Payments the Forecast STNR Costs specified in the STNR Costs Schedule to be payable in respect of such STNR Reporting Period.

6.2 At the end of each STNR Quarter, a reconciliation process shall apply as follows:

- (a) within ten (10) Weekdays of the end of the relevant STNR Quarter [REDACTED¹⁴²] in each of the STNR Reporting Periods falling within that STNR Quarter, such report to only include [REDACTED¹⁴³]. Each STNR Costs Report shall be accompanied by a certificate signed by a statutory director of the Franchisee confirming that the information contained in the STNR Costs Report is true, accurate and not misleading in all material respects and that all the requirements in paragraph 6.3 are met.**
- (b) where the STNR Costs Report shows (or the Secretary of State reasonably determines) that the aggregate [REDACTED¹⁴⁴] incurred in respect of all the STNR Reporting Periods falling within such STNR Quarter are:

[REDACTED¹⁴⁵]**
- (c) any payments to be made pursuant to paragraph 6.2(b) shall be made [REDACTED¹⁴⁶] (as the case may be) is notified to [REDACTED¹⁴⁷].**

¹⁴² 29/01/2018 (Date of Redactions Approval) – Where text has been omitted from the document this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

¹⁴³ 29/01/2018 (Date of Redactions Approval) – Where text has been omitted from the document this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

¹⁴⁴ 29/01/2018 (Date of Redactions Approval) – Where text has been omitted from the document this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

¹⁴⁵ 29/01/2018 (Date of Redactions Approval) – Where text has been omitted from the document this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

¹⁴⁶ 29/01/2018 (Date of Redactions Approval) – Where text has been omitted from the document this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

¹⁴⁷ 29/01/2018 (Date of Redactions Approval) – Where text has been omitted from the document this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

- 6.3 **The [REDACTED¹⁴⁸] under paragraph 6.2(b)(ii) is subject to the following:**
- (a) **that the [REDACTED¹⁴⁹];**
 - (b) **subject to paragraphs 6.3(a), 6.3(c) and 6.3(d) [REDACTED¹⁵⁰]**
 - (i) **and to the extent that the aggregate of [REDACTED¹⁵¹]**
[REDACTED¹⁵²]
 - (c) **the Franchisee shall use its reasonable endeavours to minimise the [REDACTED¹⁵³] incurred in any STNR Reporting Period; and**
 - (d) **notwithstanding any other provision in this Appendix 1, the Franchisee shall not be entitled to any payment or reimbursement in respect of any cost which it has already recovered (or is able to recover) under any other provision of this Franchise Agreement, any other agreement between the Franchisee and the Secretary of State (including the SEFT Deed) or any other arrangement or agreement with a third party.**
- 6.4 **If the Franchisee at any time considers that it is reasonably likely that [REDACTED¹⁵⁴]**

¹⁴⁸ 29/01/2018 (Date of Redactions Approval) – Where text has been omitted from the document this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

¹⁴⁹ 29/01/2018 (Date of Redactions Approval) – Where text has been omitted from the document this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

¹⁵⁰ 29/01/2018 (Date of Redactions Approval) – Where text has been omitted from the document this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

¹⁵¹ 29/01/2018 (Date of Redactions Approval) – Where text has been omitted from the document this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

¹⁵² 29/01/2018 (Date of Redactions Approval) – Where text has been omitted from the document this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

¹⁵³ 29/01/2018 (Date of Redactions Approval) – Where text has been omitted from the document this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

¹⁵⁴ 29/01/2018 (Date of Redactions Approval) – Where text has been omitted from the document this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

[REDACTED¹⁵⁵]

- (b) an explanation as to why that is the case (with supporting information); and

[REDACTED¹⁵⁶]

together with any other information that the Secretary of State may reasonably require in order to satisfy himself that the [REDACTED¹⁵⁷] will be and are reasonably and properly incurred.

6.5 The Franchisee shall not, in respect of any STNR Reporting Periods falling within an STNR Quarter, [REDACTED¹⁵⁸]

6.6 If and as soon as the Franchisee becomes aware of [REDACTED¹⁵⁹], the Franchisee shall, within five (5) Weekdays of first becoming aware that [REDACTED¹⁶⁰]. The Franchisee shall provide all details as are reasonably available to it (or can be ascertained by it) as to:

[REDACTED¹⁶¹]

[REDACTED¹⁶²]

7. Amendments in respect of STNR

7.1 If the Secretary of State is considering or wishes to propose amendment(s) to the STNR Obligations, the following process shall apply (unless otherwise agreed by the parties):

¹⁵⁵ 29/01/2018 (Date of Redactions Approval) – Where text has been omitted from the document this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

¹⁵⁶ 29/01/2018 (Date of Redactions Approval) – Where text has been omitted from the document this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

¹⁵⁷ 29/01/2018 (Date of Redactions Approval) – Where text has been omitted from the document this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

¹⁵⁸ 29/01/2018 (Date of Redactions Approval) – Where text has been omitted from the document this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

¹⁵⁹ 29/01/2018 (Date of Redactions Approval) – Where text has been omitted from the document this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

¹⁶⁰ 29/01/2018 (Date of Redactions Approval) – Where text has been omitted from the document this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

¹⁶¹ 29/01/2018 (Date of Redactions Approval) – Where text has been omitted from the document this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

¹⁶² 29/01/2018 (Date of Redactions Approval) – Where text has been omitted from the document this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

- (a) **the Secretary of State shall notify the Franchisee of the amendment(s) to the STNR Obligations which he does or may wish to make;**
 - (b) **the Secretary of State shall invite the Franchisee to comment within not less than fifteen (15) Weekdays on the proposed amendment(s) and may request the Franchisee:-**
 - (i) **[REDACTED¹⁶³] by the Target Date; and**
 - (ii) **to provide further information to assist the Secretary of State in considering amendment(s) to the STNR Obligations;**
 - (c) **the Franchisee shall comply with any request for information made by the Secretary of State pursuant to paragraphs 7.1(b)(i) and/or 7.1(b)(ii); and**
 - (d) **the Secretary of State shall have regard to the response received from the Franchisee in response to his invitation under paragraph 7.1(b) in proposing any amendment(s) to the STNR Obligations.**
- 7.2 **Subject to the Secretary of State complying with the process in paragraph 7.1, the parties agree that the STNR Obligations may be amended by the Secretary of State (acting through the STNR Project Steering Committee) from time to time subject to:**
- (a) **the Secretary of State acting reasonably in connection with the nature and terms of any such amendment(s); and**
 - (b) **the Secretary of State extending the Target Date [REDACTED¹⁶⁴]**
- 7.3 **The Franchisee may propose amendment(s) to the STNR Obligations at any time (including (but not so as to relieve the Franchisee of its obligations under paragraph 7.1(c)) variations to any amendment(s) proposed by the Secretary of State in accordance with paragraph 7.1(a)) but the**

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¹⁶⁴ 29/01/2018 (Date of Redactions Approval) – Where text has been omitted from the document this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

Secretary of State shall not be obliged to agree to any such Franchisee proposed amendment(s).

8. Termination or suspension

8.1 If the Secretary of State reasonably believes that:

- (a) the Franchisee will be unable to achieve STNR Completion by the Target Date; and/or**
- (b) the STNR Obligations will not be able to [REDACTED¹⁶⁵]**

then, without prejudice to any other rights and remedies he may have [REDACTED¹⁶⁶]

8.2 If the Secretary of State exercises his rights of termination in accordance with paragraph 8.1:

- (a) the Franchisee shall take such reasonable steps as the Secretary of State may request in relation to the orderly close down of the STNR Project so as to preserve and retain as much value as reasonably possible from the activity which has been undertaken and expenditure incurred;**
- (b) without limiting paragraph 8.2(a) at the request of the Secretary of State the Franchisee shall:**
 - (i) deliver up and transfer to the Secretary of State (or his nominee(s)) for no payment such of the following as he may request:**

(A) any tangible assets comprised in the STNR System [REDACTED¹⁶⁷] pursuant to this Appendix 1 including the items referred to in Annex B to the STNR Scope of Work, save to the extent that such tangible assets are required by the Franchisee for

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¹⁶⁶ 29/01/2018 (Date of Redactions Approval) – Where text has been omitted from the document this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

¹⁶⁷ 29/01/2018 (Date of Redactions Approval) – Where text has been omitted from the document this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

the continued provision of the Franchise Services;

(B) any Intellectual Property Rights that relate to the STNR Project [REDACTED¹⁶⁸] pursuant to this Appendix 1 and that are owned by the Franchisee; and

(C) such other materials whatsoever developed [REDACTED¹⁶⁹] pursuant to this Appendix 1 or copies thereof (including software, plans and other project materials), save to the extent that such other materials are required by the Franchisee for the continued provision of the Franchise Services;

- (ii) **procure the grant to the Secretary of State (or his nominee) of a non-exclusive, royalty free licence to use the Intellectual Property Rights comprised in the items specified in paragraphs 8.2(b)(i)(A) and 8.2(b)(i)(C) (in so far as they are not comprised in paragraph 8.2(b)(i)(B) and which are in existence as at the date of termination for any purposes relating to the carrying out its functions and duties or otherwise in relation to provision of passenger rail services;**
- (c) **subject to the Franchisee:**
 - (i) **having complied with and continuing to comply its obligations pursuant to paragraphs 6.3(c), 6.6, 8.2(a) and 8.2(b); and**
 - (ii) **having provided such evidence in respect of the same in equivalent detail to that required in respect of any application for payment under paragraph 6,**

¹⁶⁸ 29/01/2018 (Date of Redactions Approval) – Where text has been omitted from the document this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

¹⁶⁹ 29/01/2018 (Date of Redactions Approval) – Where text has been omitted from the document this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

- [REDACTED¹⁷⁰]. The provisions of paragraphs 3.4 and 3.5 shall apply (mutatis mutandis) in respect of [REDACTED¹⁷¹]**
- (d) **from the date of termination specified by the Secretary of State in his termination notice both parties shall be relieved of all further obligations under this Appendix 1:**
- (i) **except for their obligations pursuant to this paragraph 8.2 and to the continuation in force of such other provisions as shall expressly or impliedly continue in force notwithstanding such termination; and**
- (ii) **provided that termination shall not relieve a party of liability for any prior breach of its obligations under this Appendix 1.**
- 8.3 **If the Secretary of State exercises his rights of suspension in accordance with paragraph 8.1 the terms of paragraph 8.2 shall apply (mutatis mutandis) except that:**
- (a) **the Secretary of State shall not be entitled to require the transfer or licence of items described in paragraph 8.2(b); and**
- (b) **the Secretary of State shall be entitled by notice to the Franchisee to reverse the suspension at any time provided that (whether in the context of amendments to the STNR Obligations under paragraph 7.1 or otherwise) [REDACTED¹⁷²]**
- (i) **to the extent agreed with [REDACTED¹⁷³]**

¹⁷⁰ 29/01/2018 (Date of Redactions Approval) – Where text has been omitted from the document this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

¹⁷¹ 29/01/2018 (Date of Redactions Approval) – Where text has been omitted from the document this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

¹⁷² 29/01/2018 (Date of Redactions Approval) – Where text has been omitted from the document this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

¹⁷³ 29/01/2018 (Date of Redactions Approval) – Where text has been omitted from the document this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

(ii) in the absence of agreement, to the extent reasonably determined by the [REDACTED¹⁷⁴]

[REDACTED¹⁷⁵]

9. Escalation and disputes

Any disputes that arise with respect to the STNR Project shall first be considered between the Contract Manager and the Franchise Manager. If no such resolution can be agreed within fifteen (15) Weekdays the parties may, but shall not be obliged, to resolve the dispute in accordance with the Dispute Resolution Rules save for where any such dispute arises out of paragraph 6 of this Appendix, in which case, unless the parties otherwise agree, such dispute shall be resolved in accordance with the provisions of clause 9 (Governing Law) of this Franchise Agreement.

¹⁷⁴ 29/01/2018 (Date of Redactions Approval) – Where text has been omitted from the document this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

¹⁷⁵ 29/01/2018 (Date of Redactions Approval) – Where text has been omitted from the document this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

SCHEDULE 6

Committed Obligations and Franchise Specific Obligations

Schedule 6.1: Committed Obligations and Related Provisions

Schedule 6.2: South Eastern Franchise Specific Provisions

SCHEDULE 6.1

Committed Obligations and Related Provisions

Part 1: List of Committed Obligations

Part 2: Miscellaneous Provisions

Part 1 to Schedule 6.1**List of Committed Obligations****1. LONDON BRIDGE RESOURCE REQUIREMENTS**

1.1 The Franchisee shall:

- (a) procure the additional staff resource to provide customer information to passengers on the platforms; and
- (b) carry out the other activities which may assist in maintaining National Rail Passenger Survey performance,

which are funded through the London Bridge Compensation Agreement, for the duration of the redevelopment of London Bridge Station forming part of the Thameslink Programme.

1.2 ¹⁷⁶**Up to and including 22 June 2019, the Franchisee shall employ the following additional staff for the purpose of assisting with communications in relation to the Thameslink Programme:**

- (a) **a communications manager (of a minimum of grade of MG2);**
- (b) **two customer care advisors to deal with customer correspondence;**
- (c) **a customer care advisor to manage publication of information, and deal with queries received, via social media (in particular "Twitter"),**

each additional member of staff listed in paragraph (b) and (c) to work the equivalent of 43% of full-time hours.

2. LONDON BRIDGE COMMUNICATIONS PLAN

2.1 The Franchisee shall implement the Franchisee's obligations under the London Bridge Communications Plan in respect of working with Network Rail, Transport for London, other train operators and other relevant parties to communicate to passengers, other stakeholders and Franchise Employees the impact of the Thameslink Programme on Passenger Services which pass through London Bridge Station or which are impacted by changes associated with works at London Bridge Station and to support the highlighting of the benefits of the Thameslink Programme as they relate to the Franchise Services and the wider transport network, as funded pursuant to the London Bridge Compensation Agreement.

2.2 The Franchisee shall provide a copy of the London Bridge Communications Plan (once such plan has been developed in conjunction with Network Rail and other members of the Thameslink Programme) and updates to the London Bridge Communications Plan to the Secretary of State as soon as reasonably practicable following development of such update. As a minimum the Franchisee shall update the London Bridge Communications Plan to reflect the

¹⁷⁶ 13 June 2019 (Date of DOA) – Contract variation agreed by the Secretary of State and Franchisee.

changes to the Service Level Commitment pursuant to paragraphs 1.2(b) to (e) of Schedule 1.1, and shall:

- (a) provide the Secretary of State with a draft of such updated plan no later than 10 weeks prior to the date of each such change in Service Level Commitment;
- (b) (acting reasonably) take into account any comments received from the Secretary of State within 10 working days of such draft plan being provided pursuant to paragraph 2.2(a); and
- (c) provide the Secretary of State with the final form of such updated plan no later than 6 weeks prior to the date of the relevant change in Service Level Commitment.

3. TABLETS FOR STATION GATELINE STAFF

3.1 The Franchisee shall:

- (a) by no later than 31 July 2015 procure and deploy not less than ¹⁷⁷ 3G internet enabled tablet devices equipped with, and capable of running, a 'real time' train running software application ("**Gateline Tablets**"); and
- (b) keep deployed and operational for the remaining term of this Agreement not less than ¹⁷⁸ Gateline Tablets,

for use by Franchise Employees working on gatelines at Stations for the purpose of improving communications with and between such Franchise Employees and facilitating improved customer service and information provision.

- 3.2 The Franchisee shall ensure that any Franchisee Employee to which a tablet is deployed is appropriately trained to use the Gateline Tablet and such Gateline Tablet is used for the purpose of improving communications with and between such Franchise Employees and facilitating improved customer service and information provision.
- 3.3 The Franchisee shall report to the Secretary of State each Reporting Period the number of Gateline Tablets which have been operational for the previous Reporting Period.
- 3.4 The Gateline Tablets procured pursuant to paragraph 3.1 (a) shall be designated as Primary Franchise Assets during the term of this Agreement and for the purpose of any Transfer Scheme and Supplemental Agreement such Tablets shall have a nil value.

4. TABLET DEVICES FOR TRAIN CREW

4.1 The Franchisee shall:

¹⁷⁷ Where text has been omitted from the document, this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

¹⁷⁸ Where text has been omitted from the document, this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

- (a) by no later than 31 July 2015 procure and deploy not less than 1,300 3G internet enabled tablet devices equipped with, and capable of running, a 'real time' train running software application, training record, rule book and other reference materials ("**Train Crew Tablet**");
- (b) keep deployed and operational for the remaining term of this Agreement not less than 1,200 Train Crew Tablets,

for use by Franchisee Employees working as train crew (including train drivers, train conductors and on-board managers) for the purpose of improving communications with and between such Franchise Employees and facilitating improved customer service and information provision.

- 4.2 The Franchisee shall ensure that any Franchisee Employee to which a Train Crew Tablet is deployed is appropriately trained to use the Train Crew Tablet and such Train Crew Tablet is used for the purpose of improving communications with and between such Franchise Employees and facilitating improved customer service and information provision
- 4.3 The Franchisee shall report to the Secretary of State each Reporting Period the number of Train Crew Tablets which have been operational for the previous Reporting Period.
- 4.4 The Train Crew Tablets procured pursuant to paragraph 4.1(a) shall be designated as Primary Franchise Assets during the term of this Agreement and for the purpose of any Transfer Scheme and Supplemental Agreement such Tablets shall have a nil value.

5. **INSTALLATION OF SCREENS AND CUSTOMER INFORMATION** ¹⁷⁹

- 5.1 ***Subject to obtaining any necessary consents and the data necessary to operate the Digital Signage in accordance with paragraph 5.2, the Franchisee shall by no later than ¹⁸⁰ install and keep operational for the term of this Agreement Digital Signage at:***

- (a) ***Margate, Ramsgate, Sheerness, Paddock Wood, Hither Green, Sidcup and Maidstone West Stations, the installation of Digital Signage at such Stations shall be prioritised by the Franchisee; and***
- (b) ***any other Station subject to the approval of the Secretary of State,***

for the purpose of providing journey information to passengers and supporting the travel demand management impacts of the Thameslink Programme. The Franchisee shall incur expenditure of not less than ¹⁸¹ in undertaking this obligation. Any Digital Signage installed by the

¹⁷⁹ Date of change: 04/12/2015

¹⁸⁰ **Where text has been omitted from the document, this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.**

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Franchisee prior to the Start Date at any Station referred to above shall count for the purposes of compliance with this paragraph 5.1.

- 5.2 **The Franchisee shall use all reasonable endeavours to obtain:**
- (a) **any necessary consents required in respect of the installation of the Digital Signage;**
 - (b) **the provision from Network Rail throughout the Franchise Term of the data necessary to effectively operate the Digital Signage.**

6. STATION IMPROVEMENTS PROGRAMME

Deep Clean

- 6.1 **The Franchisee shall on or before 30 September 2015 carry out a "Deep Clean" at all Stations (excluding the Thameslink Stations and Abbey Wood Station).** ¹⁸²
- 6.2 The "Deep Clean" at each Station (excluding the Thameslink Stations) shall be carried out in such a manner as to undertake the activities and achieve the outputs specified in the specification set out in Appendix 1 to this Part 1 of Schedule 6.1, in each case to the extent applicable to each Station.
- 6.3 The Franchisee shall provide the Secretary of State with its programme for undertaking the Deep Clean at all the Stations (excluding the Thameslink Stations) in the period from the Start Date to 30 September 2015 for its approval (such approval not to be unreasonably withheld or delayed).
- 6.4 The Franchisee shall notify the Secretary of State of Stations where a Deep Clean has been completed at the next Franchise Performance Meeting and provide in advance of such meeting:
- (a) photographic evidence of Stations which have been subject to a Deep Clean taken before and after cleaning in a variety of the areas listed in the Deep Clean specification set out at Appendix 1 to this Part 1 of this Schedule 6.1 (Committed Obligations); and
 - (b) evidence of expenditure incurred in carrying out such Deep Clean.

Station Improvement Works

- 6.5 The Franchisee shall:
- (a) by no later than 1 March 2015 undertake an asset condition survey of 31 Stations;
 - (b) by no later than 1 May 2015 undertake an asset condition survey of a further 33 Stations;
 - (c) by no later than 1 July 2015 undertake an asset condition survey of a further 33 Stations;

¹⁸² Date of change: 30/09/2015

- (d) by no later than 1 September 2015 undertake an asset condition survey of a further 33 Stations; and
- (e) by no later than 1 November 2015 undertake an asset condition survey of the remaining Stations,

(each an "**Asset Condition Survey**").

6.6 From the information gathered as part of each Asset Condition Survey, the Franchisee shall prepare a programme of Station Improvement Works setting out:

- (a) the activities to be undertaken which form the Station Improvement Works at each relevant Station;
- (b) the estimated expenditure to be incurred by the Franchisee at each relevant Station in the delivery of the Station Improvement Works;
- (c) the timetable for the Station Improvement Works at each relevant Station;
- (d) the standards against which the completion of the relevant Station Improvement Works will be measured against,

(each a "**Station Improvement Programme**"),

and the Franchisee shall submit each Station Improvement Programme to the Secretary of State within four weeks of completion of the relevant Asset Condition Survey for approval by the Secretary of State (such consent to be provided within four weeks of submission of the relevant Station Improvement Programme to the Secretary of State and otherwise not to be unreasonably withheld or delayed).

6.7 Following approval by the Secretary of State pursuant to paragraph 6.6, the Franchisee shall use all reasonable endeavours to undertake and complete the Station Improvement Works in accordance with the timetable set out in the Station Improvement Programme with all such Station Improvement Works to be completed by 31 October 2016,¹⁸³ **with the exclusion of Rochester Station and Abbey Wood Station.**

6.8 The Franchisee shall incur a minimum committed spend of £4,800,000 in delivering the Station Improvement Works.

6.9 The Franchisee shall report to the Secretary of State on a quarterly basis a breakdown of how costs were incurred in completing each Station Improvement Programme.

7. SAFETY AND SECURITY

7.1 From the Start Date, the Franchisee shall pay £40,000 per annum to the Kent Community Rail Partnership (such payment to be pro-rated for any partial years).

¹⁸³ Date of insertion 07/09/2016

- 7.2 From the Start Date, the Franchisee shall pay £20,000 per annum to the CitySafe Foundation (such payment to be pro-rated for any partial years).

8. FARES - OYSTER EXTENSION

- 8.1 The Franchisee shall use reasonable endeavours to agree the extension of Oyster PAYG to Dartford Station by 31 January 2016 with Transport for London, the Secretary of State and any other relevant party provided that the costs the Franchisee has to incur in relation to the extension of Oyster PAYG to Dartford Station are limited to ¹⁸⁴.
- 8.2 The Franchisee shall use reasonable endeavours to agree the extension of Oyster PAYG to Swanley Station by 31 December 2016 with Transport for London, the Secretary of State and any other relevant party provided that the costs the Franchisee has to incur in relation to the extension of Oyster PAYG to Swanley Station are limited to ¹⁸⁵.
- 8.3 The Franchisee shall use reasonable endeavours to facilitate the payment of Fares using an Oyster card in relation to single journeys on High Speed Domestic Services between Stratford International and St. Pancras International stations by 30 May 2016 with Transport for London, the Secretary of State and any other relevant party provided that:
- (a) the Fare applicable to any such payment by an Oyster card shall be the same as or lower than that which applies if payment of the Fare is by a method other than Oyster card; and
 - (b) the costs the Franchisee has to incur for facilitating such payment of fares using an Oyster card in relation to single journeys on High Speed Domestic Services between Stratford International and St. Pancras International stations are limited to ¹⁸⁶.

9. REVENUE PROTECTION

vii Ticket Vending Machines

- 9.1 ¹⁸⁷ ¹⁸⁸ ***Subject to obtaining any consents that may be required pursuant to the relevant Station Leases and/or Access Agreements (the "TVM Consents"), the Franchisee shall install ticket vending machines at the following Stations: Adisham, Ashford, Aylesford, Aylesham, Barming, Bat and Ball, Bekesbourne, Beltring, Brixton, Charing, Chartham, Chestfield and Swalecliffe, Chilham, Crowhurst, Cuxton, Dumpton Park, Dunton Green, East Farleigh, East Malling, Etchingham, Eynsford,***

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¹⁸⁵ Where text has been omitted from the document, this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

¹⁸⁶ Where text has been omitted from the document, this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

¹⁸⁷ Date of change: 19/02/2015

¹⁸⁸ Date of change: 26/02/2016

Farningham Road, Frant, Gravesend, Halling, Harrietsham, Higham, High Brooms, Hollingbourne, Kearsney, Kemsing, Kemsley, Lenham, Maidstone Barracks, Marden, Martin Mill, Minster, New Hythe, Northfleet, Pluckley, Queenborough, Robertsbridge, Rochester, Sandling, Selling, Shepherds Well, Shoreham, Snodland, Snowdown, Sole Street, Stone Crossing, Stonegate, Strood, Sturry, Swale, Swanscombe, Teynham, Tonbridge, Watlington, West St Leonards, Westenhanger, Wye and Yalding.

- 9.2 ^{viii}The Franchisee shall have installed 31 of such ticket vending machines by 12 October 2015 and in any event shall have installed all of such ticket vending machines by 12 October 2016.
- 9.3 The Franchisee shall maintain and keep the ticket vending machines operational from the date of their installation until the end of the Franchise Term. The Franchisee shall be treated as maintaining and keeping the ticket vending machines operational notwithstanding temporary non-availability due to accidental damage or vandalism or maintenance, repair or replacement, subject in each case to the Franchisee using all reasonable endeavours to keep any such period of temporary non-availability to a minimum.
- 9.4 If the ticket vending machines are to be leased by the Franchisee, such ticket vending machines shall be leased by the Franchisee on such terms as the Secretary of State approves (acting reasonably).
- 9.5 Any lease entered into by the Franchisee pursuant to paragraph 9.2 or ticket vending machine installed pursuant to paragraph 9.1 shall be designated as a Primary Franchise Asset during the term of this Agreement and for the purpose of any Transfer Scheme and Supplemental Agreement (i) in the case of a lease, having nil value; and (ii) in the case of ticket vending machines, be valued in accordance with the Supplemental Agreement at the time of the transfer.

Automatic Ticket Gates ^{189 190}

- 9.6 ***Subject to obtaining any consents that may be required under the relevant Station Leases and/or Access Agreements (the "Automatic Ticket Gate Consents"), the Franchisee shall on or before 31 December 2016 install, maintain and operate automatic ticket gates at Canterbury East and Folkstone Central Station.***

10. IT SYSTEM ENHANCEMENTS ¹⁹¹

The Franchisee shall by no later than ¹⁹² ***replace the remote condition monitoring system on 112 Units of Class 375 and 36 Units of Class 376 rolling stock, each forming part of the Train Fleet. The Franchisee shall incur a minimum expenditure of*** ¹⁹³ ***(to include capital and operating costs) over the***

¹⁸⁹ Date of change: 18/05/2015

¹⁹⁰ Date of change: 14/12/2015

¹⁹¹ Date of change: 21/12/2015

¹⁹² **Where text has been omitted from the document, this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.**

¹⁹³ **Where text has been omitted from the document, this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.**

Franchise Term in undertaking this obligation. Where any underspend is identified, any underspent amounts will be used by the Franchisee to fund an additional capacity study and first class seating relocation works (to a maximum of ¹⁹⁴).

11. IMPROVING ENVIRONMENTAL PERFORMANCE

11.1 The Franchisee shall use reasonable endeavours to reduce the environmental impact of rail activities at Stations. Such steps to reduce the environmental impact of rail activities shall include some or all of the following (which may, where appropriate, be procured with the support of third party funding):-

- (a) expanding the scheme to convert Chatham station to LED lighting to National Station Improvement Programme schemes and other projects where new or replacement lighting is required;
- (b) completing implementation of dry mixed recycling at depots and stations;
- (c) expanding the environmental champions scheme using local volunteer champions to promote green projects;
- (d) increasing passenger information about environmental performance improvements;
- (e) agreeing and implementing an annual joint sustainability plan with Network Rail including plans for energy efficiencies at stations and depots;
- (f) implementing local energy saving schemes that pay back within the life of the franchise at certain Stations; and
- (g) any other scheme which seeks to reduce the environmental impact of rail activities,

("Environmental Schemes").

11.2 The Franchisee shall supplement its annual sustainability report with the online publication (quarterly in arrears) of the following information, where such information is reasonably available to the Franchisee:-

- (a) carbon emissions per passenger journey;
- (b) station and depot energy use, broken down into gas and electricity;
- (c) traction electricity fuel efficiency;
- (d) percentages of waste recycled and sent to landfill;
- (e) customer complaints in respect of environmental noise; and
- (f) environmental incidents reported, including any enforcement action.

¹⁹⁴

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12. PRM

- 12.1 The Franchisee shall comply with its obligations in the applicable Rolling Stock Lease to release and make available units of Class 465 rolling stock that are comprised within the Train Fleet (together the "**PRM Rolling Stock**") to the applicable lessor for such lessor to procure such modifications to PRM Rolling Stock as are necessary for compliance with the 'Persons of Reduced Mobility – Technical specification of interoperability (PRMTSI) modifications of the Railways (Interoperability) Regulations 2011 (the "**PRM Modifications**").
- 12.2 The Franchisee shall notify the Secretary of State on a quarterly basis of the PRM Rolling Stock which has completed a PRM Modification during such quarter.

13. SECURE STATIONS AND SECURE CAR PARKING ACCREDITATION**Secure Stations Accreditation**

- 13.1 Subject to paragraph 13.3, the Franchisee shall maintain throughout the Franchise Period the "Secure Stations Accreditation" in respect of a minimum of 94 Stations.

Secure Car Parking Accreditation

- 13.2 Subject to paragraph 13.3, the Franchisee shall maintain throughout the Franchise Period a secure car parking accreditation (such as the "Park Mark" accreditation or similar) in respect of a minimum of 82 Stations.

Transfer of Stations from the Franchise

- 13.3 The Franchisee shall not be required to maintain any "Secure Station Accreditation", or secure car parking accreditation in respect of:
- (a) the Abbey Wood Station after it is transferred to the Crossrail Operator on the Crossrail Transfer Date; and
 - (b) any Thameslink Station after they are transferred to the TSGN Operator on the Thameslink Transfer Date,

and the minimum number of stations to which the obligations in paragraphs 13.1 and 13.2 apply and shall be reduced accordingly on such dates provided that such Station had Secured Stations Accreditation or a secure parking accreditation on the date it was transferred.

14. DRIVERS

- 14.1 Unless as otherwise agreed by the Secretary of State in accordance with this paragraph 14, the Franchisee shall use all reasonable endeavours to manage the recruitment and training of train drivers to ensure that for each period of 13 consecutive Reporting Periods ending on the date specified in the first column (Period) of the following table ("**Driver Employment Commitment Period**"), the average number of full-time drivers (or full-time equivalent) and trainee drivers (or full-time equivalent) employed and in receipt of a salary per Reporting Period by the Franchisee ("**Average Driver Number per Reporting Period**") is at least the number specified in the second column (Driver Number Target) ("**Driver Number Target**):

Period ^{195 196}	Driver Number Target ¹⁹⁷ [REDACTED] ¹⁹⁸
End of rail industry period 1607	[REDACTED]
End of rail industry period 1707	[REDACTED]
End of rail industry period 1807	[REDACTED]
End of rail industry period 1812	[REDACTED]
End of rail industry period 1913	[REDACTED]
End of rail industry period 2003	[REDACTED]
End of rail industry period 2008	[REDACTED]
End of rail industry period 2013	[REDACTED]

- 14.2 The Franchisee shall report to the Secretary of State the Average Driver Number per Reporting Period for the Driver Employment Commitment Period within 28 days of the end of such period with such supporting evidence as the Secretary of State may reasonably require.
- 14.3 The Franchisee and Secretary of State agree and acknowledge that the Driver Number Target is based on the approach to and assumptions on driver resourcing and recruitment set out in paragraphs 4.4.1.9, 4.4.1.10, 4.4.3.9 and 4.4.3.10 of the Record of Assumptions and the Driver Inputs (together the "**Driver Assumptions**").
- 14.4 Where the Franchisee considers that it wishes to change the Driver Assumptions ("**Amended Driver Assumptions**") and the Driver Number Target ("**Amended Driver Number Target**") as a result of:
 - (a) **Where text has been omitted from the document, this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.**
 - (b) a change in the size of the train driver establishment provided by the Franchisee to other Train Operator(s) and, for this purpose, the Franchisee and Secretary of State acknowledge that as at the date of this Agreement the Franchisee provides train drivers pursuant to the agreement described at paragraph (b) of the definition of

¹⁹⁵ 08/09/2017 (Date of DOA) – Contract variation agreed by the Secretary of State and Franchisee.

¹⁹⁶ 13 June 2019 (Date of DOA) – Contract variation agreed by the Secretary of State and Franchisee.

¹⁹⁷ 13 June 2019 (Date of DOA) – Contract variation agreed by the Secretary of State and Franchisee.

¹⁹⁸ **20/11/2017 (Date of Redactions Approval) – Where text has been omitted from the document this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.**

Thameslink KO0 Trading Agreement and the Southern Trading Agreement; or

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

it shall notify the Secretary of State of the Amended Driver Assumptions and Amended Driver Number Target as soon as reasonably practicable.

- 14.5 The Secretary of State shall not unreasonably withhold its consent to the acceptance of such Amended Driver Assumptions and Amended Driver Number Target.
- 14.6 In respect of the circumstances identified in paragraph 14.4(a) above, the Franchisee and the Secretary of State shall, within 3 months of the date on which the Secretary of State provided its consent pursuant to paragraph 14.5, agree a reasonable adjustment to the Franchise Payment in the event that the implementation of the Amended Driver Assumptions results in a decrease in the costs identified in the Financial Model.
- 14.7 For the avoidance of doubt, the Franchisee and the Secretary of State agree that, in respect of the circumstances identified in paragraph 14.4(b) and/or paragraph 14.4(c) above, there shall be no adjustments to the Franchise Payments.

15. EYEWITNESS SCHEME

The Franchisee shall continue to operate its "Eye Witness" scheme that allows passengers to email reports of anti-social behaviour on Passenger Services and Station (including vandalism and fare evasion) in order that the Franchisee may deploy its revenue enforcement officers and other authorities (including the British Transport Police) to respond. In doing so, the Franchisee shall communicate such scheme to passengers and ensure that staff at the Franchisee's control centre are trained to respond appropriately to any reports of anti-social behaviour during the hours of operation of the Passenger Services.

16. GATED STATIONS

- 16.1 During the Franchise Term, the Franchisee shall ensure that its ticket gatelines are staffed and operational at:
- (a) Cannon Street and London Bridge Stations in aggregate for not less than ¹⁹⁹ hours during the hours of operation of such Stations in each Reporting Period;

¹⁹⁹

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

- (b) St Pancras International in aggregate for not less than ²⁰⁰ hours during the hours of operation of such Station in each Reporting Period;
- (c) Charing Cross and Waterloo East Stations in aggregate for not less than ²⁰¹ hours during the hours of operation of such Stations in each Reporting Period;
- (d) Victoria Station in aggregate for not less than ²⁰² hours during the hours of operation of such Station in each Reporting Period,

and such requirements shall be deemed to be satisfied provided that the Franchisee achieves at least ²⁰³ of each of these targeted hours within each Reporting Period.

16.2 During the Franchise Term, the Franchisee shall ensure that its ticket gatelines are staffed and operational at:

- (a) Bromley, Orpington and Sevenoaks Stations in aggregate for not less than ²⁰⁴ hours during the hours of operation of such Stations in each Reporting Period;
- (b) Lewisham, Bexleyheath, Eltham, Falconwood, New Cross and Welling Stations in aggregate for not less than ²⁰⁵ hours during the hours of operation of such Stations in each Reporting Period;
- (c) Abbey Wood, Dartford, Albany Park, Bexley, Crayford, New Eltham, Sidcup and Woolwich Arsenal Stations in aggregate for not less than ²⁰⁶ hours during the hours of operation of such Stations in each Reporting Period;
- (d) Chatham, Faversham, Gillingham, Gravesend, Greenhithe, Rainham, Rochester, Sittingbourne and Strood Stations in aggregate

²⁰⁰ Where text has been omitted from the document, this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

²⁰¹ Where text has been omitted from the document, this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

²⁰² Where text has been omitted from the document, this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

²⁰³ Where text has been omitted from the document, this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

²⁰⁴ Where text has been omitted from the document, this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

²⁰⁵ Where text has been omitted from the document, this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

²⁰⁶ Where text has been omitted from the document, this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

for not less than ²⁰⁷ during the hours of operation of such Stations in each Reporting Period;

- (e) Ebbsfleet International and Stratford International Stations in aggregate for not less than ²⁰⁸ hours during the hours of operation of such Stations in each Reporting Period;
- (f) Hastings, Tonbridge and Tunbridge Wells Stations in aggregate for not less than ²⁰⁹ hours during the hours of operation of such Stations in each Reporting Period; and
- (g) Canterbury, Dover Priory and Ashford International Stations in aggregate for not less than ²¹⁰ during the hours of operation of such Stations in each Reporting Period,

and such requirements shall be deemed to be satisfied provided that the Franchisee achieves at least ²¹¹ of each of these targeted hours within each Reporting Period.

16.3 The Franchisee shall:

- (a) report to the Secretary of State on a quarterly basis its compliance with its obligations in paragraph 16.1; and
- (b) ensure that appropriate systems are in place so as not to include within the information provided to the Secretary of State pursuant to paragraph 16.3(a) any hours that are outside the operational hours of any relevant Station.

17. INTRODUCTION OF ECMS

17.1 The Franchisee shall by ²¹² procure and install an electronic competence management system for train drivers as part of the Franchisee's safety management system which will include:

- (a) rules and regulation assessments;

²⁰⁷ Where text has been omitted from the document, this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

²⁰⁸ Where text has been omitted from the document, this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

²⁰⁹ Where text has been omitted from the document, this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

²¹⁰ Where text has been omitted from the document, this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

²¹¹ Where text has been omitted from the document, this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

²¹² Where text has been omitted from the document, this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

- (b) formal driving assessments encompassing both technical and non-technical skills;
- (c) intrusive on train data recorder analysis; and
- (d) the ability to provide two learning and development days (one classroom based and one simulation based) per driver ("**Training Days**"),

(the "**eCMS**").

17.2 The Franchisee shall ensure that all drivers participate in eCMS and that all drivers will have completed the Training Days by 30 September 2017.

18. CIS SYSTEM UPGRADE

18.1 The Franchisee shall by ²¹³ upgrade the customer information system by connecting the customer information system to either a 3G or GPRS network to provide the ability to make announcements using the long line public address system from the central system managed from the "Kent Integrated Control Centre", subject to paragraph 18.2 at one or more of the following Stations:

- (a) Wadhurst,
- (b) Etchingam,
- (c) Stonegate,
- (d) Frant,
- (e) Harrietsham,
- (f) Hollingbourne,
- (g) Barming,
- (h) Otford, and
- (i) Bat and Ball,

and the Franchisee shall incur a minimum expenditure of ²¹⁴ in undertaking this obligation.

18.2 The Franchisee shall notify the Secretary of State of the Stations for which it intends to upgrade the customer information system for approval by the Secretary of State (such approval not to be unreasonably withheld or delayed).

19. Renewable Energy²¹⁵

²¹³ **Where text has been omitted from the document, this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.**

²¹⁴ **Where text has been omitted from the document, this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.**

²¹⁵ **13/12/2017 (Date of Contract Change Letter)-** Contract variation agreed by the Secretary of State and Franchisee.

19.1 **Subject to any necessary consents and/or approvals that may be required, the Franchisee shall implement the following renewable energy initiatives:**

- (a) **implementation of solar photovoltaic arrays ("PVA") installations at Grove Park (Berthing shed), Gillingham (Maintenance shed), St Leonards (Berthing shed), Ramsgate (maintenance shed and inspection sheds) where in doing so the Franchisee shall incur expenditure of not less than [REDACTED²¹⁶]; and**
- (b) **installation of LED lighting where in doing so the Franchisee shall incur expenditure of not less than [REDACTED²¹⁷]**

(the "**Renewable Energy Schemes**").

19.2 The Franchisee shall within 6 months of the Start Date provide to the Secretary of State for approval its proposals to implement Renewable Energy Schemes including the locations where it proposed to implement such schemes, the consents required and the allocation of expenditure per scheme ("**Renewables Programme**").

19.3 The Franchisee shall implement the Renewable Energy Schemes in accordance with the Renewables Programme and keep any equipment installed as part of such scheme operational and in good working order (subject to any reasonable periods of required downtime to undertake any repair or replacement of such equipment). The Franchisee shall be treated as maintaining and keeping any such equipment operational notwithstanding temporary non-availability due to accidental damage or vandalism or maintenance, repair or replacement, subject in each case to the Franchisee using all reasonable endeavours to keep any such period of temporary non-availability to a minimum.

19.4 Any equipment installed as part of the Renewable Energy Scheme shall be designated as a Primary Franchise Asset during the term of this Agreement and the Secretary of State shall not de-designate such equipment. For the purpose of any Transfer Scheme and Supplemental Agreement the equipment to be installed pursuant to paragraph 19.1 shall have a total value of:

- (a) ²¹⁸ **[REDACTED²¹⁹] where this Agreement terminates on 9 November 2019; or**

²¹⁶ 18/12/2017 (Date of Redactions Approval) – Where text has been omitted from the document this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

²¹⁷ 18/12/2017 (Date of Redactions Approval) – Where text has been omitted from the document this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

²¹⁸ 13 June 2019 (Date of DOA) – Contract variation agreed by the Secretary of State and Franchisee.

²¹⁹ 5 August 2019 (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.

- (b) ²²⁰ [REDACTED²²¹] where this Agreement is extended by five Reporting Periods in accordance with paragraph 1.2 of Schedule 18,

and shall be pro-rated accordingly to the extent that either:

- (c) the Expiry Date falls on a date other than those specified in paragraphs 19.4(a) or (b); or
- (d) the Franchisee does not implement any of the Renewable Energy Schemes.

20. On-Train Wi-Fi Service²²²

20.1 Definitions

For the purposes of this paragraph 20:

[REDACTED²²³]

²²⁴“Data and Claims Budget” means the amount of [REDACTED²²⁵] available from the Secretary of State until the end of the Franchise Term for:

- (a) the purchase of Mobile Data for the OTW Solution; and/or
- (b) to reimburse the Franchisee any liability under the CRA in relation to the OTW Services in accordance with paragraph 20.9.1,

provided that, if and to the extent that the Secretary of State continues the Franchise Agreement pursuant to paragraph 1 of Schedule 18 (Additional Reporting Periods) until:

- (i) 0159 on 8 December 2019, then such amount shall be increased to [REDACTED²²⁶] and the OTWP in row 48 of the table set out in Appendix 3 (Figures for OTWP) to Schedule 8.1 (Franchise Payments) shall apply accordingly;

²²⁰ 13 June 2019 (Date of DOA) – Contract variation agreed by the Secretary of State and Franchisee.

²²¹ 5 August 2019 (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.

²²² 08/12/2016 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

²²³ 13/12/2017 (Date of Redactions Approval) – Where text has been omitted from the document this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

²²⁴ 13 June 2019 (Date of DOA) – Contract variation agreed by the Secretary of State and Franchisee.

²²⁵ 13/12/2017 (Date of Redactions Approval) – Where text has been omitted from the document this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

²²⁶ 19/06/2018 (Date of Redactions Approval) – Where text has been omitted from the document this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

- (ii) **0159 on 5 January 2020, then such amount shall be increased to [REDACTED²²⁷] and the OTWP in row 49 of the table set out in Appendix 3 (Figures for OTWP) to Schedule 8.1 (Franchise Payments) shall apply accordingly; or**
- (iii) **0159 on 2 February 2020, then such amount shall be increased to [REDACTED²²⁸] and the OTWP in row 50 of the table set out in Appendix 3 (Figures for OTWP) to Schedule 8.1 (Franchise Payments) shall apply accordingly;**
- (iv) ²²⁹**0159 on 1 March 2020, then such amount shall be increased to [REDACTED²³⁰] and the OTWP in row 51 of the table set out in Appendix 3 (Figures for OTWP) to Schedule 8.1 (Franchise Payments) shall apply accordingly;**
- (v) ²³¹**0159 on 1 April 2020, then such amount shall be increased to [REDACTED²³²] and the OTWP in row 52 of the table set out in Appendix 3 (Figures for OTWP) to Schedule 8.1 (Franchise Payments) shall apply accordingly;**

“Eversholt” means European Rail Finance (GB) Limited a company incorporated in England and Wales, with registered number 02720809, whose registered office is at 210 Pentonville Road, London, N1 9JY;

“First Unit” means one single Unit of each class of Relevant Rolling Stock as set out at paragraphs (a) to (e) of the definition of Install & Operate Rolling Stock;

“Go-Live” means the date when the OTW Services are first made available to passengers on board a Unit on a routine basis;

“Hitachi” means Hitachi Europe Limited a company incorporated in England and Wales, with registered number 02210686, whose registered office is at Whitebrook Park, Lower Cookham Road, Maidenhead, Berkshire SL6 8YA;

“Incentive Target Date” means 24 June 2018;

“Infotainment” means information and entertainment services provided to the passenger via the OTW Solution and which contain value-added chargeable services such as on-demand content, but does not include the OTW Additional Services and the OTW Ancillary Services;

²²⁷ 19/06/2018 (Date of Redactions Approval) – Where text has been omitted from the document this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

²²⁸ 19/06/2018 (Date of Redactions Approval) – Where text has been omitted from the document this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

²²⁹ 13 June 2019 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

²³⁰ 5 August 2019 (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.

²³¹ 13 June 2019 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

²³² 5 August 2019 (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.

“Initial Route Survey” means a survey of the Network Coverage which is available on the Routes;

“Install & Operate Rolling Stock” or “IORS” means:

- (a) 43 units of Class 466 rolling stock (2 vehicle);**
- (b) 147 units of Class 465 rolling stock (4 vehicle);**
- (c) 36 units of Class 376 rolling stock (5 vehicle);**
- (d) 10 units of Class 375 rolling stock (3 vehicle);**
- (e) 102 units of Class 375 rolling stock (4 vehicle); and**
- (f) 29 units of Class 395 rolling stock (6 vehicle);**

“Installation Schedule” means the weekly installation schedule for the fitment of OTW Hardware at Appendix 6 (Installation Schedule) to this Part 1 (List of Committed Obligations) of Schedule 6.1 (Committed Obligations and Related Provisions);

“IORS Unit” means a unit forming part of the Install & Operate Rolling Stock;

“IORS Vehicle” means a rolling stock vehicle forming part of an IORS Unit;

“Managed Service Provider” or “MSP” means the person engaged by the Franchisee to deliver, install and/or operate the On-Train Wi-Fi Solution;

“Measures” has the meaning set out in paragraph 20.9.6;

“Mobile Data” means the supply of wireless data connectivity services including, but not limited to, mobile internet and wireless broadband data;

“MSP Agreement” means the services agreement relating to the design, installation and provision of a passenger Wi-Fi system and associated services on rolling stock and ongoing operational services between the MSP and the Franchisee dated on or around 8 December 2016;

“MSP Insolvency” means the MSP or the parent of the MSP being subject to any event that is the same or analogous to any event mutatis mutandis set out in paragraph 2.1 of Schedule 10.3 (Events of Default and Termination Events) in relation to the Franchisee;

“Network” means an electronic communications network available for commercial use that allows the OTW Hardware to connect to the internet and provide the On-Train Wi-Fi Solution;

“Network Coverage” means the extent to which the Network Signal Strength on the Routes is sufficient for the operation of the [REDACTED²³³];

“Network Provider” means a mobile network operator engaged by the

²³³ 13/12/2017 (Date of Redactions Approval) – Where text has been omitted from the document this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

Franchisee to provide use of a Network for the On-Train Wi-Fi Solution;

"Network Signal Strength" means the measure of the level of data throughput and data availability between the OTW Hardware and the Network along the Routes;

"OTW" means on-train Wi-Fi;

"OTW Additional Services" shall mean initiatives which use the OTW Services for the purpose of generating additional income and/or reducing the costs of providing the OTW Services which may include offering passengers access to higher bandwidth services, video streaming capabilities, catch up television, file sharing and cloud services but shall not include Infotainment;

"OTW Ancillary Services" shall mean other forms of generating income such as advertising and sponsorship on the OTW Services host website;

"OTW Documentation" means any documentation provided by the MSP or produced by the Franchisee in relation to the installation and the operation of or right to operate the OTW Solution;

"OTW Hardware" means that part of the OTW Solution which is physical equipment fitted to the Install & Operate Rolling Stock, including the hardware, data communications cabling, power, equipment racks, external aerials and cabling required for the On-Train Wi-Fi Services;

"OTW Milestone" means an event at item 2, 3, 4, 5a, 5b, 5c, 5d or 7 in the OTW Payment Table;

"OTW Network Provider Agreement" means any agreement entered into between the Franchisee and a Network Provider in relation to the OTW Solution;

"OTW Payment Table" means the table set out in Appendix 5 (OTW Payment Table) to this Part 1 (List of Committed Obligations) of Schedule 6.1 (Committed Obligations and Related Provisions);

"OTW Programme" means the programme for the provision of the On-Train Wi-Fi Solution and the On-Train Wi-Fi Services;

"OTW Remediation Plan" has the meaning set out in paragraph 20.16.1;

"OTW Revised Remediation Plan" has the meaning set out in paragraph 20.16.2;

"OTW Security Requirements" means the security requirements set out at Appendix 4 (OTW Security Requirements) to this Part 1 (List of Committed Obligations) of Schedule 6.1 (Committed Obligations and Related Provisions);

"OTW Service Levels" means the service levels and service credits set out in Schedule 16 of the MSP Agreement;

"On-Train Wi-Fi Services" or "OTW Services" means:

- (a) the OTW services provided to passengers on the IORS through the OTW Solution;
- (b) those operational and support services set out in Schedule 5 of the MSP Agreement; and
- (c) to the extent the same is available to the Franchisee, the operational and support services (if any) provided by a supplier of Mobile Data in respect of the On-Train Wi-Fi Solution including any technical support in respect of system interruptions and outages;

"On-Train Wi-Fi Solution" or "OTW Solution" means the complete mobile communications solution enabling OTW and the OTW Services for the purposes of providing wireless internet access on the Install & Operate Rolling Stock including any relevant software, the OTW Hardware (and the fitment of the OTW Hardware on the Install and Operate Rolling Stock only) to be procured and provided by the Franchisee in accordance with the terms of this Franchise Agreement, as set out in this paragraph 20;

"OTW Technical Specification" means the technical specification set out at Appendix 3 (OTW Technical Specification) to this Part 1 (List of Committed Obligations) of Schedule 6.1 (Committed Obligations and Related Provisions);

"Performance Monitoring Report" has the meaning set out in paragraph 20.8.11;

"Relevant Rolling Stock" means the Install & Operate Rolling Stock with the exception of the rolling stock listed at paragraph (f) of Install & Operate Rolling Stock;

"RRS Unit" means a unit forming part of the Relevant Rolling Stock;

"RRS Vehicle" means a rolling stock vehicle forming part of a RRS Unit;

"Rolling Stock Class Type" means certain classes of rolling stock forming part of the Train Fleet and listed at paragraphs (a) to (f) of Install & Operate Rolling Stock;

"Secretary of State OTW Requirements" means the description of the Secretary of State's requirements for the On-Train Wi-Fi Services set out at Appendix 2 (Secretary of State OTW Requirements) to this Part 1 (List of Committed Obligations) of Schedule 6.1 (Committed Obligations and Related Provisions); and

"Unit" means the units listed in the definition of "Install & Operate Rolling Stock", and Unit means any one of them.

20.2 General and Warranties

20.2.1 The Franchisee shall supply:

- (a) the fitment of the On-Train Wi-Fi Solution (including the fitment of the OTW Hardware) in respect of the Install & Operate Rolling Stock in accordance with paragraph 20.3; and

- (b) the OTW Services from the date of Go-Live on a Unit in accordance with paragraph 20.

The parties acknowledge that the Franchisee may contract with an MSP and/or (in the case of the 29 units of class 395 rolling stock) Hitachi in order to provide said services.

20.2.2 The Franchisee shall ensure that the following independent obligations are complied with in respect of the Install & Operate Rolling Stock:

- (a) where the OTW Solution is fitted, OTW Security Requirements;
- (b) in respect of the OTW Services, the Secretary of State OTW Requirements; and
- (c) in respect of the OTW Solution, the OTW Technical Specification.

20.2.3 If there is any conflict between the Secretary of State OTW Requirements, the OTW Security Requirements and the OTW Technical Specification, the conflict shall be resolved giving precedence to the obligations in the order that they are set out in paragraph 20.2.2.

20.2.4 The Franchisee shall cooperate in good faith with all relevant parties to work toward the delivery of the OTW Programme in respect of the Install & Operate Rolling Stock.

20.2.5 [REDACTED²³⁴]

20.2.6 Subject to paragraph 20.2.11, the Franchisee shall procure the design of the On-Train Wi-Fi Solution in respect of the Install & Operate Rolling Stock and shall procure all items of the On-Train Wi-Fi Solution in respect of the Install & Operate Rolling Stock, together with (as applicable) all related documentation provided by third party manufacturers of such items.

20.2.7 The Franchisee shall carry out its obligations under this paragraph 20 with all reasonable diligence and despatch, and with all reasonable skill and expertise, to provide the On-Train Wi-Fi Services in accordance with the Secretary of State OTW Requirements.

20.2.8 The warranty given in paragraph 20.2.9 is in addition to the warranties given in other parts of this Franchise Agreement.

20.2.9 The Franchisee warrants that:

- (a) the OTW Hardware will be new and of satisfactory quality and will be suitable, so far as is reasonably possible, for the purpose for which it is intended in accordance with the Secretary of State OTW Requirements; and

²³⁴ 13/12/2017 (Date of Redactions Approval) – Where text has been omitted from the document this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

- (b) as far as it is able, the Franchisee will under a Transfer Scheme pass on to the Successor Operator the benefits of any third party manufacturer warranties under the MSP Agreement.

20.2.10 The Franchisee provides no warranties and accepts no liability in relation to the performance of the Networks or the signal strength that may be available via the Networks for the On-Train Wi-Fi Solution (or 'not spots' or any periods of Network unavailability or suspension for any reason).

20.2.11 Any delivery of the OTW Programme in respect of the 29 units of Class 395 rolling stock is subject to the Franchisee entering into an agreement with Hitachi for the design and installation of the OTW Hardware on the 29 units of class 395 rolling stock and an agreement with Eversholt for the funding of such design and installation (in each case subject to the prior approval of the Secretary of State) and accordingly paragraphs 20.2.5, 20.2.6 and 20.3.1 shall only apply in respect of the 29 units of Class 395 rolling stock following entry of such agreements.

20.3 Installation of the OTW Solution

20.3.1 Subject to paragraph 20.2.11, the Franchisee shall:

- (a) secure any applicable consents from the lessors of the Install & Operate Rolling Stock or otherwise in relation to the rolling stock modifications necessary to fit the OTW Hardware;
- (b) fit (or procure the fitment of) the OTW Hardware on the Install & Operate Rolling Stock in accordance with this paragraph 20.3;
- (c) procure and fit (or procure the fitment of) such other equipment and make other modifications to the Install & Operate Rolling Stock as are required to deliver the OTW Solution in respect of the Install & Operate Rolling Stock in accordance with this paragraph 20.3; and
- (d) programme the modification work on the Install & Operate Rolling Stock with the attendant time out of passenger revenue service for such Install & Operate Rolling Stock.

20.3.2 [REDACTED²³⁵]

20.3.3 Subject to paragraph 20.3.6, if the OTW Hardware is installed on between:

- (a) [REDACTED²³⁶] IORS Units (inclusive) by the Incentive Target Date then liquidated damages of [REDACTED²³⁷] (in aggregate) shall be payable by the Franchisee to the Secretary of State; or

²³⁵ 13/12/2017 (Date of Redactions Approval) – Where text has been omitted from the document this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

²³⁶ 13/12/2017 (Date of Redactions Approval) – Where text has been omitted from the document this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

²³⁷ 13/12/2017 (Date of Redactions Approval) – Where text has been omitted from the document this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

- (b) **[REDACTED²³⁸] IORS Units (inclusive) by the Incentive Target Date then liquidated damages of [REDACTED²³⁹] (in aggregate) shall be payable by the Franchisee to the Secretary of State; or**
- (c) **[REDACTED²⁴⁰] IORS Units by the Incentive Target Date then liquidated damages [REDACTED²⁴¹] (in aggregate) shall be payable by the Franchisee to the Secretary of State.**

Without prejudice to the Secretary of State's rights under paragraph 20.12.1 in respect of any obligation in this paragraph 20, where the Franchisee pays liquidated damages under this sub-paragraph or the OTW Hardware is installed on more than [REDACTED²⁴²] IORS Units by the Incentive Target Date, the Franchisee shall not be in breach of its reasonable endeavours obligation under paragraph 20.3.2.

The parties acknowledge that the payments set out in this paragraph are a true and genuine pre-estimate of the Secretary of State's loss and not a penalty.

20.3.4 If the OTW Hardware is installed on:

- (a) **between [REDACTED²⁴³] (inclusive) IORS Units by the Incentive Target Date, then the Secretary of State shall pay to the Franchisee a one-off additional payment of [REDACTED²⁴⁴];**
- (b) **between [REDACTED²⁴⁵] (inclusive) IORS Units by the Incentive Target Date, then the Secretary of State shall pay to the Franchisee a one-off additional payment of [REDACTED²⁴⁶]; or**

²³⁸ 13/12/2017 (Date of Redactions Approval) – Where text has been omitted from the document this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

²³⁹ 13/12/2017 (Date of Redactions Approval) – Where text has been omitted from the document this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

²⁴⁰ 13/12/2017 (Date of Redactions Approval) – Where text has been omitted from the document this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

²⁴¹ 13/12/2017 (Date of Redactions Approval) – Where text has been omitted from the document this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

²⁴² 13/12/2017 (Date of Redactions Approval) – Where text has been omitted from the document this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

²⁴³ 13/12/2017 (Date of Redactions Approval) – Where text has been omitted from the document this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

²⁴⁴ 13/12/2017 (Date of Redactions Approval) – Where text has been omitted from the document this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

²⁴⁵ 13/12/2017 (Date of Redactions Approval) – Where text has been omitted from the document this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

²⁴⁶ 13/12/2017 (Date of Redactions Approval) – Where text has been omitted from the document this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

- (c) more than [REDACTED²⁴⁷] IORS Units by the Incentive Target Date, then the Secretary of State shall pay to the Franchisee a one-off additional payment of [REDACTED²⁴⁸].

20.3.5 The payments referred to in paragraphs 20.3.3 and 20.3.4 shall take the form of a one-off increase or decrease (as appropriate) in the On Train Wi-Fi Solution Payment for the Reporting Period after the relevant payment has been triggered.

20.3.6 No liquidated damages shall be payable under paragraph 20.3.3, and there shall be no breach of this paragraph 20, if and to the extent that any failure to deliver the requisite number of IORS Units by the applicable date is due to:

- (a) an act of God, storm, explosion, flooding, fire, war damage, enemy action, terrorism, riot, civil commotion or rebellion (together the "Emergency Events") or the act of any government instrumentality (including the ORR) in so far as the act of government instrumentality directly relates to the any of the Emergency Events; or
- (b) any strike or other Industrial Action by any of the employees of the Franchisee or any or all of the employees of the MSP or of the agents or sub-contractors of the MSP save that, in relation to Franchisee employees, any exclusion from liability by the Franchisee is subject to the conditions in paragraph 2.2(a) and (b) of Schedule 10.4 (Force Majeure) being met. For the purposes of this paragraph Industrial Action shall include any concerted action taken in connection with the employment of such employees (whether or not that action involves any breach of such employees' conditions of employment, and including any action taken in furtherance of a dispute, or with a view to improving the terms of employment of the relevant employees or by way of support for any other person) subject always, in the case of any unofficial Industrial Action, to the Franchisee being able to demonstrate the occurrence of such unofficial Industrial Action to the reasonable satisfaction of the Secretary of State; or
- (c) MSP Insolvency, save to the extent that any such delay in performance or insolvency, administration or analogous event is as a result of a breach of the MSP Agreement by the Franchisee; or
- (d) a breach of the MSP Agreement by the MSP which is material where the reason for breach is not in whole or principally the fault of the Franchisee, such that it triggers a right to terminate the MSP Agreement, excluding any right to terminate at will, whether that right is exercised or not and having regard to paragraph 2.14 of Schedule 10.3 (Events of Default and Termination Events).

20.3.7 Not used.

²⁴⁷ 13/12/2017 (Date of Redactions Approval) – Where text has been omitted from the document this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

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20.3.8 Subject to paragraph 20.3.9, the Franchisee shall not fit the OTW Hardware to the IORS Units at a rate that is faster than the rate set out in the Installation Schedule.

20.3.9 Where the Franchisee considers that it would be necessary or expedient to fit OTW Hardware to the IORS Units in a manner and/or at a time which falls outside the provisions of the Installation Schedule, it may, in advance, make a request to the Secretary of State for consent to revise the Installation Schedule (such consent not to be unreasonably withheld or delayed).

20.3.10 Any request made pursuant to paragraph 20.3.9 above must include:

- (a) details of the proposed revisions (a "Revised Installation Schedule"); and**
- (b) provide detail on the likely impact of the derogation on:**
 - (i) passengers; and**
 - (ii) the Passenger Services, including any impact on the performance regimes at Schedule 7.1 (Performance Benchmarks) or Schedule 7.2 (National Rail Passenger Surveys).**

20.3.11 The Secretary of State shall consent to a revision of the Installation Schedule under paragraph 20.3.9 above in circumstances where the information provided under paragraph 20.3.10 demonstrates to the Secretary of State acting reasonably that the revisions in the Revised Installation Schedule shall not result in either a material negative impact on passengers or a material deterioration in Passenger Services, including any material negative impact on the Franchisee's performance against the performance regimes at Schedule 7.1 (Performance Benchmarks) or Schedule 7.2 (National Rail Passenger Surveys).

20.3.12 Where the Secretary of State accepts a Revised Installation Schedule, nothing in these paragraphs 20.3.8 to 20.3.12 shall affect the Franchisee's existing performance obligations under Schedule 7.1 (Performance Benchmarks) or Schedule 7.2 (National Rail Passenger Surveys).

20.4 Network Coverage Provisions

20.4.1 The Franchisee shall fully cooperate with the Secretary of State and with Network Provider(s) in relation to any improvements to Network Coverage on the Routes.

20.4.2 The Franchisee shall procure an Initial Route Survey to determine Network Coverage on the Routes on which the Install & Operate Rolling Stock operates.

20.4.3 In the event that the Secretary of State and the Franchisee agree that the Network Coverage has materially reduced since the Initial Route Survey the Franchisee:

- (a) shall consult with the Secretary of State on the steps proposed for the purposes of improving the Network Coverage; and**

- (b) may:
- (i) appoint one or more additional Network Provider(s) provided that such appointment does not result in an increased likelihood of (A) an adverse impact on the forecast Data and Claims Budget, or (B) the introduction of Measures, and the Secretary of State shall make (and the Franchisee hereby agrees to) such adjustments to the components of the On-Train Wi-Fi Solution Payment as the Franchisee and the Secretary of State agree will reasonably ensure that the Franchisee suffers no net financial loss and enjoys no net financial gain as a result of such appointment of one or more additional Network Provider(s)); or
 - (ii) where the proposed Network Provider(s) do not fulfil clause 20.4.3(b)(i), seek the Secretary of State's prior written consent to the appointment of such Network Provider, and inform the Secretary of State of the financial impact of such appointment. Where the Secretary of State agrees (in its absolute discretion) to the appointment of a Network Provider under this paragraph 20.4.3(b)(ii), then the Secretary of State shall make (and the Franchisee hereby agrees to) such adjustments to the components of the On-Train Wi-Fi Solution Payment as the Franchisee and the Secretary of State agree will reasonably ensure that the Franchisee suffers no net financial loss and enjoys no net financial gain as a result of such appointment of one or more additional Network Provider(s)).

20.5 The OTW Software and Related Intellectual Property

20.5.1 The Franchisee shall procure that the benefit and burden of any licence of Supplier Intellectual Property (as defined in the MSP Agreement) granted by the MSP to the Franchisee in clause 19 of the MSP Agreement shall be transferrable to any Successor Operator, such transfer to be effected by, at the Secretary of State's election, a Transfer Scheme or by an assignment or novation made by the Franchisee or otherwise.

20.5.2 The provisions of this paragraph 20.5 shall continue in force notwithstanding the termination or expiry of this Franchise Agreement for any reason.

20.6 OTW Documentation

20.6.1 The Franchisee shall, from time to time and where reasonably requested, provide the Secretary of State with copies of the OTW Documentation containing sufficient up-to-date information for the proper use and (as applicable) maintenance of the OTW Solution. Such OTW Documentation may be supplied in electronic form.

20.6.2 If and to the extent that there is a transfer of Supplier Intellectual Property (as defined in the MSP Agreement) in accordance with paragraph 20.5.1 to a Successor Operator, the Franchisee shall provide copies of the OTW Documentation to any Successor Operator (including its contractors, agents and sub-contractors), provided such parties agree to be bound by obligations of confidentiality substantially equivalent to

those set out at paragraph 1 of Schedule 17 (Confidentiality and Freedom of Information).

20.7 Changes to the OTW Technical Specification

20.7.1 If the Franchisee wishes to amend the OTW Technical Specification, it shall provide the Secretary of State with full written details of its proposed amendment. If the Franchisee and the Secretary of State agree to amend the OTW Technical Specification, the relevant amendments shall be set out in a written variation to this Franchise Agreement signed by the parties in accordance with paragraph 1 of Schedule 9.5 (Variations to the Franchise Agreement and Incentivising Beneficial Changes) and the Secretary of State shall make (and the Franchisee hereby agrees to) such adjustments to the components of On Train Wi-Fi Solution Payment as the Franchisee and the Secretary of State agree will reasonably ensure that the Franchisee suffers no net financial loss and enjoys no net financial gain as a result of the amendment to the OTW Technical Specification. Nothing in this paragraph shall affect the ability of the Franchisee to make minor amendments to any more detailed design or specification documentation relating to the OTW Solution, provided that those amendments do not amend or otherwise affect the OTW Technical Specification.

20.8 The OTW Services

20.8.1 The Franchisee shall use all reasonable endeavours to manage the MSP and to enforce the MSP's obligations under the MSP Agreement and to resolve disputes as soon as reasonably practicable, in order to secure the delivery of the OTW Services in respect of the Install & Operate Rolling Stock, provided that any expenditure incurred in pursuance of such all reasonable endeavours (excluding costs of any OTW dedicated personnel), shall be proportionate to both the value to the Franchisee of the OTW Solution in respect of the Install & Operate Rolling Stock and the stage of the OTW Programme in respect of the Install & Operate Rolling Stock at which any problem arises.

20.8.2 Without prejudice to paragraph 20.8.1, the Franchisee shall:

- (a)** maintain, or shall procure the maintenance of, the OTW Hardware on the Install & Operate Rolling Stock required in order to deliver the OTW Solution;
- (b)** use reasonable endeavours to exercise its rights under the MSP Agreement and/or any agreement with Hitachi in respect of the Class 395 Rolling Stock Class Type to remedy as soon as reasonably practicable defects in the OTW Hardware (excluding endemic and epidemic defects) that are reported by the OTW Solution/MSP, including resolving damage and vandalism; and
- (c)** use reasonable endeavours to remedy as soon as reasonably practicable defects in the OTW Hardware (excluding endemic and epidemic defects) that are reported by the OTW Solution/MSP, including resolving damage and vandalism.

20.8.3 The Franchisee shall appoint a sufficient and dedicated number of personnel with the appropriate skills and experience to fulfil the roles of

project manager, delivery manager, business analyst and systems engineer and whose work shall include:

- (a) managing the Network Provider(s) and the MSP Agreement to deliver the OTW Solution for the remainder of the Franchise Term;**
- (b) where reasonably practicable, seeking opportunities to increase ancillary profits;**
- (c) introducing a marketing campaign to advertise the availability of free OTW;**
- (d) training appropriate staff and any required refresh training before the OTW Solution is switched on (including for any relevant new employees);**
- (e) reporting to the Secretary of State monthly on the Data and Claims Budget, performance, fitment schedule and ancillary profit status/opportunities; and**
- (f) attending ad hoc meetings with the Secretary of State where he so reasonably requests.**

20.8.4 The performance of the OTW Services will be measured through the OTW Service Levels.

20.8.5 If the Franchisee believes that it is reasonably likely that the OTW Services (excluding any time when there is not train to internet coverage) might not be available in accordance with the OTW Service Levels, the Franchisee shall notify the Secretary of State as soon as reasonably practicable.

20.8.6 The Franchisee shall pay to the Secretary of State [REDACTED²⁴⁹] of the value of any Service Credits (as defined in the MSP Agreement) it receives under Schedule 16 of the MSP Agreement in respect of the OTW Services failing to achieve the OTW Service Levels or as a result of unavailability of the OTW Services following Go-Live on any Unit. Without prejudice to the Secretary of State's right to terminate the OTW Services and/or OTW Solution pursuant to paragraph 20.12, this will be the Secretary of State's sole remedy under the Franchise Agreement in respect of performance in relation to the OTW Service Levels and there shall be no breach of the Franchise Agreement for any said failure or unavailability.

20.8.7 The parties acknowledge that the [REDACTED²⁵⁰] share of any Service Credits (as defined in the MSP Agreement) recovered through Schedule 16 of the MSP Agreement and retained by the Franchisee reflect that the Franchisee has suffered and is required to actively manage the rectification of any failure to achieve the OTW Service Levels.

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20.8.8 [REDACTED²⁵¹]

20.8.9 If either of the events in 20.8.8(a) or (b) occur, the Franchisee shall consult with the Secretary of State in good faith to agree a plan of future action, which may include:

- (a) the Franchisee seeking to agree a replacement MSP (subject to variation of the obligations in this paragraph 20, and the adjustments to Franchise Payments in respect of the OTW Solution, to reflect such replacement MSP Agreement as agreed between the Secretary of State and the Franchisee); or
- (b) the Secretary of State terminating the OTW Programme. For the avoidance of doubt, in the event of the termination of the OTW Programme, the Franchisee shall cease the fitment of the OTW Solution and the OTW Services (including the purchase of Mobile Data) and, with the exception of the payments set out in paragraph 20.8.8, the Secretary of State's payment obligations pursuant to this paragraph 20 that accrue in respect of the period after termination shall also cease

20.8.10 The Franchisee shall provide the Secretary of State with a written report, provided within ten (10) Business Days following the end of the relevant Reporting Period, with effect from Go-Live on any Unit. This report shall set out the performance as against the OTW Service Levels and the details of any service failures or any OTW Milestones satisfied during the Reporting Period to the Secretary of State ("Performance Monitoring Report") and any other such content as the parties may agree.

20.8.11 The Secretary of State shall be permitted to share the Performance Monitoring Reports with other Government departments, regulators or agencies.

20.9 Data and Claims Budget

20.9.1 Subject to paragraph 20.9.2, the Secretary of State shall be responsible for, and shall pay to Franchisee, the cost of Mobile Data (including any costs of Mobile Data that are in excess of the Data and Claims Budget) associated with providing the OTW Services in accordance with this paragraph 20 and Schedule 8.1 (Franchise Payments).

20.9.2 The Secretary of State shall not be responsible for the cost of Mobile Data if and to the extent that the Data and Claims Budget is exceeded as a result of the Franchisee not complying with its obligations in this paragraph 20.9.

20.9.3 The Franchisee shall use reasonable endeavours to:

- (a) manage data usage within the Data and Claims Budget save always that providing a Mobile Data allowance of up to 15 Megabytes per user per day shall always be considered to be in compliance with this paragraph; and

²⁵¹ 13/12/2017 (Date of Redactions Approval) – Where text has been omitted from the document this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

- (b) ensure that any purchase of a bundle of Mobile Data pursuant to an agreement with a Network Provider in the last 12 months of the Franchise Period takes account of the rate at which Mobile Data is consumed by passengers under the OTW Solution in order to minimise so far as reasonably practicable the volume of Mobile Data in such bundle that is not consumed by passengers under the OTW Solution at the end of the Franchise Period.

20.9.4 The Franchisee must not at any time provide a Mobile Data allowance in excess of 50 Megabytes per user per day (or, where reasonable, the maximum free data allowance permitted from time to time by a passenger services rail franchisee (in England and Wales) that is reasonably comparable to the Franchisee).

20.9.5 The Franchisee shall report to the Secretary of State monthly on:

- (a) actual Mobile Data usage against forecast Mobile Data usage and the action the Franchisee is using to control usage, with a future use forecast; and

[REDACTED²⁵²]

20.9.6 If and to the extent that, in the reasonable opinion of the Secretary of State or the Franchisee, it appears that the Data and Claims Budget will be or is likely to be exceeded by the end of the Franchise Period [REDACTED²⁵³] then either Party may commence an issues escalation process whereby both parties, acting reasonably, will, within 1 month, agree a solution to reduce Mobile Data costs [REDACTED²⁵⁴]. In the absence of agreement within such month, the Secretary of State (acting reasonably) may determine the solution. Measures that may be determined are:

- (a) increasing the Data and Claims Budget; and/or
- (b) ceasing to make the OTW Services and Mobile Data supply available for normal passenger service on any further Units; and/or
- (c) the Secretary of State funding investment in solutions that would reduce the Mobile Data cost; and/or
- (d) reducing the number of passengers who can access the OTW Service; and/or
- (e) ceasing to make both the OTW Services and Mobile Data supply to some or all of the Install and Operation Rolling Stock Units provided that the Secretary of State shall only be entitled to require any action under this paragraph 20.9.6(e) if in the reasonable opinion of the Secretary of State or the Franchisee, it appears that the Data and

²⁵² 13/12/2017 (Date of Redactions Approval) – Where text has been omitted from the document this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

²⁵³ 13/12/2017 (Date of Redactions Approval) – Where text has been omitted from the document this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

²⁵⁴ 13/12/2017 (Date of Redactions Approval) – Where text has been omitted from the document this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

Claims Budget will be or is likely to be exceeded by more than 10 per cent by the end of the Franchise Period [REDACTED²⁵⁵],

(collectively "Measures").

20.9.7 In the event that the unit cost of Mobile Data increases or decreases, the Franchisee and the Secretary of State shall continue to apply the Data and Claims Budget for the purposes of OTW and either:

- (a) reduce or increase (as applicable) the Mobile Data usage allowance per user at paragraph 20.9.3 and/or paragraph 20.9.4; and/or**
- (b) enable less or more (as applicable) passengers to use the OTW Services,**

provided that such action does not, in the opinion of the Secretary of State, increase the risk that the Data and Claims Budget will be exceeded.

20.9.8 In the event that any Measure set out in paragraph 20.9.6(b)-(e) is agreed or determined, then the Secretary of State shall make (and the Franchisee hereby agrees to) such adjustments to the components of the On Train Wi-Fi Solution Payment (including, without limitation, the financial payments in the table set out in Appendix 3 (Figures for OTWP) to Schedule 8.1 (Franchise Payments)) as the Franchisee and the Secretary of State agree will reasonably ensure that the Franchisee suffers no net financial loss and enjoys no net financial gain as a direct result of the Measure set out in paragraph 20.9.6(b)-(e) that is agreed or determined. Such amendment shall take into account (without limitation and where relevant) the direct financial effect of any Measure set out in paragraph 20.9.6(b)-(e) on the additional expenditure required to be incurred by the Franchisee under Schedule 7.2 (National Rail Passenger Surveys), and in this regard due consideration shall be had to the Franchisee's performance against the NRPS Benchmarks:

- (a) prior to Go-Live on more than 20 per cent of the Units;**
- (b) following Go-Live on more than 20 per cent of the Units; and**
- (c) following the implementation of any measures under paragraphs 20.9.6 (b)-(e) (as agreed or determined),**

as relevant.

For the avoidance of doubt, there shall be no amendment to Schedule 7.2 (National Rail Passenger Surveys) as a consequence of this paragraph 20.9.8 and the claiming party shall be responsible for evidencing the direct financial impact of any Measures. Any dispute under this paragraph 20.9.8 may be referred for resolution or determination by arbitration by either party pursuant to paragraph 2.2 of Schedule 19 (Other Provisions).

²⁵⁵ 13/12/2017 (Date of Redactions Approval) – Where text has been omitted from the document this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

20.10 [REDACTED²⁵⁶]**20.11 Funding and Remuneration****20.11.1 The following principles apply to this paragraph 20.11:**

- (a) the Franchisee shall not be entitled to charge any passenger for utilising the minimum specification for the OTW Services set out in the Secretary of State OTW Requirements and shall only be entitled to charge for service over and above the minimum specification with the Secretary of State's prior written consent and both parties reaching agreement on the relevant profit share;
- (b) there shall be no adjustment to the forecast revenue currently embedded in the Franchisee's Financial Model as a result of the OTW Programme;
- (c) subject to paragraphs 3.1(b)(vii) and 3.1(b)(viii) of Schedule 8.1 (Franchise Payments) and paragraph 20.14.5, there shall be no amendment to profit share pursuant to paragraph 3 of Schedule 8.1 (Franchise Payments) as a result of the OTW Programme; and
- (d) the aggregate payment due in respect of each RRS Vehicle pursuant to item 4 (First in Class), 5a (Fitment of Vehicles), 5b (Retention Initial Vehicles) and/or 5c (Retention Remainder Vehicles) in the OTW Payments Table is intended to be the Total Cost for the applicable RRS Vehicle and in no event shall the aggregate amount paid in accordance with item 4 (First in Class), 5a (Fitment of Vehicles), 5b (Retention Initial Vehicles) and/or 5c (Retention Remainder Vehicles) of the OTW Payment Table in respect of any RRS Vehicle exceed its Total Cost. For the purpose of this paragraph 20.11.1, the "Total Cost" shall be:
 - (i) [REDACTED²⁵⁷] in respect of a Class 466 RRS Vehicle;
 - (ii) [REDACTED²⁵⁸] in respect of a Class 465 RRS Vehicle;
 - (iii) [REDACTED²⁵⁹] in respect of a Class 376 RRS Vehicle;
 - (iv) [REDACTED²⁶⁰] in respect of a Class 375 RRS Vehicle in 3 car formation; and

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²⁵⁹ 13/12/2017 (Date of Redactions Approval) – Where text has been omitted from the document this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

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(v) **[REDACTED²⁶¹]** in respect of a Class 375 RRS Vehicle in 4 car formation;

20.11.2 The Secretary of State shall pay to the Franchisee the OTW Payments set out in the OTW Payments Table in accordance with paragraph 8 of Schedule 8.1 (Franchise Payments). For the purposes of paragraph 8 of Schedule 8.1 (Franchise Payments):

- (a) the amount payable pursuant to item 1 (Mobilisation) in the OTW Payment Table shall be:**
 - (i) the amount specified against such item 1 in column 6 of the OTW Payment Table which shall become due on the Payment Date that immediately follows 11 December 2016; and**
 - (ii) nil in respect of every other Reporting Period.**
- (b) the amount arising during a Half Franchisee Year pursuant to item 2 (Concept Design of RRS Units) in the OTW Payment Table shall be:**
 - (i) the amount specified against such item 2 in column 6 of the OTW Payment Table in the Half Franchisee Year during which the Franchisee satisfies the acceptance criteria for such item 2 in column 3 of the OTW Payment Table and such sum shall become due on the HY On-Train Wi-Fi Solution Balancing Amount Date following satisfaction of the acceptance criteria for such item 2 in column 3 of the OTW Payment Table; and**
 - (ii) nil in respect of every other Half Franchisee Year;**
- (c) the amount arising during a Half Franchisee Year pursuant to item 3 (Detailed Design of RRS Units) in the OTW Payment Table shall be:**
 - (i) the amount specified against such item 3 in column 6 of the OTW Payment Table in the Half Franchisee Year during which the Franchisee satisfies the acceptance criteria for such item 3 in column 3 of the OTW Payment Table and such sum shall become due on the HY On-Train Wi-Fi Solution Balancing Amount Date following satisfaction of the acceptance criteria for such item 3 in column 3 of the OTW Payment Table; and**
 - (ii) nil in respect of every other Half Franchisee Year;**
- (d) the amount arising during a Half Franchisee Year pursuant to item 4 (First in Class) in the OTW Payment Table shall be:**
 - (i) (in the case of any Half Franchisee Year during which one or more First Unit(s) satisfies the acceptance criteria for such item 4 set out in column 3 of the OTW Payment Table)**

²⁶¹ 13/12/2017 (Date of Redactions Approval) – Where text has been omitted from the document this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

the amount calculated in accordance with the following formula:

$$A = \Sigma(B \times C)$$

where:

- A** means the amount during the applicable Half Franchisee Year pursuant to item 4 (First in Class) in the OTW Payment Table;
- B** means the number of vehicles in a First Unit that satisfies the acceptance criteria for such item 4 set out in column 3 of the OTW Payment Table during such Half Franchisee Year;
- C** means the amount specified against such item 4 for the applicable Rolling Stock Class Type in column 6 of the OTW Payment Table; and
- Σ** means the sum of (B x C) in respect of each First Unit that satisfies the acceptance criteria for such item 4 set out in column 3 of the OTW Payment Table during the applicable Half Franchisee Year.

Such amount shall become due on the applicable HY On-Train Wi-Fi Solution Balancing Amount Date.

(ii) nil in respect of every other Half Franchisee Year;

- (e) the amount (if any) arising during each Half Franchisee Year pursuant to item 5a (Fitment of Vehicles) in the OTW Payment Table shall be the amount calculated in accordance with the following formula:

$$D = \Sigma(E \times F)$$

where:

- D** means the amount during the Half Franchisee Year pursuant to item 5a (Fitment Initial Vehicles) in the OTW Payment Table;
- E** means the number of vehicles in the RRS Unit(s) of the same Rolling Stock Class Type that satisfy the acceptance criteria for such item 5a set out in column 3 of the OTW Payment Table during such Half Franchisee Year;

F the amount specified against such item 5a for the applicable Rolling Stock Class Type in column 6 of the OTW Payment Table; and

Σ means the sum of (E x F) in respect of each Rolling Stock Class Type.

Such amount shall become due on the applicable HY On-Train Wi-Fi Solution Balancing Amount Date;

(f) the amount (if any) arising during each Half Franchisee Year pursuant to item 5b (Retention Initial Vehicles) in the OTW Payment Table shall be:

- (i) (in respect of any Half Franchisee Year during which Go-Live is not achieved in respect of 258 RRS Vehicles, whether or not such Half Franchisee Year is before or after the Half Franchisee Year referred to in paragraph 20.11.2(f)(ii)) nil; and
- (ii) (in respect of the Half Franchisee Year during which Go-Live is achieved in respect of 258 RRS Vehicles) the amount calculated in accordance with the following formula

$$M = \Sigma(N \times O)$$

where:

M means the amount during the Half Franchisee Year pursuant to item 5b (Retention Initial Vehicles) in the OTW Payment Table;

N means the number of vehicles in the RRS Unit(s) of the same Rolling Stock Class Type that are part of the first 258 RRS Vehicles in time that satisfy the acceptance criteria for such item 5b set out in column 3 of the OTW Payment Table;

O the amount specified against such item 5b for the applicable Rolling Stock Class Type in column 6 of the OTW Payment Table; and

Σ means the sum of (N x O) in respect of each Rolling Stock Class Type.

Such amount shall become due on the applicable HY On-Train Wi-Fi Solution Balancing Amount Date;

(g) subject to paragraph 20.11.1(d), the amount (if any) arising during each Half Franchisee Year pursuant to item 5c (Retention Remainder Vehicles) in the OTW Payment Table shall be:

- (i) (in respect of any Half Franchisee Year that expires prior to the Half Franchisee Year during which Go-Live is achieved in respect of 258 RRS Vehicles) nil; and

- (ii) (in respect of any other Half Franchisee Year) the amount specified for such item 5c in column 6 of the OTW Payment Table for such item and such amount shall become due on the applicable HY On-Train Wi-Fi Solution Balancing Amount Date;
- (h) the amount (if any) arising during each Reporting Period pursuant to item 5d (Fitment on Class 395 Vehicles) in the OTW Payment Table shall be:
 - (i) (in respect of any Reporting Period during which completion of the OTW installation works on all of the Class 395 Rolling Stock Class Type vehicles (as set out in limb (f) of the definition of IORS) is not achieved) nil; and
 - (ii) (in respect of the Reporting Period during which completion of the OTW installation works on all of the Class 395 Rolling Stock Class Type vehicles is achieved) the amount specified against item 5d in column 6 of the OTW Payment Table;
- (i) the amount payable pursuant to item 6a (Ongoing Operating Costs (1)) and item 6b (Ongoing Service Costs (2)) in the OTW Payment Table in a Reporting Period shall be:
 - (i) in respect of each Reporting Period arising during the period commencing on the date set against such item in column 4 of the OTW Payment Table and ending on the date set against such item in column 5 of the OTW Payment Table the amount specified against such item in column 6 of the OTW Payment Table and such amount shall become due on the Payment Date in respect of each such Reporting Period; and
 - (ii) nil in respect of every other Reporting Period;
- (j) the amount payable pursuant to item 6c [REDACTED²⁶²] in a Reporting Period shall be [REDACTED²⁶³] satisfying the applicable criteria for such item at column 3 of the OTW Payment Table during such Reporting Period and such amount shall become due on each applicable Payment Date;
- (k) the amount (if any) arising during each Half Franchisee Year pursuant to item 7 (Train Unit Operating Cost) in the OTW Payment Table shall be calculated in accordance with the following formula:

$$J = \Sigma(K \times L)$$

where:

J means the amount arising during the applicable Half Franchisee Year pursuant

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to item 7 (Train Unit Operating Cost) in the OTW Payment Table;

- K** means the lesser of:
- (a) 396 (this being the aggregate number of gateways planned to be fitted to all of the IORS Units under the OTW Programme); and
 - (b) the aggregate number of gateways satisfying the acceptance criteria for such item 7 at column 3 of the OTW Payment Table at any time on or prior to the commencement of the applicable Reporting Period;
- L** the amount set out against such item 7 at column 6 of the OTW Payment Table; and
- Σ** the sum of (K x L) in respect of each Reporting Period falling in such Half Franchisee Year.

Such amount shall become due on each applicable HY On-Train Wi-Fi Solution Balancing Amount Date;

- (l) the amount (if any) arising during a Half Franchisee Year pursuant to item 8a (Data and CRM Claims) or 8b (Miscellaneous Charges), in the OTW Payment Table shall be the aggregate of all amounts satisfying the applicable criteria for such items at column 3 of the OTW Payment Table during such Half Franchisee Year and such amounts shall become due on each applicable HY On-Train Wi-Fi Solution Balancing Amount Date; and
- (m) in respect of each item in the OTW Payment Table, as a condition of payment the Franchisee shall provide the applicable evidence of the acceptance criteria set out in column 3 of the OTW Payment Table as a condition of payment and the Secretary of State (acting reasonably) shall be entitled to require the Franchisee to provide further evidence of such satisfaction.

20.11.3 Within four weeks of the end of each Half Franchisee Year, the Franchisee shall deliver to the Secretary of State a statement of the calculation demonstrating the aggregate of the On Train Wi-Fi Solution Payments due in respect of the relevant Half Franchisee Year (an "On Train Wi-Fi Solution Payments Statement") that is certified by a statutory director of the Franchisee (or any other Franchisee Employee approved in writing by the Secretary of State). Such statement shall include:

- (a) a statement of the Secretary of State's [REDACTED²⁶⁴] share of any service credits, service payment reductions, or liquidated damages recovered by the Franchisee from the MSP during such Half

²⁶⁴ 13/12/2017 (Date of Redactions Approval) – Where text has been omitted from the document this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

Franchisee Year pursuant to Schedule 16 of the MSP Agreement and paragraph 20.8.7;

- (b) a calculation of the HY On-Train Wi-Fi Solution Balancing Amount in accordance with paragraph 8.1 of Schedule 8.1 (Franchise Payments) for such Half Franchisee Year;**
- (c) a summary of amounts due from, and amounts owing to, the Franchisee under this paragraph 20; and**
- (d) such other supporting information as the Secretary of State may reasonably require.**

20.11.4 The Secretary of State will notify the Franchisee as soon as reasonably practicable after receipt of the On Train Wi-Fi Solution Payments Statement, whether the Franchisee has achieved the OTW Milestone or failed (in the Secretary of State's reasonable opinion) to achieve the OTW Milestone and/or whether the Secretary of State requires further information.

20.11.5 The Secretary of State:

- (a) acknowledges that he has received an invoice for [REDACTED²⁶⁵] dated [REDACTED²⁶⁶] pursuant to paragraph 11.2 of the heads of terms in relation to the Franchisee's proposal to deliver on-train Wi-Fi between the Secretary of State and the Franchisee dated 1 June 2016; and**
- (b) shall pay such invoice by no later than the Payment Date that immediately follows 11 December 2016.**

20.12 Termination of the OTW Programme

20.12.1 Notwithstanding paragraphs 20.3.3 and 20.8.4 and without prejudice to paragraph 20.8.6, the Secretary of State shall have the right to terminate the OTW Programme in respect of the Install & Operate Rolling Stock in the event of the Franchisee's material breach of its obligations in this paragraph 20 subject to:

- (a) the parties first applying the OTW remedial plan process set out in paragraph 20.16; and**
- (b) where the OTW Programme is terminated, the Secretary of State paying to the Franchisee (on a pass through basis) the aggregate of the remainder of any rent under any Rolling Stock Lease that is attributable to the OTW Solution to the end of the Franchise Term (if relevant), the fixed costs for the Franchisee's project team in respect of the OTW Solution until the date of termination of the OTW Programme (if appropriate) and the cost of Mobile Data incurred by the Franchisee to the point of termination of the OTW Programme.**

²⁶⁵ 13/12/2017 (Date of Redactions Approval) – Where text has been omitted from the document this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

²⁶⁶ 13/12/2017 (Date of Redactions Approval) – Where text has been omitted from the document this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

20.12.2 Subject to paragraph 20.16 and unless the contrary is otherwise specified, nothing in this paragraph 20 shall interfere with the provisions of Schedules 10.1 (Remedial Plans and Remedial Agreements), 10.2 (Termination and Expiry) and 10.3 (Events of Default and Termination Events).

20.13 Not Used

20.14 OTW Ancillary Services and OTW Additional Services

20.14.1 The introduction by the Franchisee of any Infotainment initiative shall be subject to consultation with the Secretary of State and the Secretary of State's written consent.

20.14.2 Subject to the Franchisee procuring the applicable passenger consent and subject to the Franchisee acting in compliance with applicable Law, the Franchisee may during the Franchise Term sell and/or disclose on a non-exclusive basis Personal Data derived from the operation of the OTW Services including, without limitation, Personal Data derived from any OTW Additional Services and any OTW Ancillary Services and the proceeds of such sale or disclosure shall be shared in accordance with paragraph 20.14.4.

20.14.3 The Franchisee may provide:

(a) subject to the written consent of the Secretary of State, OTW Additional Services for which the Franchisee may charge passengers; and

(b) OTW Ancillary Services,
using the OTW Services.

20.14.4 [REDACTED²⁶⁷]

20.14.5 Any profit from OTW Ancillary Services and/or OTW Additional Services retained by the Franchisee pursuant to this paragraph 20.14 shall not count towards the profit share under paragraph 3 of Schedule 8.1 (Franchise Payments).

20.14.6 There shall be a reconciliation at the end of each Franchisee Year in relation to the amount of profits arising from the OTW Additional Services and/or OTW Ancillary Services owed by the Franchisee to the Secretary of State. Any profit payments payable to the Secretary of State shall be payable by way of adjustment to the On Train Wi-Fi Solution Payment sum in the Reporting Period following the end of the Franchisee Year, or, in the case of the end of the Franchise as a part of the post-Franchise end financial reconciliation process.

20.14.7 The Franchisee shall keep records of any costs incurred and revenue earned in respect of OTW Additional Services and/or OTW Ancillary

²⁶⁷ 13/12/2017 (Date of Redactions Approval) – Where text has been omitted from the document this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

Services and shall provide a quarterly report to the Secretary of State setting out the revenue (or loss) generated by those services.

20.14.8 The Secretary of State may, at his sole discretion, use his share of any profit from OTW Ancillary Services and/or OTW Additional Services to:

(a) increase the Data and Claims Budget; and/or

(b) provide another passenger benefit on the Franchise (not necessarily Wi-Fi).

20.14.9 Unless expressly stated otherwise, nothing in this paragraph 20 shall affect any other additional revenue provisions in this Agreement or vice versa.

20.15 Assignment of the MSP Agreement

20.15.1 Subject to the right of the Franchisee to require the Secretary of State to make a Transfer Scheme in accordance with paragraph 3 of Schedule 15.4 (Provisions Applying on and after Termination) at the end of the Franchise Period, the Franchisee shall, if so directed by the Secretary of State, exercise its rights under the MSP Agreement to assign, transfer or novate such agreement in such a manner (consistent with such rights) as the Secretary of State shall require.

20.16 OTW Remedial Plan Process

20.16.1 In the event that the Franchisee commits a material breach in complying with its obligations under this paragraph 20, the party who is aware of such deficiency shall promptly notify the other party of such deficiency ("OTW Remedial Notice"), and within two (2) weeks of either party receiving a OTW Remedial Notice, the Franchisee and the Secretary of State shall agree a remediation plan which shall set out the steps required to remedy the failure ("OTW Remediation Plan"). The Franchisee and the Secretary of State shall use reasonable endeavours to agree a timetable in which the Franchisee shall remedy the failure, and the Franchisee shall take such steps as set out in the OTW Remediation Plan to remedy the failure in accordance with any agreed timetable provided always that the failure is remedied within 60 calendar days of the OTW Remedial Notice being issued (unless the Secretary of State agrees otherwise in writing).

20.16.2 If, despite the OTW Remediation Plan, the failure has not been remedied within 60 calendar days of a OTW Remedial Notice being issued, or such other period as agreed by the Secretary of State under paragraph 20.16.1, the Secretary of State may, by written notice to the Franchisee, choose at its sole discretion to (without prejudice to the Secretary of State's other rights and remedies) agree a revised OTW Remediation Plan with the Franchisee which shall include a revised timetable in which the Franchisee shall remedy the failure ("OTW Revised Remediation Plan").

20.16.3 If, despite the OTW Remediation Plan or, if the Secretary of State chooses to implement an OTW Revised Remediation Plan, an OTW Revised Remediation Plan, the Franchisee has still failed to remedy the failure within a period of 120 calendar days of becoming aware of the failure, then the Secretary of State may (without prejudice to the Secretary of State's other rights and remedies) terminate the OTW Programme in accordance with paragraph 20.12.1.

20.17 PFA Designation

20.17.1 The Franchisee shall not enter into any OTW Network Provider Agreement without the prior written consent of the Secretary of State (not to be unreasonably withheld).

21²⁶⁸ Capacity Enhancement proposal using the Class 377 (2017 Capacity Enhancement) Units

Cascade of Class 377 (2017 Capacity Enhancement) Units

21.1 The Franchisee shall:

- (a) use all reasonable endeavours to complete the cascade of each Class 377 (2017 Capacity Enhancement) Unit by no later than 10 Weekdays after the estimated delivery date under the Class 377 (2017 Capacity Enhancement) Sub-Lease; and
- (b) in any event, by no later than 20 Weekdays after the actual Delivery Date (as defined in the Class 377 (2017 Capacity Enhancement) Sub-Lease) of the final Class 377 (2017 Capacity Enhancement) Unit (or such later date as the parties may from time to time agree in writing) ensure that the Completion of 2017 Cascade Milestone has been achieved.

21.2 The parties acknowledge and agree that:

- (a) notwithstanding the provisions of paragraph 20 of Part 1 to Schedule 6.1 (Committed Obligations and Related Provisions) of the Franchise Agreement the Franchisee [REDACTED²⁶⁹] the cost of the purchase of Mobile Data and any claims under the CRA in relation to OTW provided on the Class 377 (Revised

²⁶⁸ 08/09/2017 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

²⁶⁹ 20/11/2017 (Date of Redactions Approval) – Where text has been omitted from the document this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

Solution) Units and the Class 377 (2017 Capacity Enhancement) Units as part of the Data and Claims Budget; and

- (b) subject to paragraph 21.2(a) (and save as provided for in the Deed of Amendment to the Franchise Agreement dated 8 December 2016 entitled "Deed of Amendment (On-Train Wi-Fi and Mobile Communications)" made between the parties) the Franchisee [REDACTED²⁷⁰] for any Wi-Fi or mobile communications costs (including fitment costs and costs of operation, including data usage) resulting or arising from the 2017 Cascade or the Updated Train Plan.**

Recruitment and Training

21.3 The Franchisee shall by no later than the completion of the 2017 Cascade, but in any event in sufficient time to facilitate optimal deployment and usage of the Class 377 (2017 Capacity Enhancement) Units, recruit and appropriately train not fewer than [REDACTED²⁷¹] additional full time shunter train drivers (being [REDACTED²⁷²] at the Grosvenor Road Victoria Depot and [REDACTED²⁷³] at the Ashford Depot). For the avoidance of doubt, such additional shunter drivers shall not qualify as drivers or trainee drivers for the purpose of paragraph 14.1 of Part 1 to Schedule 6.1 (Committed Obligations and Related Provisions) and are a separate group of staff employed to shunt trains in depots but not to drive trains in passenger service.

One-Off Cost Items

21.4 The Franchisee shall:

- (a) use all reasonable endeavours to procure that:**
- (i) each of the One-Off Costs Items (save for the Stewart's Lane Depot roof access) is completed (or delivered, as the case may be) in sufficient time to facilitate usage of the Class 377 (2017 Capacity Enhancement) Units in accordance with the Updated Train Plan; and**
 - (ii) the One-Off Cost Item in respect of Stewart's Lane Depot roof access is completed (or delivered, as the**

²⁷⁰ 20/11/2017 (Date of Redactions Approval) – Where text has been omitted from the document this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

²⁷¹ 20/11/2017 (Date of Redactions Approval) – Where text has been omitted from the document this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

²⁷² 20/11/2017 (Date of Redactions Approval) – Where text has been omitted from the document this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

²⁷³ 20/11/2017 (Date of Redactions Approval) – Where text has been omitted from the document this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

case may be) by no later than the relevant Longstop Date specified in the table at Appendix 3 to Schedule 8.5 (London Bridge and Other Potential Payment Adjustments); and

- (b) ensure in any event that each of the One-Off Costs Items (save for the Stewart's Lane Depot roof access) is completed (or delivered, as the case may be) by no later than the relevant Longstop Date specified in the table at Appendix 3 to Schedule 8.5 (London Bridge and Other Potential Payment Adjustments).

21.5 The Franchisee shall procure that the TSGN Operator carries out the One-Off Cost Item relating to roof access at Stewarts Lane Depot in accordance with all applicable legislation, regulations, licences, consents and permissions and with that degree of skill, diligence, prudence and foresight which would be exercised by a skilled and experienced Train Operator of its franchise.

21.6 [REDACTED²⁷⁴] the One-Off Cost Items as set out in paragraph 9 of Schedule 8.5 (London Bridge and Other Potential Payment Adjustments).

21.7 The Franchisee shall procure that all approvals, authorisations, consents, derogations, exemptions, licences, permissions, and registrations which are required by Law (or under any contract to which the Franchisee (or any Affiliate of the Franchisee) is a party) in connection with the carrying out and completion (or delivery, as the case may be) of each One-Off Cost Item are duly obtained and complied with.

22²⁷⁵ Staplehurst Car Park

22.1 Subject to paragraph 22.2 and to final surveys, obtaining relevant regulatory approvals and any consents that may be required under the relevant Station Leases and/or Access Agreements, the Franchisee shall create on or before [REDACTED²⁷⁶] (the "Staplehurst Delivery Date") not less than in aggregate 200 additional car parking spaces at Staplehurst Station and in so doing shall incur expenditure of not less than [REDACTED²⁷⁷] (unless the Franchisee delivers the stated objective for less than this amount in which case paragraph 8.3 of Part 2 to Schedule 6.1 shall apply). Such expenditure may include the costs of the procurement, construction or installation and project management.

²⁷⁴ 20/11/2017 (Date of Redactions Approval) – Where text has been omitted from the document this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

²⁷⁵ 19/09/2017 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

²⁷⁶ 20/11/2017 (Date of Redactions Approval) – Where text has been omitted from the document this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

²⁷⁷ 20/11/2017 (Date of Redactions Approval) – Where text has been omitted from the document this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

22.2 To the extent that the Franchisee cannot create the total number of 200 new car parking spaces at Staplehurst Station referred to in paragraph 22.1 above, despite reasonable endeavours to do so:

- (a) the Franchisee shall explain the circumstances of why the Franchisee cannot create the total number of 200 new carpark spaces at Staplehurst Station, despite using all reasonable endeavours to do so, and provide such further information as the Secretary of State, acting reasonably, may request. The Secretary of State acknowledges that the Franchisee's target date for delivery of 200 new carpark spaces at Staplehurst Station is [REDACTED²⁷⁸] and accordingly there shall not be a contravention of the paragraph 22.1 if the Expiry Date that is prior to [REDACTED²⁷⁹]; and**
- (b) the Secretary of State may exercise his power at paragraph 7.2 of Part 2 to Schedule 6.1 to modify paragraph 22.1 so as to require the Franchisee to deliver the maximum number of new car parking spaces at Staplehurst Station as is reasonably practicable in the circumstances.**

23.²⁸⁰ The Franchisee shall make available the sum of [REDACTED²⁸¹] (the "Set Aside Funds") and spend the Set Aside Funds on carrying out the following obligations:

- (a) By no later than 31 March 2018, the Franchisee shall install 27 additional platform shelters with CCTV coverage and CIS enhancements at the following locations; Albany Park, Barnehurst, Bexleyheath, Bexley, Blackheath 1, Blackheath 2, Blackheath 3, Chislehurst, Crayford, Elmstead Woods, Erith, Falconwood, Greenwich 1, Greenwich 2, Kidbrooke 1, Kidbrooke 2, Mottingham, New Cross, New Beckenham, Plumstead 1, Plumstead 2, Slade Green, St Johns, Welling 1, Welling 2, West Wickham and Woolwich Arsenal.**
- (b) By no later than 31 March 2018, the Franchisee shall carry out CIS improvements to shelters at Bellvedere, Charlton, Lee, Sidcup, New Eltham, Elmers End & Woolwich Dockyard stations.**
- (c) By no later than 30 September 2017, the Franchisee shall ensure that additional bridging ramps, which are suitable for the evacuation of stranded passengers on affected trains in an emergency, are purchased and put in place at Bromley South,**

²⁷⁸ 20/11/2017 (Date of Redactions Approval) – Where text has been omitted from the document this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

²⁷⁹ 20/11/2017 (Date of Redactions Approval) – Where text has been omitted from the document this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

²⁸⁰ 29/06/2017 (Date of contract change letter) – Contract insertion agreed by the Secretary of State and Franchisee.

²⁸¹ 23/11/2017 (Date of Redactions Approval) – Where text has been omitted from the document this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

Dover Priory, Faversham, Hastings, London Victoria, Maidstone East and Ramsgate stations;

- (d) By no later than 30 November 2017, the Franchisee shall complete a reliability and maintenance review of all of the BREL doors in the Train Fleet; and**
- (e) [DELETED²⁸²].**

In the event that the obligations set out in paragraphs (a) – (e) are completed for less than the Set Aside Funds, any such underspend will be considered an Underspend for the purposes of paragraph 8 of Part 2 to Schedule 6.1 and the provisions in relation to Underspends shall accordingly apply to any unspent Set Aside Funds.

24.²⁸³ ²⁸⁴The Franchisee shall spend not less than [REDACTED²⁸⁵] (the “Reinvestment Funds”) to complete the following:

- a) By no later than 23 June 2019, replace cab active and coupler relays on all Class 375/3, Class 375/6, Class 375/7, Class 375/8, Class 375/9 and Class 376 units in the Train Fleet;**
- b) By no later than 23 June 2019, replace OPTO Isolators on all Class 375/8 and Class 375/9 units in the Train Fleet;**
- c) By no later than 31 March 2019, replace ACU Solenoid equipment on all Class 465/9 and Class 465/2 units in the Train Fleet;**
- d) By no later than 31 March 2019, using a sub-threshold delay tool, create a fit-for-purpose delay analysis programme for the benefit of Network Rail and the Franchisee’s joint performance team (the “Delay Analysis Programme”);**
- e) By no later than 31 March 2019, provide a report to the Secretary of State and Network Rail based on the output of the Delay Analysis Programme, such report to include firm recommendations for the Franchisee and Network Rail as to how delay minute reductions of at least 6000 minutes per annum may be achieved across the Passenger Services;**
- f) By no later than 31 May 2019, using analysis from the Delay Analysis Programme, use reasonable endeavors to achieve delay minute reductions of at least 3000 minutes across the Passenger Services.**

25.²⁸⁶ By no later than 31 March 2019, the Franchisee shall commission an independent review of its maintenance documentation with a view to improving the Franchisee’s Train Fleet maintenance procedures. The Franchisee shall, at its

²⁸² 7 March 2019 (Date of Contract Change Letter) – Contract deletion agreed by the Secretary of State and Franchisee.

²⁸³ 7 March 2019 (Date of Contract Change Letter) – Contract insertion agreed by the Secretary of State and Franchisee.

²⁸⁴ Without prejudice to the Franchisee’s obligations as set out in paragraphs 23 and 24, it should be noted that the Reinvestment Funds for the obligation in paragraph 24 are derived from an Underspend in relation to the obligation set out in paragraph 23 and from funds relating to an Improvement Plan. Furthermore, paragraph 23(e) has been removed pursuant to the Notice of Variation dated 07 March 2019.

²⁸⁵ 10 May 2019 (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.

²⁸⁶ 7 March 2019 (Date of Contract Change Letter) – Contract insertion agreed by the Secretary of State and Franchisee.

own expense and using neither the Reinvestment Funds nor the Set Aside Funds, ensure that any shortcomings identified in the review of its maintenance documentation are addressed by no later than 31 May 2019.

26.²⁸⁷ **SMART TICKETING INITIATIVES**

26.1 **The Franchisee shall use reasonable endeavours to implement the following smart ticketing initiatives by [REDACTED²⁸⁸] and, subject to the continuation of the Franchise Term to 0159 on 1 April 2020 in accordance with paragraph 1.2 of Schedule 18 (Additional Reporting Periods), to have such smart ticketing initiatives implemented by no later than [REDACTED²⁸⁹]:**

- (a) **an Android app for customers and Franchise Employees to check the contents of their ITSO certified smart media (The Key card) and load action lists and hot lists;**
- (b) **online sales of The Key card (ITSO certified media) to include single and return tickets alongside season tickets; and**
- (c) **the introduction of High Speed upgrade tickets for ITSO certified media (The Key card) at ticket offices.**

26.2 **The Franchisee shall not be required to pay to the Secretary of State any underspend under the SEFT (South East Flexible Ticketing) and STNR (Smart Ticketing on National Rail) Programmes (the aggregate amount of such underspend is estimated by the Franchisee to be [REDACTED²⁹⁰] if and to the extent that the Franchisee incurs an equivalent amount of costs in relation to undertaking the obligations set out in paragraph 26.1 and such costs are supported by reasonable evidence. This paragraph 26.2 shall prevail if and to the extent that it conflicts with any other provision of the Franchise Agreement.**

27.²⁹¹ **PILOT IN RESPECT OF THE REPLACEMENT OF TICKET ISSUING TERMINALS**

The Franchisee shall on or before [REDACTED²⁹²] undertake and complete a ticket issuing system terminal replacement pilot so as to ensure that, if Priced Option 2 (as described in Schedule 3 (Priced Options)) is exercised by the Secretary of State (or deemed to have been exercised), the Franchisee is prepared so far as reasonably practicable to deliver such Priced Option 2 in accordance with its terms

²⁸⁷ 13 June 2019 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

²⁸⁸ **5 August 2019 (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.**

²⁸⁹ **5 August 2019 (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.**

²⁹⁰ **5 August 2019 (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.**

²⁹¹ 13 June 2019 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

²⁹² **5 August 2019 (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.**

28.²⁹³ **HEAD OFFICE LEASE**

28.1 **The Franchisee shall enter into, on or before 28 September 2019:**

- (a) **a lease of the second floor at 4 More London Riverside, London SE1 2AU or such other premises ("New Head Office") as may be approved by the Secretary of State (such approval not to be unreasonably withheld or delayed); and**
- (b) **an agreement in respect of the fit-out of the New Head Office.**

28.2 **The Franchisee shall incur a minimum expenditure of [REDACTED²⁹⁴] in fitting out the New Head Office provided that, for the purposes of calculation of any Underspend (as defined in paragraph 8.1 of Part 2 to Schedule 6.1 (Committed Obligations and Related Provisions)) in the event that the New Head Office is not for the second floor at 4 More London Riverside, London SE1 2AU, the Franchisee shall be entitled to set off against such Underspend any rent and/or related charges payable in respect of the New Head Office if and to the extent that such rent and/or related charges are in excess of the rent and/or related charges modelled for the New Head Office in the Record of Assumptions 2.**

29.²⁹⁵ **SERVER VIRTUALISATION**

The Franchisee shall on or before [REDACTED²⁹⁶] incur a minimum expenditure of [REDACTED²⁹⁷] in carrying out server virtualisation.

²⁹³ 13 June 2019 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

²⁹⁴ **5 August 2019 (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.**

²⁹⁵ 13 June 2019 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

²⁹⁶ **5 August 2019 (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.**

²⁹⁷ **5 August 2019 (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

Specification for the Deep Clean

The Deep Clean will cover all areas of the Station that are accessible to the public including but not limited to:

- Station approach and entrances (including areas facing the street);
- Ticket halls;
- Route ways between ticket halls/station entrances and platforms;
- Platforms;
- Subways;
- Footbridges;
- Waiting areas – waiting rooms and waiting shelters;
- Toilets; and
- Lifts/ Escalators.

Activities that may be required as part of the Deep Clean include survey of all areas, the cleaning of structures, surfaces and glazing, fixtures and fittings to a height of 1.8 metres and may include the following, as each is applicable to the relevant Station:

Station Arrival/ Approach (including Interchange facilities)

- signage including Network Rail logo, directional, cycle storage is cleaned;
- directional signage from the station to other forms of public transport are made clear and visible;
- Poster displays are scrubbed with appropriate chemicals and impact debris; including chewing gum labels and stains including finger marks are removed;
- external surfaces both horizontal and vertical are cleaned to remove impact debris and stains; and
- glazing is cleaned.

Booking Hall

- the booking hall is cleaned;
- horizontal and vertical surfaces are cleaned to remove impact debris, mould and dust;
- fixtures and fittings, including pipework and radiators are cleaned and dusted; and
- glazing is cleaned.

Waiting Areas/including both shelters and rooms

- the area is cleaned and stains are removed, the area is odour free;
- stains, impact debris, mould and graffiti are removed from seating furniture;
- window and visible areas are cleaned and impact debris is removed;
- horizontal and vertical surfaces are cleaned and stains, impact debris, mould and dust are removed; and
- fixtures and fittings,(including pipework and radiators and glazing) are cleaned.

Platforms Interchange including both bridges and underpasses

- the platform interchange is cleaned;
- Poster displays are cleaned impact debris including chewing gum, labels and stains (including finger marks) are removed;
- external surfaces both horizontal and vertical are cleaned and impact debris and graffiti are removed;
- stains are removed;

- hand rails and ledges are wiped clean; and
- glazing is cleaned.

Platforms

- platforms are cleaned;
- platform furniture is cleaned;
- waiting shelters are cleaned, canopy support columns up to 1.8m in height are cleaned and dust and mould are removed;
- high level fixtures and fittings up to 1.8m in height are cleaned of dust and mould; and
- glazing is cleaned.

Lifts / Escalators

- lifts/escalators are cleaned;
- displays within lifts on escalators are cleaned, and impact debris removed;
- stains and fluids are removed ensuring lifts and escalators are odour free; and
- horizontal and vertical surfaces are cleaned and stains removed.

Toilets

- the floor is cleaned, and left dry and cleaned of mould and dust;
- wall panels, doors, mirrors and fittings are cleaned, and mould and impact debris is removed;
- the toilet pan and seat are cleaned;
- the tap, hand dryer and soap dispenser are cleaned and stains and mould, and any build-up of lime scale are removed;
- the baby changing table is cleaned, and stains, impact debris and graffiti are removed;
- fixtures and fittings, including high level, as well as pipework, radiators are cleaned;
- stains, and fluids are to be removed, the area is odour free; and
- glazing is cleaned.

Station Information

- poster frames are well maintained;
- High level equipment including CIS, CCTV, help points and PA announcers are cleaned, and dust and mould are removed; and
- sundry "street furniture" (including but not limited) to telephone boxes, post boxes and vending/coffee machines are cleaned.

Manner of cleaning

Appropriate cleaning methods will be used in undertaking the Deep Clean and shall include the use of cleaning chemicals/ fluids where appropriate and where possible high power jetting / pressure washing shall be carried out to clean surfaces.

APPENDIX 2 TO PART 1 OF SCHEDULE 6.1²⁹⁸**Secretary of State OTW Requirements**

- 1. Not used**
- 2. Marketing**

2.1 [REDACTED²⁹⁹] the Franchisee shall:

- (a) market the availability of Wi-Fi to passengers but not specify the bandwidth or speed of the On-Train Wi-Fi Service via:**
 - (i) the Franchisee's public webpage, together with terms and conditions, fair-use policy and "how to use the service guides"; and**
 - (ii) on-board physical notices;**
- (b) ensure all branding of the OTW Services is that of the Franchisee; and**
- (c) set out such caveats to the items in (a) as are appropriate to reflect the level of service that may be available.**

All relevant marketing must be publicly available prior to Wi-Fi service going live on a particular vehicle.

3. Minimum Policy Requirements**3.1 The Franchisee shall ensure that users of the OTW Services are provided with access to terms and conditions that govern its use and such terms and condition shall address the following:**

- (d) that the Franchisee shall deal with a user's personal data in compliance with the current data protection legislation in England and Wales;**
- (e) that the Franchisee has a privacy policy which is incorporated into the terms and conditions of use;**
- (f) the user may opt out from giving the Franchisee a right to use a user's name, address and relevant information for marketing purposes and/or to provide that data to third parties;**
- (g) that the On-Train Wi-Fi Solution is provided on an "as is" and "as available" basis with no guarantee and that the Franchisee's liability in respect of a user's use of the On-Train Wi-Fi Solution will not exclude liability for death or personal injury; and**

²⁹⁸ **08/12/2016 (Date of DOA)** – Contract insertion agreed by the Secretary of State and Franchisee.

²⁹⁹ **13/12/2017 (Date of Redactions Approval)** – Where text has been omitted from the document this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

- (h) any other provisions that the Franchisee is required by law to include within the terms and conditions.

4. Service Requirements

4.1 The Franchisee shall ensure the On-Train Wi-Fi Services:

- 4.1.1 is provided to passengers Free of Charge to all classes of passengers on board trains (Standard and First);**
- 4.1.2 will permit passengers connected to such service to, at a minimum browse popular web pages on the internet and send and receive mails electronically through any mobile, tablet or computer device they may use for this purpose;**
- 4.1.3 can dynamically allocate, and restrict, the available bandwidth on an active user or select Vehicles basis, based on a fair usage policy;**
- 4.1.4 can filter the type of services permitted (e.g. restricting customer access to video and audio streaming services or peer-to-peer file sharing);**
- 4.1.5 can handle a minimum of 20 simultaneously active users per vehicle;**
- 4.1.6 can handle a minimum bandwidth of 512kbps with less than 80 ms latency plus 80 WAP-connected and registered but non-active users per vehicle; and**
- 4.1.7 subject to the availability of a Network and any usage limit applied by the Franchisee, available for use by passengers at all times for the duration of each passengers journey.**

4.2 "Free of Charge", for the purpose of this paragraph 4 shall mean:

- (a) the passenger does not have to pay directly or indirectly to use the On-Train Wi-Fi Services on an ad-hoc or on-going basis; and**
- (b) the use of the On-Train Wi-Fi Services by the passenger is independent of any Wi-Fi minutes or Wi-Fi data allowances the individual passenger may have through an agreement with one or more telecommunication internet service providers or mobile network operators.**

4.3 On request, the Franchisee shall use reasonable endeavours to make available to the Secretary of State to the extent that such information is available to the Franchisee, for use and distribution to third parties as the Secretary of State so chooses:

- (a) the train location information in real-time; and**
- (b) the Network Signal Strength as measured by the OTW Hardware for any or all Routes.**

- 4.4 The Secretary of State shall reimburse the Franchisee for any reasonable costs incurred by the Franchisee in complying with its obligations under paragraph 4.3 above to the extent that such costs relate solely to the processing of the train location information. The Secretary of State shall not be responsible for any costs relating to the value of the train location information.**

APPENDIX 3 TO PART 1 OF SCHEDULE 6.1³⁰⁰

OTW Technical Specification

Unit	Master Qty /unit	Slave Qty /unit	Equipment Master	Equipment Slave
465 0/1/2/9	1	3	1 x X6i Mobile communication Gateway	1 x Cisco Dual radio (802.11ac/n) Access point per coach (with built in Diplexer) 1x 4x4 MiMO internal antenna 1x O-ring 12 port gigabit ethernet switch with PoE and relay failover Associated RF Cable Harness Ethernet Harness (Dual CAT7) Inter - Vehicle connection (Jumpers Dual CAT7)
466	1	1	5 x Ultra wideband dual element low profile MiMo roof top antennas, 1 with GPS per Master system	
376	1	4	1 x RF filter	
375 3	1	2	1 x Cisco Dual radio (802.11ac/n) Access point per coach (with built in Diplexer)	
375 5/7/8/9	1	3	1x 4x4 MiMO internal antenna 1x O-ring 12 port gigabit ethernet switch with PoE and relay failover 1 x 110vDC to 24vDC 150w DC/DC converter (for the X6i) Ethernet Harness (Dual CAT7) Inter - Vehicle connection (Jumpers Dual CAT7)	

³⁰⁰ **08/12/2016 (Date of DOA)** – Contract insertion agreed by the Secretary of State and Franchisee.

<p>395</p>	<p>2</p>	<p>4</p>	<p>1 x X6i Mobile communication Gateway</p> <p>3 x Ultra wideband dual element low profile MiMo roof top antennas, 1 with GPS per Master system (If spacing can be achieved without effecting performance, otherwise only 2 antennas will be present)</p> <p>1 x RF filter</p> <p>1 x Cisco Dual radio (802.11ac/n) Access point per coach (with built in Diplexer)</p> <p>1x 4x4 MiMO internal antenna</p> <p>1x O-ring 12 port gigabit ethernet switch with PoE and relay failover</p> <p>1 x 110vDC to 24vDC 150w DC/DC converter (for the X6i)</p> <p>Ethernet Harness (Dual CAT7)</p> <p>Inter - Vehicle connection (Jumpers Dual CAT7)</p>	<p>1 x Cisco Dual radio (802.11ac/n) Access point per coach (with built in Diplexer)</p> <p>1x 4x4 MiMO internal antenna</p> <p>1x O-ring 12 port gigabit ethernet switch with PoE and relay failover</p> <p>Associated RF Cable Harness</p> <p>Ethernet Harness (Dual CAT7)</p> <p>Inter - Vehicle connection (Jumpers Dual CAT7)</p>
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APPENDIX 4 TO PART 1 OF SCHEDULE 6.1 ³⁰¹**OTW Security Requirements**

- 1. The Franchisee shall:**
 - 1.1 ensure that the On-Train Wi-Fi Solution includes a protocol for emergency switch-off and reinstatement of the On-Train Wi-Fi Solution in the event of counter terrorist, security concern or other incident or response as directed by the British Transport Police (the "OTW Emergency Protocol");**
 - 1.2 provide to the Secretary of State not less often than once in each Franchisee Year a copy of the OTW Emergency Protocol and make such amendments to the OTW Emergency Protocol as the Secretary of State may require;**
 - 1.3 undertake a security risk assessment of the On-Train Wi-Fi Solution using the assessment methodology of ISO27001 or ISO/EC27002:2013 (or equivalent) to determine the impact of providing the On-Train Wi-Fi Solution and the process to be followed prior to installing the On-Train Wi-Fi Solution during the Franchise Period;**
 - 1.4 provide the Secretary of State promptly after that assessment with a written report setting out the details of the assessment and its conclusions; and**
 - 1.5 ensure that no train control systems or safety critical systems are connected to the train communications infrastructure or any element of the On-Train Wi-Fi Solution and shall ensure that a physical 'air' gap exists and is maintained between (a) any train control systems or safety critical systems and (b) the train communications infrastructure or any element of the On-Train Wi-Fi Solution.**

³⁰¹ 08/12/2016 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

APPENDIX 5 TO PART 1 OF SCHEDULE 6.1³⁰²

OTW Payment Table

Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7
Item	Payment Title [REDACTED ³⁰³]	Acceptance Criteria [REDACTED ³⁰⁴]	Start Date	End Date	Value of each payment [REDACTED ³⁰⁵]	Application of Indexation
1	Mobilisation	Execution of Deed of Amendment	n/a	n/a	[REDACTED]	No
2	Concept Design of RRS Units	Submission of a certificate, signed by a statutory Director (or any other Franchisee Employee approved in writing by the Secretary of State), confirming that the concept designs have been agreed	n/a	n/a	[REDACTED]	No

³⁰² 08/12/2016 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

³⁰³ 13/12/2017 (Date of Redactions Approval) – Where text has been omitted from the document this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

³⁰⁴ 13/12/2017 (Date of Redactions Approval) – Where text has been omitted from the document this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

³⁰⁵ 13/12/2017 (Date of Redactions Approval) – Where text has been omitted from the document this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

		with the MSP in respect of each class of Relevant Rolling Stock.				
3	Detailed Design of RRS Units	Submission of a certificate, signed by a statutory Director (or any other Franchisee Employee approved in writing by the Secretary of State), confirming that the detailed designs have been agreed with the MSP in respect of each class of Relevant Rolling Stock.	n/a	n/a	[REDACTED]	No

<p>4</p>	<p>First in Class</p>	<p>Submission of a certificate, signed by a statutory Director (or any other Franchisee Employee approved in writing by the Secretary of State), confirming that an Acceptance Certificate (as defined in the MSP Agreement) has been issued in respect of a First Unit.</p>	<p>n/a</p>	<p>n/a</p>	<p>The following amount per RRS Vehicle forming part of a First Unit:</p> <ul style="list-style-type: none"> • [REDACTED] in respect of a [REDACTED] RRS Vehicle; • [REDACTED] in respect of a [REDACTED] RRS Vehicle; • [REDACTED] in respect of a [REDACTED] RRS Vehicle; • [REDACTED] in respect of a [REDACTED] RRS Vehicle in [REDACTED]; and • [REDACTED] in respect of a [REDACTED] RRS Vehicle in [REDACTED] 	<p>No</p>
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<p>5a</p>	<p>Fitment of Vehicles</p>	<p>Submission of a certificate, signed by a statutory Director (or any other Franchisee Employee approved in writing by the Secretary of State), confirming that an Acceptance Certificate (as defined in the MSP Agreement) has been issued in respect of the applicable number of RRS Vehicles.</p>	<p>n/a</p>	<p>n/a</p>	<p>The following amount per RRS Vehicle accepted during the applicable Half Franchisee Year:</p> <ul style="list-style-type: none"> • [REDACTED] in respect of a [REDACTED] RRS Vehicle; • [REDACTED] in respect of a [REDACTED] RRS Vehicle; • [REDACTED] in respect of a [REDACTED] RRS Vehicle; • [REDACTED] in respect of a [REDACTED] Vehicle in [REDACTED]; and • [REDACTED] in respect of a [REDACTED] RRS Vehicle in [REDACTED], <p>but always excluding any RRS Vehicle which has already qualified for a</p>	<p>No</p>
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					payment pursuant to row 4 above.	
5b	Retention Initial Vehicles	Submission of a certificate, signed by a statutory Director (or any other Franchisee Employee approved in writing by the Secretary of State), confirming Go-Live in respect of [REDACTED] RRS Vehicles	n/a	n/a	<ul style="list-style-type: none"> • The following amount per RRS Vehicle that is part of the first [REDACTED] RRS Vehicles to be accepted in time: • [REDACTED] in respect of a [REDACTED] RRS Vehicle; • [REDACTED] in respect of a [REDACTED] RRS Vehicle; • [REDACTED] in respect of a [REDACTED] RRS Vehicle; • [REDACTED] in respect of a [REDACTED] RRS Vehicle in [REDACTED]; and • [REDACTED] in respect of a [REDACTED] RRS Vehicle in [REDACTED], 	

					but always excluding any RRS Vehicle which has already qualified for a payment pursuant to row 4 above.	
5c	Retention Remainder Vehicles	<p>Submission of a certificate, signed by a statutory Director (or any other Franchisee Employee approved in writing by the Secretary of State), confirming:</p> <p>(a) an Acceptance Certificate (as defined in the MSP Agreement) has been issued in respect of the applicable number of IORS Vehicle; and</p> <p>(b) Go-Live in respect of [REDACTED] or more RRS Vehicles.</p>	n/a	n/a	<p>The following amount per RRS Vehicle accepted during the Applicable Half Franchisee Year (and, in the case of the Half Franchisee Year in which Go-Live is achieved in respect of [REDACTED] RRS Vehicles, any RRS Vehicle accepted during any prior Half Franchisee Year):</p> <ul style="list-style-type: none"> • [REDACTED] in respect of a [REDACTED] RRS Vehicle; • [REDACTED] in respect of a [REDACTED] RRS Vehicle; • [REDACTED] in respect of a [REDACTED] RRS Vehicle; • [REDACTED] 	No

					<p>in respect of a [REDACTED] RRS Vehicle in [REDACTED]; and</p> <ul style="list-style-type: none"> • [REDACTED] in respect of a [REDACTED] RRS Vehicle in [REDACTED], <p>but always excluding any RRS Vehicle which has already qualified for a payment pursuant to either row 4 or row 5b above.</p>	
5d	Fitment on [REDACTED] Vehicles	Submission of a certificate, signed by a statutory Director (or any other Franchisee Employee approved in writing by the Secretary of State), confirming completion of the OTW installation works on all of the [REDACTED] Rolling Stock Class Type vehicles.	n/a	n/a	[REDACTED]	No
6a	Ongoing Operating Costs (1)	n/a	11 December 2016	14/10/17	[REDACTED]	No
6b	Ongoing Service Costs (2)	n/a	11 December 2016	End of the Franchise Period	[REDACTED]	No

<p>6c</p>	<p>[REDACTED] Costs</p>	<p>Submission of a certificate, signed by a statutory Director (or any other Franchisee Employee approved in writing by the Secretary of State), confirming the aggregate amount of any payments in the Reporting Period by the Franchisee in relation to the design, procurement, installation and commissioning of the OTW Solution on the [REDACTED]</p>	<p>n/a</p>	<p>n/a</p>	<p>[REDACTED] amounts payable in respect of the OTW Solution on the [REDACTED]</p>	<p>No</p>
<p>7</p>	<p>Train Unit Operating Cost</p>	<p>Submission of a certificate, signed by a statutory Director (or any other Franchisee Employee approved in writing by the Secretary of State), specifying the aggregate number of gateways fitted to the IORS Units at the start of the applicable Reporting Period</p>	<p>n/a</p>	<p>n/a</p>	<p>[REDACTED]</p>	<p>No</p>
<p>8a</p>	<p>Data and Claims</p>	<p>Submission of a Certificate by a statutory Director (or any other Franchisee Employee approved in writing by the Secretary of State) confirming for the Half Franchisee Year the aggregate amount of: (a) invoices in respect of Mobile Data; and</p>	<p>n/a</p>	<p>n/a</p>	<p>[REDACTED]</p>	<p>No</p>

		<p>[REDACTED]</p> <p>including in each case any invoices, costs or payments after the end of the Franchise Period that relate to the operation of the OTW Services during the Franchise Period.</p>				
8b	Miscellaneous Charges	<p>Submission of a Certificate by a statutory Director (or any other Franchisee Employee approved in writing by the Secretary of State):</p> <p>(a) confirming for the Half Franchise Year the aggregate amounts invoiced [REDACTED]</p> <p>(i) engineering costs incurred [REDACTED]</p> <p>(ii) any amounts invoiced after the end of the Franchise Period [REDACTED]</p> <p>(b) accompanied by evidence of the cost [REDACTED]</p>	n/a	n/a	[REDACTED]	No

APPENDIX 6 TO PART 1 OF SCHEDULE 6.1³⁰⁶

Installation Schedule

See attached

³⁰⁶ **08/12/2016 (Date of DOA)** – Contract insertion agreed by the Secretary of State and Franchisee.

Part 2 to Schedule 6.1**Miscellaneous Provisions****1. APPLICATION**

This Part 2 of this Schedule 6.1 sets out further terms which apply to the Committed Obligations set out in Part 1 (List of Committed Obligations) to this Schedule 6.1 and the references to Committed Obligations in this Part 2 of this Schedule 6.1 are only to the Committed Obligations in Part 1 (List of Committed Obligations) of this Schedule 6.1.

2. EXPENDITURE COMMITMENTS**Annual Expenditure**

- 2.1 Where Part 1 (List of Committed Obligations) to this Schedule 6.1 provides for the expenditure of an annual amount (or an amount over some other period) by the Franchisee, that amount:
- (a) is assessed net of Value Added Tax; and
 - (b) is the amount required to be expended by the Franchisee itself or procured by the Franchisee to be expended.

Expenditure Commitments in real amounts

- 2.2 All expenditure commitments set out in Part 1 (List of Committed Obligations) to this Schedule 6.1, to the extent they have not already been incurred by the Franchisee, shall be indexed by the Retail Prices Index (in the same way as variable costs are indexed in Schedule 8.2 (Annual Franchise Payments)).

Expenditure by the Infrastructure Manager

- 2.3 All amounts which the Franchisee has committed (whether unconditionally or otherwise) pursuant to Part 1 (List of Committed Obligations) to this Schedule 6.1 to expend in connection with improvements to track or Stations shall be in addition to any expenditure made by the Infrastructure Manager as part of its infrastructure improvements or maintenance programme to the extent such expenditure is not directly funded or reimbursed by the Franchisee.

3. LIAISON AND CO-OPERATION

Where the Franchisee is committed to liaison and co-operation under Part 1 (List of Committed Obligations) to this Schedule 6.1, it shall participate actively in the relevant measures including through the application of management time and internal resources, correspondence and attendance at meetings, in each case as the Franchisee reasonably considers in all the circumstances to be an appropriate use of its resources and effective to help achieve the relevant objective.

4. NATURE OF COMMITMENT

- 4.1 Any commitment in terms of Part 1 (List of Committed Obligations) to this Schedule 6.1 shall be in addition to any obligation of the Franchisee elsewhere in this Agreement and nothing in this Schedule 6.1 shall limit or restrict an obligation imposed on the Franchisee elsewhere in this Agreement.

- 4.2 Where in Part 1 (List of Committed Obligations) to this Schedule 6.1, references are made to particular manufacturers or suppliers of equipment or services, the Franchisee may fulfil its relevant commitment by using reasonable equivalents.
- 4.3 Each commitment under this Schedule 6.1 shall come to an end on expiry of the Franchise Term for whatever reason.

5. REVIEW OF COMPLIANCE

- 5.1 Progress with Committed Obligations is an agenda item for Franchise Performance Meetings and the Franchisee shall ensure that at such meetings, the Secretary of State is given such progress reports as he may reasonably request.
- 5.2 In addition to its obligation under paragraph 6.1, the Franchisee shall from time to time promptly provide such evidence of its compliance with any Committed Obligation as the Secretary of State may reasonably request.

6. LATE COMPLETION OR NON-DELIVERY OF COMMITTED OBLIGATIONS

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

7. CONSENTS

- 7.1 Where, in delivering a Committed Obligation, the Franchisee is required to obtain one or more consents, the Franchisee shall use all reasonable endeavours to obtain such consents. If the Franchisee is unable to obtain the relevant consent or the proposed terms upon which the relevant consent would be granted would, in the reasonable opinion of the Franchisee, be likely to prejudice the financial and/or commercial viability of delivering the Committed Obligation, the Franchisee may apply to the Secretary of State for the approval referred to in paragraph 7.2. For the purposes of this paragraph 1, the expression "**consent**" shall mean those approvals, authorisations, consents, derogations, exemptions, licences, permissions, and registrations which are required by Law or any contract to which the Franchisee is a party (including TVM Consents and Automatic Ticket Gate Consents), to be obtained by the Franchisee in connection with the delivery of a Committed Obligation.
- 7.2 The Secretary of State's approval for the purposes of paragraph 7.2 is his approval for the Franchisee to modify the relevant Committed Obligation so as to deliver a scheme which would give rise to benefits to passengers using the Passenger Services similar to (but not necessarily the same as) those benefits which would have arisen if the Franchisee delivered the relevant Committed Obligation. The modifications to the relevant Committed Obligation shall be agreed between the Franchisee and the Secretary of State or failing such agreement shall be reasonably determined by the Secretary of State. The approval of the Secretary of State may not be unreasonably withheld.
- 7.3 If the Secretary of State gives his approval pursuant to paragraph 7.2 in respect of a Committed Obligation, then to the extent that the Franchisee delivers the modified Committed Obligation by the date agreed between the Franchisee and the Secretary of State, or failing such agreement by the date reasonably determined by the Secretary of State, the Franchisee shall not be in breach of the Franchise Agreement.

8. Underspend

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

8.3³⁰⁷ Notwithstanding that paragraphs 8.1 and 8.2 shall not apply to the Committed Obligation set out in paragraph 22 of Part 1 (Committed Obligations) to this Schedule 6.1, where in relation to the Staplehurst RV Asset Committed Obligation at paragraph 22 of Part 1 (Committed Obligations) to this Schedule 6.1 the Franchisee is able to achieve that stated objective and its capital expenditure is less than 85% of the full amount referred to in such Staplehurst RV Asset Committed Obligation, the Franchisee shall provide to the Secretary of State any additional evidence required by the Secretary of State relating to the actual costs incurred in carrying out the Staplehurst RV Asset Committed Obligation on an open book basis including without limitation the costs and specifications of any assets, good and materials procured by the Franchisee. Prior to the relevant Certificate of Completion being issued in accordance with paragraph 13.3 of Schedule 14.4 (Designation of Franchise Assets) such information must demonstrate to the Secretary of State's reasonable satisfaction that the efficiencies in expenditure have been achieved without having a material detriment to the quality of the Staplehurst RV Asset being delivered.

³⁰⁷ 19/09/2017 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

SCHEDULE 6.2**South Eastern Franchise Specific Provisions****1. Crossrail**

- 1.1 For the purpose of facilitating the continued effective and efficient operation of Abbey Wood Station after it transfers to the Crossrail Operator the Franchisee shall:
- (a) record all information in respect of Abbey Wood Station separately including separate station staff allocation in relation to Abbey Wood Station;
 - (b) from the Start Date implement such financial reporting systems as are reasonably required by the Secretary of State for the purpose of identifying the costs associated with the operation of Abbey Wood Station from the date specified by the Secretary of State;
 - (c) ensure that Abbey Wood Station and all systems of whatever nature used for the purposes of the Franchise Services at Abbey Wood Station are capable of being transferred in an efficient and cost effective manner to the Crossrail Operator on the date for such transfer;
 - (d) efficiently and effectively plan, project manage and implement the transfer of Abbey Wood Station in accordance with the timescales of the Crossrail Programme as they might be varied from time to time including, without limitation, by making all necessary arrangements for the transfer of relevant Franchise Employees to the Crossrail Operator and the separation and transfer of relevant ticket retailing and information distribution and broadcast systems, IT servers and networks including any transitional arrangements reasonably required for such separation or transfer;
 - (e) engage in such "shadow running" and testing of systems, services and operational plans as the Secretary of State may reasonably specify for the purposes of assisting the effective delivery of the Crossrail Programme and the efficient handover of the Abbey Wood Station to the Crossrail Operator;
 - (f) act fairly, reasonably and in good faith for the purpose of agreeing a consequent fair and reasonable transfer of relevant assets and resources in relation to the Abbey Wood Station to the Crossrail Operator.
- 1.2 The Franchisee shall fully and effectively co-operate with the Secretary of State in connection with the transfer of Abbey Wood Station. Accordingly if so requested by the Secretary of State the Franchisee shall:
- (a) provide the Secretary of State (or any of his advisers, employees, representatives, nominees or agents) with such information, reports and analysis as the Secretary of State (or any of his advisers, employees, representatives, nominees or agents) may require. This may include without limitation:

- (i) operational and financial information, data, reports and analysis (health and safety and environmental information, information about Franchise Employees employed in relation to the carrying out of the Franchise Services from Abbey Wood Station, information about Franchise Employees employed as cleaning staff, information about relevant real property and Network Rail charges and performance data);
 - (ii) terms and conditions of relevant Franchise Employees and human resources policies;
 - (iii) any other relevant information as the Secretary of State (or any of his advisers, employees, representatives, nominees or agents) may specify from time to time.
 - (b) provide access to Abbey Wood Station and other facilities to the Secretary of State (or any of its advisers, employees, representatives, nominees or agents).
- 1.3 The Franchisee shall comply with the reasonable requirements of the Secretary of State in relation to the implementation of all aspects of the Crossrail Programme (including through co-operation with Network Rail, the Crossrail Operator, Crossrail Limited and TfL as directed by the Secretary of State) where such implementation involves an interface with any railway infrastructure used in relation to the Franchise Services or is otherwise related to the Franchise Services.
- 1.4 The Franchisee's obligations pursuant to this paragraph 1.4 shall include:
- (a) upon reasonable notice, attending meetings with the Secretary of State, TfL, Network Rail, the Crossrail Operator and other relevant bodies specified by the Secretary of State to discuss and provide an opinion on any relevant issues;
 - (b) providing information, data, reports and analysis reasonably required by the Secretary of State in relation to assessing the implications of relevant aspects of the implementation of the Crossrail Programme including the transfer of Abbey Wood Station; and
 - (c) reviewing and commenting on implementation timetable and programme for the transfer of the Crossrail Station or relevant aspects of the implementation of the Crossrail Programme.
- 1.5 The Franchisee:
- (a) shall complete the Crossrail Transfer Agreements such that they are effective from 01.59 on 10 December 2017 (or such other date as the Secretary of State shall specify) including by entering into the Crossrail Business Transfer Agreement;
 - (b) act fairly, reasonably and in good faith for the purpose of agreeing the transfer of any other Franchise Assets to the Crossrail Operator and TfL as may be reasonably required by the Secretary of State or (if directed by the Secretary of State) by TfL prior to 10 December 2017 at a cost which reflects the net book value of such Franchise Assets);

- (c) shall not without the prior written permission of the Secretary of State enter into any contracts, agreements or arrangements in relation to Abbey Wood Station (including the Station Lease) where such contracts are not capable of being terminated on or before the Crossrail Transfer Date; and
- (d) prior to the Crossrail Transfer Date, shall act reasonably and in good faith and co-operate with the Crossrail Operator's reasonable requirements to facilitate the mobilisation of the Crossrail Operator including permitting reasonable access by the Crossrail Operator to relevant employees for briefing and training purposes.

1.6 The Franchisee shall:

- (a) fully and effectively co-operate with Network Rail or any other station lessor for the purposes of facilitating the efficient achievement of the enhancement and rebuilding programme at all relevant stations served by the Passenger Services and affected by the Crossrail Programme (including the Abbey Wood Station) in accordance with the timescales for the Crossrail Programme as they might be varied from time to time and act reasonably in relation to station change and network change processes including through reasonable co-operation with the Crossrail Operator, TfL and Rail for London;
- (b) fully and effectively co-operate with the Secretary of State, TfL, Network Rail, Rail for London, the Crossrail Operator and other relevant bodies specified by the Secretary of State for the purpose of developing and implementing plans for the enhancement and rebuilding of relevant stations served by the Passenger Services in connection with the Crossrail Programme;
- (c) in connection with the installation and maintenance of certain equipment at the Abbey Wood Station for the purposes of the operation of the Crossrail Programme (including in relation to driver only operation), grant reasonable access to such station to TfL, Rail for London or the Crossrail Operator and co-operate in relation to such installation and maintenance;
- (d) prior to the transfer of the Abbey Wood Station to the Crossrail Operator not change the:
 - (i) number of Franchise Employees employed at the Abbey Wood Station (including Franchise Employees whose duties extend to other stations) from the number at the Start Date without the prior consent of the Secretary of State;
 - (ii) terms and conditions of Franchise Employees employed at Abbey Wood Station (including Franchise Employees whose duties extend to other stations) except where such changes are made to the terms and conditions of all Franchise Employees of the relevant grade or category or are a result of a properly conducted promotion process without the prior consent of the Secretary of State;
 - (iii) identity of the Franchise Employees employed at Abbey Wood Station (including Franchise Employees whose duties

extend to other stations) other than for reasonable business reasons unconnected to the transfer of Abbey Wood Station to the Crossrail Operator without the prior consent of the Secretary of State;

- (e) consult with the Secretary of State in relation to any proposals that it may have to change the number, terms and conditions or the identity of Franchise Employees employed at Abbey Wood Station (in all cases including Franchise Employees whose duties extend to other stations);
- (f) take no actions or steps which is or are designed, directly or indirectly to prevent, prejudice, or frustrate:
 - (i) the transfer of Abbey Wood Station to the Crossrail Operator (including by acting in a manner that unreasonably increases the liability transferring to the Crossrail Operator pursuant to the Transfer of Undertakings (Protection of Employment) Regulations 2006);
 - (ii) the letting of a franchise agreement or concession agreement in relation to the operation of the Crossrail Programme; or
 - (iii) the implementation of the Crossrail Programme.

1.7 The Secretary of State shall have the right to notify the Franchisee that specified rights of the Secretary of State pursuant to this paragraph 1 shall be exercisable by TfL on his behalf and the Franchisee shall be required to act and perform its obligations accordingly. In the event such notification has been given and the Franchisee believes that:

- (a) there is any conflict between instructions received from TfL and instructions received from the Secretary of State; or
- (b) instructions received from TfL are inconsistent with the terms of this Agreement,

the Franchisee shall notify the Secretary of State forthwith identifying the conflict or inconsistency. The Franchisee shall act in accordance with instructions received from the Secretary of State in relation to any such matter. The Franchisee shall not be liable for any failure to act in accordance with the instructions of TfL where such a conflict or inconsistency is established to the extent that such failure was a consequence of such conflict or inconsistency.

2. British Transport Police Accommodation

2.1 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.

2.2 The Franchisee shall:

- (a) work in partnership with the British Transport Police to assess and review regularly the security and crime risk at all Stations and across the franchise generally;
- (b) work with the British Transport Police to:
 - (i) reduce crime on the railway;
 - (ii) reduce minutes lost to police-related disruption;
 - (iii) increase passenger confidence with personal security on train and on station;
- (c) co-operate with the British Transport Police to provide the British Transport Police 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. The Franchisee shall consult with the British Transport Police as to its requirements in relation to such records and/or systems and shall ensure that the British Transport Police has access to such records and/or systems within 12 months of the Start Date.

2.3 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.

3. Stations

The Franchisee with co-operate with the promoters of any new stations within the Franchise area and act reasonably and in good faith in its engagement with them in relation to the development of such new stations.

4. REBS

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

5. THAMESLINK**CO-OPERATION WITH AND TRANSFER TO THE THAMESLINK PROGRAMME**

- 5.1 The Franchisee shall take no actions or steps which is or are designed, directly or indirectly to prevent, prejudice, or frustrate:
- (a) the letting of a franchise agreement or concession agreement in relation to the operation of the Thameslink Programme; or
 - (b) the implementation of the Thameslink Programme; or
 - (c) the transfer of the Thameslink Stations to the FCC Franchise (or any successor operator) (including by acting in a manner that unreasonably increases the liability transferring to the TSGN Operator pursuant to the Transfer of Undertakings (Protection of Employment) Regulations 2006).
- 5.2 The Franchisee shall fully and effectively co-operate with the Secretary of State in connection with the transfer of the Thameslink Stations and the implementation of the Thameslink Programme. Accordingly if so requested by the Secretary of State the Franchisee shall:
- (a) provide the Secretary of State (or any of his advisers, employees, representatives, nominees or agents) with such information, reports and analysis as the Secretary of State (or any of his advisers, employees, representatives, nominees or agents) may require. This may include without limitation:
 - (i) operational and financial information, data, reports and analysis (health and safety and environmental information, information about Franchise Employees employed in relation to the carrying out of the Franchise Services from the Thameslink Stations, information about Franchise Employees employed as cleaning staff, information about relevant real property and Network Rail charges and performance data);
 - (ii) information in relation to planning, timetabling, diagramming and operation of the Franchise Services
 - (iii) terms and conditions of relevant Franchise Employees and human resources policies; and
 - (iv) any other relevant information as the Secretary of State (or any of his advisers, employees, representatives, nominees or agents) may specify from time to time; and
 - (b) provide access to the Thameslink Stations and other facilities to the Secretary of State (or any of his advisers, employees, representatives, nominees or agents) including access accompanied by representatives of the TSGN Operator and their advisers.
- 5.3 The Franchisee shall comply with the reasonable requirements of the Secretary of State in relation to the implementation of all aspects of the Thameslink Programme (including through co-operation with Network Rail and/or the TSGN Operator) where such implementation involves an interface with any railway

infrastructure used in relation to the Franchise Services or is otherwise related to the Franchise Services.

- 5.4 The Franchisee's obligations pursuant to paragraph 5.3 shall include:
- (a) upon reasonable notice, attending meetings with the Secretary of State, Network Rail, the TSGN Operator and other relevant bodies specified by the Secretary of State to discuss and provide an opinion on any relevant issues;
 - (b) providing information, data, reports and analysis reasonably required by the Secretary of State in relation to assessing the implications of relevant aspects of the implementation of the Thameslink Programme including the transfer of Thameslink Stations; and
 - (c) reviewing and commenting on implementation timetable and programme for the transfer of the Thameslink Stations or relevant aspects of the implementation of the Thameslink Programme.
- 5.5 For the purpose of facilitating the continued effective and efficient operation of Thameslink Stations after they transfer to the TSGN Operator the Franchisee shall:
- (a) record all information in respect of the Thameslink Stations separately including separate station staff allocation in relation to Thameslink Stations;
 - (b) from the Start Date implement such financial reporting systems as are reasonably required by the Secretary of State for the purpose of identifying the costs associated with the operation of the Thameslink Stations from the date specified by the Secretary of State;
 - (c) ensure that the Thameslink Stations and all systems of whatever nature used for the purposes of the Franchise Services at the Thameslink Stations are capable of being transferred in an efficient and cost effective manner to the TSGN Operator on the date for such transfer;
 - (d) efficiently and effectively plan, project manage and implement the transfer of the Thameslink Stations in accordance with the timescales of the Thameslink Programme as they might be varied from time to time including, without limitation, by making all necessary arrangements for the transfer of relevant Franchise Employees to the TSGN Operator and the separation and transfer of relevant ticket retailing and information distribution and broadcast systems, IT servers and networks including any transitional arrangements reasonably required for such separation or transfer;
 - (e) engage in such "shadow running" and testing of systems, services and operational plans as the Secretary of State may reasonably specify for the purposes of assisting the effective delivery of the Thameslink Programme and the efficient handover of the Thameslink Stations to the TSGN Operator;
 - (f) act fairly, reasonably and in good faith for the purpose of agreeing a consequent fair and reasonable transfer of relevant assets and

resources in relation to the Thameslink Stations to the TSGN Operator.

- 5.6 Subject to paragraph 5.7, the Franchisee shall by the Thameslink Transfer Date (or such other earlier or later date as the Secretary of State may otherwise direct) either:
- (a) surrender its rights in respect of each station lease to which it is a party for the Thameslink Stations ("**Thameslink Station Leases**"); or
 - (b) novate or assign each Thameslink Station Lease to the TSGN Operator,

and in either case on such terms as approved by the Secretary of State.

- 5.7 The Parties agree and acknowledge that the Franchisee's obligation under paragraph 5.6 is subject to:
- (a) the TSGN Operator agreeing to the novation or assignment of the Thameslink Station Leases;
 - (b) the counterparty to the Thameslink Stations Leases agreeing to any such surrender, assignment or novation (as the case maybe),

and the Franchisee shall use all reasonable endeavours to obtain the agreement of those parties required under paragraph 5.7.

- 5.8 The Franchisee shall:
- (a) act fairly, reasonably and in good faith for the purpose of agreeing the transfer of any other Franchise Assets to the TSGN Operator as may be reasonably required by the Secretary of State prior to the Thameslink Transfer Date at a cost which reflects the net book value of such Franchise Assets) and on such terms as approved by the Secretary of State;
 - (b) shall not without the prior written permission of the Secretary of State enter into any contracts, agreements or arrangements in relation to Thameslink Stations (including the Station Leases) where such contracts are not capable of being terminated on or before the Thameslink Transfer Date;
 - (c) prior to the Thameslink Transfer Date, shall act reasonably and in good faith and co-operate with the TSGN Operator's reasonable requirements to facilitate the mobilisation of the TSGN Operator or including permitting reasonable access by the TSGN Operator to relevant employees for briefing and training purposes;
 - (d) prior to the transfer of the Thameslink Stations to the TSGN Operator not change the:
 - (i) number of Franchise Employees employed at the Thameslink Stations (including Franchise Employees whose duties extend to other stations) by more than five per cent (whether by increase or decrease) from the net number at

the Start Date without the prior consent of the Secretary of State;

- (ii) terms and conditions of Franchise Employees employed at the Thameslink Stations (including Franchise Employees whose duties extend to other stations) except where such changes are made to the terms and conditions of all Franchise Employees of the relevant grade or category or are a result of a properly conducted promotion process without the prior consent of the Secretary of State; and
 - (iii) identity of the Franchise Employees employed at the Thameslink Stations (including Franchise Employees whose duties extend to other stations) other than for reasonable business reasons unconnected to the transfer of the Thameslink Stations to the TSGN Operator without the prior consent of the Secretary of State; and
- (e) consult with the Secretary of State in relation to any proposals that it may have to change the number, terms and conditions or the identity of Franchise Employees employed at the Thameslink Stations (in all cases including Franchise Employees whose duties extend to other stations).

Thameslink KO0 Trading Agreements

5.9 The Franchisee agrees and undertakes to:

- (a) observe and comply with all the conditions and obligations on its part contained in each Thameslink KO0 Trading Agreement;
- (b) agree, and take all steps which may be required to implement, any amendment to any Thameslink Trading KO0 Agreement as the Secretary of State may direct from time to time;
- (c) take all such steps as may be required to terminate each or any Thameslink KO0 Trading Agreement as the Secretary of State may direct from time to time;
- (d) except as otherwise directed by the Secretary of State, not vary, agree to vary, waive performance of, terminate or in any other way deal with or change the terms of any Thameslink KO0 Trading Agreement without the prior consent of the Secretary of State; and
- (e) to enter into replacement Thameslink KO0 Trading Agreements on materially the same commercial terms with, the TSGN Operator, except to the extent that the Secretary of State otherwise directs.

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

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

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

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5.12 **[REDACTED³⁰⁸]**

5.13 ³⁰⁹ **[REDACTED³¹⁰]**

³⁰⁸ **Date of redaction 03/07/2017 - Where text has been omitted from the document this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.**

³⁰⁹ **08/09/2017 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.**

³¹⁰ **Date of redaction 03/07/2017 - Where text has been omitted from the document this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.**

6. Thameslink Lead Operator

6.1 The Franchisee:

- (a) acknowledges that:
 - (i) the Thameslink Passenger Services are to transfer to the TSGN Operator; and
 - (ii) the TSGN Operator may, subject to the application of the terms of the Ticketing and Settlement Agreement, become the Lead Operator for some, or all of the flows, comprised within the Thameslink Passenger Services (at least in respect of those flows where the TSGN Operator is the principle revenue earner) for the purpose of the Ticketing and Settlement Agreement upon such transfer; and
- (b) shall co-operate with the Secretary of State and the TSGN Operator and provide all assistance required to change the identity of the Lead Operator under the terms of the Ticketing and Settlement Agreement for the relevant flows comprised within the Thameslink Passenger Services prior to the date of transfer of such Thameslink Passenger Services.

7. Qualifying Changes

The parties agree and acknowledge that if the circumstances set out in limbs (aa) and/or (bb) of the definition of Change occur, such circumstances will constitute a Qualifying Change for the purpose of Schedule 9 (Change) irrespective of whether the Threshold Amount is exceeded.

8. Transparency and Engagement Strategy

- 8.1 The Franchisee shall prepare, maintain and implement a Customer and Stakeholder Engagement Strategy which sets out how the Franchisee will maintain customer satisfaction and the NRPS Benchmarks for the Franchise Period and the Franchisee shall publish its Customer and Stakeholder Engagement Strategy on the Franchisee's website and sending a copy, free of charge, to any person who requests it.
- 8.2 The Franchisee shall undertake consultations with passengers, potential passengers and other users of the rail network in accordance with, and shall otherwise comply with, the Customer and Stakeholder Strategy.
- 8.3 The Franchisee shall:
 - (a) by no later than the Start Date; and
 - (b) thereafter at least every 6 months,

publish the Customer Report (on the Franchisee's website and making hard copies available free of charge to any person who requests such a copy) in accordance with the Customer and Stakeholder Engagement Strategy and such Customer Report shall include in addition to the requirements of the Customer and Stakeholder Engagement Strategy:

- (c) the number of complaints per 1000 passengers (separated into type of complaint categories in line with ORR guidance) for the last 6 month period;
- (d) ticket offices planned and actual opening hours over the last 6 month period (including the percentage of planned opening hours against the actual opening hours for such period across the network) and any stations which were left unmanned of a period of over 4 hours (where such incident was not planned in advance);
- (e) the availability of ticket vending machines across the network for the last 6 month period (including the percentage of ticket vending machines that were available and operational against the total number of ticket vending machines on the network).

8.4 The Franchisee shall:

- (a) undertake and complete a review of its Customer and Stakeholder Engagement Strategy each Franchisee Year; and
- (b) provide the Secretary of State with any proposed revisions to the Customer and Stakeholder Engagement Strategy arising out of such review by no later than the end of each such Franchisee Year,

8.5 To update the Customer and Stakeholder Engagement Strategy to reflect lessons learned in the period since the Start Date or the previous review of the Customer and Stakeholder Engagement Strategy (as applicable) and to ensure that the Customer and Stakeholder Engagement Strategy achieves effective passenger engagement. Any revisions to the Customer and Stakeholder Engagement Strategy shall require the consent of the Secretary of State (such consent not to be unreasonably withheld or delayed).

9. Publication of Public Performance Measure Information

9.1 The Franchisee shall, within six Months of the Start Date, Publish the statistics in relation to its Public Performance Measure to such level of disaggregation (including by Route or Service Group) as is reasonably specified by the Secretary of State. The initial relevant level of disaggregation from the Start Date shall be:

- (a) Bexleyheath Line;
- (b) Bromley South Line;
- (c) Hayes Line;
- (d) Sevenoaks Line;
- (e) Sidcup Line;
- (f) Greenwich Line;
- (g) Ashford Line;
- (h) Chatham Line;
- (i) Hastings Line;

- (j) Maidstone East Line;
- (k) Medway Valley Line; and
- (l) High Speed Line.

9.2 For the purposes of this paragraph 4:

"Publish" means making the relevant information available upon request in one or more booklets or in similar form at Stations and displaying such information on information displays at all Stations and/or on the Franchisee's website; and

"Public Performance Measure" means the public performance measure as produced and/or published by Network Rail and/or the ORR.

APPENDIX TO SCHEDULE 6.2

CROSSRAIL BUSINESS TRANSFER AGREEMENT

See the appended document

SCHEDULE 7

Performance Benchmarks

Schedule 7.1: Performance Benchmarks

**Appendix 1: Cancellations and Annual Cancellations
Benchmark Tables**

**Appendix 2: TOC Minute Delay and Annual TOC Minute
Delay Benchmark Tables**

Appendix 3: Capacity Benchmark Table

Schedule 7.2: National Rail Passenger Surveys

Appendix 1: NRPS Benchmark Table

SCHEDULE 7.1

Performance Benchmarks

1. Benchmarks and Annual Benchmarks

Location and amendment of Benchmarks and Annual Benchmarks

- 1.1 The Cancellations Benchmarks are set out in the table in Part 1 (Cancellations Benchmark Table) of Appendix 1 (Cancellations Benchmarks and Annual Cancellations Benchmarks) to this Schedule 7.1.
- 1.2 The Annual Cancellations Benchmarks are set out in the table in Part 2 (Annual Cancellations Benchmark Table) of Appendix 1 (Cancellations Benchmarks and Annual Cancellations Benchmarks) to this Schedule 7.1.
- 1.3 The Capacity Benchmarks are set out in the table in Appendix 2 (Capacity Benchmark Table) to this Schedule 7.1.
- 1.4 The TOC Minute Delay Benchmarks are set out in the table in Part 1 (TOC Minute Delay Benchmark Table) of Appendix 3 (TOC Minute Delay Benchmarks and Annual TOC Minute Delay Benchmarks) to this Schedule 7.1.
- 1.5 The Annual TOC Minute Delay Benchmarks are set out in the table in Part 2 (Annual TOC Minute Delay Benchmark Table) of Appendix 3 (TOC Minute Delay Benchmarks and Annual TOC Minute Delay Benchmarks) to this Schedule 7.1.
- 1.6 The Secretary of State may at any time after a Charging Review vary, on giving not less than three months' notice in writing, any of the Benchmarks and/or the Annual Benchmarks to reflect the Secretary of State's reasonable view of the performance trajectory set as part of such Charging Review. Where the Secretary of State exercises his right pursuant to this paragraph 1.6, the relevant Benchmark Tables and/or Annual Benchmark Tables shall be deemed to have been amended accordingly.

2. Information Provisions

Cancellations Benchmarks and Annual Cancellations Benchmarks

- 2.3 At the end of each Reporting Period, the Franchisee shall, in accordance with the relevant requirements of Appendix 3 (Operational Information) to Schedule 13 (Information and Industry Initiatives), report to the Secretary of State;
 - (a) the total number of Cancellations and Partial Cancellations in that Reporting Period;
 - (b) the total number of Disputed Cancellations and Disputed Partial Cancellations in that Reporting Period;
 - (c) the total number of Infrastructure Manager Cancellations and Infrastructure Manager Partial Cancellations in that Reporting Period;

- (d) the total number of Disputed Cancellations and Disputed Partial Cancellations from the 12 preceding Reporting Periods for which the attribution remains in dispute; and
- (e) the total number of Disputed Cancellations and Disputed Partial Cancellations for which the disputed attribution has been resolved since the Franchisee's last report pursuant to this paragraph 2.1 (including whether each relevant Disputed Cancellation and/or Disputed Partial Cancellation was attributed to Network Rail or to the Franchisee).

2.4 For each Reporting Period, the Secretary of State shall calculate a moving annual average of the Franchisee's performance against the Cancellations Benchmark in accordance with the following formula:

$$\frac{A + D}{13}$$

where:

A is ascertained as follows:

$$\frac{B}{C} \times 100$$

where:

B is the total number of Cancellations or Partial Cancellations of Passenger Services in that Reporting Period, on the basis that:

- (a) Cancellation shall count as 1;
- (b) a Partial Cancellation shall count as 0.5; and
- (c) any Cancellations or Partial Cancellations during that Reporting Period which were caused by:
 - (i) the Franchisee's implementation of a Service Recovery Plan during that Reporting Period; or
 - (ii) the occurrence or continuing effect of a Force Majeure Event,

shall, if the Franchisee has complied with paragraph 4, be disregarded in determining such total number;

C is the total number of Passenger Services scheduled to be operated in the Enforcement Plan of the Day for that Reporting Period, disregarding, if the Franchisee has complied with paragraph 4, any Cancellations or Partial Cancellations during that Reporting Period which were caused by:

- (a) the Franchisee's implementation of a Service Recovery Plan during that Reporting Period; or
- (b) the occurrence or continuing effect of a Force Majeure Event; and

D is the sum of the values of A in each of the 12 preceding Reporting Periods.

2.5 At the end of each Performance Calculation Year the Secretary of State shall calculate a moving annual average of the Franchisee's performance against the Annual Cancellations Benchmark in accordance with the following formula:

$$\text{ACTUAL}_C = \frac{\sum A}{B}$$

where:

ACTUAL_C is the moving annual average of the Franchisee's performance against the Annual Cancellations Benchmark for that Performance Calculation Year;

$\sum A$ is the sum of the values of A as determined in accordance with paragraph 2.2 for each Reporting Period in that Performance Calculation Year; and

B is in respect of a Performance Calculation Year consisting of 13 Reporting Periods, 13 and in respect of a Performance Calculation Year consisting of less than 13 Reporting Periods, the number of Reporting Periods in such Performance Calculation Year.

2.6 Where there are any Disputed Cancellations and/or Disputed Partial Cancellations at the end of a Reporting Period and/or a Performance Calculation Year (as applicable) the Secretary of State shall, for the purpose of performing the calculations referred to in paragraphs 2.2 and/or 2.3 allocate any Disputed Cancellations and/or Disputed Partial Cancellations between the Franchisee and Network Rail in the proportions of:

A to B

where

A is the total number of undisputed Cancellations and/or Partial Cancellations (that is, which are not Disputed Cancellations or Disputed Partial Cancellations) from the 12 preceding Reporting Periods including any Disputed Cancellations or Disputed Partial Cancellations which were resolved or determined (and attributed to the Franchisee) during such 12 preceding Reporting Periods; and

B is the total number of undisputed Infrastructure Manager Cancellations and/or Infrastructure Manager Partial Cancellations (that is, which are not Disputed Cancellations or Disputed Partial Cancellations) from the 12 preceding Reporting Periods including any Disputed Cancellations or Disputed Partial Cancellations which were resolved or determined (and attributed to Network Rail) during such 12 preceding Reporting Periods.

Capacity Benchmarks

- 2.7 At the end of each Reporting Period the Franchisee shall, in accordance with the relevant requirements of Appendix 3 (Operational Information) to Schedule 13 (Information and Industry Initiatives), report to the Secretary of State the total number of Passenger Services in that Reporting Period operated in the Peak with less than the Passenger Carrying Capacity specified for each such Passenger Service in the Train Plan. For the purposes of this Schedule 7.1 and Appendix 3 (Operational Information) to Schedule 13 (Information and Industry Initiatives) only a Passenger Service is operated in the Peak if:
- (a) it is timetabled to arrive at London Charing Cross, London Waterloo East, London Blackfriars, London Bridge, London Cannon Street, St Pancras International or London Victoria during the Morning Peak; or
 - (b) it is timetabled to depart from London Charing Cross, London Waterloo East, London Blackfriars, London Bridge, London Cannon Street, St Pancras International or London Victoria during the Evening Peak.
- 2.8 ³¹¹ ***For each Reporting Period, the Secretary of State shall calculate a moving annual average of the Franchisee's performance against the Capacity Benchmark in accordance with the following formula:***

$$\frac{A + D}{13}$$

where:

A ***is ascertained as follows:***

$$\frac{B}{C} \times 100$$

where:

B ***is the total number of Passenger Services in that Reporting Period operated in the Peak with Passenger Carrying Capacity that is more than 35 seats per Peak Mainline Passenger Service (excluding any High Speed Passenger Service) and 35 capacity per Peak Metro Passenger Service less than the Passenger Carrying Capacity specified for each such Passenger Service in the Train Plan, disregarding any such Passenger Services which were operated in the Peak in that way as a result of:***

- (a) ***the Franchisee's implementation of a Service Recovery Plan during that Reporting Period; or***
- (b) ***the occurrence or continuing effect of a Force Majeure Event;***

C ***is the total number of Passenger Services scheduled to be operated in the Peak in that Reporting Period, disregarding, if the Franchisee has complied with paragraph 4, any Passenger***

³¹¹ Date of change: 09/12/2014

Services operated with less Passenger Carrying Capacity than the passenger carrying capacity specified for each such Passenger Service in the Train Plan as a result of:

- (a) **the Franchisee's implementation of a Service Recovery Plan during that Reporting Period; or**
- (b) **the occurrence or continuing effect of a Force Majeure Event; and**

D is the sum of the values of A in each of the 12 preceding Reporting Periods.

- 2.9 If and to the extent that any Passenger Service is operated in the Peak with Passenger Carrying Capacity in excess of the Passenger Carrying Capacity specified for that Passenger Service in the Train Plan, the excess capacity shall be disregarded for the purposes of the calculation referred to in paragraph 2.6.
- 2.10 Any Passenger Service that is the subject of a Cancellation or a Partial Cancellation shall be disregarded altogether for the purpose of the calculations referred to in paragraph 2.6.

TOC Minute Delay Benchmarks and Annual TOC Minute Delay Benchmarks

- 2.11 At the end of each Reporting Period the Franchisee shall, in accordance with the relevant requirements of Appendix 3 (Operational Information) to Schedule 13 (Information and Industry Initiatives), report to the Secretary of State:
- (a) the total number of Minutes Delay:
 - (i) in that Reporting Period attributable to the Franchisee;
 - (ii) in that Reporting Period for which the attribution is in dispute between Network Rail and the Franchisee;
 - (iii) from the 12 preceding Reporting Periods for which the attribution remains in dispute; and
 - (iv) from the 12 preceding Reporting Periods for which disputed attributions have been resolved or determined since the Franchisee's last report pursuant to this paragraph 2.9, and the number of such Minutes Delay attributed to each of the Franchisee and Network Rail as a result of such resolution or determination; and
 - (b) the aggregate Train Mileage operated in that Reporting Period.
- 2.12 For each Reporting Period, the Secretary of State shall calculate a moving annual average of the Franchisee's performance against the TOC Minute Delay Benchmark in accordance with the following formula:

$$\frac{A}{D}$$

where:

A is the sum of the number of Minutes Delay that are attributable to the Franchisee:

- (i) in such Reporting Period; and
- (ii) in the 12 preceding Reporting Periods;

D is ascertained as follows:

$$\frac{B}{1000}$$

Where:

B is the sum of the actual Train Mileage operated by the Franchisee:

- (i) in such Reporting Period; and
- (ii) in the 12 preceding Reporting Periods.

2.13 At the end of each Performance Calculation Year the Secretary of State shall calculate a moving annual average of the Franchisee's performance against the Annual TOC Minute Delay Benchmark in accordance with the following formula:

$$ACTUAL_{MD} = \frac{AA}{AD}$$

where:

ACTUAL_{MD} is the Franchisee's performance against the Annual TOC Minute Delay Benchmark for that Performance Calculation Year;

AA is the sum of the number of Minutes Delay that are attributable to the Franchisee in each Reporting Period in that Performance Calculation Year; and

AD is ascertained as follows:

$$\frac{AB}{1000}$$

where:

AB is the sum of the actual Train Mileage operated by the Franchisee in each Reporting Period in that Performance Calculation Year.

2.14 In performing the calculations pursuant to paragraphs 2.10 and/or 2.11, the Secretary of State shall disregard any Minutes Delay that are caused by the occurrence or continuing effect of a Force Majeure Event.

- 2.15 Where the attribution of any Minutes Delay is in dispute between Network Rail and the Franchisee at the end of a Reporting Period and/or a Performance Calculation Year (as applicable) the Secretary of State shall, for the purpose of performing the calculations referred to in paragraphs 2.10 and/or 2.11, allocate any disputed Minutes Delay between the Franchisee and Network Rail in the proportions of:

A to B

where:

- A is the total number of undisputed Minutes Delay from the 12 preceding Reporting Periods that are attributable to the Franchisee including any disputed attributions which were resolved or determined during such 12 preceding Reporting Periods; and
- B is the total number of undisputed Minutes Delay from the 12 preceding Reporting Periods that are attributable to Network Rail including any disputed attributions which were resolved or determined during such 12 preceding Reporting Periods.

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

First 12 Reporting Periods of the Franchise Term

- 2.17 For as long as fewer than 13 Reporting Periods have elapsed following the Start Date, the Secretary of State shall, for the purposes of performing the calculations referred to in paragraphs 2.2, 2.6 and 2.10, assume performance the Previous Performance Level in respect of the relevant Reporting Periods (up to a maximum of the 12 Reporting Periods) that precede the Start Date.

Calculations

- 2.18 The Secretary of State shall perform the calculations referred to in paragraphs 2.2, 2.3, 2.6, 2.10, 2.11 and 3 rounded to two decimal places, with the midpoint (that is, 11.115) rounded upwards (that is, 11.12).

Notice of Performance Results

- 2.19 As soon as reasonably practicable after the end of each Reporting Period and each Performance Calculation Year, the Secretary of State shall notify the Franchisee of the results of the calculations performed pursuant to this paragraph 2.

Meaning of Train Plan

- 2.20 For the purposes of this Schedule 7.1, Train Plan shall, unless otherwise stated, mean the then current Train Plan and which includes any amendments thereto pursuant to paragraph 3 of

- 2.21 SCHEDULE 1.2 (Operating Obligations), where:
- (a) such amendments are required as a consequence of Network Rail and HS1 Limited exercising their rights pursuant to the Track Access Agreement(s); and
 - (b) the Franchisee has complied with the provisions of such paragraph in respect thereof.

Consequences for Poor Performance

- 2.22 The consequences of the Franchisee's performance exceeding (that is, equalling or being worse than) the Improvement Plan Performance Level for the Capacity Benchmark are set out in paragraph 2.22 of this Schedule 7.1.
- 2.23 The Franchisee shall procure that in each Reporting Period the moving annual average of:
- (a) Cancellations and Partial Cancellations (calculated in accordance with paragraph 2.2) does not exceed (that is, is neither equal to nor worse than) the Breach Performance Levels and the Default Performance Levels specified in the cells relating to each such Reporting Period in the Cancellations Benchmark Table;
 - (b) Passenger Services operated in the Peak with less Passenger Carrying Capacity than the Passenger Carrying Capacity specified for such Passenger Services in the Train Plan (calculated in accordance with paragraph 2.6), does not exceed (that is, is neither equal to nor worse than) the Breach Performance Levels and the Default Performance Levels specified in the cells relating to such Reporting Period in the Capacity Benchmark Table; and
 - (c) the Minutes Delay occurring in respect of the Passenger Services which are attributable to the Franchisee (including in accordance with paragraph 2.13) per 1,000 Train Miles actually operated in that Reporting Period (calculated in accordance with paragraph 2.10) does not exceed (that is, is neither equal to nor worse than) the Breach Performance Levels and the Default Performance Levels specified in the cells relating to such Reporting Period in the TOC Minute Delay Benchmark Table.
- 2.24 Certain consequences of the Franchisee's performance exceeding (that is, equalling or being worse than) the Breach Performance Levels and Default Performance Levels relating to each Benchmark are set out in Schedule 10 (Remedies, Termination and Expiry).

Improvement Plans

- 2.25 If and whenever the Franchisee's performance:
- (a) in respect of a Reporting Period, calculated as a moving annual average in accordance with this Schedule 7.1, exceeds (that is, is equal to or worse than) the Improvement Plan Performance Level for the Capacity Benchmark, the Franchisee shall promptly notify the Secretary of State of that fact; and

- (b) exceeds (that is, is equal to or worse than) the Improvement Plan Performance Level for the Capacity Benchmark for any two consecutive Reporting Periods the Franchise shall:
- (i) prepare and provide to the Secretary of State, for his comments, a plan that it proposes to implement to ensure that its future performance does not exceed (that is, is neither equal to or worse than) the Improvement Plan Performance Level (an "**Improvement Plan**"). The Franchisee shall have due regard to any comments provided by the Secretary of State in relation to the Improvement Plan and may amend the Improvement Plan as may be considered necessary (and consistent with its obligation under this paragraph 2.22(b)(i));
 - (ii) implement such Improvement Plan; and
 - (iii) advise the Secretary of State from time to time of the results of the implementation of such Improvement Plan.

3. Performance Sum Payments

- 3.1 At the end of each Performance Calculation Year the Secretary of State shall, in accordance with this paragraph 3, calculate the Cancellations Performance Sum and the TOC Minute Delay Performance Sum payable by the Secretary of State to the Franchisee or required to be incurred by the Franchisee (as the case may be).

Cancellations Performance Sum

- 3.2 Where for any Performance Calculation Year, the Franchisee's performance in relation to the Annual Cancellations Benchmark as calculated pursuant to paragraph 2.3 (that is, the value of ACTUAL_C) is:
- (a) less than (that is, better than) the Annual Target Performance Level for that Annual Cancellations Benchmark and is less than (that is, better than) or equal to the Annual Cap Performance Level for such Annual Cancellations Benchmark, in each case for that Performance Calculation Year, then the Cancellations Performance Sum in respect of that Performance Calculation Year shall subject to paragraph 3.5 be payable by the Secretary of State to the Franchisee and shall be an amount calculated as follows:

$$(\text{TARGET}_C - \text{CAP}_C) \times \text{PBP}_C$$

where:

TARGET_C is the Annual Target Performance Level relating to that Annual Cancellations Benchmark for that Performance Calculation Year;

CAP_C is the Annual Cap Performance Level relating to that Annual Cancellations Benchmark for that Performance Calculation Year;

PBP_c is, in respect of any Performance Calculation Year, an amount calculated as follows:

$$\text{PBP}_c \times \text{RPI}$$

where:

PBP_c is the amount that is equal to the amount specified in column 2 of the table in Part 3 (Annual Cancellations Payment Table) of Appendix 1 (Cancellations Benchmarks and Annual Cancellations Benchmarks) to this Schedule 7.1;

RPI is the quotient of the Retail Prices Index for the February which immediately precedes the commencement of the relevant Performance Calculation Year divided by the Retail Prices Index for February 2014 (provided that for the first Performance Calculation Year RPI shall be one);

- (b) less than (that is, better than) the Annual Target Performance Level for that Annual Cancellations Benchmark but more than (that is, worse than) the Annual Cap Performance Level for that Annual Cancellations Benchmark, in each case for that Performance Calculation Year, then the Cancellations Performance Sum in respect of that Performance Calculation Year shall subject to paragraph 3.5 be payable by the Secretary of State to the Franchisee and shall be an amount calculated as follows:

$$(\text{TARGET}_c - \text{ACTUAL}_c) \times \text{PBP}_c$$

where:

TARGET_c has the meaning given to it in paragraph 3.2(a);

ACTUAL_c has the meaning given to it in paragraph 2.3; and

PBP_c has the meaning given to it in paragraph 3.2(a);

- (c) more than (that is, worse than) the Annual Target Performance Level for that Annual Cancellations Benchmark but less than (that is, better than) the Annual Floor Performance Level for that Annual Cancellations Benchmark, in each case for that Performance Calculation Year, then the Cancellations Performance Sum in respect of that Performance Calculation Year shall be required to be incurred by the Franchisee in accordance with paragraph 3.7 and shall subject to paragraph 3.6 be an amount calculated as follows:

$$(\text{ACTUAL}_C - \text{TARGET}_C) \times \text{PPP}_C$$

where:

ACTUAL_C has the meaning given to it in paragraph 2.3;

TARGET_C has the meaning given to it in paragraph 3.2(a);

PPP_C is, in respect of any Performance Calculation Year, an amount calculated as follows:

$$\text{PPP}_C \times \text{RPI}$$

where

PPP_C is the amount that is equal to the amount specified in column 3 in the table in Part 3 (Annual Cancellations Payment Table) of Appendix 1 (Cancellations Benchmarks and Annual Cancellations Benchmarks) to this Schedule 7.1;

RPI has the meaning given to it in paragraph 3.2(a); and

- (d) more than (that is, worse than) or equal to the Annual Floor Performance Level for that Annual Cancellations Benchmark for that Performance Calculation Year then the Cancellations Performance Sum in respect of that Performance Calculation Year shall be required to be incurred by the Franchisee in accordance with paragraph 3.7 and shall subject to paragraph 3.6 be an amount calculated as follows:

$$(\text{FLOOR}_C - \text{TARGET}_C) \times \text{PPP}_C$$

where:

FLOOR_C is the Annual Floor Performance Level relating to that Annual Cancellations Benchmark for that Performance Calculation Year;

TARGET_C has the meaning given to it in paragraph 3.2(a); and

PPP_C has the meaning given to it in paragraph 3.2(c).

TOC Minute Delay Performance Sum

- 3.3 Where for any Performance Calculation Year, the Franchisee's performance in relation to the Annual TOC Minute Delay Benchmark as calculated pursuant to paragraph 2.11 (that is, the value of $\text{ACTUAL}_{\text{MD}}$) is:

- (a) less than (that is, better than) the Annual Target Performance Level for that Annual TOC Minute Delay Benchmark and is less than (that

is, better than) or equal to the Annual Cap Performance Level for such Annual TOC Minute Delay Benchmark, in each case for that Performance Calculation Year, then the TOC Minute Delay Performance Sum in respect of that Performance Calculation Year shall be payable by the Secretary of State to the Franchisee and shall subject to paragraph 3.5 be an amount calculated as follows:

$$(TARGET_{MD} - CAP_{MD}) \times PBP_{MD}$$

where:

$TARGET_{MD}$ is the Annual Target Performance Level relating to that Annual TOC Minute Delay Benchmark for that Performance Calculation Year;

CAP_{MD} is the Annual Cap Performance Level relating to that Annual TOC Minute Delay Benchmark for that Performance Calculation Year;

PBP_{MD} is, in respect of any Performance Calculation Year, an amount calculated as follows:

$$PBP_{MD} \times RPI$$

where:

PBP_{MD} is the amount that is equal to the amount specified in column 2 of the table in Part 3 (Annual TOC Minute Delay Payment Table) of Appendix 3 (TOC Minute Delay Benchmarks and Annual TOC Minute Delay Benchmarks) to this Schedule 7.1;

RPI is the quotient of the Retail Prices Index for the February which immediately precedes the commencement of the relevant Performance Calculation Year divided by the Retail Prices Index for February 2014 (provided that for the first Performance Calculation Year RPI shall be one);

- (b) less than (that is, better than) the Annual Target Performance Level for that Annual TOC Minute Delay Benchmark but more than (that is, worse than) the Annual Cap Performance Level for that Annual TOC Minute Delay Benchmark, in each case for that Performance Calculation Year, then the TOC Minute Delay Performance Sum in respect of that Performance Calculation Year shall be payable by the Secretary of State to the Franchisee and shall subject to paragraph 3.5 be an amount calculated as follows:

$$(TARGET_{MD} - ACTUAL_{MD}) \times PBP_{MD}$$

where:

TARGET_{MD} has the meaning given to it in paragraph 3.3(a);
D

ACTUAL_{MD} has the meaning given to it in paragraph 2.11; and
D

PBP_{MD} has the meaning given to it in paragraph 3.3(a);

- (c) more than (that is, worse than) the Annual Target Performance Level for that Annual TOC Minute Delay Benchmark but less than (that is, better than) the Annual Floor Performance Level for that Annual TOC Minute Delay Benchmark, in each case for that Performance Calculation Year, then the TOC Minute Delay Performance Sum in respect of that Performance Calculation Year shall be required to be incurred by the Franchisee in accordance with paragraph 3.7 and shall subject to paragraph 3.6 be an amount calculated as follows:

$$(ACTUAL_{MD} - TARGET_{MD}) \times PPP_{MD}$$

where:

ACTUAL_{MD} has the meaning given to it in paragraph 2.11;

TARGET_{MD} has the meaning given to it in paragraph 3.3(a);

PPP_{MD} is, in respect of any Performance Calculation Year, an amount calculated as follows:

$$PPP_{MD} \times RPI$$

where

PPP_{MD} is the amount that is equal to the amount specified in column 3 of the table in Part 3 (Annual TOC Minute Delay Payment Table) of Appendix 3 (TOC Minute Delay Benchmarks and Annual TOC Minute Delay Benchmarks) to this Schedule 7.1;

RPI has the meaning given to it in paragraph 3.3(a); and

- (d) more than (that is, worse than) or equal to the Annual Floor Performance Level for that Annual TOC Minute Delay Benchmark for that Performance Calculation Year then the TOC Minute Delay Performance Sum in respect of that Performance Calculation Year shall be required to be incurred by the Franchisee in accordance with paragraph 3.7 and shall subject to paragraph 3.6 be an amount calculated as follows:

$$(\text{FLOOR}_{\text{MD}} - \text{TARGET}_{\text{MD}}) \times \text{PPP}_{\text{MD}}$$

where:

FLOOR_{MD} is the Annual Floor Performance Level relating to that Annual TOC Minute Delay Benchmark for that Performance Calculation Year;

$\text{TARGET}_{\text{MD}}$ has the meaning given to it in paragraph 3.3(a); and

PPP_{MD} has the meaning given to it in paragraph 3.3(c).

- 3.4 For the purpose of the calculations referred to in this paragraph 3, each of the Annual Cap Performance Level, the Annual Target Performance Level and the Annual Floor Performance Level will be specified as an absolute number not as a percentage (i.e. 1.5% equals 1.5).
- 3.5 The maximum amount payable by the Secretary of State by way of Cancellations Performance Sum and TOC Minute Delay Performance Sum in respect of any Performance Calculation Year shall, in aggregate, be equal to ³¹². No amount shall be due from the Secretary of State by way of Cancellations Performance Sum or TOC Minute Delay Performance Sum in respect of any Performance Calculation Year if, in the final Reporting Period of that Performance Calculation Year, the moving annual average of:
- (a) Cancellations and Partial Cancellations (calculated in accordance with paragraph 2.2) is equal to or worse than the Breach Performance Level specified in relation to such Reporting Period in the Cancellations Benchmark Table; or
 - (b) Passenger Services operated in the Peak with less Passenger Carrying Capacity than the Passenger Carrying Capacity specified for such Passenger Services in the Train Plan (calculated in accordance with paragraph 2.6) is equal to or worse than the Breach Performance Level specified in relation to such Reporting Period in the Capacity Benchmark Table; or
 - (c) the Minutes Delay occurring in respect of the Passenger Services which are attributable to the Franchisee (including in accordance with paragraph 2.13) per 1000 Train Miles actually operated (calculated in accordance with paragraph 2.10) is equal to or worse than the Breach Performance Level specified in relation to such Reporting Period in the TOC Minute Delay Benchmark Table.

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

- 3.6 The maximum amount to be incurred as expenditure by the Franchisee by way of Cancellations Performance Sum and TOC Minute Delay Performance Sum in respect of any Performance Calculation Year shall, in aggregate, be equal to ³¹³.
- 3.7 Where following calculation of the Cancellations Performance Sum or the TOC Minute Delay Performance Sum, the Franchisee is required to incur expenditure, the Franchisee shall, unless the Secretary of State shall otherwise direct, incur expenditure equal to the amount of the Cancellations Performance Sum and/or the TOC Minute Delay Performance Sum due from the Franchisee in order to secure:
- (a) where the Franchisee is obliged to incur expenditure equal to the amount of the Cancellations Performance Sum, an improvement in the Franchisee's performance against the Annual Cancellations Benchmark so that such level is equal to or higher than the Annual Target Performance Level for the Annual Cancellations Benchmark; and/or
 - (b) where the Franchisee is obliged to incur expenditure equal to the amount of the TOC Minute Delay Performance Sum, an improvement in the Franchisee's performance against the Annual TOC Minute Delay Benchmark so that such level is equal to or higher than the Annual Target Performance Level for the Annual TOC Minute Delay Benchmark,

("the **Required Performance Improvement**").

- 3.8 Without limiting paragraph 3.7, on each occasion that the Franchisee becomes obliged to incur expenditure equal to the amount of the Cancellations Performance Sum and/or the TOC Minute Delay Performance Sum to secure a Required Performance Improvement, the Franchisee shall produce an action plan which is consistent with its obligations under paragraph 3.7 and in compliance with the following provisions:
- (a) the Franchisee shall (1) produce, (2) obtain the Secretary of State's approval of, and (3) commence the implementation of the action plan within three months after the end of the relevant Performance Calculation Year;
 - (b) the action plan will contain specific tangible action points and indicate in the case of each action point:
 - (i) how that action will contribute to achieving the Required Performance Improvement;
 - (ii) where the action is to be implemented;
 - (iii) when the action is to be commenced and by when it is to be implemented provided always that where any action is expressed to be ongoing the plan shall include specific review dates; and

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

- (iv) how performance of the action is to be measured; and
 - (c) the action plan will identify the amount of the Cancellations Performance Sum and/or the TOC Minute Delay Performance Sum associated with each action.
- 3.9 The Franchisee shall, except to the extent otherwise agreed by the Secretary of State in advance, implement each action plan referred to in paragraph 3.8 in accordance with its terms.
- 3.10 It is acknowledged by the Franchisee that the approval or lack of approval by the Secretary of State of each action plan as contemplated in paragraph 3.8(a) shall not relieve the Franchisee of its obligations under this Schedule 7.1 or any other provisions of the Franchise Agreement.
- 3.11 Each Cancellations Performance Sum and TOC Minute Delay Performance Sum calculated pursuant to paragraphs 3.2 and 3.3 (respectively) in respect of any Performance Calculation Year payable by the Secretary of State to the Franchisee shall, subject to paragraph 3.12, be paid by way of adjustment to Franchise Payments on the Performance Sum Adjustment Date.
- 3.12 Upon the termination of this Franchise Agreement:
- (a) the Franchisee shall pay to the Secretary of State, by way of adjustment to Franchise Payments, an amount equivalent to the amount of any Cancellations Performance Sum and/or TOC Minute Delay Performance Sum due from the Franchisee and which it has not yet incurred as at the end of the Franchise Period; and/or
 - (b) the Secretary of State shall pay to the Franchisee, by way of adjustment to Franchise Payments, an amount equivalent to the amount of any Cancellation Performance Sum and/or TOC Minute Delay Performance Sum payable by the Secretary of State in respect of the final Performance Calculation Year.

4. Submission of Records Relating to the Implementation of a Service Recovery Plan

The Franchisee shall, within eight weeks of the end of each Reporting Period for which a Service Recovery Plan has been implemented (or such other period as may be agreed by the Secretary of State), submit to the Secretary of State all the comprehensive records (as more particularly described in the relevant paragraph of the Service Recovery Plan) which relate to the implementation of such Service Recovery Plan during that Reporting Period.

5. Determination of the Annual Benchmarks for Performance Calculation Years that are shorter than 13 Reporting Periods

- 5.1 Where a Performance Calculation Year is shorter than 13 Reporting Periods the Secretary of State will perform the following calculations for the purposes of determining the Annual Cancellations Benchmark and the Annual TOC Minute Delay Benchmark relating to that Performance Calculation Year:
- (a) in respect of the Annual Cancellations Benchmark for that Performance Calculation Year:

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

where:

$\sum A$ is:

- (i) for the Annual Cap Performance Level, the sum of the data relevant for each of the Reporting Periods in that Performance Calculation Year, such data being the data which was used for the purposes of determining the Annual Cap Performance Level in respect of a full Performance Calculation Year as more particularly set out in the document in agreed terms marked **ABD**; or
 - (ii) for the Annual Target Performance Level, the sum of the data relevant for each of the Reporting Periods in that Performance Calculation Year, such data being the data which was used for the purposes of determining the Annual Target Performance Level in respect of a full Performance Calculation Year as more particularly set out in the document in agreed terms marked **ABD**; or
 - (iii) for the Annual Floor Performance Level, the sum of the data relevant for each of the Reporting Periods in that Performance Calculation Year, such data being the data which was used for the purposes of determining the Annual Floor Performance Level in respect of a full Performance Calculation Year as more particularly set out in the document in agreed terms marked **ABD**; and
 - (iv) B is the number of Reporting Periods in that Performance Calculation Year; and
- (b) in respect of the Annual TOC Minute Delay Benchmark for that Performance Calculation Year:

$$\frac{\sum AA}{AB}$$

where:

$\sum AA$ is:

- (i) for the Annual Cap Performance Level, the sum of the Minutes Delay attributable to the Franchisee as comprised in the data relevant for each of the Reporting Periods in that Performance Calculation Year, such Minutes Delay data being the data which was used for the purposes of determining the Annual Cap Performance Level in respect of a full Performance Calculation Year as more particularly set out in the document in agreed terms marked **ABD**; or

- (ii) for the Annual Target Performance Level, the sum of the Minutes Delay attributable to the Franchisee as comprised in the data relevant for each of the Reporting Periods in that Performance Calculation Year, such Minutes Delay data being the data which was used for the purposes of determining the Annual Target Performance Level in respect of a full Performance Calculation Year as more particularly set out in the document in agreed terms marked **ABD**; or
- (iii) for the Annual Floor Performance Level, the sum of the Minutes Delay attributable to the Franchisee as comprised in the data relevant for each of the Reporting Periods in that Performance Calculation Year, such Minutes Delay data being the data which was used for the purposes of determining the Annual Floor Performance Level in respect of a full Performance Calculation Year as more particularly set out in the document in agreed terms marked **ABD**; and

AB is ascertained as follows:

$$\frac{B}{1000}$$

where:

B is:

- (iv) for the Annual Cap Performance Level, the sum of the Train Mileage as comprised in the data relevant for each of the Reporting Periods in that Performance Calculation Year, such Train Mileage data being the data which was used for the purposes of determining the Annual Cap Performance Level in respect of a full Performance Calculation Year as more particularly set out in the document in agreed terms marked **ABD**; or
- (v) for the Annual Target Performance Level, the sum of the Train Mileage as comprised in the data relevant for each of the Reporting Periods in that Performance Calculation Year, such Train Mileage data being the data which was used for the purposes of determining the Annual Target Performance Level in respect of a full Performance Calculation Year as more particularly set out in the document in agreed terms marked **ABD**; or
- (vi) for the Annual Floor Performance Level, the sum of the Train Mileage as comprised in the data relevant for each of the Reporting Periods in that Performance Calculation Year, such Train Mileage data being the data which was used for the purposes of determining the Annual Floor Performance Level in respect of a full Performance Calculation Year as more particularly set out in the document in agreed terms marked **ABD**.

APPENDIX 1 TO SCHEDULE 7.1^{314 315}**Cancellations Benchmarks and Annual Cancellations Benchmarks Table****Part 1 – Cancellations Benchmark Table**

Reporting Period		Breach Performance Level	Default Performance Level
		(% Cancelled)	(% Cancelled)
Year 1, Period 8	2014/2015	0.90%	1.01%
Year 1, Period 9	2014/2015	0.91%	1.02%
Year 1, Period 10	2014/2015	0.87%	0.98%
Year 1, Period 11	2014/2015	0.87%	0.98%
Year 1, Period 12	2014/2015	0.88%	0.99%
Year 1, Period 13	2014/2015	0.88%	0.99%
Year 2, Period 1	2014/2015	0.88%	1.00%
Year 2, Period 2	2015/2016	0.89%	1.00%
Year 2, Period 3	2015/2016	0.89%	1.01%
Year 2, Period 4	2015/2016	0.89%	1.01%
Year 2, Period 5	2015/2016	0.90%	1.01%
Year 2, Period 6	2015/2016	0.90%	1.02%
Year 2, Period 7	2015/2016	0.90%	1.02%
Year 2, Period 8	2015/2016	0.91%	1.03%
Year 2, Period 9	2015/2016	0.91%	1.03%
Year 2, Period 10	2015/2016	0.92%	1.04%
Year 2, Period 11	2015/2016	0.92%	1.04%
Year 2, Period 12	2015/2016	0.92%	1.04%
Year 2, Period 13	2015/2016	0.92%	1.04%
Year 3, Period 1	2015/2016	0.92%	1.04%
Year 3, Period 2	2016/2017	0.92%	1.04%

³¹⁴ 23 March 2018 (Date of DOA) - Contract variation agreed by the Secretary of State and Franchisee.

³¹⁵ 13 June 2019 (Date of DOA) - Contract variation agreed by the Secretary of State and Franchisee.

Reporting Period		Breach Performance Level	Default Performance Level
		(% Cancelled)	(% Cancelled)
Year 3, Period 3	2016/2017	0.92%	1.04%
Year 3, Period 4	2016/2017	0.92%	1.04%
Year 3, Period 5	2016/2017	0.92%	1.04%
Year 3, Period 6	2016/2017	0.92%	1.04%
Year 3, Period 7	2016/2017	0.92%	1.04%
Year 3, Period 8	2016/2017	0.92%	1.04%
Year 3, Period 9	2016/2017	0.92%	1.04%
Year 3, Period 10	2016/2017	0.92%	1.04%
Year 3, Period 11	2016/2017	0.92%	1.04%
Year 3, Period 12	2016/2017	0.92%	1.04%
Year 3, Period 13	2016/2017	0.92%	1.04%
Year 4, Period 1	2016/2017	0.92%	1.04%
Year 4, Period 2	2017/2018	0.92%	1.04%
Year 4, Period 3	2017/2018	0.92%	1.04%
Year 4, Period 4	2017/2018	0.92%	1.04%
Year 4, Period 5	2017/2018	0.92%	1.04%
Year 4, Period 6	2017/2018	0.92%	1.04%
Year 4, Period 7	2017/2018	0.92%	1.04%
Year 4, Period 8	2017/2018	0.92%	1.04%
Year 4, Period 9	2017/2018	0.92%	1.04%
Year 4, Period 10	2017/2018	0.92%	1.04%
Year 4, Period 11	2017/2018	0.91%	1.03%
Year 4, Period 12	2017/2018	0.91%	1.03%
Year 4, Period 13	2017/2018	0.91%	1.02%
Year 5, Period 1	2017/2018	0.90%	1.02%
Year 5, Period 2	2018/2019	0.90%	1.02%
Year 5, Period 3	2018/2019	0.90%	1.01%
Year 5, Period 4	2018/2019	0.89%	1.01%

Reporting Period		Breach Performance Level	Default Performance Level
		(% Cancelled)	(% Cancelled)
Year 5, Period 5	2018/2019	0.89%	1.00%
Year 5 Period 6	2018/2019	0.88%	1.00%
Year 5, Period 7	2018/2019	0.88%	1.00%
Year 5, Period 8	2018/2019	0.88%	0.99%
Year 5, Period 9	2018/2019	0.87%	0.98%
Year 5, Period 10	2018/2019	0.87%	0.98%
Year 5, Period 11	2018/2019	0.87%	0.98%
Year 5, Period 12	2018/2019	0.87%	0.98%
Year 5, Period 13	2018/2019	0.87%	0.98%
Year 5, Period 1	2019/2020	0.87%	0.98%
Year 5, Period 2	2019/2020	0.87%	0.98%
Year 5, Period 3	2019/2020	0.87%	0.98%
Year 6, Period 4	2019/2020	0.87%	0.98%
Year 6, Period 5	2019/2020	0.87%	0.98%
Year 6, Period 6	2019/2020	0.87%	0.98%
Year 6, Period 7	2019/2020	0.87%	0.98%
Year 6, Period 8	2019/2020	0.87%	0.98%
Year 6, Period 9	2019/2020	0.87%	0.98%
Year 6, Period 10	2019/2020	0.87%	0.98%
Year 6, Period 11	2019/2020	0.87%	0.98%
Year 6, Period 12	2019/2020	0.87%	0.98%
Year 6, Period 13	2019/2020	0.87%	0.98%

START OF THE FRANCHISE

The Reporting Period in the cells entitled "Year 1 Period 8" shall be the first Reporting Period of the Franchise Term.

Part 2 – Annual Cancellations Benchmark Table

Column 1	Column 2	Column 3	Column 4
Performance Year	Calculation	Annual Cap Performance Level (%)	Annual Target Performance Level (%)
Year 1 (part)		0.65%	0.76%
Year 2		0.65%	0.77%
Year 3		0.66%	0.77%
Year 4		0.66%	0.77%
[DELETED ³¹⁶]			
[DELETED ³¹⁷]			
Year 5 ³¹⁸		0.66%	0.78%
[DELETED ³¹⁹]			
Year 6 (previous 3 RP extended period) ³²⁰		0.66%	0.78%
Year 6 (previous 5 RPs plus optional 5 RP extension) ³²¹		0.63%	0.75%

³¹⁶ 23 March 2018 (Date of DOA) – Contract deletion agreed by the Secretary of State and Franchisee.

³¹⁷ 23 March 2018 (Date of DOA) – Contract deletion agreed by the Secretary of State and Franchisee.

³¹⁸ 23 March 2018 (Date of DOA) - Contract variation agreed by the Secretary of State and Franchisee.

³¹⁹ 13 June 2019 (Date of DOA) – Contract deletion agreed by the Secretary of State and Franchisee.

³²⁰ 13 June 2019 (Date of DOA) - Contract insertion agreed by the Secretary of State and Franchisee.

³²¹ 13 June 2019 (Date of DOA) - Contract insertion agreed by the Secretary of State and Franchisee.

Part 3 – Annual Cancellations Payment Table

	PBP _C	PPP _C
Real Prices	Amount £ per %	Amount £ per %
Year 1 (part)	<p>Where text has been omitted from the document, this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.</p> <p>[REDACTED³²²]</p>	
Year 2		
Year 3		
Year 4		
[DELETED ³²³]		
[DELETED ³²⁴]		
Year 5 ³²⁵		
[DELETED ³²⁶]		
Year 6 (previous 3 RP extended period) ³²⁷		
Year 6 (previous 5 RPs plus optional 5 RP extension) ³²⁸		

* provided that in respect of any Performance Calculation Year of less than 13 Reporting Periods PBP_C and/or PPP_C (as applicable) shall be multiplied by the number of whole Reporting Period in the relevant Performance Calculation Year and then divided by 13.

³²² 5 August 2019 (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.

³²³ 23 March 2018 (Date of DOA) – Contract deletion agreed by the Secretary of State and Franchisee.

³²⁴ 23 March 2018 (Date of DOA) – Contract deletion agreed by the Secretary of State and Franchisee.

³²⁵ 23 March 2018 (Date of DOA) - Contract variation agreed by the Secretary of State and Franchisee.

³²⁶ 13 June 2019 (Date of DOA) – Contract deletion agreed by the Secretary of State and Franchisee.

³²⁷ 13 June 2019 (Date of DOA) - Contract insertion agreed by the Secretary of State and Franchisee.

³²⁸ 13 June 2019 (Date of DOA) - Contract insertion agreed by the Secretary of State and Franchisee.

APPENDIX 2 TO SCHEDULE 7.1^{329 330}**Capacity Benchmark Table**

Reporting Period		Improvement Plan Performance Level	Breach Performance Level	Default Performance Level
		(% Short Formed)	(% Short Formed)	(% Short Formed)
Year 1, Period 8	2014/2015	2.03%	2.17%	2.46%
Year 1, Period 9	2014/2015	2.03%	2.17%	2.46%
Year 1, Period 10	2014/2015	2.03%	2.17%	2.46%
Year 1, Period 11	2014/2015	2.03%	2.17%	2.46%
Year 1, Period 12	2014/2015	2.03%	2.17%	2.46%
Year 1, Period 13	2014/2015	2.03%	2.17%	2.46%
Year 2, Period 1	2014/2015	2.03%	2.17%	2.46%
Year 2, Period 2	2015/2016	2.03%	2.17%	2.46%
Year 2, Period 3	2015/2016	2.03%	2.17%	2.46%
Year 2, Period 4	2015/2016	2.03%	2.17%	2.46%
Year 2, Period 5	2015/2016	2.03%	2.17%	2.46%
Year 2, Period 6	2015/2016	2.03%	2.17%	2.46%
Year 2, Period 7	2015/2016	2.03%	2.17%	2.46%
Year 2, Period 8	2015/2016	2.03%	2.17%	2.46%
Year 2, Period 9	2015/2016	2.03%	2.17%	2.46%
Year 2, Period 10	2015/2016	2.03%	2.17%	2.46%
Year 2, Period 11	2015/2016	2.03%	2.17%	2.46%
Year 2, Period 12	2015/2016	2.03%	2.17%	2.46%
Year 2, Period 13	2015/2016	2.03%	2.17%	2.46%
Year 3, Period 1	2015/2016	2.03%	2.17%	2.46%
Year 3, Period 2	2016/2017	2.03%	2.17%	2.46%
Year 3, Period 3	2016/2017	2.03%	2.17%	2.46%
Year 3, Period 4	2016/2017	2.03%	2.17%	2.46%

³²⁹ 23 March 2018 (Date of DOA) - Contract variation agreed by the Secretary of State and Franchisee.

³³⁰ 13 June 2019 (Date of DOA) - Contract variation agreed by the Secretary of State and Franchisee.

Reporting Period		Improvement Plan Performance Level	Breach Performance Level	Default Performance Level
		(% Short Formed)	(% Short Formed)	(% Short Formed)
Year 3, Period 5	2016/2017	2.03%	2.17%	2.46%
Year 3, Period 6	2016/2017	2.03%	2.17%	2.46%
Year 3, Period 7	2016/2017	2.03%	2.17%	2.46%
Year 3, Period 8	2016/2017	2.03%	2.17%	2.46%
Year 3, Period 9	2016/2017	2.03%	2.17%	2.46%
Year 3, Period 10	2016/2017	2.03%	2.17%	2.46%
Year 3, Period 11	2016/2017	2.03%	2.17%	2.46%
Year 3, Period 12	2016/2017	2.03%	2.17%	2.46%
Year 3, Period 13	2016/2017	2.03%	2.17%	2.46%
Year 4, Period 1	2016/2017	2.03%	2.17%	2.46%
Year 4, Period 2	2017/2018	2.03%	2.17%	2.46%
Year 4, Period 3	2017/2018	2.03%	2.17%	2.46%
Year 4, Period 4	2017/2018	2.03%	2.17%	2.46%
Year 4, Period 5	2017/2018	2.03%	2.17%	2.46%
Year 4, Period 6	2017/2018	2.03%	2.17%	2.46%
Year 4, Period 7	2017/2018	2.03%	2.17%	2.46%
Year 4, Period 8	2017/2018	2.03%	2.17%	2.46%
Year 4, Period 9	2017/2018	2.03%	2.17%	2.46%
Year 4, Period 10	2017/2018	2.03%	2.17%	2.46%
Year 4, Period 11	2017/2018	2.03%	2.17%	2.46%
Year 4, Period 12	2017/2018	2.03%	2.17%	2.46%
Year 4, Period 13	2017/2018	2.03%	2.17%	2.46%
Year 5, Period 1	2017/2018	2.03%	2.17%	2.46%
Year 5, Period 2	2018/2019	2.03%	2.17%	2.46%
Year 5, Period 3	2018/2019	2.03%	2.17%	2.46%
Year 5, Period 4	2018/2019	2.03%	2.17%	2.46%
Year 5, Period 5	2018/2019	2.03%	2.17%	2.46%
Year 5 Period 6	2018/2019	2.03%	2.17%	2.46%

Reporting Period		Improvement Plan Performance Level	Breach Performance Level	Default Performance Level
		(% Short Formed)	(% Short Formed)	(% Short Formed)
Year 5, Period 7	2018/2019	2.03%	2.17%	2.46%
Year 5, Period 8	2018/2019	2.03%	2.17%	2.46%
Year 5, Period 9	2018/2019	2.03%	2.17%	2.46%
Year 5, Period 10	2018/2019	2.03%	2.17%	2.46%
Year 5, Period 11	2018/2019	2.03%	2.17%	2.46%
Year 5, Period 12	2018/2019	2.03%	2.17%	2.46%
Year 5, Period 13	2018/2019	2.03%	2.17%	2.46%
Year 5, Period 1	2019/2020	2.03%	2.17%	2.46%
Year 5, Period 2	2019/2020	2.03%	2.17%	2.46%
Year 5, Period 3	2019/2020	2.03%	2.17%	2.46%
Year 6, Period 4	2019/2020	2.03%	2.17%	2.46%
Year 6, Period 5	2019/2020	2.03%	2.17%	2.46%
Year 6, Period 6	2019/2020	2.03%	2.17%	2.46%
Year 6, Period 7	2019/2020	2.03%	2.17%	2.46%
Year 6, Period 8	2019/2020	2.03%	2.17%	2.46%
Year 6, Period 9	2019/2020	2.03%	2.17%	2.46%
Year 6, Period 10	2019/2020	2.03%	2.17%	2.46%
Year 6, Period 11	2019/2020	2.03%	2.17%	2.46%
Year 6, Period 12	2019/2020	2.03%	2.17%	2.46%
Year 6, Period 13	2019/2020	2.03%	2.17%	2.46%

START OF THE FRANCHISE

The Reporting Period in the cells entitled "Year 1 Period 8" shall be the first Reporting Period of the Franchise Term.

APPENDIX 3 TO SCHEDULE 7.1^{331 332}**TOC Minute Delay Benchmarks and Annual TOC Minute Delay Benchmarks****Part 1 – TOC Minute Delay Benchmark Table**

Reporting Period		Breach Performance Level	Default Performance Level
		(relevant Minutes Delay/1000 Train Miles)	(relevant Minutes Delay/1000 Train Miles)
Year 1, Period 8	2014/2015	17.04	19.26
Year 1, Period 9	2014/2015	17.04	19.26
Year 1, Period 10	2014/2015	17.04	19.26
Year 1, Period 11	2014/2015	17.05	19.27
Year 1, Period 12	2014/2015	17.07	19.29
Year 1, Period 13	2014/2015	17.10	19.33
Year 2, Period 1	2014/2015	17.10	19.33
Year 2, Period 2	2015/2016	17.11	19.34
Year 2, Period 3	2015/2016	17.13	19.37
Year 2, Period 4	2015/2016	17.15	19.39
Year 2, Period 5	2015/2016	17.17	19.41
Year 2, Period 6	2015/2016	17.23	19.47
Year 2, Period 7	2015/2016	17.21	19.45
Year 2, Period 8	2015/2016	17.18	19.42
Year 2, Period 9	2015/2016	17.24	19.49
Year 2, Period 10	2015/2016	17.26	19.51
Year 2, Period 11	2015/2016	17.25	19.50
Year 2, Period 12	2015/2016	17.23	19.48
Year 2, Period 13	2015/2016	17.27	19.52
Year 3, Period 1	2015/2016	17.30	19.56
Year 3, Period 2	2016/2017	17.32	19.58

³³¹ 23 March 2018 (Date of DOA) - Contract variation agreed by the Secretary of State and Franchisee.

³³² 13 June 2019 (Date of DOA) - Contract variation agreed by the Secretary of State and Franchisee.

Reporting Period		Breach Performance Level	Default Performance Level
		(relevant Minutes Delay/1000 Train Miles)	(relevant Minutes Delay/1000 Train Miles)
Year 3, Period 3	2016/2017	17.30	19.55
Year 3, Period 4	2016/2017	17.33	19.60
Year 3, Period 5	2016/2017	17.30	19.55
Year 3, Period 6	2016/2017	17.29	19.54
Year 3, Period 7	2016/2017	17.34	19.60
Year 3, Period 8	2016/2017	17.35	19.61
Year 3, Period 9	2016/2017	17.31	19.57
Year 3, Period 10	2016/2017	17.31	19.57
Year 3, Period 11	2016/2017	17.32	19.58
Year 3, Period 12	2016/2017	17.34	19.60
Year 3, Period 13	2016/2017	17.31	19.57
Year 4, Period 1	2016/2017	17.30	19.55
Year 4, Period 2	2017/2018	17.30	19.55
Year 4, Period 3	2017/2018	17.34	19.60
Year 4, Period 4	2017/2018	17.38	19.64
Year 4, Period 5	2017/2018	17.44	19.72
Year 4, Period 6	2017/2018	17.44	19.72
Year 4, Period 7	2017/2018	17.42	19.70
Year 4, Period 8	2017/2018	17.43	19.71
Year 4, Period 9	2017/2018	17.44	19.72
Year 4, Period 10	2017/2018	17.44	19.72
Year 4, Period 11	2017/2018	17.40	19.67
Year 4, Period 12	2017/2018	17.35	19.62
Year 4, Period 13	2017/2018	17.33	19.58
Year 5, Period 1	2017/2018	17.29	19.55
Year 5, Period 2	2018/2019	17.26	19.51
Year 5, Period 3	2018/2019	17.21	19.45

Reporting Period		Breach Performance Level	Default Performance Level
		(relevant Minutes Delay/1000 Train Miles)	(relevant Minutes Delay/1000 Train Miles)
Year 5, Period 4	2018/2019	17.14	19.38
Year 5, Period 5	2018/2019	17.08	19.31
Year 5 Period 6	2018/2019	17.05	19.28
Year 5, Period 7	2018/2019	17.02	19.24
Year 5, Period 8	2018/2019	16.96	19.17
Year 5, Period 9	2018/2019	16.92	19.12
Year 5, Period 10	2018/2019	16.87	19.08
Year 5, Period 11	2018/2019	16.87	19.08
Year 5, Period 12	2018/2019	16.87	19.08
Year 5, Period 13	2018/2019	16.87	19.08
Year 6, Period 1	2019/2020	16.87	19.08
Year 6, Period 2	2019/2020	16.87	19.08
Year 6, Period 3	2019/2020	16.87	19.08
Year 6, Period 4	2019/2020	16.87	19.08
Year 6, Period 5	2019/2020	16.87	19.08
Year 6, Period 6	2019/2020	16.87	19.08
Year 6, Period 7	2019/2020	16.87	19.08
Year 6, Period 8	2019/2020	16.87	19.08
Year 6, Period 9	2019/2020	16.87	19.08
Year 6, Period 10	2019/2020	16.87	19.08
Year 6, Period 11	2019/2020	16.87	19.08
Year 6, Period 12	2019/2020	16.87	19.08
Year 6, Period 13	2019/2020	16.87	19.08

Part 2 – Annual TOC Minute Delay Benchmark Table

Column 1	Column 2	Column 3	Column 4
Performance Calculation Year	Annual Cap Performance Level (relevant Minutes Delay per 1000 train miles)	Annual Target Performance Level (relevant Minutes Delay per 1000 train miles)	Annual Floor Performance Level (relevant Minutes Delay per 1000 train miles)
Year 1 (part)	12.64	14.87	17.10
Year 2	12.76	15.02	17.27
Year 3	12.80	15.05	17.31
Year 4	12.81	15.07	17.33
[DELETED ³³³]	[DELETED]	[DELETED]	[DELETED]
[DELETED ³³⁴]	[DELETED]	[DELETED]	[DELETED]
Year 5³³⁵	12.47	14.67	16.87
[DELETED ³³⁶]			
Year 6 (previous 3 RP extended period)³³⁷	12.47	14.67	16.87
Year 6 (new 5 RPs plus optional 5 RP extension)³³⁸	12.42	14.62	16.82

³³³ 23 March 2018 (Date of DOA) – Contract deletion agreed by the Secretary of State and Franchisee.

³³⁴ 23 March 2018 (Date of DOA) – Contract deletion agreed by the Secretary of State and Franchisee.

³³⁵ 23 March 2018 (Date of DOA) - Contract variation agreed by the Secretary of State and Franchisee.

³³⁶ 13 June 2019 (Date of DOA) – Contract deletion agreed by the Secretary of State and Franchisee.

³³⁷ 13 June 2019 (Date of DOA) - Contract insertion agreed by the Secretary of State and Franchisee.

³³⁸ 13 June 2019 (Date of DOA) - Contract insertion agreed by the Secretary of State and Franchisee.

Part 3 – Annual TOC Minute Delay Payment Table

Real Prices	Amount £ per minute per 1000 train miles	Amount £ per minute per 1000 train miles
Year 1 (part)	<p>Where text has been omitted from the document, this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.</p> <p style="text-align: center;">[REDACTED³³⁹]</p>	
Year 2		
Year 3		
Year 4		
[DELETED ³⁴⁰]		
[DELETED ³⁴¹]		
Year 5 ³⁴²		
[DELETED ³⁴³]		
Year 6 (previous 3 RP extended period) ³⁴⁴		
Year 6 (new 5 RPs plus optional 5 RP extension) ³⁴⁵		

* provided that in respect of any Performance Calculation Year of less than 13 Reporting Periods PBP_{MD} and/or PPP_{MD} (as applicable) shall be multiplied by the number of whole Reporting Period in the relevant Performance Calculation Year and then divided by 13.

³³⁹ **5 August 2019 (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.**

³⁴⁰ 23 March 2018 (Date of DOA) - Contract deletion agreed by the Secretary of State and Franchisee.

³⁴¹ 23 March 2018 (Date of DOA) - Contract deletion agreed by the Secretary of State and Franchisee.

³⁴² 13 June 2019 (Date of DOA) - Contract variation agreed by the Secretary of State and Franchisee.

³⁴³ 13 June 2019 (Date of DOA) - Contract deletion agreed by the Secretary of State and Franchisee.

³⁴⁴ 13 June 2019 (Date of DOA) - Contract insertion agreed by the Secretary of State and Franchisee.

³⁴⁵ 13 June 2019 (Date of DOA) - Contract insertion agreed by the Secretary of State and Franchisee.

SCHEDULE 7.2**National Rail Passenger Surveys****1. Conduct of National Rail Passenger Surveys**

- 1.1 The Franchisee agrees with the Secretary of State that:
- (a) the Passengers' Council may measure the level of passenger satisfaction with the Franchise Services through National Rail Passenger Surveys;
 - (b) the Passengers' Council shall determine how, when (normally twice per annum) and where National Rail Passenger Surveys are to be carried out;
 - (c) the Franchisee shall grant access on trains or at stations to the Passengers' Council (or its representatives and agents) to carry out National Rail Passenger Surveys;
 - (d) the Franchisee shall co-operate with the Passengers' Council (in such manner as the Passengers' Council may reasonably request or as the Secretary of State may reasonably direct) in order to enable the Passengers' Council to carry out National Rail Passenger Surveys; and
 - (e) the Passengers' Council and/or the Secretary of State may, from time to time, publish the results of each National Rail Passenger Survey.
- 1.2 The Secretary of State shall or shall procure that:
- (a) the findings of any National Rail Passenger Survey are made available by the Passengers' Council to the Franchisee within a reasonable period of time after the completion of each such survey and shall use all reasonable endeavours to procure that those findings are made available in a timely manner to enable the Franchisee to comply with its obligations under paragraph 1.3; and
 - (b) if any such survey includes a comparison between its findings and the findings of any equivalent earlier survey, such comparison forms a reasonable basis for monitoring the trends of passenger satisfaction over time.
- 1.3 The Franchisee shall, as soon as reasonably practicable after such information is made available to the Franchisee in accordance with paragraph 1.2, publicise its performance against the NRPS Benchmarks by displaying:
- (a) at all of the Stations, a summary of its performance against the NRPS Benchmarks against that of the other train operating companies in the same NRPS Service TOC Categories; and
 - (b) on its website, the full results of the National Rail Passenger Survey relevant to the Franchisee setting out its performance against the NRPS Benchmarks and for each NRPS Measure against that of the

other train operating companies in the same NRPS Service TOC Categories,

in both cases in such format and with such content as reasonably required and approved by the Secretary of State.

- 1.4 If the Passengers' Council ceases to undertake National Rail Passenger Surveys then the relevant National Rail Passenger Survey for the purposes of this Schedule 7.2 shall be such other passenger survey as the Secretary of State may, after consultation with the Franchisee, reasonably determine to be appropriate in the circumstances (the "**Alternative NRPS**"). The provisions of this Schedule 7.2 shall apply in respect of any Alternative NRPS and for these purposes Passengers' Council shall be replaced with such other entity that is responsible for conducting such Alternative NRPS.

2. NRPS Benchmarks

- 2.1 It is agreed by the Secretary of State and the Franchisee that the results of the National Rail Passenger Survey(s) carried out by the Passengers' Council in any Franchisee Year shall be used to determine the Franchisee's performance against the NRPS Benchmarks for that Franchisee Year. If in any Franchisee Year the Passengers' Council has conducted:
- (a) only one National Rail Passenger Survey in that Franchisee Year then the performance of the Franchisee against the NRPS Benchmarks shall be measured against the results of such National Rail Passenger Survey; or
 - (b) more than one National Rail Passenger Survey in that Franchisee Year then the performance of the Franchisee against the NRPS Benchmarks shall be measured against the average of the results of all of the National Rail Passenger Surveys conducted by the Passengers' Council in that Franchisee Year.

Performance Results/Required Remedial Actions

- 2.2 For each Franchisee Year (for 2015 - 2016, 2016- 2017 and 2017 - 2018) the Secretary of State shall determine within one month of the publication of the National Rail Passenger Survey results by the Passengers' Council for the relevant Franchisee Year, the Franchisee's performance against each NRPS Benchmark by comparing:
- (a) if only one National Rail Passenger Survey has been published by Passengers' Council in that Franchisee Year, the results of such National Rail Passenger Survey against the NRPS Benchmarks applicable in respect of that Franchisee Year; or
 - (b) if more than one National Rail Passenger Survey has been published by Passengers' Council in that Franchisee Year, the average of the results of all of the National Rail Passenger Surveys published by the Passengers' Council in that Franchisee Year against the NRPS Benchmarks applicable in respect of that Franchisee Year; and
 - (c) in the case of determining the Franchisee's performance against the NRPS Benchmark in respect of category of service group set out in limb (a) (Metro being journeys on Routes within London) of the

definition of NRPS Service Group, the following shall not be taken into account when determining such NRPS Benchmark:

- (i) in respect of the Train Criteria NRPS Measure, the Train Criteria NRPS Measure Factor set out at limb (d) ("T6 - The toilet facilities) of the definition of Train Criteria NRPS Measure; and
- (ii) in respect of the Customer Service and Information NRPS Measure, the Customer Service and Information NRPS Measure Factor set out at limbs (d) ("C6 Train - The helpfulness and attitude of staff on the train") and (g) ("C7 Train - The availability of staff on the train") of the definition of Customer Service and Information NRPS Measure.

2.3 For the purposes of undertaking the comparison pursuant to this paragraph 2.2, the results referred to in paragraph 2.2(a) or paragraph 2.2(b) (as the case may be) shall be rounded up to one decimal place with the midpoint (that is, 4.45) rounded upwards (that is, 4.5).

2.4 If, following the Secretary of State's determination pursuant to any of paragraphs 2.2(a) or 2.2(b) (as the case may be), the results show that, in respect of the Franchisee and Franchise Services the level of customer satisfaction in respect of any NRPS Measure(s) is below the NRPS Benchmark for such measure then the Franchisee shall, unless the Secretary of State shall otherwise direct, subject to paragraph 2.10, incur additional expenditure in order to secure the required improvement.

2.5 Without limiting paragraph 2.4, on each occasion that the Franchisee becomes obliged to incur additional expenditure to secure a required improvement, the Franchisee shall produce within three months of the publication of the results of the National Rail Passenger Survey by the Passengers' Council (or within such reasonable time period as directed by the Secretary of State) an action plan which is consistent with its obligations under paragraph 2.4 and in compliance with the following provisions:

- (a) the Franchisee shall (1) produce, (2) obtain the Secretary of State's approval of, and (3) commence the implementation of the action plan within three months after the date on which the results of such National Rail Passenger Survey which triggered the requirement for the required improvement were published or otherwise made available to the Franchisee pursuant to paragraph 1.2;
- (b) the action plan will contain specific tangible action points and indicate in the case of each action point:
 - (i) show that action will contribute to meeting the NRPS Measure;
 - (ii) where the action is to be implemented;
 - (iii) when the action is to be commenced and by when it is to be implemented provided always that where any action is expressed to be on-going the plan shall include specific review dates; and
 - (iv) how performance of the action is to be measured; and

- (c) the action plan will identify the additional expenditure associated with each action.
- 2.6 The Franchisee shall, except to the extent otherwise agreed by the Secretary of State in advance, implement each action plan referred to in paragraph 2.5 in accordance with its terms.
- 2.7 It is acknowledged by the Franchisee that the approval or lack of approval by the Secretary of State of each action plan as contemplated in paragraph 2.5(a) shall not relieve the Franchisee of its obligations under this Schedule 7.2 or any other provisions of the Franchise Agreement.
- 2.8 Upon the termination of this Franchise Agreement the Franchisee shall pay to the Secretary of State, by way of adjustment to Franchise Payments, an amount equivalent to the amount of any additional expenditure that the Franchisee is committed to incur pursuant to paragraph 2.4 and which it has not yet incurred as at the end of the Franchise Period.
- 2.9 For the purposes of this Schedule 7.2:

“**additional expenditure**” means up to ³⁴⁶ in aggregate per applicable Franchisee Year save that for each applicable Franchisee Year the additional expenditure applicable in relation to such Franchisee Year shall be determined as follows:

$AD \times RPI$

where:

AD is ³⁴⁷; and

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

- (a) such additional expenditure shall be additional to:
- (i) any sums provided for expenditure in respect of the same or similar commitments in the Business Plan for the Franchisee Year (the “**First Expenditure Franchisee Year**”) in which the obligation to incur additional expenditure under paragraph 2.3 first arises (the “**Existing Expenditure**”), and in any subsequent Franchisee Year, shall be in addition to the amount of the Existing Expenditure as increased by an amount equivalent to any increase in the Retail Prices Index between the beginning of the First Expenditure Franchisee Year and the beginning of that subsequent Franchisee Year; and
- (ii) without limiting the preceding paragraph (c)(i), any expenditure made or to be made by the Franchisee for the

³⁴⁶ Where text has been omitted from the document, this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

³⁴⁷ Where text has been omitted from the document, this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

purposes of complying with the provisions of Schedule 1 (Passenger Service Obligations), Schedule 4 (Persons with Disabilities and Disability Discrimination), Part 1 (List of Committed Obligations) to Schedule 6.1 (Committed Obligations and Related Provisions) and Schedule 7.1 (Performance Benchmarks);

“required improvement” means an improvement in the level of customer satisfaction for the relevant NRPS Measure(s) as measured by a National Rail Passenger Survey so that such level is equal to or higher than the related NRPS Benchmark.

- 2.10 For each Franchisee Year (for 2015 – 2016, 2016 – 2017 and 2017 - 2018) the aggregate amount of additional expenditure that may be required in respect of the Franchisee’s performance against all of the NRSP Benchmarks in that Franchisee Year shall in no circumstances exceed the amount determined as follows:

$AAD \times RPI$

where:

AAD is ³⁴⁸; and

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

- 2.11 ³⁴⁹**It is acknowledged and agreed by the Parties that the performance results/required remedial actions regime, pursuant to paragraphs 2.2 to 2.10 of Schedule 7.2 of the Franchise Agreement, shall not apply for the publication of the National Rail Passenger Survey Results for the Franchisee Year 2018 – 2019 and the Franchisee Year 2019 - 2020.**

³⁴⁸ **Where text has been omitted from the document, this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.**

³⁴⁹ 23 March 2018 (Date of DOA) - Contract insertion agreed by the Secretary of State and Franchisee

APPENDIX 1 TO SCHEDULE 7.2³⁵⁰**NRPS Benchmark Table**

	NRPS Benchmark		
	Stations	Train Services	Customer Service and Information
High Speed			
2015 - 2016	74	90	77
2016 - 2017	74	90	77
2017 - 2018	74	90	77
2018 - 2019	74	90	77
Main Line			
2015 - 2016	71	69	68
2016 - 2017	71	69	68
2017 - 2018	71	69	68
2018 - 2019	71	69	68
Metro			
2015 - 2016	70	71	63
2016 - 2017	70	71	63
2017 - 2018	70	71	63
2018 - 2019	70	71	63

³⁵⁰ 23 March 2018 (Date of DOA) - Contract variation agreed by the Secretary of State and Franchisee

SCHEDULE 8

Payments

Schedule 8.1: Franchise Payments

Appendix 1: Profit Share Thresholds

Appendix 2: Components of AFA and DFR

Schedule 8.2: Annual Franchise Payments

Appendix: Figures for the Calculation of Annual Franchise payments

Schedule 8.3 Miscellaneous Payment Provisions

Schedule 8.4 Track Access Adjustments and Station Charge Adjustments

SCHEDULE 8.1**Franchise Payments****1. Franchise Payments**

1.1 The Franchise Payment for any Reporting Period shall be an amount equal to:

$$\text{£FP} = \text{PFP} + \text{TAA} + \text{SCA} + \text{HTAAQ} - \text{HTAAP} + \text{HTAA} + \text{HSCP} + \text{AWA} + \text{LBA} + \text{DRA} + \text{SETML} \\ + \text{TRAP} + \text{LTEP} + \text{C377LA} - \text{HTAAQEC} + \text{OTWSP}^{351} + \text{CL377 (RS) LA}^{352}$$

where:

£FP means the Franchise Payment for that Reporting Period;

PFP means $\left(\frac{\text{RPD}}{\text{FYD}} \times \text{AFP} \right)$

where:

RPD means the number of days in that Reporting Period;

FYD^{353 354} means the number of days in the Franchisee Year in which that Reporting Period occurs provided that in respect of any Reporting Period:

- (a) **occurring during any Franchisee Year in which the Franchise Agreement terminates early pursuant to Schedule 10 (Remedies, Termination and Expiry), FYD shall mean the number of days there would have been in such Franchisee Year had such early termination not occurred;**
- (b) **which commences between 6 January 2019 and 31 March 2019 (inclusive), FYD shall be deemed to be the number of days during the period from 6 January 2019 to 31 March 2019 (inclusive);**
- (c) **which commences between 1 April 2019 and 22 June 2019 (inclusive), FYD shall be deemed to be the number of days during the period from 1 April 2019 to 22 June 2019 (inclusive);**
- (d) **which commences between 23 June 2019 and 9 November 2019 (inclusive), FYD shall be deemed to be the number of days during the period from 23 June 2019 to 9 November 2019 (inclusive); and**

³⁵¹ 08/12/2016 (Date of DOA)- Contract insertion agreed by the Secretary of State and Franchisee.

³⁵² 09/12/2016 (Date of Contract change letter) – Contract insertion agreed by the Secretary of State and Franchisee.

³⁵³ 23 March 2018 (Date of DOA) - Contract variation agreed by the Secretary of State and Franchisee

³⁵⁴ 13 June 2019 (Date of DOA) - Contract variation agreed by the Secretary of State and Franchisee

- (e) ³⁵⁵ **which commences between 10 November 2019 and 31 March 2020 (inclusive), FYD shall be deemed to be the number of days during the period from 10 November 2019 to 31 March 2020 (inclusive);**

AFP means the Annual Franchise Payment for the Franchisee Year in which that Reporting Period occurs, as determined in accordance with Schedule 8.2 (Annual Franchise Payments);

TAA means any Track Access Adjustment to be made on that Reporting Period's Payment Date;

SCA means any Station Charge Adjustment to be made on that Reporting Period's Payment Date;

HTAAQ means the track access charge due in respect of the "IRC", the "OMRC" and the "Capacity Reservation Charge" (as such are defined under the High Speed 1 Passenger Access Terms December 2012) (the "**Advance Payments**") and payable in the following Reporting Period pursuant to the terms of the Track Access Agreement between the Franchisee and HS1 Limited in respect of the Passenger Services required to deliver the Service Level Commitment;

HTAAP means the value of the Advance Payments which relate to that Reporting Period, which shall be calculated as:

$$HTAAP = \sum HTAAQ_{RP} \times \frac{DRP_q}{DQ_q}$$

where:

HTAAQ_{RP} means each Advance Payment which relates to any part of that Reporting Period;

DRP_q is the number of days in the Reporting Period to which that Advance Payment relates; and

DQ_q is the number of days in the quarter to which that Advance Payment relates;

RPI has the meaning given to it in Schedule 8.2;

HTAA the track access adjustment to be made in that Reporting Period in accordance with paragraph 2 of Schedule 8.4 (Track Access Adjustments and Station Charge Adjustments) in respect of the difference between the track access charges due and payable pursuant to the terms of the Track Access Agreement for that Reporting Period and the modelled cost for such track access charges (other than the Advance Payments);

HSCP means the station access adjustment to be made in that Reporting Period in accordance with paragraph 3 of Schedule 8.4 (Track Access Adjustments and Station Charge Adjustments) in respect of the difference between the station access charge due and payable in the following Reporting Period due and payable pursuant to the terms of the Station Access Agreement for that Reporting Period pursuant to the

³⁵⁵ 13 June 2019 (Date of DOA) - Contract insertion agreed by the Secretary of State and Franchisee

terms of the Station Access Agreement and the modelled cost for such station access charges;

HTAAQEC means any amounts of HTAAQ paid which relate to Reporting Periods falling after the expiry or termination of the Franchise Term;

AWA means the payment of the Abbey Wood Adjustment to be made for that Reporting Period in accordance with paragraph 2 of Schedule 8.5 (London Bridge and Other Potential Payment Adjustments);

LBA means the payment of the London Bridge Adjustment to be made to be made in that Reporting Period in accordance with paragraph 3 of Schedule 8.5 (London Bridge and Other Potential Payment Adjustments);

DRA means the Depot Rental Adjustment to be made in that Reporting Period in accordance with paragraph 4 of Schedule 8.5 (London Bridge and Other Potential Payment Adjustments);

SETML means any SETML Payment to to be made for that Reporting Period in accordance with paragraph 5 of Schedule 8.5 (London Bridge and Other Potential Payment Adjustments);

TRAP means the payment of the Travelcard Revenue Adjustment Payment to be made in that Reporting Period in accordance with paragraph 6 of Schedule 8.5 (London Bridge and Other Potential Payment Adjustments);

LTEP means the payment of the London Terminals Extension Payment to be made in accordance in that Reporting Period with paragraph 7 of Schedule 8.5 (London Bridge and Other Potential Payment Adjustments);

C377LA means the payment of the Class 377 Leasing Adjustment to be made in that Reporting Period in accordance with paragraph 8 of Schedule 8.5 (London Bridge and Other Potential Payment Adjustments);

CL377 (RS)LA³⁵⁶ means the Class 377 (Revised Solution) Leasing Adjustment to be made in that Reporting Period as calculated pursuant to paragraph 8.2 of Schedule 8.5 (London Bridge and Other Potential Payment Adjustments); and

OTWSP³⁵⁷ means any On-Train Wi-Fi Solution Payment payable by the Secretary of State to the Franchisee or the Franchisee to the Secretary of State (as the case may be) on that Reporting Period's Payment Date.

- 1.2 Where a Franchisee Year starts or ends during a Reporting Period, £FP and PFP shall be determined as if references in paragraph 1.1 to a Reporting Period were to each of the separate sections of two such Reporting Periods which fall either side of such Franchisee Year start or end, and the Franchise Payment for such

³⁵⁶ 09/12/2016 (Date of Contract change letter) – Contract insertion agreed by the Secretary of State and Franchisee.

³⁵⁷ 08/12/2016 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

Reporting Period shall be the sum of £FP as determined for each such section of such Reporting Period.

1.3 The parties agree that:

- (a) ³⁵⁸ **each of £FP, TAA, SCA, HSCQ, HTAA, HSCP, TRAP, AWA, LBA, DRA, LTEP, OTWSP or HYOTWSPBAR (as that expression is defined in paragraph 8.1) may be a positive number or a negative number;**
- (b) each of HTAAQ, HTAAP, HTAAQEC, SETML, C377LA **and CL377(RS)LA**³⁵⁹ may only be a positive number;
- (c) where £FP is a positive number, the Secretary of State shall pay that amount to the Franchisee on the Payment Date for that Reporting Period; and
- (d) where £FP is a negative number, the Franchisee shall pay the corresponding positive amount to the Secretary of State on the Payment Date for that Reporting Period.

2. Payment of Franchise Payments

- 2.1 The Secretary of State shall notify the Franchisee, no less than seven days prior to the end of each Reporting Period, of the amount of the Franchise Payment payable in respect of that Reporting Period.
- 2.2 Each such notification shall set out in reasonable detail how the Franchise Payment has been calculated.
- 2.3 The Payment Date for a Reporting Period shall be the last business day of that Reporting Period.
- 2.4 Each Franchise Payment shall be payable by the Franchisee or, as the case may be, the Secretary of State in the amount notified by the Secretary of State in accordance with paragraph 2.1 on the Payment Date of the Reporting Period to which it relates.
- 2.5 Each Franchise Payment shall be made:
 - (a) by automatic electronic funds transfer in pounds sterling to such bank account in the United Kingdom as the payee of such payment may have previously specified to the payer in writing; and
 - (b) so that cleared funds are received in that account on or before the due date for payment.
- 2.6 If either party disputes the amount of a Franchise Payment, the dispute shall, unless the parties otherwise agree, be resolved in accordance with the provisions of clause 8 (Governing Law) of this Franchise Agreement. Any such dispute shall not affect the obligation of either party to pay a Franchise Payment notified in accordance with this paragraph 2.

³⁵⁸ 08/12/2016 (Date of DOA) – Contract variation agreed by the Secretary of State and Franchisee

³⁵⁹ 09/12/2016 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

- 2.7 If either party fails to pay any amount to the other party on its due date, it shall in addition pay interest on such amount at the Interest Rate, calculated on a daily basis, from the due date for payment to the date on which payment is made.
- 2.8 If the amount of any Franchise Payment is agreed or determined to be incorrect and:
- (a) either party has made a payment to the other party which is greater than it would have made if the amount of the Franchise Payment had been correct, then the recipient shall repay the excess within three business days of the agreement or determination; or
 - (b) either party has made a payment to the other party which is less than it would have made if the amount of the Franchise Payment had been correct, then the payer shall pay the amount of any shortfall to the payee within three business days of the agreement or determination,

together, in each case, with interest on the amount payable at the Interest Rate, calculated on a daily basis from the date on which the Franchise Payment was paid until the date on which such excess amount or shortfall is paid.

3. Profit Share

- 3.1 ³⁶⁰**In respect of any Franchisee Accounting Year, other than the Last Franchisee Accounting Year, for the purposes of this paragraph 3:**

"First Profit Share Threshold" means an amount in respect of any Franchisee Accounting Year determined as follows:

FPST = the amount prescribed for these purposes in Appendix 1 (Profit Share Thresholds) to this Schedule 8.1 in respect of the relevant Franchisee Accounting Year x RPI x (NRP/13)

where:

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

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

NRP means the whole number of Reporting Periods in that Franchisee Accounting Year.

"Second Profit Share Threshold" means an amount in respect of any Franchisee Accounting Year determined as follows:

SPST = the amount prescribed for these purposes in Appendix 1 (Profit Share Thresholds) to this Schedule 8.1 in respect of the relevant Franchisee Accounting Year x RPI x (NRP/13)

where:

³⁶⁰ 13 June 2019 (Date of DOA) - Contract variation agreed by the Secretary of State and Franchisee

SPST	means the Second Profit Share Threshold for that Franchisee Accounting Year;
RPI	has the meaning given to it in Schedule 8.2 (Annual Franchise Payments);
NRP	means the whole number of Reporting Periods in that Franchisee Accounting Year.

"Third Profit Share Threshold" means an amount in respect of any Franchisee Accounting Year determined as follows:

TPST = the amount prescribed for these purposes in Appendix 1 (Profit Share Thresholds) to this Schedule 8.1 in respect of the relevant Franchisee Accounting Year x RPI x (NRP/13)

where:

TPST	means the Third Profit Share Threshold for that Franchisee Accounting Year;
RPI	has the meaning given to it in Schedule 8.2 (Annual Franchise Payments);
NRP	means the whole number of Reporting Periods in that Franchisee Accounting Year.

"Relevant Profit" means, subject to paragraph 3.4, in respect of any Franchisee Accounting Year, the total profit of the Franchisee for that Franchisee Accounting Year calculated by applying the accounting policies and standards set out in the Record of Assumptions and applied through the Financial Model:

- (a) after taking into account in respect of that Franchisee Accounting Year:
 - (i) interest, finance income and finance charges (other than finance items recognised in respect of retirement benefits);
 - (ii) Franchise Payments;
 - (iii) all extraordinary and exceptional items, as defined under the accounting policies and standards set out in the Record of Assumptions and applied through the Financial Model;
 - (iv) the Franchisee's normal pension contributions in relation to the Franchise Sections and any other pension schemes to the extent connected with the Franchise; and
 - (v) ³⁶¹any payments to Affiliates of the Franchisee (including management fees and royalty fees) except

³⁶¹ 23 March 2018 (Date of DOA) - Contract variation agreed by the Secretary of State and Franchisee.

to the extent that such payments exceed an amount to be determined as follows:

AFA x RPI

where:

AFA is the amount specified in respect of each Franchisee Accounting Year in column 2 of the table set out in paragraph 1 of Appendix 2 to this Schedule 8.1 (Franchise Payments) provided that if the Secretary of State exercises his right to extend the Franchise pursuant to Schedule 18 (Additional Reporting Periods):

(aa) for 3 Reporting Periods, AFA for the Franchisee Accounting Year which commences 1 April 2019 shall be the amount specified in column 2 of the table set out in paragraph 1 of Appendix 2 to this Schedule 8.1 for the periods referred to Year 6 (Optional extension); or

(bb) for less than 3 Reporting Periods, AFA for the Franchisee Accounting Year which commences 1 April 2019 shall be equal to $A \times (B/3)$ where:

A means the aggregate of the amounts specified in column 2 of the table set out in paragraph 1 of Appendix 2 to this Schedule 8.1 for the periods referred to as Year 6 (Optional extension); and

B means the number of Reporting Periods in the Franchisee Accounting Year which commences 1 April 2019 (as extended pursuant to Schedule 18 (Additional Reporting Periods)); and

RPI has the meaning given to it in the definition of Threshold Amount;

(vi) any sums payable by or to the Franchisee pursuant to the terms of the Supplemental Agreement; and

(vii) any capital expenditure to the extent that it is recognised as an operating cost in the Annual Audited Accounts and any depreciation on capital expenditure that is recognised as an expense in the Annual Audited Accounts, unless the depreciation policy and assumptions used in the Annual Audited Accounts are different to those set out in the Record of Assumptions and applied through the Financial Model, in which case an adjustment should be made to take account of the depreciation which would have been charged had the policy and assumptions set out in the Record of

Assumptions been applied for the relevant Franchisee Accounting Year; and

- (b) before taking into account in respect of that Franchisee Accounting Year:
- (i) any taxation on profits including corporation tax;
 - (ii) shares of the profit of any Affiliate of the Franchisee, except dividends received in cash;
 - (iii) non cash entries in respect of the Franchise Sections and any other pension schemes to the extent connected with the Franchise, excluding accruals or prepayments of any normal pension contributions due;
 - (iv) any payment made by the Franchisee consequent upon any breach or contravention of the Franchise Agreement and/or its Licences (including as a consequence of any penalty payment paid or payable pursuant to Section 57A of the Act);
 - (v) any profit share payments payable to the Secretary of State in relation to any Franchisee Accounting Year;
 - (vi) ³⁶²**fees, remuneration and pension contributions in respect of any director and officers of the Franchisee in excess of an amount to be determined as follows:**

DFR x RPI

where:

DFR is the amount specified in respect of each Franchisee Accounting Year in column 2 of the table set out in paragraph 2 of Appendix 2 to this Schedule 8.1 (Franchise Payments) provided that if the Secretary of State exercises his right to extend the Franchise pursuant to Schedule 18 (Additional Reporting Periods):

(aa) for 3 Reporting Periods, DFR for the Franchisee Accounting Year which commences 1 April 2019 shall be the amount specified in column 2 of the table set out in paragraph 2 of Appendix 2 to this Schedule 8.1 for the periods referred to as Year 6 (Optional extension); or

(bb) for less than 3 Reporting Periods, DFR for the Franchisee Accounting Year which commences 1 April 2019 shall be equal to $A \times (B/3)$ where:

³⁶² 23 March 2018 (Date of DOA) - Contract variation agreed by the Secretary of State and Franchisee

A means the amount specified in column 2 of the table set out in paragraph 2 of Appendix 2 to this Schedule 8.1 for the periods referred to as Year 6 (Optional extension); and

B means the number of Reporting Periods in the Franchisee Accounting Year which commences 1 April 2019 (as extended pursuant to Schedule 18 (Additional Reporting Periods)); and

RPI has the meaning given to it in the definition of Threshold Amount; and³⁶³

- (vii)³⁶⁴ any profit or loss (as applicable) of the Franchisee in relation to the procurement, implementation and/or operation of the OTW Solution (as defined in paragraph 20.1 of Part 1 (List of Committed Obligations) of Schedule 6.1 (Committed Obligations and Related Provisions). For this purpose, the calculation of profit or loss (as applicable) shall be before taking into account the impact of the OTW Solution on all revenue derived by the Franchisee from:**
- (aa) the sale of tickets of any type for the carriage of passenger by railway (including revenue allocated to the Franchisee through the Ticketing and Settlement Agreement);**
 - (bb) the sale of any Discount Cards or Railcards;**
 - (cc) a Penalty Fare;**
 - (dd) a concessionary scheme, multi-modal scheme or integrated transport scheme; and**
- (viii)³⁶⁵ any profits in respect of any OTW Additional Services and/or OTW Ancillary Service.**

Where the calculation of Relevant Profit requires account to be taken of amounts prescribed in the Financial Model or the Record of Assumptions by reference to Franchisee Years rather than Franchisee Accounting Years the Secretary of State shall reasonably determine any calculation required to apply such amounts on a pro rata basis by reference to Franchisee Accounting Years.

3.1A³⁶⁶ In respect of the Last Franchisee Accounting Year, for the purposes of this paragraph 3:

(a) First Profit Share Threshold

³⁶³ 08/12/2016 (Date of DOA) – Contract variation agreed by the Secretary of State and Franchisee.

³⁶⁴ 08/12/2016 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

³⁶⁵ 08/12/2016 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

³⁶⁶ 13 June 2019 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

“First Profit Share Threshold” means an amount in respect of the Last Franchisee Accounting Year determined as follows:

$$\text{FPST} \times \text{RPI} \times (\text{FYD}_A / 283)$$

where:

FPST	is the amount prescribed for these purposes in paragraph 1 of Appendix 1 (Profit Share Thresholds) to this Schedule 8.1 in respect of the Last Franchisee Accounting Year;
RPI	has the meaning given to it in Schedule 8.2 (Annual Franchise Payments); and
FYD_A	means the number of days in the Last Franchisee Accounting Year (including the period of any extension of the Franchise Agreement by up to five Reporting Periods pursuant to paragraph 1.2 of Schedule 18 (Additional Reporting Periods) if and to the extent that such extension is called by the Secretary of State).

(b) Second Profit Share Threshold

“Second Profit Share Threshold” means an amount in respect of the Last Franchisee Accounting Year determined as follows:

$$\text{SPST} \times \text{RPI} \times (\text{FYD}_A / 283)$$

where:

SPST	is the amount prescribed for these purposes in paragraph 2 of Appendix 1 (Profit Share Thresholds) to this Schedule 8.1 in respect of the Last Franchisee Accounting Year;
RPI	has the meaning given to it in Schedule 8.2 (Annual Franchise Payments); and
FYD_A	means the number of days in the Last Franchisee Accounting Year (including the period of any extension of the Franchise Agreement pursuant to paragraph 1.2 of Schedule 18 (Additional Reporting Periods) if and to the extent that such extension is called by the Secretary of State).

(c) Relevant Profit

"Relevant Profit" means, subject to paragraph 3.4, in respect of the Last Franchisee Accounting Year, the total profit of the Franchisee for the Last Franchisee Accounting Year calculated by applying the accounting policies and standards set out in the Record of Assumptions and applied through the Financial Model:

(a) after taking into account in respect of the Last Franchisee Accounting Year:

- (i) interest, finance income and finance charges (other than finance items recognised in respect of retirement benefits);**
- (ii) Franchise Payments;**
- (iii) all extraordinary and exceptional items, as defined under the accounting policies and standards set out in the Record of Assumptions and applied through the Financial Model;**
- (iv) the Franchisee's normal pension contributions in relation to the Franchise Sections and any other pension schemes to the extent connected with the Franchise;**
- (v) any payments to Affiliates of the Franchisee (including management fees and royalty fees) except to the extent that such payments exceed an amount to be determined as set out below:**

AFA x RPI x (FYD_A/283)	
where:	
AFA	is the amount prescribed for these purposes in the table set out in paragraph 1 of Appendix 2 (Components of AFA and DFR) to this Schedule 8.1 in respect of the Last Franchisee Accounting Year;
RPI	has the meaning given to it in the definition of Threshold Amount; and
FYD_A	means the number of days in the Last Franchisee Accounting Year (including the period of any extension of the Franchise Agreement by up to five Reporting Periods pursuant to paragraph 1.2 of Schedule 18 (Additional Reporting Periods) if and to the extent that such extension is called by the Secretary of State).

- (vi) any sums payable by or to the Franchisee pursuant to the terms of the Supplemental Agreement; and**
- (vii) any capital expenditure to the extent that it is recognised as an operating cost in the Annual Audited Accounts and any depreciation on capital expenditure that is recognised as an expense in the Annual Audited Accounts, unless the depreciation policy and assumptions used in the Annual Audited Accounts are different to those set out in the Record of Assumptions and applied through the Financial Model, in which case an adjustment should be made to take account of**

the depreciation which would have been charged had the policy and assumptions set out in the Record of Assumptions been applied for the Last Franchisee Accounting Year; and

- (b) before taking into account in respect of the Last Franchisee Accounting Year:**
 - (i) any taxation on profits including corporation tax;**
 - (ii) shares of the profit of any Affiliate of the Franchisee, except dividends received in cash;**
 - (iii) non cash entries in respect of the Franchise Sections and any other pension schemes to the extent connected with the Franchise, excluding accruals or prepayments of any normal pension contributions due;**
 - (iv) any payment made by the Franchisee consequent upon any breach or contravention of the Franchise Agreement and/or its Licences (including as a consequence of any penalty payment paid or payable pursuant to Section 57A of the Act);**
 - (v) any profit share payments payable to the Secretary of State in relation to any Franchisee Accounting Year;**
 - (vi) fees, remuneration and pension contributions in respect of any director and officer of the Franchisee in excess of an amount to be determined as set out below:**

DFR x RPI x (FYD_A/283)	
where:	
DFR	is the amount prescribed for these purposes in the table set out in paragraph 2 of Appendix 2 (Components of AFA and DFR) to this Schedule 8.1 in respect of the Last Franchisee Accounting Year;
FYD_A	means the number of days in the Last Franchisee Accounting Year (including the period of any extension of the Franchise Agreement by up to five Reporting Periods pursuant to paragraph 1.2 of Schedule 18 (Additional Reporting Periods) if and to the extent that such extension is called by the Secretary of State); and
RPI	has the meaning given to it in the definition of Threshold Amount.

- (vii) any profit or loss (as applicable) of the Franchisee in relation to the procurement, implementation and/or operation of the OTW Solution (as defined in paragraph 20.1 of Part 1 (List of Committed Obligations) of Schedule 6.1 (Committed**

Obligations and Related Provisions). For this purpose, the calculation of profit or loss (as applicable) shall be before taking into account the impact of the OTW Solution on all revenue derived by the Franchisee from:

- (aa) **the sale of tickets of any type for the carriage of passenger by railway (including revenue allocated to the Franchisee through the Ticketing and Settlement Agreement);**
 - (bb) **the sale of any Discount Cards or Railcards;**
 - (cc) **a Penalty Fare;**
 - (dd) **a concessionary scheme, multi-modal scheme or integrated transport scheme; and**
- (viii) any profits in respect of any OTW Additional Services and/or OTW Ancillary Service.**

Where the calculation of Relevant Profit requires account to be taken of amounts prescribed in the Financial Model or the Record of Assumptions by reference to Franchisee Years rather than Franchisee Accounting Years the Secretary of State shall reasonably determine any calculation required to apply such amounts on a pro rata basis by reference to Franchisee Accounting Years.

3.2 ³⁶⁷ ³⁶⁸ **If the Annual Audited Accounts in respect of any Franchisee Accounting Year (other than the Last Franchisee Accounting Year) show that the Relevant Profit for that Franchisee Accounting Year exceeds the First Profit Share Threshold then, subject to paragraph 4, the Franchisee shall pay to the Secretary of State:**

- (a) **[REDACTED³⁶⁹] of Relevant Profit in excess of the First Profit Share Threshold but less than the Second Profit Share Threshold;**
- (b) **[REDACTED³⁷⁰] of Relevant Profit in excess of the Second Profit Share Threshold but less than the Third Profit Share Threshold; and**

³⁶⁷ 23 March 2018 (Date of DOA) - Contract variation agreed by the Secretary of State and Franchisee.

³⁶⁸ 13 June 2019 (Date of DOA) - Contract variation agreed by the Secretary of State and Franchisee.

³⁶⁹ **5 August 2019 (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.**

³⁷⁰ **5 August 2019 (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) ³⁷¹[REDACTED³⁷²] of Relevant Profit in excess of the Third Profit Share Threshold Profit Share Threshold.

Provided that the Parties acknowledge and agree that:

- (d) **for the purposes of calculating the Relevant Profit and the application of the First Profit Share Threshold, the Second Profit Share Threshold and the Third Profit Share for each of the Franchisee Accounting Year of ten Reporting Periods commencing on 1 April 2018 and the Franchisee Accounting Year of three Reporting Periods commencing on 6 January 2019:**
- (i) **the Franchisee shall procure that the Annual Audited Accounts for the 12 months commencing 1 April 2018 to be provided to the Secretary of State pursuant to paragraph 3.9 of Schedule 13 (Information & Industry Initiatives):**
- (aa) **are prepared in two separate sections for Reporting Periods 1 to 10 and Reporting Periods 11 to 13 such that each line of the profit and loss account in such Annual Audited accounts are allocated to the relevant Reporting Periods 1 to 10 or Reporting Periods 11 to 13 in a manner which is consistent with the way that costs and revenue have arisen during the 12 months commencing on 1 April 2018; and**
- (bb) **include a statement from the Franchisee's auditor confirming that the allocation of Relevant Profit between Reporting Periods 1 to 10 or Reporting Periods 11 to 13, in the auditor's opinion, is consistent with the way that costs and revenues have been provided to the Secretary of State in the Management Accounts for each Reporting Period during the 12 months commencing 1 April 2018; and**
- (ii) **the Parties shall use such Annual Audited Accounts for the 12 months commencing 1 April 2018 to apportion the Relevant Profit between the Franchisee Accounting Year commencing on 1 April 2018 and the Franchisee Accounting Year commencing on 6 January 2019 and not the Management Accounts; and**

³⁷¹ Where text has been omitted from the document, this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

³⁷² 5 August 2019 (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.

- (e) ³⁷³ ³⁷⁴ **for the purposes of calculating the Relevant Profit and the application of the First Profit Share Threshold, the Second Profit Share Threshold and the Third Profit Share for the Franchisee Accounting Year of three Reporting Periods commencing on 1 April 2019:**
- (i) **the Franchisee shall procure that the Annual Audited Accounts for the 12 months commencing 1 April 2019 to be provided to the Secretary of State pursuant to paragraph 3.9 of Schedule 13 (Information & Industry Initiatives):**
- (aa) **are prepared in two separate sections for Reporting Periods 1 to 3 and Reporting Periods 3 to 13 such that each line of the profit and loss account in such Annual Audited accounts are allocated to the relevant Reporting Periods 1 to 3 or Reporting Periods 4 to 13 in a manner which is consistent with the way that costs and revenue have arisen during the 12 months commencing on 1 April 2019; and**
- (bb) **include a statement from the Franchisee's auditor confirming that the allocation of Relevant Profit between Reporting Periods 1 to 3 or Reporting Periods 4 to 13, in the auditor's opinion, is consistent with the way that costs and revenues have been provided to the Secretary of State in the Management Accounts for each Reporting Period during the 12 months commencing 1 April 2019; and**
- (ii) **the Parties shall use such Annual Audited Accounts for the 12 months commencing 1 April 2019 to apportion the Relevant Profit between the Franchisee Accounting Year commencing on 1 April 2019 and the Last Franchisee Accounting Year and not the Management Accounts.**

3.2A³⁷⁵ **If the Annual Audited Accounts in respect of the Last Franchisee Accounting Year show that the Relevant Profit for the Last Franchisee Accounting Year exceeds the First Profit Share Threshold then, subject to paragraph 4, the Franchisee shall pay to the Secretary of State:**

³⁷³ 14 May 2018 (Date of Contract Change Letter) - Contract variation agreed by the Secretary of State and Franchisee.

³⁷⁴ 13 June 2019 (Date of DOA) - Contract variation agreed by the Secretary of State and Franchisee.

³⁷⁵ 13 June 2019 (Date of DOA) - Contract insertion agreed by the Secretary of State and Franchisee.

- (a) **[REDACTED³⁷⁶] of Relevant Profit in excess of the First Profit Share Threshold but less than the Second Profit Share Threshold; and**
- (b) **[REDACTED³⁷⁷] of Relevant Profit in excess of the Second Profit Share Threshold,**

provided that the Parties acknowledge and agree that paragraph 3.2(e) shall apply to the Last Franchisee Accounting Year for the purposes of calculating the Relevant Profit and the application of the First Profit Share Threshold and the Second Profit Share Threshold.

3.3 ³⁷⁸**Subject to paragraphs 3.5 and 3.6 below, payments due under paragraph 3.2 or paragraph 3.2A (as applicable) shall be paid as part of the Franchise Payment for the first Reporting Period falling 30 or more days after delivery of the Annual Audited Accounts by the Franchisee to the Secretary of State under paragraph 3.9 of Schedule 13 (Information and Industry Initiatives) or if there is no such Reporting Period, within 30 days of the date of such delivery.**

3.4

- (a) If in any Franchisee Accounting Year (or any period of 12 consecutive months after the end of the Franchise Period) (the "**Current Franchisee Accounting Year**") the Franchisee receives a compensation or other settlement payment of at least £200,000 x RPI arising from a single claim or series of related claims which relate wholly or partly to costs, losses or expenses (including loss of revenue) arising in any other Franchisee Accounting Year or Franchisee Accounting Years, then the Franchisee shall notify the Secretary of State of such payment as soon as reasonably practicable and for the purposes of this paragraph 3 and notwithstanding its other terms:
 - (i) the payment which relates to such other Franchisee Accounting Year shall be attributed to that other Franchisee Accounting Year and not treated as received in the Current Franchisee Accounting Year;
 - (ii) where and to the extent any payments under this paragraph 3 in respect of any other Franchisee Accounting Year would have been made or would have been higher had that amount actually been received in that other Franchisee Accounting Year, the Franchisee shall pay a reconciliation amount to the Secretary of State within 30 days after delivery of the Annual Audited Accounts that relate to the Current Franchisee Accounting Year by the Franchisee to

³⁷⁶ **5 August 2019 (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.**

³⁷⁷ **5 August 2019 (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.**

³⁷⁸ 13 June 2019 (Date of DOA) - Contract variation agreed by the Secretary of State and Franchisee.

the Secretary of State under paragraph 3.9 of Schedule 13 (Information and Industry Initiatives) or, if there is no further requirement on the Franchisee to deliver Annual Audited Accounts following the end of the Franchise Period, within 30 days of the Franchisee receiving the relevant payment; and

- (iii) RPI has the meaning given to it in Schedule 8.2 (Annual Franchise Payments).
- (b) Where the Secretary of State reasonably considers that in calculating Relevant Profit any particular item or transaction has not been accounted for on a reasonable basis (including where the accounting treatment looks to the form rather than the substance, of the item or transaction) he shall be entitled to require it to be accounted for on such other basis as he may reasonably determine and notify to the Franchisee provided that the Secretary of State shall not be entitled pursuant to this paragraph to alter the accounting policies of the Franchisee from those set out in the Record of Assumptions and applied through the Financial Model.
- (c) ³⁷⁹**Without prejudice to paragraph 3.4(a) where the Annual Audited Accounts in relation to any previous Franchisee Accounting Year are subject to adjustment or restatement the Secretary of State shall have a discretion to require the recalculation of Relevant Profit for the relevant Franchisee Accounting Year and to require that the Franchisee shall pay to the Secretary of State the amount which is the difference between the profit share actually paid to the Secretary of State pursuant to paragraph 3.2 or paragraph 3.2A (as applicable) and the amount that would have been paid had the Relevant Profit been originally calculated on the basis that such adjustment or revision was included in the Annual Audited Accounts. Any payment due to the Secretary of State shall be paid by the Franchisee within 30 days of the Secretary of State notifying the Franchisee that he requires a payment to be made pursuant to this paragraph.**

3.5 The Franchisee shall, within 10 days after delivery of any Annual Audited Accounts under paragraph 3.9 of Schedule 13 (Information and Industry Initiatives), deliver to the Secretary of State a report identifying:

- (a) ³⁸⁰**the amount of total profit and the adjustments made in the calculation of Relevant Profit pursuant to paragraph 3.1 or paragraph 3.1A;**
- (b) any items falling under paragraph 3.4(a), including details of the allocation across Franchisee Accounting Years of such items; and
- (c) any adjustments or restatements made in relation to the Annual Audited Accounts in respect of any previous Franchisee Accounting Year

³⁷⁹ 13 June 2019 (Date of DOA) - Contract variation agreed by the Secretary of State and Franchisee.

³⁸⁰ 13 June 2019 (Date of DOA) - Contract variation agreed by the Secretary of State and Franchisee.

and shall provide such additional information, records or documents as the Secretary of State may reasonably require in relation to such matters (including an unqualified written report from the Franchisee's auditors which confirm that any such report gives a true and fair view of the matters contained within it including the amount of total profit and the adjustments made in the calculation of Relevant Profit).

3.6 **³⁸¹Any profit share payment pursuant to paragraph 3.2 or paragraph 3.2A (as applicable) to be made in respect of the Last Franchisee Accounting Year shall be determined in accordance with this paragraph 3 but shall be paid within 30 days of the Secretary of State giving written notice to the Franchisee of the amount of such profit share payment.**

3.7 If the Franchisee fails to provide the Annual Audited Accounts for the final Franchisee Accounting Year within four Reporting Periods of the expiry of the final Franchisee Accounting Year pursuant to paragraph 3.9 of Schedule 13 (Information and Industry Initiatives), the Secretary of State shall be entitled (but not obliged) to determine any Profit Share Adjustment in accordance with this paragraph 3 but by reference to any relevant information available to the Secretary of State at the time of such determination, including any information contained in the latest cumulative, year-to-date Management Accounts or in the Annual Management Accounts.

³⁸¹ 13 June 2019 (Date of DOA) - Contract variation agreed by the Secretary of State and Franchisee.

4.³⁸² On Train Wi-Fi Solution Payment Provisions

4.1 The On Train Wi-Fi Solution Payment payable in respect of any Reporting Period shall be determined in accordance with the following formula:

$$\text{OTWSP} = (\text{FOTWP} - \text{SOTWP}) + \text{OTWP} + \text{HYOTWSPBAR}$$

where:

FOTWP means the aggregate of any amount(s) payable in that Reporting Period by the Secretary of State to the Franchisee:

- (a) pursuant to paragraph 20.8.8 of Part 1 (List of Committed Obligations) of Schedule 6.1 (Committed Obligations and Related Provisions);
- (b) paragraph 20.11.2 of Part 1 (List of Committed Obligations) of Schedule 6.1 (Committed Obligations and Related Provisions) in respect of:
 - (i) item 1 (Mobilisation);
 - (ii) item 5d (Fitment on [REDACTED³⁸³] Vehicles);
 - (iii) item 6a (Ongoing Operating Costs (1));
 - (iv) item 6b (Ongoing Service Costs (2));
 - (v) item 6c [REDACTED³⁸⁴]; and/or
 - (vi) item 8b (Miscellaneous Charges);
 of the OTW Payment Table; and/or
- (c) pursuant to paragraph 20.3.4 of Part 1 (List of Committed Obligations) of Schedule 6.1 (Committed Obligations and Related Obligations);

SOTWP means the aggregate of the amount (if any) payable in that Reporting Period by the Franchisee to the Secretary of State pursuant to:

- (a) paragraph 20.3.3 of Part 1 (List of Committed Obligations) of Schedule 6.1 (Committed Obligations and Related Provisions);

³⁸² 08/12/2016 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

³⁸³ 13/12/2017 (Date of Redactions Approval) – Where text has been omitted from the document this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

³⁸⁴ 13/12/2017 (Date of Redactions Approval) – Where text has been omitted from the document this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

- (b) paragraph 20.8.6 of Part 1 (List of Committed Obligations) of Schedule 6.1 (Committed Obligations and Related Provisions);
- (c) paragraph 20.10.4A of Part 1 (List of Committed Obligations) of Schedule 6.1 (Committed Obligations and Related Provisions);
- (d) paragraph 20.10.10 of Part 1 (List of Committed Obligations) of Schedule 6.1 (Committed Obligations and Related Provisions); and/or
- (e) paragraph 20.14.6 of Part 1 (List of Committed Obligations) of Schedule 6.1 (Committed Obligations and Related Provisions);

OTWP the figure shown in respect of the relevant Reporting Period in Column 5 of the table set out in Appendix 3 (Figures for OTWP) to this Schedule 8.1 (as amended under paragraph (ii) of the definition of Data and Claims Budget) and payable by the Secretary of State to the Franchisee on that Reporting Period's Payment Date;

HYOTWSPBr means the HY On-Train Wi-Fi Solution Balancing Amount (if any) payable for the applicable Half Franchisee Year in respect of a Reporting Period during which the HY On-Train Wi-Fi Solution Balancing Amount Date falls, and shall be determined in accordance with the following formula:

$$\text{HYOTWSPBAr} = \text{HYA} - \text{HYOTWP}$$

where:

HYA is the aggregate of the OTW Payments arising during that Half Franchisee Year pursuant to paragraph 20.11.2 of Part 1 (List of Committed Obligations) of Schedule 6.1 (Committed Obligations and Related Provisions) in respect of:

- (a) item 2 (Concept Design of RRS Units);
- (b) item 3 (Detailed Design of RRS Units);
- (c) item 4 (First in Class);
- (d) item 5a (Fitment of Vehicles);

- (e) item 5b (Retention Initial Vehicles);
 - (f) item 5c (Retention Remainder Vehicles);
 - (g) item 7 (Train Unit Operating Cost); and/or
 - (h) item 8a (Data and Claims),
- of the OTW Payment Table; and

HYOTWP

shall be calculated as follows:

$$HYOTWP = \Sigma A$$

where:

HYOTWP is the value of **HYOTWP** for the applicable Half Franchisee Year;

A is the amount set out in Column 5 of the table set out in Appendix 3 (Figures for OTWP) to this Schedule 8.1 against a Reporting Period falling in the applicable Half Franchisee Year; and

Σ is the sum of **A** in respect of each Reporting Period falling in the applicable Half Franchisee Year.

- 4.2 For each Half Franchisee Year the Secretary of State shall, following receipt by him of information required by paragraph 20.11.2 of Part 1 (List of Committed Obligations) of Schedule 6.1 (Committed Obligations and Related Provisions) in respect of that Half Franchisee Year, calculate the HY On-Train Wi-Fi Solution Balancing Amount in respect of that Half Franchisee Year.
- 4.3 The HY On-Train Wi-Fi Solution Balancing Amount (if any) in respect of any Half Franchisee Year shall, subject to paragraph 4.4, shall be applied to the Franchise Payment payable on the HY On-Train Wi-Fi Solution Balancing Amount Date.
- 4.4 Any HY On-Train Wi-Fi Solution Balancing Amount which:
 - (a) is to be made during or in respect of the final Half Franchisee Year; and
 - (b) has not been made during the Franchise Period,

shall be determined in accordance with this paragraph 4, but shall be paid within 30 days of the Secretary of State giving written notice to the Franchisee of the amount of such HY On-Train Wi-Fi Solution Balancing Amount.

- 4.5 All fees and amounts payable by the Secretary of State in respect of the OTW Solution for the Install & Operate Rolling Stock and the OTW Services are set out in this Franchise Agreement.**

APPENDIX 1 TO SCHEDULE 8.1

Profit Share Thresholds

1. The prescribed amounts for the component of FPST for the relevant Franchisee Accounting Year and for the purposes of the definition of First Profit Share Threshold are as set out in the table below:

Franchisee Accounting Year ^{385 386}	First Profit Share Threshold Amount (£) ^{387 388}
Year 1 (part year)	[REDACTED ³⁸⁹]
Year 2	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.
Year 3	
Year 4	
Year 5 (10 RPs)	
Year 5 (3 RP extended period)	
Year 6 (previous 3 RP extended period)	
Period commencing 23 June 2019 until the end of the Franchise Period	

2. The prescribed amounts for the component of SPST for the relevant Franchisee Accounting Year and for the purposes of the definition of Second Profit Share Threshold are as set out in the table below:

Franchisee Accounting Year ^{390 391}	Second Profit Share Threshold Amount (£) ^{392 393}
Year 1 (part year)	

³⁸⁵ 23 March 2018 (Date of DOA) Contract variation agreed by the Secretary of State and Franchisee.

³⁸⁶ 13 June 2019 (Date of DOA) Contract variation agreed by the Secretary of State and Franchisee.

³⁸⁷ 11 April 2017 – Contract variation agreed by the Secretary of State and Franchisee.

³⁸⁸ 13 June 2019 (Date of DOA) Contract variation agreed by the Secretary of State and Franchisee.

³⁸⁹ **5 August 2019 (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.**

³⁹⁰ 23 March 2018 (Date of DOA) Contract variation agreed by the Secretary of State and Franchisee.

³⁹¹ 13 June 2019 (Date of DOA) Contract variation agreed by the Secretary of State and Franchisee.

³⁹² 11 April 2017 – Contract variation agreed by the Secretary of State and Franchisee.

³⁹³ 13 June 2019 (Date of DOA) Contract variation agreed by the Secretary of State and Franchisee.

Year 2	[REDACTED³⁹⁴] 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.
Year 3	
Year 4	
Year 5 (10 RPs)	
Year 5 (3 RP extended period)	
Year 6 (previous 3 RP extended period)	
Period commencing 23 June 2019 until the end of the Franchise Period	

3. ³⁹⁵The prescribed amounts for the component of TPST for the relevant Franchisee Year (other than the Last Franchisee Accounting Year) and for the purposes of the definition of Third Profit Share Threshold are as set out in the table below:

Franchisee Accounting Year³⁹⁶	Third Profit Share Threshold Amount (£)³⁹⁷
Year 1 (part year)	Where text has been omitted from the document, this is because Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.
Year 2	
Year 3	
Year 4	
Year 5 (10 RPs)	
Year 5 (3 RP extended period)	
Year 6 (optional extension of up to 3 RPs)	

³⁹⁴ 5 August 2019 (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.

³⁹⁵ 13 June 2019 (Date of DOA) Contract variation agreed by the Secretary of State and Franchisee.

³⁹⁶ 23 March 2018 (Date of DOA) Contract variation agreed by the Secretary of State and Franchisee.

³⁹⁷ 11 April 2017 – Contract variation agreed by the Secretary of State and Franchisee.

APPENDIX 2 TO SCHEDULE 8.1

Components of AFA and DFR

1. The amounts for the purposes of the component of AFA in paragraph 3(a)(v) of Schedule 8.1 (Franchise Payments) are set out in the table below:

Franchisee Accounting Year ^{398 399}	Component of AFA (£)
Year 1 (part year)	[REDACTED ⁴⁰⁰]
Year 2	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.
Year 3	
Year 4	
Year 5 (10 RPs)	
Year 5 (3 RP extended period)	
Year 6 (previous 3 RP extended period)	
Period commencing 23 June 2019 until the end of the Franchise Period	

2. The amounts for the purposes of the component of DFR in paragraph 3(b)(vi) of Schedule 8.1 (Franchise Payments) are set out in the table below:

Franchisee Accounting Year ^{401 402}	Component of DFR (£)
Year 1 (part year)	[REDACTED ⁴⁰³]
Year 2	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.
Year 3	
Year 4	

³⁹⁸ 23 March 2018 (Date of DOA) Contract variation agreed by the Secretary of State and Franchisee.

³⁹⁹ 13 June 2019 (Date of DOA) Contract variation agreed by the Secretary of State and Franchisee.

⁴⁰⁰ 5 August 2019 (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.

⁴⁰¹ 23 March 2018 (Date of DOA) Contract variation agreed by the Secretary of State and Franchisee.

⁴⁰² 13 June 2019 (Date of DOA) Contract variation agreed by the Secretary of State and Franchisee.

⁴⁰³ 5 August 2019 (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.

Year 5 (10 RPs)	
Year 5 (3 RP extended period))	
Year 6 (previous 3 RP extended period)	
Period commencing 23 June 2019 until the end of the Franchise Period	

APPENDIX 3 TO SCHEDULE 8.1^{404 405 406}

Figures for OTWP

Column 1	Column 2	Column 3	Column 4	Column 5
	FY		Reporting Period End Date	OTWP [REDACTED ⁴⁰⁷]
1	FY16/17	Period 1	30-Apr- 2016	[REDACTED]
2	FY16/17	Period 2	28-May- 2016	[REDACTED]
3	FY16/17	Period 3	25-Jun- 2016	[REDACTED]
4	FY16/17	Period 4	23-Jul- 2016	[REDACTED]
5	FY16/17	Period 5	20-Aug- 2016	[REDACTED]
6	FY16/17	Period 6	17-Sep- 2016	[REDACTED]
7	FY16/17	Period 7	15-Oct- 2016	[REDACTED]
8	FY16/17	Period 8	12-Nov- 2016	[REDACTED]
9	FY16/17	Period 9	10-Dec- 2016	[REDACTED]
10	FY16/17	Period 10	07-Jan- 2017	[REDACTED]
11	FY16/17	Period 11	04-Feb- 2017	[REDACTED]
12	FY16/17	Period 12	04-Mar- 2017	[REDACTED]
13	FY16/17	Period 13	31-Mar- 2017	[REDACTED]
14	FY17/18	Period 1	29-Apr- 2017	[REDACTED]
15	FY17/18	Period 2	27-May- 2017	[REDACTED]
16	FY17/18	Period 3	24-Jun- 2017	[REDACTED]
17	FY17/18	Period 4	22-Jul- 2017	[REDACTED]

⁴⁰⁴ 08/12/2016 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

⁴⁰⁵ 23 March 2018 (Date of DOA) Contract variation agreed by the Secretary of State and Franchisee.

⁴⁰⁶ 13 June 2019 (Date of DOA) Contract variation agreed by the Secretary of State and Franchisee.

⁴⁰⁷ 13/12/2017 (Date of Redactions Approval) – Where text has been omitted from the document this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

18	FY17/18	Period 5	19-Aug-2017	[REDACTED]
19	FY17/18	Period 6	16-Sep-2017	[REDACTED]
20	FY17/18	Period 7	14-Oct-2017	[REDACTED]
21	FY17/18	Period 8	11-Nov-2017	[REDACTED]
22	FY17/18	Period 9	09-Dec-2017	[REDACTED]
23	FY17/18	Period 10	06-Jan-2018	[REDACTED]
24	FY17/18	Period 11	03-Feb-2018	[REDACTED]
25	FY17/18	Period 12	03-Mar-2018	[REDACTED]
26	FY17/18	Period 13	31-Mar-2018	[REDACTED]
27	FY18/19	Period 1	28-Apr-2018	[REDACTED]
28	FY18/19	Period 2	26-May-2018	[REDACTED]
29	FY18/19	Period 3	23-Jun-2018	[REDACTED]
30	FY18/19	Period 4	21-Jul-2018	[REDACTED]
31	FY18/19	Period 5	18-Aug-2018	[REDACTED]
32	FY18/19	Period 6	15-Sep-2018	[REDACTED]
33	FY18/19	Period 7	13-Oct-2018	[REDACTED]
34	FY18/19	Period 8	10-Nov-2018	[REDACTED]
35	FY18/19	Period 9	08-Dec-2018	[REDACTED]
36	FY18/19	Period 10	05-Jan-2019	[REDACTED]
37	FY18/19	Period 11	02-Feb-2019	[REDACTED]
38	FY18/19	Period 12	02-Mar-2019	[REDACTED]
39	FY18/19	Period 13	31-Mar-2019	[REDACTED]
40	FY19/20	Period 1	27-Apr-2019	[REDACTED]
41	FY19/20	Period 2	25-May-2019	[REDACTED]
42	FY19/20	Period 3	22-Jun-2019	[REDACTED]
43	FY19/20	Period 4	20-Jul-19	[REDACTED]
44	FY19/20	Period 5	17-Aug-19	[REDACTED]

45	FY19/20	Period 6	14-Sep-19	[REDACTED]
46	FY19/20	Period 7	12-Oct-19	[REDACTED]
47	FY19/20	Period 8	9-Nov-19	[REDACTED]
48	FY19/20	Period 9	7-Dec-19	[REDACTED]
49	FY19/20	Period 10	4-Jan-20	[REDACTED]
50	FY19/20	Period 11	1-Feb-20	[REDACTED]
51	FY19/20	Period 12	29-Feb-20	[REDACTED]
52	FY19/20	Period 13	31-Mar-20	[REDACTED]

Notes:

- 1** *The figures after 23 June 2018 may be increased in accordance with paragraph (ii) of the definition of Data and Claims Budget for Item 8a (Data and Claims).*
- 2** *The figures in this table have been calculated by forecasting the aggregate of all sums due in respect of each Reporting Period under items 2, 3, 4, 5a, 5b, 5c, 7 and 8a of the OTW Payment Table (as defined at paragraph 20.1 of Part 1 (List of Committed Obligations) of Schedule 6.1 (Committed Obligations and Related Provisions)).*

SCHEDULE 8.2

Annual Franchise Payments

1. Annual Franchise Payments

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

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

where:

AFP equals the Annual Franchise Payment in the relevant Franchisee Year;

FXD means the figure shown in respect of the relevant Franchisee Year in column 2 of the table set out in the Appendix (Figures for Calculation of Annual Franchise Payments) to this Schedule 8.2;

VCRPI means the figure shown in respect of the relevant Franchisee Year in column 3 of the table set out in Appendix (Figures for Calculation of Annual Franchise Payments) to this Schedule 8.2;

RPI is the quotient of the Retail Prices Index for the February which immediately precedes the commencement of the relevant Franchisee Year divided by the Retail Prices Index for February 2014, provided that, for the first Franchisee Year, RPI shall be one;

VCAWE means the figure shown in respect of the relevant Franchisee Year in column 4 of the table set out in Appendix (Figures for Calculation of Annual Franchise Payments) to this Schedule 8.2;

AWE is the quotient of the Average Weekly Earnings for the February which immediately precedes the commencement of the relevant Franchisee Year divided by the Average Weekly Earnings for February 2014, provided that, for the first Franchisee Year, AWE shall be one;

PRPI means the figure shown in respect of the relevant Franchisee Year in column 5 of the table set out in Appendix (Figures for Calculation of Annual Franchise Payments) to this Schedule 8.2; and

RRPI means the figure shown in respect of the relevant Franchisee Year in column 6 of the table set out in Appendix (Figures for Calculation of Annual Franchise Payments) to this Schedule 8.2 (and which shall always be expressed as a negative number).

APPENDIX TO SCHEDULE 8.2

Figures for Calculation of Annual Franchise Payments^{408 409 410}

Column 1	Column 2	Column 3	Column 4	Column 5	Column 6
Franchisee Year	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Year 1(part)	<p style="text-align: center;">[REDACTED⁴¹¹] Where text has been omitted from the document, this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.</p>				
Year 2					
Year 3					
Year 4					
Year 5 (10 RPs)					
Year 5 (3 RP extended period)					
Year 6 (previous 3 RP extended period)					
Year 6 (new 5 RPs)					
Year 6 (optional 5 RP extension)					

⁴⁰⁸ 11/04/2017 – Contract variation agreed by the Secretary of State and Franchisee

⁴⁰⁹ 23 March 2018 (Date of DOA) Contract variation agreed by the Secretary of State and Franchisee.

⁴¹⁰ 13 June 2019 (Date of DOA) Contract variation agreed by the Secretary of State and Franchisee.

⁴¹¹ **5 August 2019 (Date of Redactions Approval) – Where text has been omitted from the document this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.**

SCHEDULE 8.3

Miscellaneous Payment Provisions

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

⁴¹²Financial Impact of 16/17 Railcard and Fares Rounding

- 2.1 **As soon as reasonably practicable after the Expiry Date, the parties shall apply the methodology set out in Schedule 2 of the deed of variation dated 2 October 2019 (the "16/17 Railcard Deed") in order to determine the actual financial impact of the amendments to the Franchise Agreement set out in the 16/17 Railcard Deed on the Franchisee during the period from the commencement of the 16/17 Railcard Deed to the Expiry Date (the "Final Amount"), save that the parties acknowledge that no Estimated Revision Inputs (as defined in such methodology) shall have been made in respect of the Franchisee and accordingly such methodology shall apply by changing those things that need to be changed to reflect such absence of Estimated Revision Inputs.**
- 2.2 **If the Final Amount (i) is, on its own or when aggregated with the financial impact of other Changes implemented in the applicable period, greater than the aggregate of the Threshold Amounts for Franchisee Year 6 (new 5 RPs) and Franchisee Year 6 (optional 5 RP extension) and (ii) indicates that the amendments to the Franchise Agreement set out in the 16/17 Railcard Deed had a positive financial impact on the Franchisee, then the following amount shall be paid by the Franchisee to Secretary of State:**
- 2.2.1 **the Final Amount; less**
- 2.2.2 **where a profit share payment has been made in advance of the determination of the Final Amount, any overpayment of profit share pursuant to paragraph 3 of Schedule 8.1 (Franchise Payments) in respect of any Franchisee Accounting Year resulting solely from the amendments to the Franchise Agreement set out in the 16/17 Railcard Deed, such overpayment to be determined by recalculating Relevant Profit for the relevant Franchisee Accounting Year after taking into account in respect of that Franchisee Accounting Year the value of the Final Amount payable pursuant to paragraph 2.2.1,**
- within 30 days of agreement or determination of the Final Amount and any adjustment pursuant to paragraph 2.2.2, or within such alternative timeframe as the parties may agree.**
- 2.3 **If the Final Amount (i) is, on its own or when aggregated with the financial impact of other Changes implemented in the applicable period, greater than the aggregate of the Threshold Amounts for Franchisee Year 6 (new 5 RPs) and Franchisee Year 6 (optional 5 RP extension) and (ii) indicates that the amendments to the Franchise Agreement set out in the 16/17**

⁴¹² 2 October 2019 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

Railcard Deed had a negative financial impact on the Franchisee, then the following amount shall be paid by the Secretary of State to the Franchisee:

2.3.1 the Final Amount; less

2.3.2 where a profit share payment has been made in advance of the determination of the Final Amount, any underpayment of profit share pursuant to paragraph 3 of Schedule 8.1 (Franchise Payments) in respect of any Franchisee Accounting Year resulting solely from the amendments to the Franchise Agreement set out in the 16/17 Railcard Deed, such underpayment to be determined by recalculating Relevant Profit for the relevant Franchisee Accounting Year after taking into account in respect of that Franchisee Accounting Year the value of the Final Amount payable pursuant to paragraph 2.3.1,

within 30 days of agreement or determination of the Final Amount and any adjustment pursuant to paragraph 2.3.2, or other such alternative timeframe as the parties may agree.

2.4 If the Final Amount is, on its own or when aggregated with the financial impact of other Changes implemented in the applicable period, less than the aggregate of the Threshold Amounts for Franchisee Year 6 (new 5 RPs) and Franchisee Year 6 (optional 5 RP extension), then there shall be no adjustment to Franchise Payments or payments made pursuant to paragraph 2.2 or 2.3 above in respect of the amendments to the Franchise Agreement set out in the 16/17 Railcard Deed.

SCHEDULE 8.4**Track Access Adjustments and Station Charge Adjustments****1. Track Access Adjustments (Network Rail)**

- 1.1 The Track Access Adjustment to be made in respect of any Reporting Period shall be determined in accordance with the following formula:

$$TAA = (GCA - W) \times \frac{RPD}{FYD}$$

where:

TAA means the Track Access Adjustment to be made in that Reporting Period;

GCA is the value of "GC" for the Franchisee Year in which the Reporting Period falls under Part 3A of Schedule 7 of the Track Access Agreement;

W is the value of "Wt" for the Franchisee Year in which the Reporting Period falls under Part 2 of Schedule 7 of the Track Access Agreement;

RPD means the number of days in that Reporting Period; and

FYD means the number of days in the Franchisee Year in which that Reporting Period falls,

except that, where a Reporting Period falls during two Franchisee Years, TAA shall be determined as if the references to Reporting Period were to each of the two periods within such Reporting Period which fall wholly within one of such Franchisee Years and the Track Access Adjustment to be made in that Reporting Period shall reflect the sum of TAA as determined for each such period.

- 1.2 The Franchisee shall notify the Secretary of State upon becoming aware that any Track Access Adjustment is to be made and shall supply such information as the Secretary of State may require in relation thereto. The Franchisee shall exercise its rights under the Track Access Agreement in such manner and take such other action as the Secretary of State may reasonably require in connection with any related payment thereunder (including in relation to any agreement of the amount of any such payment and including submitting any relevant dispute to any relevant dispute resolution procedures). The Franchisee shall not, without the consent of the Secretary of State, agree or propose to agree a value for "Wt", "L" or "GC" under Parts 2 or 3A of Schedule 7 of the Track Access Agreement.
- 1.3 The Franchisee shall provide such evidence of payment as the Secretary of State may require (including any certificates) for the purpose of determining the value of W, L and GCA under paragraph 1.1.
- 1.4 If no value is ascertained for W, L or GCA prior to the date on which the Franchise Payment for the relevant Reporting Period is determined, then a Track Access Adjustment shall only be determined to the extent such values can be ascertained at such time and, when such values are subsequently

ascertained, adjustment shall be made to reflect the full Track Access Adjustment for such Reporting Period.

- 1.5 The values of W, L and GCA when used in the computation in paragraph 1.1 shall be taken to exclude any input Value Added Tax which is recoverable in respect of the payments they represent by the Franchisee under Sections 24 to 26 of the Value Added Tax Act 1994.
- 1.6 References in this paragraph 1 to "Wt", "L" and "GC" and Parts 2 and 3A of Schedule 7 of the Track Access Agreement (not including any Track Access Agreement between the Franchisee and HS1 Limited) shall be deemed also to be references to such other provisions, and such other algebra under any such other provisions, of any Track Access Agreement as the Secretary of State may reasonably consider have an equivalent effect, or are intended to fulfil the same function, as "Wt", "L" or "GC" and Parts 2 or 3A of Schedule 7 of the Track Access Agreement to which the Franchisee is a party on the Start Date.

2. Track Access Adjustments (HS1 Limited)

The Franchise Payments in any given Reporting Period shall be adjusted to reflect any changes to the track access charge payable in respect of the Passenger Services required to comply with the Service Level Commitment (and not in respect of any Additional Passenger Services) pursuant to the Track Access Agreement between HS1 Limited and the Franchisee provided that in respect of any payments in relation to performance such will be paid only in accordance with the performance regime in Section 8 of the relevant Track Access Agreement at the date of this Agreement.

3. Station Access Charge Adjustments (HS1 Limited)

The Franchise Payments in any given Reporting Period shall be adjusted to reflect any changes to the station access charge payable in respect of the Passenger Services required to comply with the Service Level Commitment (and not in respect of any Additional Passenger Services) pursuant to the Station Access Agreement between HS1 Limited and the Franchisee.

4. Station Charge Adjustment (Network Rail/National Rail Network)

- 4.1 The following provisions shall not apply in relation to any Station or each other Franchisee Access Station for which the applicable Station Access Conditions is the one entitled "National Station Access Conditions 2011 (FRI Leases) (England and Wales)" or any Station Access Conditions entered into between the Franchisee and HS1 Limited.
- 4.2 The Station Charge Adjustment to be made in respect of any Reporting Period shall be the aggregate of the Individual Station Charge Adjustments as determined in accordance with the following formula for each Station and each other Franchisee Access Station:

$$ISCA = (L - P) \times \frac{RPD}{FYD}$$

where:

ISCA means the Individual Station Charge Adjustment for the relevant station for that Reporting Period;

L is the value of "Lt" for the Franchisee Year in which the Reporting Period falls under:

- (a) if the relevant station is not an Independent Station, Condition F11.2 of the Station Access Conditions entitled "National Station Access Conditions 2013 (England and Wales) (incorporating amendments with effect from 1 April 2014)" relating to such station; or
- (b) if the relevant station is an Independent Station, Condition 42.3 of the Independent Station Access Conditions relating to that Independent Station,

in each case, to the extent that value represents an amount payable to or by the Infrastructure Manager or any other relevant Facility Owner by or to the Franchisee on its own behalf under the relevant Access Agreement (excluding any amount payable to the Infrastructure Manager by the Franchisee in its capacity as Facility Owner of a station on behalf of a beneficiary which is party to an Access Agreement in respect of a Station);

P is the value of "Pt" for the Franchisee Year in which the Reporting Period falls under:

- (a) if the relevant station is not an Independent Station, Condition F11.2 of the Station Access Conditions entitled "National Station Access Conditions 2013 (England and Wales) (incorporating amendments with effect from 1 April 2014)" relating to such station; or
- (b) if the relevant station is an Independent Station, Condition 42.3 of the Independent Station Access Conditions relating to that Independent Station,

in each case, to the extent that value represents an amount payable to or by the Infrastructure Manager or any other relevant Facility Owner by or to the Franchisee on its own behalf under the relevant Access Agreement (excluding any amount payable to the Infrastructure Manager by the Franchisee in its capacity as Facility Owner of a station on behalf of a beneficiary which is party to an Access Agreement in respect of a Station);

RPD means the number of days in that Reporting Period; and

FYD means the number of days in the Franchisee Year in which that Reporting Period falls except that, where a Reporting Period falls during two Franchisee Years, the Station Charge Adjustment shall be determined as if the references to Reporting Period were to each of the two periods within such Reporting Period which fall wholly within one of such Franchisee Years and the Station Charge Adjustment for such Reporting Period shall be the sum of the Station Charge Adjustment as determined for each such period.

4.3 The Franchisee shall notify the Secretary of State upon becoming aware that any Station Charge Adjustment is to be made and shall supply such information as the Secretary of State may require in relation thereto. The Franchisee shall exercise such rights as it may have under any Access Agreement in such

manner and take such other action as the Secretary of State may reasonably require in connection with any related payment thereunder (including in relation to any agreement of the amount of any such payment and including submitting any relevant dispute to any relevant dispute resolution procedures). The Franchisee shall not, without the consent of the Secretary of State, agree or propose to agree a value for "Lt" or "Pt" under any relevant Access Agreement.

- 4.4 The Franchisee shall provide such evidence of payment as the Secretary of State may require (including any certificates) for the purpose of determining the value of L and P under paragraph 4.2.
- 4.5 If no value is ascertained for any of L or P prior to the date on which the Franchise Payment for the relevant Reporting Period is determined, then a Station Charge Adjustment shall only be determined to the extent such values can be ascertained at such time and, when such values are subsequently ascertained, an adjustment shall be made to reflect the full Station Charge Adjustment for such Reporting Period.
- 4.6 The values of L and P when used in the computation in paragraph 4.2 shall be taken to exclude any input Value Added Tax which is recoverable in respect of the payments they represent by the Franchisee under Sections 24 to 26 of the Value Added Tax Act 1994.
- 4.7 For the purposes of this paragraph 4, "**Independent Station**" shall mean, at any time, any station of which the Infrastructure Manager is the Facility Owner at that time. As at the date of the Franchise Agreement, the Independent Stations are Birmingham New Street, Edinburgh Waverley, Fenchurch Street, Gatwick Airport, Glasgow Central High Level, London Bridge, London Cannon Street, London Charing Cross, London Euston, London King's Cross, London Liverpool Street, London Paddington, London Victoria, London Waterloo (excluding Waterloo International), Leeds, Liverpool Lime Street and Manchester Piccadilly.
- 4.8 References in this paragraph 2 to "Lt", Pt, Condition F11.2 of the Station Access Conditions entitled "National Station Access Conditions 2013 (England and Wales) (incorporating amendments with effect from 1 April 2014)" and Condition 42.3 of the Independent Station Access Conditions shall be deemed also to be references to such other provisions, and such other algebra under any such other provisions, of any relevant station access conditions as the Secretary of State may reasonably consider have an equivalent effect, or are intended to fulfil the same function as, "Lt", Pt and Condition F11.2 of the Station Access Conditions entitled "National Station Access Conditions 2013 (England and Wales) (incorporating amendments with effect from 1 April 2014)" and Condition 42.3 of the Independent Station Access Conditions which are in effect on the Start Date.

SCHEDULE 8.5**London Bridge and Other Potential Payment Adjustments****1. NOT USED****2. Abbey Wood Station Access Charges**

- 2.1 Where in any given Reporting Period between the Crossrail Transfer Date and the end of the Franchise Term there is a difference between the Modelled Abbey Wood Amounts and the Actual Abbey Wood Amounts, the Abbey Wood Adjustment (AWA) to be made in respect of any Reporting Period shall be determined in accordance with the following formula, subject to the Franchisee's compliance with paragraph 2.2:

$$AWA = AAWA - (MAWA \times RPI)$$

Where:-

"MAWA" (Modelled Abbey Wood Amounts) means the the relevant modelled amount set out in table 1 in the Appendix to this Schedule 8.5 and assumed by the Franchisee as being payable as "Qualifying Expenditure" (as such is defined in the relevant Station Access Agreement) in the Reporting Period to the Crossrail Operator under the Station Access Agreement between the Crossrail Operator and the Franchisee in respect of Abbey Wood Station;

"AAWA" (Actual Abbey Wood Amounts) means the actual amounts of "Qualifying Expenditure" (as such is defined in the relevant Station Access Agreement) payable by the Franchisee in the Reporting Period to the Crossrail Operator under the Station Access Agreement between the Crossrail Operator and the Franchisee in respect of Abbey Wood Station); and

"RPI" shall have the meaning given to is in Schedule 8.2.

- 2.2 Where the Franchisee considers (acting reasonably) that the determination of "Qualifying Expenditure" (as such is defined in the relevant Station Access Agreement) by the Crossrail Operator is not fair and reasonable, the Franchisee shall use all reasonable endeavours to dispute such determination with the Crossrail Operator in accordance with the terms of the Station Access Agreement for Abbey Wood.

3. London Bridge Access Charges

- 3.1 Where in any given Reporting Period between the Start Date and the end of the Franchise Term there is a difference between the Modelled London Bridge Amounts and the Actual London Bridge Amounts, the London Bridge Adjustment (LBA) to be made in respect of any Reporting Period shall be determined in accordance with the following formula, subject to the Franchisee's compliance with paragraph 3.2:

$$LBA = ALBA - (MLBA \times RPI)$$

Where:-

"MLBA" (Modelled London Bridge Amounts) - means the the relevant modelled amounts set out in table 2 in Appendix 1 to this Schedule 8.5 and assumed by the Franchisee as being payable as "Qualifying Expenditure" (as such is defined in the relevant Station Access Agreement) in the Reporting Period to Network Rail under the Station Access Agreement between Network Rail and the Franchisee in respect of London Bridge Station;

"ALBA" (Actual London Bridge Amounts) means the actual amounts of "Qualifying Expenditure" (as such is defined in the relevant Station Access Agreement) payable by the Franchisee in the Reporting Period to Network Rail under the Station Access Agreement between Network Rail and the Franchisee in respect of London Bridge Station; and

"RPI" shall have the meaning given to is in Schedule 8.2.

- 3.2 Where the Franchisee considers (acting reasonably) that the determination of "Qualifying Expenditure" (as such is defined in the relevant Station Access Agreement) by Network Rail is not fair and reasonable, the Franchisee shall use all reasonable endeavours to dispute such determination with Network Rail in accordance with the terms of the Station Access Agreement for London Bridge.

4. Rent at Ramsgate and Ashford Depots

- 4.1 Where either or both of the Depot Rentals payable by the Franchisee as part of the Rental payable in respect of the Depot Lease for Ashford Depot and/or the Ramsgate Depot is adjusted due to application of paragraph 2 of Table B in Schedule 1B of the relevant Payment Deed(s) by reference to the Franchise Fixing Date in respect of this Agreement, subject to compliance with paragraph 4.3 (a) and (c) there will be an adjustment to the Franchise Payment in accordance with paragraph 4.2.

- 4.2 The Depot Rental Adjustment (DRA) to be made in respect of any Reporting Period shall be determined in accordance with the following formula:

$$\text{DRA} = \text{ADR} - \text{MDR}$$

Where:

"ADR" means the actual amount of the Depot Rental payable by the Franchisee in the Reporting Period in respect of the Depot Lease for Ashford Depot and/or the Ramsgate Depot (as the case may be) as determined in accordance with paragraph 2 of Table B of Schedule 1B of the relevant Payment Deed(s); and

"MDR" means the the relevant modelled amounts set out in table 3 in Appendix 1 to this Schedule 8.5 assumed by the Franchisee as being payable in the Reporting Period as the Depot Rental in respect of the Depot Lease for the Ashford Depot and/or the Ramsgate Depot Lease (as the case may be).

- 4.3 The Franchisee shall:

- (a) where the Franchisee considers (acting reasonably) that the determination of the Depot Rental by Lloyds General Leasing Limited is incorrectly adjusted, use all reasonable endeavours to exercise such rights as it may have to pursue any dispute on the determination of such Depot Rental in accordance with clause 3 of the relevant Payment Deed;

- (b) provide such information that the Secretary of State may reasonably require in respect of the rents, cashflows, and fixed and floating interest balances relating to the Depot Lease for Ashford Depot and the Ramsgate Depot, shall consult with the Secretary of State regarding any floating or fixed rate balances on an ongoing basis; and
- (c) use all reasonable endeavours to give effect to any reasonable request of the Secretary of State to agree fixed rate funding with the lessor.

For the purpose of this paragraph 4, the following capitalised terms shall have the following meaning:

"Depot Lease" shall have the meaning given to such term in the Payment Deed;

"Depot Rental" shall have the meaning given to such term in the Payment Deeds;

"Franchise Fixing Date" shall have the meaning given to such term in the Payment Deeds;

"Payment Deeds" means the payment deeds entered into in respect of the Ashford Depot and the Ramsgate Depot between the Franchisee and Lloyds General Leasing Limited dated 7 September 2005; and

"Rental" shall have the meaning given to such term in the Payment Deeds.

5. **BTUK, SETML and the Transition Project**

An adjustment shall be made to the Franchise Payment to reimburse the Franchisee for any reasonably and properly incurred costs, expenses, liabilities, losses and damages in connection with any liabilities arising in relation to pensions arrangements for any employee or former employee of the Franchisee, BTUK or SETML (including employees transferring to the Franchisee as part of the Transition Project) occurring as a direct result of the Transition Project, which have not already been reimbursed pursuant to paragraphs 1.4 or 1.5 of Appendix 23 of the Previous Franchise Agreement or otherwise ("**SETML Payment**"). This includes liabilities arising as a direct result of harmonising the benefits and rights of any employees which transferred to the Franchisee as part of the Transition Project with the benefits and rights offered by the Franchisee to equivalent or similar staff.

In this paragraph 5, the expressions "BTUK", "SETML" and the "Transition Project" shall have the same meaning as they do in the Previous Franchise Agreement.

6. **Travelcard Revenue Allocation Payment**

6.1 Following the introduction of any Travelcard Apportionment Methodology Amendment an adjustment shall be made to the Franchise Payment in any Reporting Period equal to the difference between:

- (a) the amount of revenue which would have been payable had the Franchisee's share of Total Travelcard Revenue in that Reporting Period been based on the Travelcard Apportionment Methodology. Such amount of Total Travelcard Revenue shall be determined by:

- (i) taking each relevant category of Total Travelcard Revenue for that Reporting Period; and
 - (ii) applying the Franchisee's average apportionment factor for that category of Total Travelcard Revenue over the 13 Reporting Periods immediately preceding the implementation of the Travelcard Apportionment Methodology Amendment; and
- (b) the amount of Total Travelcard Revenue payable to the Franchisee in that Reporting Period plus any compensation payable to the Franchisee by TfL in that Reporting Period in respect of the Travelcard Apportionment Methodology Amendment;

and provided that:

the Franchisee shall use all reasonable endeavours to obtain compensation from TfL in respect of the effect of a Travelcard Apportionment Methodology Amendment; and

- (c) the Franchisee shall not:
- (i) consent or otherwise assent under the terms of the Travelcard Agreement to a Travelcard Apportionment Methodology Amendment; and
 - (ii) dispute any Travelcard Apportionment Methodology Amendment under paragraph 2.8 of Schedule 4 of the Travelcard Agreement,

without the prior approval of the Secretary of State (such approval not to be unreasonably withheld or delayed),

(the "**Travelcard Revenue Allocation Payment**").

- 6.2 Where there is a dispute in respect of any Travelcard Apportionment Methodology Amendment, the Secretary of State shall reimburse the Franchisee any reasonably and properly incurred costs of participating in such dispute at the direction of the Secretary of State.

7. London Terminals Extension Payment

- 7.1 The London Terminals Extension Payment to be made in respect of any Reporting Period shall be determined in accordance with the following formula:

$$\text{LTEP} = \text{SP} - \text{DP}$$

where:

LTEP means the London Terminals Extension Adjustment to be made in that Reporting Period;

SP is:

- (a) ⁴¹³ in respect of that Reporting Period, where:
 - (i) SLC 3 or SLC 4 is in operation; and
 - (ii) the London Terminals Season Ticket Extensions is not being applied;
- (b) (in the case of any other Reporting Period) £nil; and

DP is:

- (a) ⁴¹⁴ in respect of that Reporting Period, where:
 - (i) SLC 3 or SLC 4 is in operation; and
 - (ii) the London Terminals Daily Ticket Extension applies; and
- (b) (in the case of any other Reporting Period) £nil.

7.2 It is acknowledged that the Franchisee shall not be responsible for securing the London Terminals Season Ticket Extension or the London Terminals Daily Ticket Extension or paying any sum in respect of the same to TfL or London Underground.

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

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

⁴¹³ **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.**

⁴¹⁴ **Where text has been omitted from the document, this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.**

8. Class 377 Sub-leasing

8.1. Subject to the Franchisee's compliance with paragraphs 5.10 and 5.11 of Schedule 6.2 (South Eastern Franchise Specific Provisions), the Class 377 Leasing Adjustment (**C377LA**) in any Reporting Period during the Back Fill Rolling Stock Period shall be:

- (a) (in the case of a Reporting Period during which the rental payments payable by the Franchisee to Southern or the TSGN Operator pursuant to the Class 377 OHA ("**Class 377 Lease Payments**") are greater than the rental payments payable by Southern or the TSGN Operator pursuant to the Back Fill Rolling Stock Sub-Lease ("**Back Fill Rolling Stock Sub-Lease Payments**")) determined in accordance with the following formula:

$$C377LA = C377LP - BFSLP$$

Where:

C377LP means the Class 377 Lease Payments payable by the Franchisee in that Reporting Period; and

BFSLP means the Back Fill Rolling Stock Sub-Lease Payments payable to the Franchisee in that Reporting Period;

- (b) (in the case of a Reporting Period during which the rental payments payable by the Franchisee pursuant to the Back Fill Rolling Stock Head-Lease ("**Back Fill Rolling Stock Head-Lease Payments**") are greater than the rental payments payable by the Franchisee to Southern or the TSGN Operator pursuant to the Class 377 Lease Payments) determined in accordance with the following formula:

$$C377LA = BFHLP - C377LP$$

where:

BFHLP means the Back Fill Rolling Stock Head-Lease Payments payable by the Franchisee in that Reporting Period; and

C377LP means the Class 377 Lease Payments payable by the Franchisee in that Reporting Period; and

- (c) (in the case of any other Reporting Period) nil.

8.2⁴¹⁵ The Class 377 (Revised Solution) Leasing Adjustment ("CL377(RS)LA") in any Reporting Period during the period from 11 December 2016 until the end of the Franchise Term shall be:

$$CL377(RS)LA = CL377(RS)LP - A + B + C$$

where:

⁴¹⁵ Date of contract insertion 09/12/2016 – Agreed by the Secretary of State and Franchisee.

CL377(RS)LA ***means the Class 377 (Revised Solution) Leasing Adjustment for the Reporting Period;***

CL377(RS)LP **[REDACTED⁴¹⁶]**

A **[REDACTED⁴¹⁷]**

B **[REDACTED⁴¹⁸]**

C **[REDACTED⁴¹⁹]**

8.3 Subject to paragraphs 8.4 and 8.5, the Franchisee shall in each Reporting Period present to the Secretary of State a statement detailing all of the costs that the Franchisee has incurred in the preceding Reporting Period in relation to the cost items set out in paragraph 8.2 and such statement shall be signed by a statutory director of the Franchisee confirming that the statement is a true and accurate record of the costs incurred.

8.4 In the case of any Reporting Period in which the aggregate of the cost items referred to in limb "B" of the formula at paragraph 8.2 exceed **[REDACTED⁴²⁰]**(being the aggregate amount of the estimated costs for each Reporting Period of the cost items referred to in limb "B" of the formula at paragraph 8.2 plus 15%), the Franchisee shall:

- (a) present to the Secretary of State a statement, prepared on an open book basis, detailing all of the costs that the Franchisee has incurred in the preceding Reporting Period in relation to the cost items referred to in limb "B" of the formula at paragraph 8.2 and such statement shall be signed by a statutory director of the Franchisee confirming that the statement is a true and accurate record of the costs incurred; and
- (b) provide such other supporting information that the Secretary of State may reasonably require in order to satisfy himself that the costs are reasonably and properly incurred in accordance with paragraph 8.2 and the Secretary of State reserves the right to dispute any such

⁴¹⁶ Date of redaction 03/07/2017 - Where text has been omitted from the document this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

⁴¹⁷ Date of redaction 03/07/2017 - Where text has been omitted from the document this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

⁴¹⁸ Date of redaction 03/07/2017 - Where text has been omitted from the document this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

⁴¹⁹ Date of redaction 03/07/2017 - Where text has been omitted from the document this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

⁴²⁰ Date of redaction 03/07/2017 - Where text has been omitted from the document this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

costs where he is not satisfied that such costs have been reasonably and properly incurred.

8.5 In the case that the cumulative aggregate of the cost items referred to in limb "C" of the formula at paragraph 8.2 exceed [REDACTED⁴²¹] (being the aggregate amount of the estimated costs of the cost items referred to in limb "C" of the formula at paragraph 8.2 plus 15%), the Franchisee shall:

- (a) present to the Secretary of State a statement, prepared on an open book basis, detailing all of the costs that the Franchisee has incurred in the preceding Reporting Period in relation to the cost items referred to in limb "C" of the formula at paragraph 8.2 and such statement shall be signed by a statutory director of the Franchisee confirming that the statement is a true and accurate record of the costs incurred; and
- (b) provide such other supporting information that the Secretary of State may reasonably require in order to satisfy himself that the costs are reasonably and properly incurred in accordance with paragraph 8.2 and the Secretary of State reserves the right to dispute any such costs where he is not satisfied that such costs have been reasonably and properly incurred.

9 One-Off Costs⁴²²

[REDACTED⁴²³] the One-Off Cost Items as follows:

9.1 By no later than the next Payment Date falling after the 10th business day after the date of the 2017 Capacity Enhancement Deed of Amendment [REDACTED⁴²⁴]

9.2 By no later than the 10th business day of each Reporting Period, the Franchisee shall:

- (a) **present to the Secretary of State a report on progress for each extant One-Off Cost Item and an indication of any likely [REDACTED⁴²⁵], if requested, a statement, prepared on an open book basis, detailing all of the actual costs that the Franchisee has incurred in the preceding Reporting Periods in relation to each One-Off Cost Item and such statement shall be signed by a statutory director of the Franchisee confirming that the**

⁴²¹ Date of redaction 03/07/2017 - Where text has been omitted from the document this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

⁴²² 08/09/2017 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

⁴²³ 20/11/2017 (Date of Redactions Approval) – Where text has been omitted from the document this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

⁴²⁴ 20/11/2017 (Date of Redactions Approval) – Where text has been omitted from the document this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

⁴²⁵ 20/11/2017 (Date of Redactions Approval) – Where text has been omitted from the document this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

statement is a true and accurate progress report and record of the costs incurred; and

- (b) **if requested, provide copy invoices and such other supporting information that [REDACTED⁴²⁶] in completing (or delivering, as the case may be) each One-Off Cost Item (which in the case of work carried out by or for any Affiliate of the Franchisee shall also include evidence to demonstrate that such works have actually been carried out). [REDACTED⁴²⁷]**

9.3 [REDACTED⁴²⁸]

- (a) **[REDACTED⁴²⁹]**
 (b) **[REDACTED⁴³⁰]**

[REDACTED⁴³¹]

9.4 [REDACTED⁴³²]

9.5 The Franchisee shall if requested by the Secretary of State, allow the Secretary of State and his representatives and advisers 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 their respective auditors and any assets (including the Franchise Assets) used or to be used by the Franchisee in connection with the One-Off Costs and One-Off Cost Items.

⁴²⁶ 20/11/2017 (Date of Redactions Approval) – Where text has been omitted from the document this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

⁴²⁷ 20/11/2017 (Date of Redactions Approval) – Where text has been omitted from the document this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

⁴²⁸ 20/11/2017 (Date of Redactions Approval) – Where text has been omitted from the document this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

⁴²⁹ 20/11/2017 (Date of Redactions Approval) – Where text has been omitted from the document this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

⁴³⁰ 20/11/2017 (Date of Redactions Approval) – Where text has been omitted from the document this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

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⁴³² 20/11/2017 (Date of Redactions Approval) – Where text has been omitted from the document this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

Appendix to Schedule 8.5^{433 434}

Modelled Amounts

Table 1 - Abbey Wood

	Part Year 1	Year 2	Year 3	Year 4 (first 9 RPs)	Year 4 (final 4 RPs)	Year 5 (10 RPs)	Year 5 (3 RP extended period)	Year 6 (previous 3 RP extended period)	Year 6 (new 5 RPs)	Year 6 (optional 5 RP extension)
QX at Abbey Wood	[REDACTED ⁴³⁵]									

Table 2 - London Bridge

	Part Year 1	Year 2	Year 3	Year 4	Year 5 (10 RPs)	Year 5 (3 RP extended period)	Year 6 (previous 3 RP extended period)	Year 6 (new 5 RPs)	Year 6 (optional 5 RP extension)
London Bridge QX	[REDACTED ⁴³⁶]								

Table 3 - Ashford and Ramsgate Depots

Modelled Depot charges	Part Year 1	Year 2	Year 3	Year 4	Year 5 (10 RPs)	Year 5 (3 RP extended period)	Year 6 (previous 3 RP extended period)	Year 6 (new 5 RPs)	Year 6 (optional 5 RP extension)
Ashford depot	[REDACTED ⁴³⁷]								
Ramsgate depot	[REDACTED ⁴³⁸]								

⁴³³ 23 March 2018 (Date of DOA) - Contract variation agreed by the Secretary of State and Franchisee

⁴³⁴ 13 June 2019 (Date of DOA) – Contract variation agreed by the Secretary of State and Franchisee.

⁴³⁵ **5 August 2019 (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.**

⁴³⁶ **5 August 2019 (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.**

⁴³⁷ **5 August 2019 (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.**

⁴³⁸ **5 August 2019 (Date of Redactions Approval) – Where text has been omitted from the document this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.**

APPENDIX 2 to Schedule 8.5

[REDACTED⁴³⁹]

⁴³⁹ Date of redaction 03/07/2017 - Where text has been omitted from the document this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

Appendix 3 to Schedule 8.5⁴⁴⁰

One-Off Costs and One-Off Cost Items

Column 1	Column 2	Column 3	Column 4	Column 5	Column 6
One-Off Cost Item	Output	Longstop Date [REDACTED ⁴⁴¹]	Estimated One-Off Costs [REDACTED ⁴⁴²]	Maximum Contingency [REDACTED ⁴⁴³]	Maximum One-Off Cost Amount Payable [REDACTED ⁴⁴⁴]
Grosvenor Road Victoria Depot Safety and Operational Enhancements	<i>To ensure that Grosvenor Road Victoria Depot meets the safety specification set out by the ORR and other necessary operational enhancements to undertake various train stabling and servicing activities to accommodate an increase in overnight stabling and</i>				

⁴⁴⁰ 08/09/2017 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

⁴⁴¹ 20/11/2017 (Date of Redactions Approval) – Where text has been omitted from the document this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

⁴⁴² 20/11/2017 (Date of Redactions Approval) – Where text has been omitted from the document this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

⁴⁴³ 20/11/2017 (Date of Redactions Approval) – Where text has been omitted from the document this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

⁴⁴⁴ 20/11/2017 (Date of Redactions Approval) – Where text has been omitted from the document this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

	<p>servicing for at least 68 Vehicles in total.</p> <p><i>This shall include, in particular:</i></p> <ul style="list-style-type: none"> • <i>3rd rail protection barriers and gates for each road</i> • <i>ability to locally isolate one third rail road (subject to a satisfactory feasibility study)</i> • <i>high level walkway (2 x 12 car road) to facilitate train cleaning activities safely</i> • <i>increase in CET facilities (for 2 roads)</i> • <i>upgrade of hand points 2, 3, 4 and 5 to facilitate additional shunting at reduced risk to staff</i> • <i>upgrade CCTV security for site and staff security and</i> • <i>accommodation enhancements for additional operating and cleaning staff</i> 				
<p>Stewart's Lane Depot roof access</p>	<p><i>To enable depot staff to access roof mounted equipment such as HVAC modules for maintenance</i></p>				

<p>CET – Installation of CET facilities in the down main at Tonbridge</p>	<p><i>Increased CET toilet emptying facilities to handle the cascaded Units</i></p>				
<p>CWM – Upgrade of CWM facilities at Grove Park</p>	<p><i>Improvements to the CWM facilities at Grove Park to include :</i></p> <ul style="list-style-type: none"> • <i>New Electrical Control Panel</i> • <i>8 x New Flail/Brush rota assemblies with motors bearings and drives</i> • <i>Replacement of valves, sensors and associated pipework</i> 				
<p>Day 1 Modifications to the Units</p>					
<p>Installation of Southeastern GSM -R phone book</p> <p>Installation of Southeastern emergency equipment</p> <p>Removal of emergency egress cover (and replacement of label)</p>	<p>Software update to Southeastern Cab Radio phone book</p> <p>Southeastern standard equipment needs to be provided</p> <p>Aligns Units to Southeastern operational practises</p>				

<p>Fitment of tie wraps on ACU cover</p>	<p>Secondary Safety Modification</p>				
<p>Fitment of MO/NM Holder and stickers in each driving cab (MO/NM means "Multiple Only" / "Not to Multiple")</p> <p>Fitment of Southeastern cab labels</p> <p>Removal of GTR labels & fitment of Southeastern labels in saloons</p>	<p>Aligns Units to Southeastern operational practises</p> <p>Aligns Units to Southeastern operational practises</p> <p>Aligns Units to Southeastern routes</p>				
<p>Fitment of shoe fuse covers</p>	<p>Class 377 Cascaded units to be modified with Southeastern shoe fuse covers (8 per Unit) to improve electrical safety of the unit</p>				
<p>Fitment of Perpetuum axle bearing monitoring</p>	<p>Class 377 Cascaded units to be upgraded with a bearing monitoring equipment to improve the Safety monitoring of the rolling stock to Southeastern's operational</p>				

	standards. 32 Wireless Sensor Nodes and 1 Data Concentrator installed per Unit, along with necessary updates to IT systems				
SDO database change to Southeastern version PIS audio and route database update	Class 377 Cascaded units to be compatible with Southeastern operational routes, and the on-board customer information systems be compliant with the Southeastern operational procedures				
CCTV HDDs	16 Hard Disc Drives for Class 377 Cascaded units to be compatible with Southeastern's CCTV operational procedures and improved to CCTV data storage to aide customer safety and security				
TCMS	Class 377 Cascaded units to be compatible with Southeastern train operating manuals, and the on-board train controls be compliant with the LSER operational procedures				

SCHEDULE 9

Changes

- Schedule 9.1: Financial and Other Consequences of Change**
- Appendix 1: Summary Flow Chart**
 - Appendix 2: Agreement or Determination of Revised Inputs**
 - Annex to Appendix 2: Incentivising Long Term Investment**
- Schedule 9.2: Identity of the Financial Model etc.**
- Schedule 9.3: Secretary of State Risk Assumptions**
- Schedule 9.4: Component of FAT**
- Schedule 9.5: Variations and Incentivising Beneficial Changes**

SCHEDULE 9.1**Financial and Other Consequences of Change****1. Purpose and Application of Schedule**

- 1.1 This Schedule 9.1 sets out:
- (a) the circumstances in which the occurrence of a Change will result in an adjustment to the Franchise Payments and/or the Benchmarks; and
 - (b) the process by which that adjustment to the Franchise Payments and/or the Benchmarks will be determined and effected; and
 - (c) provisions dealing with the responsibility for costs incurred by the Franchisee in connection with any audit of the Run of the Financial Model and its results.
- 1.2 Schedule 9.2 (Identity of the Financial Model etc.) contains provisions dealing with the Financial Model which are relevant to the operation of this Schedule 9.1.
- 1.3 This Schedule 9.1 shall apply in relation to a Change where:
- (a) there are good reasons for considering that that Change will be a Qualifying Change or, with other Changes, part of an Aggregated Qualifying Change; and
 - (b) the required notice(s) has/have been given in accordance with paragraph 1.4 (or the parties have agreed that this Schedule 9.1 will apply and there should be a Run of the Financial Model and/or a Review of the Benchmarks even though the required notices have not been given).
- 1.4 The notice requirements are:
- (a) subject to paragraph 1.4(b), a party must have notified the other that it considers that the Change will be a Qualifying Change and that it requires a Run of the Financial Model and/or a review of the Benchmarks in respect of that Change:
 - (i) within six months of the notification or agreement of that Change if it is a Variation pursuant to paragraph 1.1 of Schedule 9.5 (Variations and Incentivising Beneficial Changes); or
 - (ii) within six months of becoming aware of it, if it is any other type of Change; and
 - (b) in the case of an Aggregated Qualifying Change, a party must have notified the other:
 - (i) after an individual Change occurs, within the time limits stated in 1.4(a)(i) or 1.4(a)(ii), that it reserves the right to

count that Change towards an Aggregated Qualifying Change; and

- (ii) within six months of the occurrence of the last Change which that party considers will trigger an Aggregated Qualifying Change, that the party requires a Run of the Financial Model and/or a review of the Benchmarks in respect of the Changes comprised in that Aggregated Qualifying Change. The notice must identify each of the Changes included in the Aggregated Qualifying Change.

1.5 References in the remainder of this Schedule 9.1 and in Schedule 9.2 (Identity of the Financial Model etc.) to a "Change" are to a Change in respect of which the requirements in paragraph 1.3 have been satisfied.

1.6 Appendix 1 (Summary Flow Chart) to this Schedule 9.1 contains a flow chart summary of the process described in this Schedule 9.1. This is for guidance only and if there are any inconsistencies between this flow chart and any other of the contents of Schedule 9 (Changes), the latter shall apply.

1.7 For the avoidance of doubt:

- (a) the 2013 periodic review carried out by the ORR in respect of the period 1 April 2014 to 31 March 2019 ("PR2013") shall not be prevented from being a Charging Review and/or the effect of PR2013 on any Relevant Agreement shall not be prevented from being a Charge Variation in each case for the purpose of this Agreement as a result of the fact that:
 - (i) PR2013 is or may be concluded prior to the date of the Franchise Agreement; and/or
 - (ii) any Relevant Agreement entered into by the Franchisee, or to which the Franchisee otherwise becomes a party by Transfer Scheme or otherwise, reflects the outcome of PR2013 (as opposed to any such Relevant Agreement being varied to reflect the outcome of PR2013 after the Franchisee becomes a party to it); and
- (b) the exercise by the Secretary of State of his power pursuant to paragraph 5 of Schedule 5.7 (Changes to Fares and Fares Regulation) to alter the obligations of and restrictions on the Franchisee under Schedule 5 (Fares) shall not be prevented from being a Change pursuant to paragraph (r) of the definition thereof as a result of the fact that such exercise reflects a review of rail fares and ticketing undertaken by the Secretary of State in October 2013 ("the Fares Review"),

provided that the Request for Proposal (where relevant, as amended) did not require the Franchisee to submit its bid for the Franchise on the basis of the outcome of PR2013 or the Fares Review.

2. Timescales

- 2.1 Where this Schedule 9.1 applies, any resulting restatement of the Annual Franchise Payment Components and/or the Benchmarks (as applicable) shall be made in accordance with this Schedule:
- (a) where it is reasonably practicable to do so, at least three Reporting Periods prior to the Change; or
 - (b) where the timescale in 2.1(a) is not reasonably practicable, as soon as reasonably practicable after that.
- 2.2 If paragraph 2.1(b) applies and it is not reasonably practicable for the restatement of the Annual Franchise Payment Components to be made before the Change occurs, then paragraph 9 (Estimated Revisions) shall apply.

3. How any adjustments to Franchise Payments will be established

The adjustments, if any, to the Franchise Payments to be made in respect of any Change shall be established by:

- (a) establishing those Model Changes and/or Revised Inputs required to take account of the Change; then
- (b) applying those Model Changes and/or Revised Inputs to the Financial Model before performing a Run of the Financial Model to generate the New Results; then
- (c) restating the Annual Franchise Payment Components, by substituting the New Results for the Old Results (so that, to the extent that the New Results and the Old Results are different, this will result in an adjustment to the Franchise Payments),

in each case, subject to and in accordance with the terms more particularly described in this Schedule 9.1.

4. How Model Changes and/or Revised Inputs will be established

- 4.1 The parties shall agree or the Secretary of State shall reasonably determine the Revised Inputs and (if any) the Model Changes.
- 4.2 Revised Inputs means:
- (a) the data that the Financial Model utilised in order to produce the Old Results, as such data is recorded in the Financial Model released by the Secretary of State pursuant to either of paragraphs 2.1(d) or 2.2 of Schedule 9.2 (Identity of the Financial Model etc.) for the purposes of the Run of the Financial Model; but
 - (b) amended, whether by way of increase, reduction or other alterations to such data, (if at all) only as the parties may agree or the Secretary of State may reasonably determine is required by the provisions of Appendix 2 to this Schedule 9.1 in respect of a Change.
- 4.3 **"Model Changes"** means: any changes that the parties may agree or the Secretary of State may reasonably determine are required to the Financial Model and/or the Operational Model, as released by the Secretary of State

pursuant to either of paragraphs 2.1(d) or 2.2 of Schedule 9.2 (Identity of the Financial Model etc.), for the purposes of the Run of the Financial Model, as a consequence of and in order to give effect to the Revised Inputs.

- 4.4 The Secretary of State shall provide a written statement of the Revised Inputs and any Model Changes to the Franchisee for the purposes of paragraph 6 promptly after they have been agreed or determined.

5. Changes to Benchmarks

- 5.1 This paragraph 5 shall apply if either party has given notice to the other that it considers that a Change has or will have, in that party's reasonable opinion, a material effect on the risk of the Franchisee failing to satisfy the requirements of any Benchmark (whether in terms of increasing or reducing that risk).
- 5.2 Any notice pursuant to paragraph 5.1 shall be given as soon as reasonably practicable and in any event before the parties have agreed or the Secretary of State has reasonably determined the Revised Inputs in respect of the Change.
- 5.3 Where this paragraph 5 applies, the relevant Benchmarks shall be revised to the extent that such revision is reasonably considered to be appropriate to hold constant the risk of the Franchisee failing to satisfy the requirements of that Benchmark. The parties shall agree or the Secretary of State shall reasonably determine any such revision(s).
- 5.4 For the purposes of any revision to the Benchmarks under this paragraph 5, regard may be had to:
- (a) any relevant assumptions in the Record of Assumptions; and/or
 - (b) the contents of an Operational Model; and/or
 - (c) any other information

to the extent they are relevant to the consideration of whether a revision is reasonably considered to be appropriate to take account of the Change.

6. Run of the Financial Model following agreement or determination of the Revised Inputs and Model Changes

- 6.1 When the Revised Inputs and Model Changes (if any) are agreed or determined there shall be a Run of the Financial Model.
- 6.2 The Run of the Financial Model shall be performed after making any Model Changes and utilising the Revised Inputs and shall be performed by:
- (a) the Franchisee promptly on receiving notification of the Revised Inputs and any Model Changes from the Secretary of State pursuant to paragraph 4.4 or within such period of time as the Secretary of State shall reasonably determine; or
 - (b) the Secretary of State if the Franchisee fails to do so. In these circumstances, the Franchisee shall reimburse to the Secretary of State the Secretary of State's costs of performing the Run of the Financial Model.

- 6.3 The party that performs the Run of the Financial Model pursuant to paragraph 6.2 shall provide the non performing party with a reasonable opportunity to be in attendance and shall promptly notify such other party of the New Results.
- 6.4 Where there is more than one Change, Runs of the Financial Model in respect of such Changes shall (unless otherwise agreed or the Secretary of State reasonably determines) be undertaken in the order in which such Changes occur. For this purpose, the order of occurrence will be determined by reference to the earliest date from which the Franchise Payments are reasonably expected to require adjustment as a result of the restatement of the Annual Franchise Payment Components triggered by a Change. This will be as agreed between the parties or in the absence of agreement be reasonably determined by the Secretary of State.

7. Certification or Audit of the New Results

- 7.1 The Secretary of State, as soon as reasonably practicable after receiving or generating the New Results pursuant to paragraph 6.2, shall either:
- (a) certify to the Franchisee his approval of the New Results; or
 - (b) notify the Franchisee that he requires the Run of the Financial Model and its results to be audited by an independent auditor appointed by the Secretary of State with the approval (not to be unreasonably withheld) of the Franchisee.
- 7.2 For purposes of paragraph 7.1, the requirement for an audit is one that requires the auditor either to certify:
- (a) that the New Results have been produced by applying the Revised Inputs (as provided to the Franchisee by the Secretary of State pursuant to paragraph 4.4) to the Financial Model after making the Model Changes (as provided to the Franchisee by the Secretary of State pursuant to paragraph 4.4); or
 - (b) the New Results themselves, by itself applying the Revised Inputs (as provided to the Franchisee by the Secretary of State pursuant to paragraph 4.4) to the Financial Model after making the Model Changes (as provided to the Franchisee by the Secretary of State pursuant to paragraph 4.4).
- 7.3 The parties shall procure that any auditor is, as soon as reasonably practicable after his appointment, able to discharge the audit requirements.
- 7.4 The results as certified by the Secretary of State pursuant to paragraph 7.1 or by the auditor pursuant to paragraph 7.2 shall be final and binding on the parties, except in the case of manifest error.
- 7.5 The Secretary of State may stipulate (on or before the date on which the Secretary of State approves or the auditor certifies the results of the Run of the Financial Model) in respect of a Change that the restated Annual Franchise Payment Components are to apply for a limited period of time only (the "**Initial Period**"), with provision thereafter, if appropriate, for a further Run of the Financial Model with new Revised Inputs and/or Model Changes based on information available at that time.

8. Restatement of Annual Franchise Payment Components and/or Benchmarks

8.1 When the New Results have been certified by the Secretary of State or the auditor in accordance with paragraph 7 then if:

- (a) there is any difference between the Old Results and the New Results; and
- (b) the New Results are such that the Change:
 - (i) meets the criteria for a Qualifying Change; or
 - (ii) with other Changes meets the criteria for an Aggregated Qualifying Change

the Annual Franchise Payment Components shall be restated in the amounts of the New Results; and

- (c) if any changes to the Benchmarks have been agreed or determined in accordance with paragraph 5, the Benchmarks shall be restated to give effect to those changes.

8.2 Subject to paragraph 8.3, the restatement of the Annual Franchise Payment Component shall have effect on and from the date on which the Secretary of State or the auditor certifies the results of the Run of the Financial Model.

8.3 If and to the extent that:

- (a) the application of the New Results in respect of the then current or any earlier Franchisee Year would, result in any change to the amount of any payments already made between the Secretary of State and the Franchisee; and
- (b) that change in payments is not already taken into account in any Reconciliation Amount payable pursuant to paragraph 9.9,

then a reconciliation payment shall be paid by the Franchisee or the Secretary of State (as the case may be). The payment shall be made on the first Payment Date after agreement or determination of the amount of the reconciliation payment required (or if there is no such Payment Date, within 14 days after such agreement or determination).

9. Estimated Revisions

9.1 This paragraph 9 applies where there is or is to be a Change before there is a Run of the Financial Model in respect of it. It provides a mechanism for interim adjustments in Franchise Payments pending the final agreement or determination of those adjustments under this Schedule.

9.2 Where this paragraph 9 applies, the Secretary of State shall make the Estimated Revisions described in paragraph 9.3:

- (a) if the Franchisee requests the Secretary of State to do so at the same time as requesting a Run of the Financial Model in respect of the Change under paragraph 1.4; or

- (b) if the Secretary of State otherwise agrees or chooses (in his discretion) to do so.
- 9.3 The Estimated Revisions are the Secretary of State's estimates of the New Results which will apply once the process in paragraphs 4 - 8 of this Schedule 9.1 has been completed in respect of the Change. For the avoidance of doubt, Revised Inputs are not made in order to generate or take account of the Estimated Revisions.
- 9.4 The estimates referred to in paragraph 9.3 will be such estimates as the Secretary of State, acting reasonably, makes having regard to the time and the information available to him at the time the estimates fall to be made provided always that it is acknowledged that:
 - (a) the purpose of the estimates is to enable some provision to be made in respect of adjustments to the Annual Franchise Payment Components before full information about the Change is available and/or full consideration of the nature and extent of Revised Inputs and/or Model Changes has been undertaken;
 - (b) it may not be reasonably practicable in all circumstances for the Secretary of State to take into account in such an estimate all actual or potential impacts of a Change. Where the Secretary of State is aware that there are any such actual or potential impacts which he has not taken into account, he shall notify the Franchisee of them when notifying the Estimated Revisions pursuant to paragraph 9.2; and
 - (c) the Secretary of State shall be entitled to adjust any Estimated Revision notified pursuant to paragraph 9.2 to the extent he reasonably considers appropriate if at any time:
 - (i) the Secretary of State becomes aware of any new or revised information which would, if it had been available to him at the time he made his original estimate, have resulted in him making a different Estimated Revision; and
 - (ii) it is reasonable to revise the Estimated Revision having regard to the likely period of delay prior to the Run of the Financial Model in respect of the relevant Change.
- 9.5 In the circumstances described in paragraph 9.2 and paragraph 9.4(c) the Annual Franchise Payment Components shall be restated in the amounts and values of the Estimated Revisions, and Franchise Payments shall be paid accordingly until the Run of the Financial Model has taken place and its results have been put into effect.
- 9.6 The Secretary of State shall use all reasonable endeavours to notify the Franchisee of the Estimated Revisions required by paragraph 9.2 at least two Reporting Periods before he considers the Change is likely to occur. If, having exercised all reasonable endeavours, the Secretary of State cannot provide two Reporting Periods' notice, he shall provide such notification as soon as reasonably practicable afterwards.

- 9.7 The restatement of the Annual Franchise Payment Components referred to in paragraph 9.5 shall have effect on and from:
- (a) the date on which the Secretary of State notifies the Franchisee of the Estimated Revisions; or
 - (b) such other date as the Secretary of State, acting reasonably, may notify the Franchisee as the date on which the Secretary of State considers the Estimated Revisions should reasonably take effect, consistent with the matters taken into account by the Secretary of State in estimating the Estimated Revisions.
- 9.8 No estimate made by the Secretary of State pursuant to this paragraph 9 shall prejudice the Secretary of State's subsequent determination of any Revised Input or Model Change pursuant to paragraph 4.
- 9.9 Subject to paragraph 9.10, where adjustments to Franchise Payments have resulted from the operation of paragraph 9.5. then, as soon as reasonably practicable after the certification of the New Results following the related Run of the Financial Model, the parties shall agree or the Secretary of State shall reasonably determine the difference (the "**Reconciliation Amount**") between:
- (a) the total amount of Franchise Payments paid or to be paid to which adjustments have been made pursuant to the operation of paragraph 9.5; and
 - (b) the total amount of the Franchise Payments, as determined by that Run of the Financial Model, in respect of the same period as the period over which the adjusted Franchise Payments referred to in paragraph 9.9(a) have been paid/or are to be paid.
- 9.10 If a Change is agreed or determined not to be a Qualifying Change or not to be part of an Aggregated Qualifying Change with or without any Run of the Financial Model having been performed, the Reconciliation Amount shall be the total amount of the adjustments to Franchise Payments which have resulted from the operation of paragraph 9.5.
- 9.11 The Reconciliation Amount shall be paid:
- (a) by the Franchisee to the Secretary of State where the Estimated Revisions resulted in an overpayment of Franchise Payments by the Secretary of State to the Franchisee or an underpayment of Franchise Payments by the Franchisee to the Secretary of State compared with:
 - (i) the amount of the Franchise Payments described in paragraph 9.9(b); or
 - (ii) where paragraph 9.10 applies, the amount of the unrestated Franchise Payments over the same period; and
 - (b) by the Secretary of State to the Franchisee where the Estimated Revisions resulted in an underpayment of Franchise Payments by the Secretary of State to the Franchisee or an overpayment of

Franchise Payments by the Franchisee to the Secretary of State compared with:

- (i) the amount of the Franchise Payments described in paragraph 9.9(b); or
- (ii) where paragraph 9.10 applies, the amount of the unrestated Franchise Payments over the same period.

In either case, such payment shall be made on the first Payment Date after agreement or determination (or if none, within 14 days after such agreement or determination).

10. Information

The Franchisee shall promptly, having regard to the other timescales anticipated in this Schedule 9.1, provide to the Secretary of State such information as the Secretary of State may request for the purpose of enabling the Secretary of State to exercise his rights and comply with his obligations pursuant to this Schedule 9.1.

11. Costs

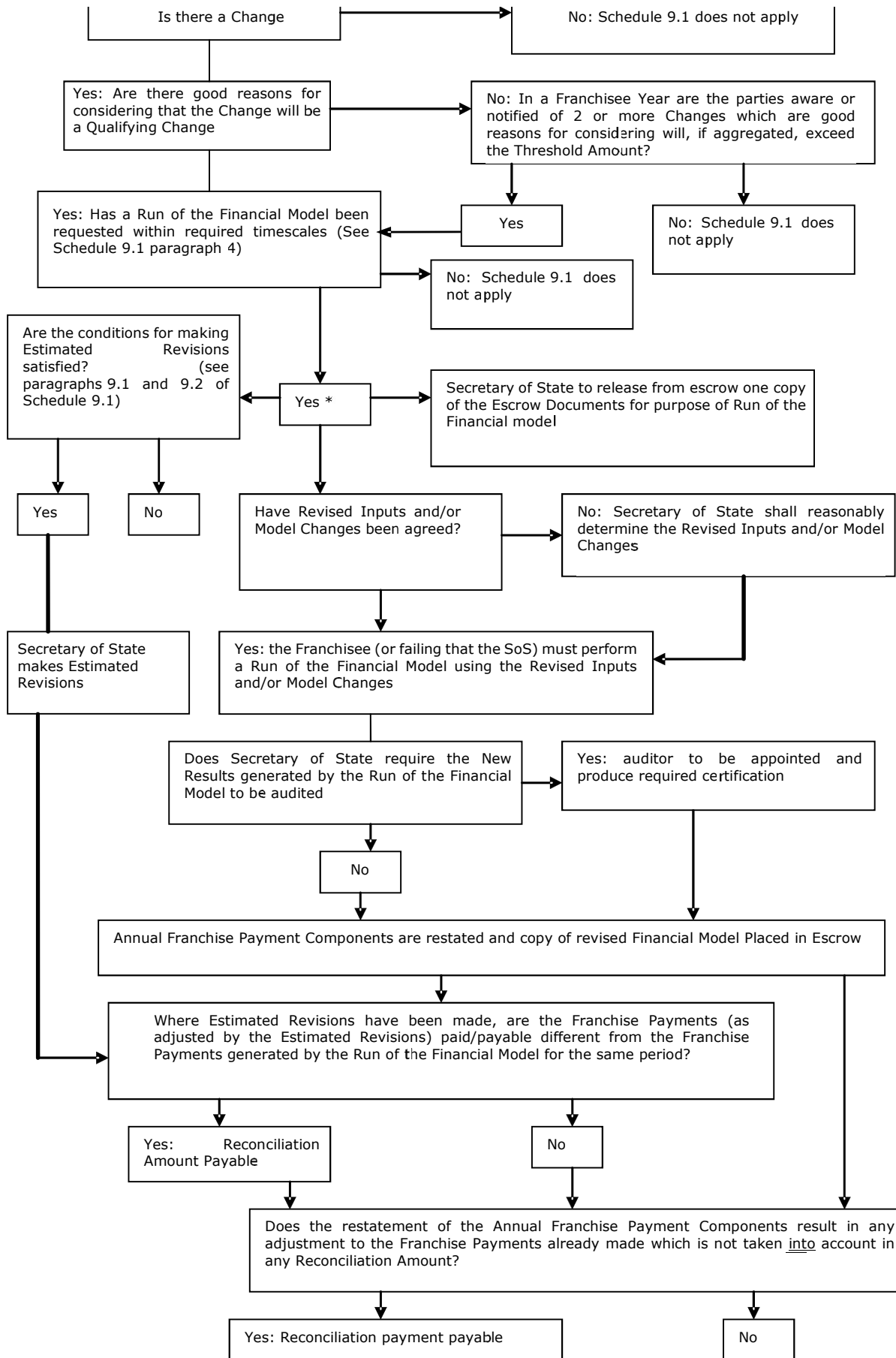
- 11.1 This paragraph deals with the costs incurred by the Franchisee in connection with any audit required by the Secretary of State pursuant to paragraph 7.
- 11.2 The costs of any audit required under paragraph 7.1(b) shall be met by the Secretary of State subject to the following:
 - (a) the costs of the audit shall be met entirely by the Franchisee:
 - (i) Not Used;
 - (ii) in the case of a Change falling within any of the following subparagraphs within the definition of Change:
 - (A) an event set out in any Secretary of State Risk Assumption specified in Schedule 9.3 (Secretary of State Risk Assumptions); and
 - (B) a Charge Variation;
 - (b) where paragraph 11.2(a) does not apply, the Secretary of State shall only be responsible for the reasonable costs of the Franchisee in connection with the audit, and the Franchisee shall comply with the Secretary of State's reasonable directions in connection with the audit which may include a requirement for a competitive tender for the appointment of the auditor.

APPENDIX 1 TO SCHEDULE 9.1

Summary Flow Chart

See next page

This summary is for guidance only. If there are any inconsistencies with the other contents of Schedule 9.1 or 9.2 (including any Appendix), those other contents shall apply.



* Note: that in these circumstances, either party may serve notice (before Revised Inputs in respect of the Change are agreed or determined) that it considers a Change has or will have a material effect on the risk of the Franchisee failing to satisfy the requirements of a Benchmark - See Schedule 9 paragraph 5.

APPENDIX 2 TO SCHEDULE 9.1**Agreement or Determination of Revised Inputs**

- 1.** The parties shall agree or the Secretary of State shall reasonably determine the Revised Inputs that are required in respect of a Change:
- (a) on the basis of the general adjustments and/or assumptions referred to in paragraph 2;
 - (b) on the basis of the assumptions in the Record of Assumptions as added to and/or amended (if at all) in accordance with paragraph 3;
 - (c) so as to provide for Traction Electricity Charges in accordance with paragraph 4;
 - (d) so as to provide for profit in accordance with paragraph 5; and
 - (e) so as to give effect to the provisions of paragraph 6 in relation to indexation,

provided that if there is any inconsistency between the assumptions in the Record of Assumptions described in paragraph (b) above and any other of the requirements of this paragraph 1, those other requirements shall prevail, unless the Secretary of State (acting reasonably) otherwise elects.

2. General Adjustments/Assumptions

- 2.1** Revised Inputs are to be agreed between the parties or reasonably determined by the Secretary of State on the basis that:
- (a) any increase in costs relating to a Change; and/or
 - (b) any reduction in revenues relating to a Change,

that is attributable to any activities, actions or omissions of the Franchisee which are not permitted under, or would otherwise constitute a contravention of, the terms of the Franchise Agreement, is to be disregarded.

- 2.2** Revised Inputs are to be agreed between the parties or reasonably determined by the Secretary of State on the basis that:
- (a) any reduction in costs relating to a Change; and/or
 - (b) any increase in revenues relating to a Change,

that is attributable to any activities, actions or omissions of the Franchisee which are not permitted under, or would otherwise constitute a contravention of, the terms of the Franchise Agreement, is to be taken into account.

- 2.3 Revised Inputs are also to be agreed between the parties or reasonably determined by the Secretary of State on the basis that:
- (a) the Franchisee will use all reasonable endeavours to:
 - (i) reduce any costs that may arise or income that may be foregone; and
 - (ii) increase any revenue that may arise and avoid any cost that may be avoided,as a consequence of a Change; and
 - (b) any requirement for borrowing in respect of Capital Expenditure by the Franchisee is dealt with in accordance with paragraph 2 of Schedule 9.5 (Variations and Incentivising Beneficial Changes).
- 2.4 Where and as directed to do so by the Secretary of State (acting reasonably) the Franchisee shall undertake one or more competitive tendering exercises for the purposes of ascertaining the likely level of any costs relating to a Change which are relevant to a Revised Input.

3. Assumptions in the Record of Assumptions

- 3.1 The parties shall (unless to do so would be contrary to paragraph 2) agree or the Secretary of State shall reasonably determine Revised Inputs that are in accordance with the assumptions that are contained in the Record of Assumptions, as added to or modified pursuant to paragraph 3.2 or paragraph 3.3.
- 3.2 Where the Secretary of State reasonably considers that the assumptions contained in the Record of Assumptions are ambiguous or that additional assumptions are required in relation to circumstances not dealt with by the assumptions in the Record of Assumptions, the parties shall agree or the Secretary of State shall reasonably determine the assumptions or additional assumptions to be utilised for this purpose.
- 3.3 Where the Secretary of State reasonably considers that:
- (a) a Change is likely to result in an increase in either or both of the costs of the Franchisee and the revenues of the Franchisee; and
 - (b) an assumption relevant to the Change contained in the Record of Assumptions does not accord with what would be achievable by, or experienced by, an economic and efficient franchisee,

then the parties shall agree or the Secretary of State shall reasonably determine a modification to the assumption so that, as modified, it does accord with what would be achievable by, or experienced by, an economic and efficient franchisee.

4. Traction Electricity Charges

- 4.1 This paragraph 4 applies only in relation to Charge Variations.
- 4.2 In agreeing or determining Revised Inputs, no adjustment shall be made in respect of a Charge Variation to the extent that Charge Variation relates, directly or indirectly and however it may be effected, to the Traction Electricity

Charge payable by the Franchisee pursuant to any Track Access Agreement. For this purpose (and subject to clause 1.1(l) of this Agreement), the Traction Electricity Charge is the component of the Track Charges (as defined in the Track Access Agreement) identified as such in any Track Access Agreement or any similar arrangement under which the Franchisee pays for traction current consumed by rolling stock vehicles operated by or on behalf of the Franchisee.

5. Revised Input for Profit

5.1

- (a) Where a Change is forecast to result in an increase to the Franchisee's revenue in a Franchisee Year, the parties shall agree or the Secretary of State shall reasonably determine Revised Inputs in relation to profit that provide for an increase in the amount of profit in any Franchisee Year equal to 4% of the forecast increase in revenue for that Franchisee Year; and/or
- (b) Where a Change is forecast to result in a reduction in the Franchisee's revenue in a Franchisee Year, the parties shall agree or the Secretary of State shall reasonably determine Revised Inputs in relation to profit that provide for a decrease in the amount of profit in any Franchisee Year equal to the lower of:
 - (i) the percentage specified in paragraph 5.1(a); or
 - (ii) the average profit margin in the current Business Plan for the remaining Franchise Term,

of the forecast reduction in revenue for that Franchisee Year.

5.2 In agreeing or determining Revised Inputs in relation to profit in respect of any Change, the parties or the Secretary of State shall effect such change (if any) in the amount attributable to profit in paragraph 5.1 as they agree or the Secretary of State reasonably determines to reflect:

- (a) the risk for the Franchisee in continuing to operate the Franchise on the terms of the Franchise Agreement after and as a result of the Change; and
- (b) the likelihood of:
 - (i) material benefit from such Change arising after expiry of the Franchise Term; and
 - (ii) material detriment from such Change arising prior to the expiry of the Franchise Term.

5.3 In agreeing or determining Revised Inputs for the purposes of any Protected Proposal, the parties or the Secretary of State shall effect such change (if any) to the amount attributable to profit as they agree or the Secretary of State reasonably determines:

- (a) fairly rewards the Franchisee for proposing the Protected Proposal; and

- (b) reasonably incentivises the Franchisee to propose further Protected Proposals

by sharing with the Franchisee a reasonable amount of the additional profit that is expected to arise from implementing the Protected Proposal.

- 5.4 The Annex (Incentivising Long Term Investment) to this Appendix 2 sets out the Secretary of State's guidance on how he approaches incentivising long term investment.

6. Indexation

In agreeing or determining Revised Inputs, the parties shall apply the following principles in connection with indexation. For each relevant item of data in the Financial Model in respect of which a Revised Input is agreed or determined to be required:

- (a) the parties shall agree or the Secretary of State shall reasonably determine, having regard to the particular facts of the Change, the base date at which that item is priced; and
- (b) that item shall be deflated by reference to the original base date and index (if any) relevant to that item in the Financial Model.

7. Efficiency Benefit Share/REBS

No Revised Inputs will be made to reflect:

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

For this purpose (and subject to clause 1.1(l) of this Agreement), Efficiency Benefit Share is the component of Track Charges (as defined in the Track Access Agreement) identified as such in any Track Access Agreement or similar arrangement under which benefits of any outperformance of efficiency targets (or risk of failure to achieve efficiency targets) are to be shared between Network Rail and train operators.

8. Cancellations Performance Sum and TOC Minute Delay Performance Sum

In agreeing or determining Revised Inputs, no adjustment shall be made to the Financial Model to reflect any change in the amount of the Cancellations Performance Sum or the TOC Minute Delay Performance Sum payable by the Secretary of State or to be incurred by the Franchisee arising from the exercise by the Secretary of State of his rights pursuant to paragraph 1.6 of Schedule 7.1 (Performance Benchmarks). So for example if prior to such exercise the Franchisee would have been entitled to receive a Cancellations Performance Sum of £100 for a particular level of performance against the Annual Cancellations Benchmark and after such exercise the Franchisee would only be entitled to

receive a Cancellations Performance Sum of £50 for achieving the same level of performance, no adjustment shall be made to the Revised Inputs to reflect this.

ANNEX TO APPENDIX 2 TO SCHEDULE 9.1**Incentivising Long Term Investment**

This Appendix sets out the Secretary of State's guidance on how he approaches incentivising long term investment.

- 1.** The Secretary of State wishes to encourage the Franchisee to:
 - (a) improve the efficiency;
 - (b) reduce the cost; and
 - (c) enhance the revenue earning potential of the delivery of services to passengers,from the commencement of the Franchise, through the Franchise Term and into the successor franchises.
- 2.** It is recognised however, that the Franchise Term may be perceived to be a barrier to undertaking investment or change programmes where:
 - (a) the time scale for implementation limits the benefit to the Franchisee; or
 - (b) the business case for such investment or change has a payback period longer than the Franchise Term.
- 3.** In this context investment or change may be considered to encompass:
 - (a) capital investments undertaken solely by the Franchisee;
 - (b) capital investments undertaken by the Franchisee in association with others;
 - (c) total or partial substitution of certain train services by bus services where an enhanced service level could be provided for reduced cost or where the provision of bus services improves the overall capacity of the network or delivers other benefits;
 - (d) changes in working practices of the Franchisee's employees;
 - (e) changes in the contracted roles and responsibilities between the Franchisee and its major suppliers; and
 - (f) operational changes.
- 4.** Accordingly, the Franchisee is encouraged to propose schemes that seek to achieve the objectives set out in paragraph 1 for consideration by the Secretary of State during the Franchise Term.
- 5.** In considering the Franchisee's proposals for any investment or change proposed to be undertaken, the Secretary of State will recognise:
 - (a) the capital cost and proposed payment profile;

- (b) legitimate costs of the Franchisee in developing, procuring, delivering and project managing the project;
- (c) the life of any capital assets and the duration of the benefits stream arising;
- (d) the remaining Franchise Term and the projected payback period;
- (e) the benefits associated with undertaking the investment early rather than waiting until the Franchise is re-let;
- (f) the risks of cost overrun or under performance of the projected benefits;
- (g) a profit element for undertaking the project commensurate with the risks of the proposed project; and
- (h) alternative benefit sharing arrangements which could be based on:
 - (i) a capital lump sum when the expenditure is incurred;
 - (ii) an enhanced Franchise Payment over the Franchise Term;
 - (iii) a balloon payment on expiry of the Franchise which allocates a proportion of future benefits to the Franchisee;
 - (iv) an ongoing payment if the benefits materialise after the Franchise Term; and/or
 - (v) any combination of any of paragraphs 5(h)(i) to (h)(iv) inclusive.

- 6.** In evaluating the Franchisee's proposals for any investment or change proposed to be undertaken and to enable best value for money to be obtained from third party financiers, the Secretary of State shall also give consideration to the appropriateness of the provision, by the Secretary of State, of an undertaking (or other form of comfort) pursuant to Section 54 of the Act.

SCHEDULE 9.2

Identity of the Financial Model etc.

1. Franchisee's Obligations

- 1.1 The Franchisee shall deliver two copies of each of the Financial Model, the Operational Model and the Record of Assumptions (each such copy in electronic format on CD-ROM) together with hard format copies of the output template of the Financial Model in the format set out in the document in agreed terms marked FF (the "**Escrow Documents**") to the Secretary of State in the agreed form, accompanied by a notice that those Escrow Documents are to be Placed in Escrow.
- 1.2 The Franchisee shall deliver the Escrow Documents in accordance with paragraph 1.1 of this Schedule 9.2:
- (a) on the date of the Franchise Agreement;
 - (b) within seven days of the Start Date, but updated only as strictly necessary for any elapsed time between the actual Start Date and the date assumed to be the Start Date in the Initial Business Plan; and
 - (c) within seven days of any approval or audit of a Run of the Financial Model as provided for in paragraph 7 of Schedule 9.1 (Financial and Other Consequences of Change), but updated with the Revised Inputs and any Model Changes.
- 1.3 The Franchisee shall deliver with each such deposit of the Escrow Documents all of the following information to the extent that it is relevant:
- (a) details of the Escrow Documents deposited (including full filename and version details, any details required to access the Escrow Documents including media type, backup command/software used, compression used, archive hardware and operating system details);
 - (b) the names and contact details of persons who are able to provide support in relation to accessing and interpreting the Escrow Documents; and
 - (c) if required by the Secretary of State, a certificate from independent auditors approved by the Secretary of State, confirming that the deposited version of the Escrow Documents is in the agreed form in accordance with paragraph 1.2(a) or (as the case may be) is in accordance with paragraphs 1.2(b) or 1.2(c).

2. Secretary of State's Obligations

- 2.3 The Secretary of State shall:
- (a) within three days following receipt, acknowledge receipt to the Franchisee of any version of the Escrow Documents delivered to him for the purposes of being Placed in Escrow;

- (b) save as provided under paragraph 2.1(c), store each copy of the Escrow Documents in a different physical location from any other copy of each such document and use all reasonable endeavours to ensure that each copy of the Escrow Documents is at all times kept in a safe and secure environment. In so doing the Secretary of State shall be deemed to have Placed in Escrow the Escrow Documents for the purposes of the Franchise Agreement;
- (c) notify the Franchisee if he becomes aware at any time during the term of the Franchise Agreement that any copy of the Escrow Documents or part thereof stored in a particular location has been lost, damaged or destroyed. In such an event, the Secretary of State shall be permitted to create a new copy of the Escrow Documents or part thereof from the other copy Placed in Escrow and shall within seven days notify the Franchisee accordingly and afford it the right to make reasonable inspections in order to satisfy itself that a "complete and accurate" copy has been made. Following the making of such a new copy of the Escrow Documents, the Secretary of State shall retain all copies of the Escrow Documents in accordance with paragraph 2.1(b);
- (d) within seven days of receipt of a notice from the Franchisee stating that the Escrow Documents are required for the purposes of a Run of the Financial Model in relation to any Change, or should the Secretary of State himself so decide that the Escrow Documents are required by the Franchisee or by the Secretary of State for such purposes release one copy of the Escrow Documents accordingly and retain one copy of the Escrow Documents in escrow in accordance with paragraph 2.1(b);
- (e) maintain a record of any release of any copy of any version of the Escrow Documents made, including details of any version released and the date of release as well as the identity of the person to whom the Escrow Documents are released;
- (f) have no obligation or responsibility to any person whatsoever to determine the existence, relevance, completeness, accuracy, effectiveness or any other aspect of the Escrow Documents; and
- (g) not be liable for any loss, damage or destruction caused to the Franchisee arising from any loss of, damage to or destruction of the Escrow Documents.

2.4 If the Franchisee fails to perform a Run of the Financial Model pursuant to paragraph 6.2(a) of Schedule 9.1 (Financial and Other Consequences of Change) or fails to return the copy of the Escrow Documents released pursuant to paragraph 2.1(d):

- (a) such failure to perform or to return the released copy to the Secretary of State shall be a contravention of the Franchise Agreement;
- (b) the Secretary of State may release the other copy of the Escrow Documents Placed in Escrow and take a copy thereof (the "**Replacement Copy**") in order that the Secretary of State may perform a Run of the Financial Model pursuant to paragraph 6.2(a) of Schedule 9.1 (Financial and Other Consequences of Change);

- (c) once copied, the second copy of the Escrow Documents released pursuant to this paragraph 2.2 shall be Placed in Escrow; and
- (d) once the Run of the Financial Model has been approved or audited as provided for in paragraph 7 of Schedule 9.1 (Financial and Other Consequences of Change), two copies of the Replacement Copy shall also be Placed in Escrow.
- (e) Nothing in this Schedule 9.2 shall prevent the Secretary of State or the Franchisee each retaining for their working use one or more copies of any of the Escrow Documents Placed in Escrow provided that no such working copy shall (unless otherwise explicitly agreed by the parties) be regarded as a copy released from Escrow for the purposes of this Schedule 9.2 or any Run of the Financial Model.

3. Errors in Escrow Documents

- 3.1 Any feature of the Escrow Documents which is in the reasonable opinion of the Secretary of State an error will be addressed as follows:
 - (a) if rectification of such an error would (as the case may be) over the Franchise Term result in a net increase in the amount of Franchise Payments payable by the Secretary of State to the Franchisee or a net decrease in the amount of Franchise Payments payable by the Franchisee to the Secretary of State then such error shall be rectified provided that there shall not be a restatement of the values of the Annual Franchise Payment Components;
 - (b) if rectification of such an error would (as the case may be) over the Franchise Term result in a net decrease in the amount of Franchise Payments payable by the Secretary of State to the Franchisee or a net increase in the amount of Franchise Payments payable by the Franchisee to the Secretary of State then such error shall be rectified and the values of the Annual Franchise Payment Components shall be restated where appropriate.
 - (c) a record of the error shall be noted in the Record of Assumptions and, if applicable, the Financial Model; and
 - (d) as soon as reasonably practicable after the date of the rectification of the error, the Franchisee shall (unless otherwise agreed by the Secretary of State) deliver to the Secretary of State a certificate from independent auditors approved by the Secretary of State confirming that the error has been rectified as required by this paragraph 3 and is now in the required form in accordance with paragraph 1.2(a), 1.2(b) or 1.2(c) as the case may be.

Schedule 9.3⁴⁴⁵

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.

⁴⁴⁵ 13 June 2019 (Date of DOA) Contract variation agreed by the Secretary of State and Franchisee.

Schedule 9.4^{446 447}

Component of FAT: Definition of Threshold Amount

Franchisee Year	
Year 1	<p>[REDACTED⁴⁴⁸] Where text has been omitted from the document, this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.</p>
Year 2	
Year 3	
Year 4	
Year 5 (10 RPs)	
Year 5 (3 RP extended period)	
Year 6 (previous 3 RP extended period)	
Year 6 (new 5 RPs)	
Year 6 (optional 5 RP extension)	

⁴⁴⁶ 23 March 2018 (Date of DOA) Contract variation agreed by the Secretary of State and Franchisee.

⁴⁴⁷ 13 June 2019 (Date of DOA) Contract variation agreed by the Secretary of State and Franchisee.

⁴⁴⁸ **5 August 2019 (Date of Redactions Approval) – Where text has been omitted from the document this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.**

Schedule 9.5

Variations and Incentivising Beneficial Changes

1. Variations to the Franchise Agreement and Incentivising Beneficial Changes

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

(a) by the Secretary of State as contemplated where relevant in the Request for Proposal in relation to:

(i) any aspect of the Franchise Services; and/or

(ii) any provision of the Franchise Agreement other than those provisions specified in paragraph 1.2,

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

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

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

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

(a) clause 4 (Term) of this Agreement;

(b) Schedules 8 (Payments), 9 (Changes), 10 (Remedies, Termination and Expiry), 12 (Financial Obligations and Covenants), 14 (Preservation of Assets), 18 (Additional Reporting Periods) and Schedule 19 (Other Provisions); and

(c) the definitions set out at clause 2 (Definitions) of this Agreement insofar as such affect the respective rights and obligations of the Secretary of State and the Franchisee pursuant to the provisions referred to at (a) and (b) above,

shall not be varied at any time other than in accordance with the terms of the Franchise Agreement or with the agreement of the parties.

1.3 The Secretary of State shall, to the extent reasonably practicable, allow the Franchisee a reasonable opportunity to make representations to the Secretary of State concerning any Variation to be made in accordance with paragraph 1.1(a), prior to making any such Variation.

1.4 The Secretary of State may:

(a) issue, revise and withdraw from time to time procedures that he requires to be followed for the purposes of orderly consideration of

Variations. This will include for the purpose of establishing in relation to any Change whether it is a Qualifying Change; and

- (b) require the Franchisee to provide any information that the Secretary of State reasonably requires for this purpose (including in relation to prospective change to profit, costs and revenue as a consequence of proceeding with the Variation).
- 1.5 Procedures issued pursuant to paragraph 1.4 may provide for indicative iterations of Runs of the Financial Model in relation to one or more Changes that the Secretary of State is considering and may also provide for any number of Changes to be grouped together as a single Change for the purposes of agreeing or determining Revised Inputs and then performing a Run of the Financial Model.
- 1.6 Procedures issued pursuant to paragraph 1.4 shall have contractual effect between the parties in accordance with their terms.
- 1.7 The Franchisee may notify the Secretary of State of any proposal for a Variation by notice setting out the proposed method of implementing such Variation including:
- (a) the timescale for doing so;
 - (b) the effect (if any) on the timing of the performance of its other obligations under the Franchise Agreement;
 - (c) the impact of effecting the proposed Variation on the provision of the Franchise Services and the Franchisee's proposals as to how to minimise such impact; and
 - (d) the financial consequences of implementing the Variation proposed by the Franchisee in terms of the Revised Inputs that the Franchisee considers the Variation would require.
- 1.8 The Secretary of State shall be under no obligation to consider a Variation proposed by the Franchisee but if he wishes to do so, he shall do so pursuant to paragraph 1.1. of this Schedule 9.5.
- 1.9 Where the Franchisee proposes a Variation in sufficient detail for it to be apparent that its implementation is likely to result in an increase in the overall profitability of the Franchisee through costs saving measures (a "**Protected Proposal**"), the Secretary of State may not proceed with the Protected Proposal or seek to implement the substance of it by proposing a Variation of his own without complying with the provisions of paragraph 5.3 of Appendix 2 (Agreement or Determination of Revised Inputs) to Schedule 9.1 (Financial and Other Consequences of Change).
- 1.10
- (a) The Franchisee and the Secretary of State acknowledge that the Franchisee may during the Franchise Term identify actions that could be taken by the Franchisee to achieve savings and improved financial performance and that such actions may if implemented give rise to a Change under the terms of this Agreement which, if it is a Qualifying Change, will give a financial benefit to the Secretary of State. It is further acknowledged that it is appropriate for the

Franchisee to seek to identify such actions for the purposes of improving the cost effective delivery of railway passenger services.

- (b) To incentivise the Franchisee to seek to identify such actions it is agreed that the Franchisee may approach the Secretary of State with a proposal to take an action that would constitute a Change on the basis that if such a Change occurred and was a Qualifying Change in agreeing or determining Revised Inputs the parties or the Secretary of State would effect such change (if any) to the amount attributable to profit as they agree or the Secretary of State reasonably determines:
 - (i) fairly rewards the Franchisee for proposing the Change; and
 - (ii) reasonably incentivises the Franchisee to propose further Changes that achieve savings and/or improved financial performance by sharing with the Franchisee a reasonable amount of the additional profit that is expected to arise from implementing the relevant Change.
- (c) The Secretary of State shall have an unfettered discretion as to whether or not to agree such a proposal but if he does so agree and a Qualifying Change in consequence occurs then in agreeing or determining Revised Inputs the provisions referred to in sub paragraph (b) above shall apply.

2. Capital Expenditure

Capital Expenditure Threshold

- 2.1 The Franchisee shall notify the Secretary of State promptly if it reasonably expects that a Change to which paragraph 1 relates would require it to incur, singly or in aggregate with other Changes from time to time, Capital Expenditure in excess of one per cent of its annual Turnover as disclosed by its latest available Annual Audited Accounts and, when so notified, the Secretary of State shall either:
 - (a) withdraw the Change;
 - (b) undertake to meet the excess through additional funding as and when such Capital Expenditure is incurred; or
 - (c) direct the Franchisee to use all reasonable endeavours to borrow or otherwise raise the money required to fund any Change on commercial terms and at rates which are consistent with market conditions at the time, unless borrowing or otherwise raising such money would result in the Franchisee failing to comply with the financial covenants contained in Schedule 12 (Financial Obligations and Covenants).

Franchisee to Seek Finance

- 2.2 If the Secretary of State elects to require the Franchisee to use all reasonable endeavours as described in paragraph 2.1(c) then the Franchisee shall:
 - (a) seek finance from a representative range of lending institutions and other financial institutions including those which at that time provide

finance to the Franchisee, the Parent and/or either of the Ultimate Parents;

- (b) if it is unable to raise funding, provide the Secretary of State with all information the Secretary of State may reasonably require in relation to the efforts made by the Franchisee and the reasons for a failure to raise additional finance;
- (c) so far as it is able (having used all reasonable efforts to do so), the Franchisee shall provide to the Secretary of State letters from lenders and financiers it has approached for finance stating their reasons for refusing to provide it and if the Secretary of State so requires, arrange and attend meetings with them for the Secretary of State to discuss those reasons; and
- (d) if funding is not available, or is not available on terms that the Secretary of State considers to be commercial terms or at rates which are consistent with market conditions at that time the Secretary of State may:
 - (i) withdraw the Change; or
 - (ii) undertake to fund the Capital Expenditure as and when such Capital Expenditure is incurred.

Treatment of Borrowings in Revised Inputs

- 2.3 In calculating the Revised Inputs for the purposes of any Change referred to in this paragraph 2, the Franchisee shall account for the Capital Expenditure in accordance with GAAP, taking into account the basis on which such Capital Expenditure has been financed.

Meaning of Capital Expenditure

- 2.4 The expression Capital Expenditure when used in this Schedule 9.5 refers to the nature of the expenditure incurred by the Franchisee and, accordingly, does not include expenditure incurred under operating leases.

SCHEDULE 10

Remedies, Termination and Expiry

Schedule 10.1:	Remedial Plans and Remedial Agreements
Schedule 10.2	Termination and Expiry
Schedule 10.3	Events of Default and Termination Event
Schedule 10.4	Force Majeure
Schedule 10.5	Liability

SCHEDULE 10.1**Remedial Plans and Remedial Agreements****1. Remedies for Contraventions of the Franchise Agreement**

- 1.1 If the Secretary of State is satisfied that the Franchisee is contravening or is likely to contravene any term of the Franchise Agreement he may serve a notice on the Franchisee requiring it to propose such steps as the Franchisee considers appropriate for the purpose of securing or facilitating compliance with the term in question (a "**Remedial Plan Notice**").

Contents of Remedial Plan Notices

- 1.2 Each Remedial Plan Notice shall specify the following:
- (a) the term or terms of the Franchise Agreement that the Secretary of State is satisfied that the Franchisee is contravening or is likely to contravene (each a "**Relevant Term**"); and
 - (b) the time period within which the Secretary of State requires the Franchisee to provide an appropriate plan for the purpose of facilitating or securing compliance with any Relevant Term (a "**Remedial Plan**").

Contents of Remedial Plans

- 1.3 If the Secretary of State issues a Remedial Plan Notice, the Franchisee shall submit a Remedial Plan to the Secretary of State within the period specified in such Remedial Plan Notice.
- 1.4 Each Remedial Plan shall set out:
- (a) the Relevant Term which has caused a Remedial Plan to be required;
 - (b) an explanation of the reasons for the contravention or likely contravention of the Relevant Term;
 - (c) the steps proposed for the purposes of securing or facilitating compliance with the Relevant Term; and
 - (d) the time period within which the Franchisee proposes to implement those steps.

Remedial Agreements

- 1.5 If the Secretary of State is satisfied that the matters referred to in paragraph 1.4(c) and (d) are appropriate (with or without further modification as the parties may agree) he may require the Franchisee to enter into a supplemental agreement (the "**Remedial Agreement**") with the Secretary of State to implement those matters.
- 1.6 It is a term of the Franchise Agreement that the Franchisee (at its own cost) complies with the Remedial Agreement in accordance with its terms.

Effect of Force Majeure Event

- 1.7 Without prejudice to the operation of paragraph 3.2 of Schedule 10.4 (Force Majeure), the following provisions shall apply in relation to Force Majeure Events affecting performance of a Remedial Agreement:
- (a) the Franchisee shall give written notice to the Secretary of State promptly after it becomes aware (and in any event within 24 hours after becoming aware) of the occurrence or likely occurrence of a Force Majeure Event which will or is likely to affect the Franchisee's ability to comply with a Remedial Agreement within the period specified therein;
 - (b) each notice submitted in accordance with paragraph 1.7(a) shall state the extent or likely extent of the relevant Force Majeure Event and, in the case of a Force Majeure Event which has not occurred at such time, the reasons why the Franchisee considers it likely to occur;
 - (c) the Franchisee shall use, and shall continue to use, all reasonable endeavours to avoid or reduce the effect or likely effect of any Force Majeure Event on its ability to comply with any Remedial Agreement; and
 - (d) subject to the Franchisee having complied with its obligations under paragraphs 1.7(a) to 1.7(c) (inclusive) the Franchisee shall be entitled to a reasonable extension of the remedial period applicable to a Remedial Agreement in order to take account of the effect of a Force Majeure Event which has occurred on the Franchisee's ability to comply with any Remedial Agreement.

Occurrence of a Contravention

- 1.8 Following the occurrence of a contravention of the Franchise Agreement, the Secretary of State may at his option (but shall not be obliged to) commence or increase the level and/or frequency of monitoring (whether by inspection, audit or otherwise) of the Franchisee's performance of any relevant obligations until such time as the Franchisee demonstrates, to the Secretary of State's reasonable satisfaction, that it is capable of performing and will perform such obligations as required by the Franchise Agreement.
- 1.9 The Franchisee shall co-operate fully with the Secretary of State in relation to the monitoring referred to in paragraph 1.8.
- 1.10 The results of such monitoring will be reviewed at each Franchise Performance Meeting held pursuant to Schedule 11 (Agreement Management Provisions).
- 1.11 The Franchisee shall compensate the Secretary of State for all reasonable costs incurred by the Secretary of State in carrying out such monitoring.

SCHEDULE 10.2**Termination and Expiry****1. Termination Notices**

- 1.1 The Secretary of State may, on and at any time after the occurrence of:
- (a) (subject to paragraphs 1.2 and 1.3) an Event of Default which:
 - (i) is unremedied or continuing; and
 - (ii) the Secretary of State considers to be material;
 - (b) a Termination Event specified in paragraph 3.1 of Schedule 10.3 (Events of Default and Termination Events) which is unremedied or continuing; or
 - (c) a Termination Event specified in paragraph 3.2 of Schedule 10.3 (Events of Default and Termination Events),

terminate the Franchise Agreement by serving a Termination Notice on the Franchisee. The Franchise Agreement shall terminate with effect from the date specified in any such Termination Notice.

- 1.2 The Secretary of State may not serve a Termination Notice in respect of an Event of Default in relation to which a Remedial Plan Notice has been issued until the period has expired within which the Franchisee is required to deliver to the Secretary of State the Remedial Plan specified in such Remedial Plan Notice.
- 1.3 The Secretary of State may not serve a Termination Notice in respect of an Event of Default for which the Franchisee is implementing a Remedial Agreement in accordance with its terms.

2. Consequences of Termination or Expiry

- 2.1 Upon termination of the Franchise Agreement (whether through default or effluxion of time or otherwise) the obligations of the parties shall cease except for:
- (a) any obligations arising as a result of any antecedent contravention of the Franchise Agreement;
 - (b) any obligations which are expressed to continue in accordance with the terms of the Franchise Agreement; and
 - (c) any other obligations which give effect to such termination or to the consequences of such termination or which otherwise apply (expressly or impliedly) on or after such termination.

- 2.2 Nothing in this paragraph 2 shall prevent the Secretary of State from bringing an action against the Franchisee in connection with the termination of the Franchise Agreement prior to the expiry of the Franchise Term.

SCHEDULE 10.3**Events of Default and Termination Event****1. Provisions Relating to Events of Default****Contravention**

- 1.1 The occurrence of an Event of Default shall constitute a contravention of the Franchise Agreement by the Franchisee.

Notification of Event of Default

- 1.2 The Franchisee shall notify the Secretary of State as soon as reasonably practicable on, and in any event within 24 hours of, it becoming aware of the occurrence of an Event of Default or an event which is likely to result in the occurrence of an Event of Default. The Franchisee shall take such action or steps as the Secretary of State may require to remedy any Event of Default or potential Event of Default.

Consequences of Event of Default

- 1.3 On the occurrence of an Event of Default, the provisions of Schedule 10.1 (Remedial Plans and Remedial Agreements) shall apply.

2. Events of Default

Each of the following is an Event of Default:

Insolvency

2.1

- (a) **Administration:** Any step being taken by any person with a view to the appointment of an administrator to the Franchisee or the Parent, or either, or both, of the Ultimate Parents or any Bond Provider;
- (b) **Insolvency:** Any of the Franchisee or the Parent, either, or both, of the Ultimate Parents or Bond Provider stopping or suspending or threatening to stop or suspend payment of all or, in the reasonable opinion of the Secretary of State, a material part of (or of a particular type of) its debts, or being unable to pay its debts, or being deemed unable to pay its debts under Section 123(1) or (2) of the Insolvency Act 1986 except that in the interpretation of this paragraph the words "it is proved to the satisfaction of the court that" in subsection (1)(e) and subsection (2) of Section 123 shall be deemed to be deleted;
- (c) **Arrangements with Creditors:** The directors of the Franchisee or the Parent, either, or both, of the Ultimate Parents or any Bond Provider making any proposal under Section 1 of the Insolvency Act 1986, or any of the Franchisee or the Parent or either, or both, of the Ultimate Parents or any Bond Provider proposing or making any agreement for the deferral, rescheduling or other readjustment

(or proposing or making a general assignment or an arrangement or composition with or for the benefit of creditors) of all or, in the reasonable opinion of the Secretary of State, a material part of (or of a particular type of) its debts, or a moratorium being agreed or declared in respect of or affecting all or, in the reasonable opinion of the Secretary of State, a material part of (or of a particular type of) its debts;

- (d) **Security Enforceable:** Any expropriation, attachment, sequestration, execution or other enforcement action or other similar process affecting any property of the Franchisee or the whole or a substantial part of the assets or undertaking of the Franchisee, the Parent, either, or both, of the Ultimate Parents or any Bond Provider, including the appointment of a receiver, administrative receiver, manager or similar person to enforce that security;
- (e) **Stopping Business/Winding-Up:** Any step being taken by the Franchisee, the Parent, either, or both, of the Ultimate Parents or any Bond Provider with a view to its winding-up or any person presenting a winding-up petition or any of the Franchisee or the Parent or either, or both, of the Ultimate Parents or any Bond Provider ceasing or threatening to cease to carry on all or, in the reasonable opinion of the Secretary of State, a material part of its business, except for the purpose of and followed by a reconstruction, amalgamation, reorganisation, merger or consolidation on terms approved by the Secretary of State before that step is taken;
- (f) **Railway Administration Order:** A railway administration order being made in relation to the Franchisee under Sections 60 to 62 of the Act; and
- (g) **Analogous Events:** Any event occurring which, under the Law of any relevant jurisdiction, has an analogous or equivalent effect to any of the events listed in this paragraph 2.1,

subject, in the case of any relevant event occurring in relation to a Bond Provider unless in the case of paragraph 2.1(e), the relevant petition is being actively contested in good faith by the relevant person with recourse to all appropriate resources and procedures and such person has adequate funds to discharge the relevant debt and where no such other Event of Default has occurred and is unremedied or continuing at such time, to a period of 20 business days having elapsed in order to allow the Franchisee to replace the relevant Bond Provider.

Non-payment

- 2.2 The Franchisee failing to pay to the Secretary of State any amount due under the Franchise Agreement within 28 days of the due date for such payment.

Change of Control

- 2.3 Otherwise than in accordance with a prior consent of the Secretary of State given under paragraph 4 of this Schedule 10.3, a change occurring in the identity of any one person, or two or more persons acting by agreement, who may Control the Franchisee on and from the date of the Franchise Agreement and during the Franchise Term, which shall include a person, or two or more persons acting by agreement, ceasing to Control the Franchisee at any time during the Franchise Term, whether or not any other person Controls the

Franchisee at the same time (any such change a "**Change of Control**") and for the purposes of this paragraph 2.3, two or more persons shall be deemed to be acting by agreement in relation to the Franchisee if, assuming the Franchisee was a target company as defined in the Companies Act 2006, such persons would be under an obligation to disclose an interest in shares in such company by virtue of an agreement between such persons.

Revocation of Licence

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

Safety Certificate

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

Passenger Service Performance

- 2.6 The Franchisee's performance in relation to any Benchmark exceeds (that is, is equal to or worse than) the Default Performance Level for that Benchmark for:
- (a) any three consecutive Reporting Periods;
 - (b) any four Reporting Periods within a period of 13 consecutive Reporting Periods; or
 - (c) any five Reporting Periods within a period of 26 consecutive Reporting Periods.

Remedial Agreements and Enforcement Orders

- 2.7
- (a) Non-compliance by the Franchisee with a Remedial Agreement, where such non-compliance is reasonably considered by the Secretary of State to be material; and
 - (b) Non-compliance by the Franchisee with:
 - (i) a provisional order;
 - (ii) a final order;
 - (iii) a penalty; or
 - (iv) any other order made relating to contravention of either a relevant condition or requirement (as defined in Section 55 of the Act) or another order,

in each case made by the Secretary of State under the Act;

Financial Ratios

- 2.8 Breach by the Franchisee of either or both of the financial ratios specified in paragraph 2 of Schedule 12 (Financial Obligations and Covenants).

Breach of Law

2.9

- (a) It is unlawful for the Franchisee to provide all or, in the reasonable opinion of the Secretary of State, a material part of the Passenger Services or to operate all or, in the reasonable opinion of the Secretary of State, a material number of the Stations or Depots (except to the extent not required so to do under the Franchise Agreement).
- (b) The Franchisee or any of the directors or senior managers of the Franchisee being convicted of manslaughter, fraud or any other indictable criminal offence in each case relating directly to the provision and operation of the Franchise Services.
- (c) The Franchisee being, in the reasonable opinion of the Secretary of State, in material non-compliance with a prohibition or enforcement order (or the equivalent thereof) issued by the ORR pursuant to its safety functions. If the Franchisee makes an appeal against such prohibition or enforcement order (or such equivalent thereof) in accordance with its terms, no Event of Default shall have occurred under this paragraph 2.9(c) until such appeal has been determined to be unsuccessful.

Contravention of Other Obligations

2.10 The occurrence of the following:

- (a) the Franchisee contravening to an extent which is reasonably considered by the Secretary of State to be material any one or more of its obligations under the Franchise Agreement (other than such non-performance or non-compliance as may constitute an Event of Default under the provisions of this Schedule 10.3 other than this paragraph 2.10);
- (b) the service by the Secretary of State on the Franchisee of a written notice specifying:
 - (i) such contravention; and
 - (ii) to the extent the contravention is capable of being remedied, the reasonable period within which the Franchisee is required to so remedy; and
- (c) the Franchisee contravening such obligation or obligations again to an extent which is reasonably considered by the Secretary of State to be material or permitting the contravention to continue or, if the contravention is capable of remedy, failing to remedy such contravention within such period as the Secretary of State has specified in the notice served pursuant to paragraph 2.10(b)(ii).

Non-membership of Inter-Operator Schemes

- 2.11 The Franchisee ceasing to be a member of, or ceasing to participate in or to be party to, any of the Inter-Operator Schemes, or having its membership or participation therein suspended.

Bonds

2.12

- (a) Any Performance Bond or Season Ticket Bond ceasing to be a legal, valid and binding obligation on the relevant Bond Provider (other than in accordance with its terms) or it otherwise becoming unlawful or impossible for any Bond Provider to perform its obligations thereunder;
- (b) A failure by the Franchisee to procure the provision to the Secretary of State of a Performance Bond which fulfils the requirements of Schedule 12 (Financial Obligations and Covenants); or
- (c) A failure by the Franchisee to procure the provision to the Secretary of State of a Season Ticket Bond which fulfils the requirements of Schedule 12 (Financial Obligations and Covenants).

Key Contracts

2.13 Termination of any Key Contract, or the failure by the Franchisee to take all reasonable steps to enter into an appropriate replacement contract prior to the scheduled expiry date of any Key Contract, except where requested by the Secretary of State or to the extent that the Franchisee has demonstrated to the reasonable satisfaction of the Secretary of State that for the duration of the Franchise Term:

- (a) it is no longer necessary for it to be party to such Key Contract; or
- (b) it has made adequate alternative arrangements in order to be able to continue to provide and operate the Franchise Services.

Funding Deed/Funding Deed Guarantee

2.14 A failure by the Franchisee or the Parent to comply with their respective obligations under the Funding Deed and/or a failure by either, or both, of the Ultimate Parents to comply with their respective obligations under the Funding Deed Guarantee.

3. Termination Events

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

3.1 any Force Majeure Event continues with the effect of preventing the Franchisee from delivering, wholly or mainly, the Passenger Services for more than six consecutive months (a Termination Event); or

3.2

- (a) the warranty given by the Franchisee pursuant to paragraph 6 of Schedule 12 (Financial Obligations and Covenants) is materially untrue; or
- (b) the Franchisee commits a material breach of its obligation to notify the Secretary of State of any Occasion of Tax Non-Compliance as

required by paragraph 6.2(a) of Schedule 12 (Financial Obligations and Covenants); or

- (c) the Franchisee fails to provide details of proposed mitigating factors as required by paragraph 6.2(b) of Schedule 12 (Financial Obligations and Covenants) which in the reasonable opinion of the Secretary of State, are acceptable,

each a "Termination Event".

4. Facilitation Fee

- 4.1 The Franchisee may, at any time, apply in writing to the Secretary of State for his consent to a Change of Control (as such term is defined pursuant to paragraph 2.3).
- 4.2 The Secretary of State may require the Franchisee to pay a fee in consideration of the grant of such consent (the "**Facilitation Fee**").
- 4.3 The Secretary of State may require the Franchisee to pay an additional fee in respect of the staff, professional and other costs incurred by the Secretary of State in connection with the Franchisee's application (the "**Administration Fee**"). The Administration Fee shall be payable whether or not the Secretary of State consents to the proposed Change of Control.
- 4.4 On or after submitting such application to the Secretary of State, the Franchisee will provide, and will procure that the seller and the buyer provide, the Secretary of State with such documentation and information as the Secretary of State may require to assess such application and the amount of the Facilitation Fee. Without limiting paragraphs 4.9 or 4.10, it shall be deemed to be reasonable for the Secretary of State to delay or withhold consent to the Change of Control where any such documentation is not provided.
- 4.5 The Facilitation Fee shall be a sum equal to the greater of:
 - (a) one million pounds sterling (£1,000,000); or
 - (b) where the Estimated Profit Stream is greater than the Bid Profit Stream five per cent of the difference between the Bid Profit Stream and the Estimated Profit Stream.
- 4.6 The Administration Fee shall be determined by the Secretary of State on the basis of:
 - (a) the aggregate time spent by officials within the Secretary of State's Department on matters relating to such application;
 - (b) the Secretary of State's hourly scale rates for such officials, as varied from time to time; and
 - (c) the aggregate costs and disbursements, including where applicable VAT and professional costs, incurred by the Secretary of State in connection with such application.
- 4.7 Any determination by the Secretary of State for the purposes of paragraphs 4.5 or 4.6 shall in the absence of manifest error be final and binding as between the Secretary of State and the Franchisee (but without prejudice to the

requirement of the Secretary of State to reasonably determine the Estimated Profit Stream).

- 4.8 Any consent by the Secretary of State to a Change of Control may be given subject to such conditions as the Secretary of State sees fit and the Franchisee shall, as applicable, comply with, and/or procure that the seller and/or the buyer comply with, any such conditions.
- 4.9 The Secretary of State shall have absolute discretion as to the grant of consent to any Change of Control and may accordingly refuse such consent for any reason he sees fit.
- 4.10 The Secretary of State shall have no liability whatever to the Franchisee in respect of any refusal of consent to a Change of Control, any delay in providing such consent, or any condition of such consent.

SCHEDULE 10.4**Force Majeure****1. Force Majeure Events**

1.1 The following events shall constitute Force Majeure Events, subject to the conditions specified in paragraph 2 being satisfied:

- (a) the Franchisee or any of its agents or subcontractors is prevented or restricted by the Infrastructure Manager (including by virtue of the implementation of any Contingency Plan) from gaining access to any section or part of track (including any track running into, through or out of a station). For the purposes of this paragraph 1:
 - (i) references to a party being prevented or restricted from gaining access to any section or part of track shall mean that such party is not permitted to operate any trains on the relevant section or part of track, or is only permitted to operate a reduced number of trains from that which it was scheduled to operate;
 - (ii) the period of such prevention or restriction shall be deemed to commence with effect from the first occasion on which the Franchisee is prevented or restricted from operating a train on such section or part of track;
 - (iii) references in paragraphs 1(a)(i) and (ii) to the operation of trains include scheduled empty rolling stock vehicle movements; and
 - (iv) "**Contingency Plan**" means a contingency plan (as defined in the Railway Operational Code or where the Railway Operational Code ceases to exist such other replacement document of a similar or equivalent nature which contains a definition of contingency plan similar to that contained in the Railway Operational Code or in the case of HS1, any equivalent definition in any equivalent code) implemented by and at the instigation of the Infrastructure Manager, or such other contingency or recovery plan as the Secretary of State may agree from time to time;
- (b) the Franchisee or any of its agents or subcontractors is prevented or restricted by the Infrastructure Manager or any Facility Owner (other than a Facility Owner which is an Affiliate of the Franchisee) from entering or leaving:
 - (i) any station or part thereof (excluding any prevention or restriction from gaining access to any section or part of track running into, through or out of a station); or
 - (ii) any depot or part thereof (including the movement of trains on tracks within any depot but excluding any prevention or restriction from gaining access to any track outside such depot running into or out of that depot);

1.2 any of the following events occurs:

- (a) a programme of Mandatory Modifications commences;
- (b) any Rolling Stock Units are damaged by fire, vandalism, sabotage or a collision and are beyond repair or beyond economic repair; or
- (c) a government authority prevents the operation of Rolling Stock Units on the grounds of safety,

and, in each case, the greater of two Rolling Stock Units and 10 per cent of all rolling stock vehicles used by the Franchisee in the provision of the Passenger Services in relation to any Service Group are unavailable for use in the provision of the Passenger Services as a result of the occurrence of such event;

- (d) the Franchisee prevents or restricts the operation of any train on safety grounds provided that:
 - (i) the Franchisee has, either before or as soon as reasonably practicable after initiating such prevention or restriction, sought the confirmation of the ORR in exercise of its safety functions, or any relevant other body with statutory responsibility for safety in the circumstances, of the necessity of such prevention or restriction; and
 - (ii) if and to the extent that the ORR, or other relevant body with statutory responsibility for safety in the circumstances, in exercise of its safety functions indicates that such prevention or restriction is not necessary, then no Force Majeure Event under this paragraph 1(d) shall continue in respect of that restriction or prevention after the receipt of such indication from the ORR or other relevant body;
- (e) act of God, war damage, enemy action, terrorism or suspected terrorism, riot, civil commotion or rebellion (together "**Emergency Events**") or the act of any government instrumentality (including the ORR but excluding the Secretary of State) in so far as the act of government instrumentality directly relates to any of the Emergency Events, provided that there shall be no Force Majeure Event under this paragraph 1(e) by reason of:
 - (i) the suicide or attempted suicide of any person that does not constitute an act of terrorism;
 - (ii) the activities of the police, fire service, ambulance service or other equivalent emergency service that are not in response to acts of terrorism or suspected terrorism; or
 - (iii) an act of God which results in the Franchisee or its agents or subcontractors being prevented or restricted by the Infrastructure Manager from gaining access to any relevant section or part of track; and
- (f) any strike or other Industrial Action by any or all of the employees of the Franchisee or any or all of the employees of:
 - (i) the Infrastructure Manager;

- (ii) the operator of any other railway facility; or
- (iii) any person with whom the Franchisee has a contract or arrangement for the lending, seconding, hiring, contracting out or supervision by that person of train drivers, conductors, other train crew or station or depot staff used by the Franchisee in the provision of the Franchise Services,

or of the agents or subcontractors of any such person listed in paragraphs 1.2 (f)(i) to (iii) and for the purposes of this paragraph Industrial Action shall include any concerted action taken in connection with the employment of such employees (whether or not that action involves any breach of such employees' conditions of employment, and including any action taken in furtherance of a dispute, or with a view to improving the terms of employment of the relevant employees or by way of support for any other person) subject always, in the case of any unofficial Industrial Action, to the Franchisee being able to demonstrate the occurrence of such unofficial Industrial Action to the reasonable satisfaction of the Secretary of State.

2. Conditions to Force Majeure Events

- 2.1 The occurrence, and continuing existence of a Force Majeure Event shall be subject to satisfaction of the following conditions:
- (a) in relation to an event occurring under paragraph 1(a), that event has continued for more than 12 consecutive hours;
 - (b) the Franchisee notifies the Secretary of State within two business days of it becoming aware or, if circumstances dictate, as soon as reasonably practicable thereafter, of:
 - (i) the occurrence or likely occurrence of the relevant event; and
 - (ii) the effect or the anticipated effect of such event on the Franchisee's performance of the Passenger Services;
 - (c) at the same time as the Franchisee serves notification on the Secretary of State under paragraph 2.1(b), it informs the Secretary of State of the steps taken and/or proposed to be taken by the Franchisee to prevent the occurrence of, and/or to mitigate and minimise the effects of, the relevant event and to restore the provision of the Passenger Services;
 - (d) the relevant event did not occur as a result of:
 - (i) any act or omission to act by the Franchisee or its agents or subcontractors, save that in respect of the occurrence of Industrial Action in accordance with paragraph 1.2(f), the provisions of paragraph 2.2 apply; or
 - (ii) the Franchisee's own contravention of, or default under, the Franchise Agreement, any Access Agreement, Rolling Stock Related Contract, Property Lease or any other agreement;

- (e) the Franchisee used and continues to use all reasonable endeavours to avert or prevent the occurrence of the relevant event and/or to mitigate and minimise the effects of such event on its performance of the Passenger Services and to restore the provision of the Passenger Services as soon as reasonably practicable after the onset of the occurrence of such event; and
- (f) the Franchisee shall, to the extent reasonably so requested by the Secretary of State, exercise its rights and remedies under any relevant agreement to prevent the occurrence or recurrence of any such event and to obtain appropriate redress and/or compensation from any relevant person.

2.2 Where:

- (a) Industrial Action in accordance with paragraph 1.2(f) occurs as a result of an act or omission to act by the Franchisee or its agents or subcontractors;
- (b) the Secretary of State reasonably believes that it was reasonable for the Franchisee, its agents or subcontractors (as the case may be) so to act or omit to act; and
- (c) the other conditions specified in paragraph 2.1 have been satisfied,

such occurrence shall be a Force Majeure Event.

3. Consequences of Force Majeure Events

On Obligations

- 3.1 The Franchisee shall not be responsible for any failure to perform any of its obligations under the Franchise Agreement, nor shall there be any contravention of the Franchise Agreement if and to the extent that such failure is caused by any Force Majeure Event.
- 3.2 If any Force Majeure Event continues, with the effect of preventing the Franchisee from delivering, wholly or mainly, the Passenger Services for more than six consecutive months, it shall be a Termination Event in accordance with paragraph 3 of Schedule 10.3 (Events of Default and Termination Event).

Business Continuity

First BCP

- 3.3 Within one month following the Start Date, the Franchisee shall produce and provide to the Secretary of State a written Business Continuity Plan in respect of the Franchise Services and the people, facilities and assets used to provide them, that is adequate to minimise the effect of and deal promptly and efficiently with any Disaster which will as a minimum:
 - (a) reflect the degree of skill, care, foresight and prudence which can reasonably be expected from a highly experienced and competent operator of railway passenger services;
 - (b) use what the industry would (at the relevant time) regard as the best generally accepted processes, techniques and materials; and

- (c) comply with all Laws.

Obligation to maintain the BCP

- 3.4 The Franchisee shall, at all times, maintain and comply with the Business Continuity Plan, and ensure that it is, at all times, able to implement the Business Continuity Plan immediately upon an event occurring which the Business Continuity Plan is expressed to cover, or reasonably can be expected to cover.
- 3.5 The Franchisee shall update the Business Continuity Plan at least once during each Franchisee Year.
- 3.6 The Franchisee will, on request, provide a copy of such plan to the Secretary of State and will provide to the Secretary of State any other information that the Secretary of State may reasonably require in relation thereto.
- 3.7 Nothing in this paragraph 3 will relieve the Franchisee from its obligations under this Franchise Agreement to create, implement and operate the Business Continuity Plan. Accordingly, if a Force Majeure Event affecting the Franchisee occurs which is an event or circumstance that is within the scope of the Business Continuity Plan, or would have been had the Franchisee and/or Business Continuity Plan complied with this paragraph 3, then paragraph 3.1 will only apply to that Force Majeure Event to the extent that the impacts of that Force Majeure Event would have arisen even if the Business Continuity Plan had complied with paragraph 3 and had been fully and properly implemented and operated in accordance with paragraph 3 and the terms of the Business Continuity Plan in respect of that Force Majeure Event.

On Payments

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

SCHEDULE 10.5**Liability****1. Exclusion of Liability****Liability with respect to Passengers and Third Parties**

- 1.1 The Franchisee hereby acknowledges that the Secretary of State will not be responsible for the actions of the Franchisee or any Affiliate of the Franchisee and that, except as expressly provided in the Franchise Agreement, the Franchisee shall provide and operate the Franchise Services at its own cost and risk without recourse to the Secretary of State or government funds or guarantees.
- 1.2 The Franchisee, on demand, shall hold the Secretary of State fully protected and indemnified in respect of all losses, liabilities, costs, charges, expenses, actions, proceedings, claims or demands incurred by or made on the Secretary of State in connection with any death, personal injury, loss or damage suffered by passengers or by any third party using or affected by the Franchise Services which is caused or contributed to by the Franchisee, any Affiliate of the Franchisee, or any employee, agent, contractor or subcontractor of the Franchisee or of any Affiliate of the Franchisee.

Liability of the Secretary of State

- 1.3 Neither the Secretary of State nor any of his officers, agents or employees shall in any circumstances be liable to the Franchisee for any loss or damage caused by the negligent exercise of any powers reserved to the Secretary of State under the Franchise Agreement, except to the extent that such negligence also constitutes a contravention of an obligation of the Secretary of State under the Franchise Agreement. The Franchisee may not recover from the Secretary of State or any of his officers, agents, or employees any amount in respect of loss of profit or consequential loss.

2. Review or Monitoring by the Secretary of State

- 2.1 The Secretary of State may for his own purposes (whether under the Franchise Agreement or under any other arrangement or otherwise and whether before or after the date of the Franchise Agreement) monitor or review any proposals, plans or projects (or any aspect thereof) of the Franchisee under the Franchise Agreement, but no review, enquiry, comment, statement, report or undertaking, made or given by or on behalf of the Secretary of State during such review or monitoring (and no failure to undertake, make or give any review, enquiry, comment or statement) shall operate to exclude or relieve either party from or reduce or otherwise affect the obligations of such party under the Franchise Agreement.
- 2.2 The exercise by or on behalf of the Secretary of State of (or, as the case may be, any failure to exercise) any of his functions, rights or obligations in respect of any review or monitoring process shall not in any way impose any liability, express or implied, on the Secretary of State to any other party save to the extent that the exercise (or failure to exercise) of any of such functions, rights or obligations results in a contravention by the Secretary of State of an express provision of the Franchise Agreement and the Secretary of State does not make

or give any representation or warranty, either express or implied, as to whether any proposal, plan or project will enable either party to comply with its obligations under the Franchise Agreement.

SCHEDULE 11

Agreement Management Provisions

1. Not Used

2. Identification of Key Personnel and Provision of Organisation Chart

2.1 The Franchisee shall identify and provide to the Secretary of State a schedule of Key Personnel who shall be employed by the Franchisee in the performance of the Franchise Agreement. This shall include but not be limited to the following persons:

- (a) a managing director whose role will include the overall management of the operation of the Franchise Services;
- (b) a train service delivery manager, whose role will include responsibility for ensuring compliance by the Franchisee with Schedule 7.1 (Performance Benchmarks);
- (c) a safety manager, whose role will include responsibility for ensuring that the Franchisee complies with its legal obligations in relation to the Franchise Services including the Safety Certificate; and
- (d) a finance manager, whose role will include responsibility in relation to the Financial Model.

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

3. Not Used

4. Franchise Performance Meetings

4.1

- (a) The parties shall hold a Franchise Performance Meeting at least once in every quarter (or such other interval as the Secretary of State may notify to the Franchisee in writing) at a time and location notified to the Franchisee by the Secretary of State.
- (b) Not used.
- (c) Not used.
- (d) Not used.
- (e) The Franchisee shall ensure that each of its representatives at all Franchise Performance Meetings have full power and authority delegated to them by the Franchisee to act and to make binding decisions on behalf of the Franchisee and shall include such directors and/or senior managers of the Franchisee and the Parent as the Secretary of State may require.

- 4.2 Not used.
- 4.3 Not used.
- 4.4 The Franchisee shall prepare and present such reports to each Franchise Performance Meeting as the Secretary of State may reasonably request. The Franchisee's obligations under this paragraph 4.4 are subject to the Franchisee receiving at least 28 days' notice of the requirement to prepare and present any such report.
- 4.5 No comment or failure to comment nor any agreement or approval, implicit or explicit by the Secretary of State at such meetings will relieve the Franchisee of any of its obligations under the Franchise Agreement.

4A. Periodic Update Reports

- 4A.1 In addition to the obligation at paragraph 4.4 above, the Franchisee shall prepare and submit to the Secretary of State a periodic report in each Reporting Period containing such information as the Secretary of State may reasonably specify upon commencement of this Agreement or from time to time in accordance with clause 4A.2 below 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)
- 4A.2 The Franchisee's obligations under this paragraph 4A are subject to the Franchisee receiving at least 28 days' notice of amendments required and any additional contents of such report.

5. Right of Assessment or Inspection

- 5.1 The Franchisee shall, if requested by the Secretary of State, allow the Secretary of State and his representatives and advisers:
 - (a) to inspect and copy any records referred to in Schedule 13 (Information and Industry Initiatives) and the Secretary of State may verify any such records; and
 - (b) to inspect and copy at any reasonable time any books, records and any other material kept by or on behalf of the Franchisee and/or its auditors and any assets (including the Franchise Assets) used by the Franchisee in connection with the Franchise Services.
- 5.2 The Franchisee shall make available to the Secretary of State, his representatives and advisers the information referred to in paragraph 5.1 and grant or procure the grant of such access (including to or from third parties) as the Secretary of State, his representatives and advisers shall reasonably require in connection therewith. The obligation of the Franchisee under this paragraph 5.2 shall include an obligation on the Franchisee to grant or procure the grant of such access to premises (including third party premises) where the information referred to in paragraph 5.1 is kept by or on behalf of the Franchisee.
- 5.3 The Secretary of State, his representatives and advisers shall be permitted to take photographs, film or make a video recording, or make any other kind of record of any such inspection.

- 5.4 If any inspection reveals that information previously supplied to the Secretary of State was, in the reasonable opinion of the Secretary of State, inaccurate in any material respect or if such inspection reveals any other contravention of the Franchisee's obligations under the Franchise Agreement which the Secretary of State considers to be material, the costs of any such inspection shall be borne by the Franchisee.

SCHEDULE 12

Financial Obligations and Covenants

1. Obligations

Except to the extent that the Secretary of State may otherwise agree from time to time, the Franchisee shall not:

- (a) incur any liability or financial indebtedness except in the ordinary course of providing and operating the Franchise Services;
- (b) make any loan or grant any credit, or have or permit to subsist any loan or any credit, to any person (other than the deposit of cash with a Bank as permitted under paragraph 1(d) or to an employee in the ordinary course of its business);
- (c) create or permit to subsist any Security Interest over any of its assets or property or give any guarantee or indemnity to or for the benefit of any person or otherwise assume liability or become obliged (actually or contingently) in respect of any obligation of any other person, in each case other than in the ordinary course of the business of providing and operating the Franchise Services; or
- (d) create or acquire any subsidiary or make or have any investment in any other entity, except for the deposit of cash with a Bank.

2. Financial Ratios

2.1 The Franchisee covenants that as at the end of each Reporting Period during the Franchise Term:

- (a) the ratio of its Modified Revenue to its Actual Operating Costs during the preceding 13 Reporting Periods of the Franchise Term (or, prior to the end of the thirteenth such Reporting Period, during all preceding Reporting Periods) will equal or exceed the ratio of 1.050:1; and
- (b) the ratio of its Forecast Modified Revenue to its Forecast Operating Costs for the next 13 Reporting Periods (or, where there are less than 13 Reporting Periods remaining in the Franchise Term, for all such remaining Reporting Periods) will equal or exceed the ratio of 1.050:1; and
- (c) For the purposes of this paragraph 2 "**preceding 13 Reporting Periods**" means the Reporting Period just ended and the preceding 12 Reporting Periods of the Franchise Term.

2.2 If:

- (a) in respect of any Reporting Period, the Franchisee fails pursuant to paragraph 3.3(b) of Schedule 13 (Information and Industry Initiatives) to provide a statement of calculation of performance against the covenants set out in paragraph 2.1(b) for each of the next 13 Reporting Periods (or, where there are less than 13 Reporting Periods remaining in the Franchise Term, for all such

remaining Reporting Periods) following any such Reporting Period;
or

- (b) the Secretary of State reasonably considers that any particular item of Forecast Modified Revenue or Forecast Operating Cost used for the purposes of determining the Franchisee's performance against the covenants set out in paragraph 2.1(b) has not been accounted for on a reasonable basis (including where the accounting treatment looks to the form rather than the substance),

then the Secretary of State may:

- (i) in the circumstances referred to in paragraph 2.2(a) above reasonably determine the ratio of the Forecast Modified Revenue and Forecast Operating Cost on the basis of information available to him; or
- (ii) in the circumstances referred to in paragraph 2.2(b) above require any such particular item of Forecast Modified Revenue or Forecast Operating Cost to be adjusted in a manner which is fair and reasonable and, so far as reasonably determinable, on the basis on which such particular item of Forecast Modified Revenue or Forecast Operating Cost should have been accounted for by the Franchisee as reasonably determined by the Secretary of State,

in either case after having exercised his rights under paragraph 3.13 of Schedule 13 (Information and Industry Initiatives) to the extent that he considers appropriate in the circumstances for the purpose of making any such reasonable determination.

3. Breach of Financial Ratios

- 3.1 The Franchisee shall not during any Lock-up Period, do any of the following without the Secretary of State's consent:
 - (a) declare or pay any dividend (equity or preference) or make any other distribution including surrendering any taxable losses to any of its Affiliates or pay any of its Affiliates in respect of taxable losses that they wish to surrender to the Franchisee, without the prior written consent of the Secretary of State;
 - (b) pay management charges to any of its Affiliates in excess of those specified in the Initial Business Plan; or
 - (c) make payment under any intra-group borrowings.
- 3.2 Lock-up Period means any period from the time when either of the ratios referred to in paragraphs 2(a) and (b) falls below the ratio of 1.070:1 until the time at which the Secretary of State is satisfied that the relevant ratio is again above the ratio of 1.070:1.
- 3.3 Failure by the Franchisee at any time to comply with either of the ratios referred to in paragraph 2.1 shall be an Event of Default under paragraph 2.9 of Schedule 10.3 (Events of Default and Termination Event).

4. Performance Bond

4.1

- (a) The Franchisee shall procure that there shall be a valid and effective Performance Bond in place with effect:
 - (i) from the date of the Franchise Agreement;
 - (ii) throughout the Franchise Term; and
 - (iii) for a period of seven Reporting Periods after the end of the Franchise Period;
- (b) The Performance Bond that the Franchisee shall procure is in place pursuant to paragraph 4.1(a) and any replacement Performance Bonds shall:
 - (i) be substantially in the form of Appendix 1 (Form of Performance Bond) to this Schedule 12;
 - (ii) have a value equal to the amount determined under paragraph 4.4; and
 - (iii) have a duration of three years except where a Performance Bond is to be renewed and the period of time from the date from which such Performance Bond is to be put in place until the date seven Reporting Periods after the end of the Franchise Term is less than three years the duration of such Performance Bond shall be from the date of such renewal until the date seven Reporting Periods after the end of the Franchise Term.

- 4.1A The Secretary of State acknowledges that the Franchisee may put in place one performance bond to satisfy its obligations in respect of the performance bond required to be in place in accordance with this Agreement and the performance bond required to be in place in accordance with the Previous Franchise Agreement provided that all relevant requirements in respect of each performance bond are fulfilled by one such performance bond.

Provision of Replacement Performance Bond

- 4.2 The Franchisee may replace the Performance Bond at any time, provided that the Secretary of State receives a replacement Performance Bond:
- (a) substantially in the form of Appendix 1 to this Schedule 12 (or in any other form acceptable to the Secretary of State in his discretion);
 - (b) duly executed and delivered by a Bond Provider acceptable to the Secretary of State; and
 - (c) in an amount determined in accordance with paragraph 4.4.
- 4.3 The Franchisee shall replace any Performance Bond at least six months prior to its scheduled expiry with a replacement that complies with the requirements of paragraph 4.2.

Amount of Performance Bond

4.4 The amount of any Performance Bond shall be as follows:

- (a) ⁴⁴⁹ in relation to the first Performance Bond until the date which is earlier of:
 - (i) where the Original Franchise Agreement has expired and this Agreement has been terminated before the Start Date, the later of:
 - (A) the date falling one month after the determination of the Purchase Price (as defined in any Supplemental Agreement under the Original Franchise Agreement) under each relevant Supplemental Agreement under the Original Franchise Agreement; and
 - (B) the date falling seven Reporting Periods after the end of the Franchise Period (as defined in the Original Franchise Agreement); and
 - (C) the end of the Franchise Term (as defined in the Original Franchise Agreement); and
 - (ii) 2 May 2015; and

following which date the amount of the Performance Bond may be reduced to ⁴⁵⁰;
- (b) in relation to the second Performance Bond an amount which is ⁴⁵¹ × RPI;
- (c) in relation to each subsequent Performance Bond an amount which is the amount of the Performance Bond that it is replacing × RPI,

and for the purpose of this paragraph 4.4 RPI shall be the quotient of the Retail Prices Index for the month for which the Retail Prices Index has most recently been determined on the date on which the Franchisee is to replace the Performance Bond divided by the Retail Prices Index for the month in which the Performance Bond that is being replaced was required to be delivered to the Secretary of State.

⁴⁴⁹ **Where text has been omitted from the document, this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.**

⁴⁵⁰ **Where text has been omitted from the document, this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.**

⁴⁵¹ **Where text has been omitted from the document, this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.**

Demands under the Performance Bond

4.5

- (a) The Performance Bond shall be on terms that it is payable without further enquiry by the Bond Provider to the Secretary of State in full in London on first written demand by the Secretary of State on the Bond Provider, certifying as to any one or more of the following:
- (i) that the Previous Franchise Agreement or the Franchise Agreement (together the "**Bonded Franchise Agreements**") has:
 - (A) either terminated or expired and, in either case, there are liabilities or obligations outstanding from the Franchisee to the Secretary of State; and/or
 - (B) terminated solely as a consequence of the occurrence of one or more Events of Default in circumstances where the Secretary of State has incurred or expects to incur additional costs in connection with early termination of the Franchise;
 - (ii) that a railway administration order has been made in relation to the Franchisee pursuant to Sections 60 to 62 of the Act;
 - (iii) the occurrence of an Event of Default under either Bonded Franchise Agreement in respect of:
 - (A) paragraph 2.13(a) of Schedule 10.3 (Events of Default and Termination Event) of the Original Franchise Agreement or paragraph 2.12(a) of Schedule 10.3 (Events of Default and Termination Event) of the Interim Franchise Agreement in relation to the Performance Bond; or
 - (B) paragraph 2.13(b) of Schedule 10.3 (Events of Default and Termination Event) of the Original Franchise Agreement or paragraph 2.12(b) of Schedule 10.3 (Events of Default and Termination Event) of the Interim Franchise Agreement,

whether or not the relevant Bonded Franchise Agreement is, or is to be, terminated as a result thereof;
 - (iv) that the Franchisee has failed to perform or comply with its obligations under any applicable Supplemental Agreement under either of the Bonded Franchise Agreements;
 - (v) that the Franchisee has failed to provide a replacement Performance Bond complying with this paragraph 4 of the relevant Bonded Franchise Agreement at least six months prior to the scheduled expiry of the existing Performance Bond; or
 - (vi) that the Franchisee has failed to procure the execution and delivery of a new Performance Bond by a Bond Provider acceptable to the Secretary of State when required to do so in

accordance with paragraph 4.8 of either of the relevant Bonded Franchise Agreements,

provided that in the case of the Previous Franchise Agreement a demand may only be made prior to the date that is seven Reporting Periods after the end of the Franchise Period (as such term is defined in the Previous Franchise Agreement).

- (b) If the Secretary of State makes a demand under the Performance Bond, he shall, within a reasonable period, account to the Franchisee for the proceeds of such Performance Bond less the amount of the losses, liabilities, costs or expenses which, in the reasonable opinion of the Secretary of State, the Secretary of State or a Successor Operator has incurred or suffered or may be reasonably likely to incur or suffer including as a result of:
 - (i) early termination of the Franchise Agreement; and/or
 - (ii) any failure by the Franchisee to perform or comply with any of its obligations to the Secretary of State under the Franchise Agreement or to a Successor Operator under the Supplemental Agreement.

Characteristics of Performance Bond Provider

- 4.6 In determining whether a Bond Provider under any replacement Performance Bond is acceptable, the Secretary of State may exercise his discretion and shall not be obliged to accept a Bond Provider accepted under any previous Performance Bond.
- 4.7 The Franchisee shall provide such information relating to any Bond Provider or proposed Bond Provider as the Secretary of State may require from time to time.
- 4.8 If at any time the Secretary of State reasonably considers the Bond Provider under the then current Performance Bond to be unacceptable, the Secretary of State may require the Franchisee within 20 business days to procure the execution and delivery of a new Performance Bond by a Bond Provider acceptable to the Secretary of State. This applies:
 - (a) notwithstanding the other provisions of this paragraph 4; and
 - (b) irrespective of the scheduled expiry date of the then current Performance Bond.

Provision of more than one Performance Bond

- 4.9 The Franchisee shall be permitted subject to the prior consent of the Secretary of State (such consent not to be unreasonably withheld or delayed) to meet its obligations to provide a valid and effective Performance Bond by providing up to three valid and effective Performance Bonds the aggregate value of which at all times is equal to the value determined under paragraph 4.4. With the exception of the value of each individual Performance Bond the provisions of the Franchise Agreement in relation to the Performance Bond shall be deemed to apply separately in relation to each such Performance Bond. Where more than one Performance Bond is provided the Secretary of State shall have a discretion as to whether to make a demand under some or all of such

Performance Bonds and the extent to which he accounts for the proceeds of each such Performance Bond in accordance with the provisions of paragraph 4.5(b).

5. Season Ticket Bond

Provision of Season Ticket Bond

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

Provision of Replacement Season Ticket Bond

- 5.2 No later than one Reporting Period before the expiry of each Bond Year, the Franchisee shall provide to the Secretary of State (or procure that the Secretary of State receives) a Season Ticket Bond for the following Bond Year:
- (a) substantially in the form of Appendix 2 to this Schedule 12
 - (b) (or in any other form acceptable to the Secretary of State in his discretion);
 - (c) duly executed and delivered by a Bond Provider acceptable to the Secretary of State; and
 - (d) in an amount determined in accordance with paragraph 5.3.

Amount of Season Ticket Bond

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

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

where:

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

STL equals, in respect of such Reporting Period, the maximum amount which would be payable by the Franchisee and the Stored Credit Balance which would be held by the Franchisee:

- (a) if the Franchise Agreement were to terminate on any day during the Reporting Period (the "**relevant Reporting Period**") falling 13 Reporting Periods before such Reporting Period; and
- (b) in respect of Season Ticket Fares under and in accordance with a Supplemental Agreement and paragraph 3.3 of Schedule 15.4 (Provisions Applying on and after Termination) and the rights and liabilities of the Franchisee relating to an obligation of carriage under the terms of any Season Ticket Fares which were transferred under

a Transfer Scheme relating to that Supplemental Agreement to a Successor Operator at that time, provided that for these purposes only:

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

RPI equals the quotient of the Retail Prices Index for the month for which the Retail Prices Index has most recently been determined at the time the Franchisee is required under paragraph 5.4 to provide its estimate of the amount of the relevant Season Ticket Bond divided by the Retail Prices Index for the month falling 12 months before such month, provided that, for the first Franchisee Year, RPI shall be one;

k has the value attributed to it in Schedule 5 (Fares) for the Fare Year in which the Reporting Period in the relevant Bond Year falls; and

Z equals +1 or, if the relevant Reporting Period falls 26 Reporting Periods before such Reporting Period, an amount equal to:

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

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

- 5.4 The Franchisee shall supply to the Secretary of State, not later than three Reporting Periods before the end of each Bond Year, its estimate of the amount of the Season Ticket Bond for each Reporting Period during the following Bond Year and shall supply such details as the Secretary of State may request in connection therewith.
- 5.5 The Franchisee and the Secretary of State shall endeavour to agree the amount of such Season Ticket Bond by no later than two Reporting Periods before the end of each Bond Year. If the parties are unable to agree the amount of the Season Ticket Bond in respect of any Reporting Period during the following Bond Year, the matter shall be resolved in accordance with the Dispute Resolution Rules.
- 5.6 If the amount of the Season Ticket Bond for each Reporting Period during a Bond Year has not been agreed two Reporting Periods before the end of the preceding Bond Year, then, until the amount is agreed or determined in

accordance with the Dispute Resolution Rules, the amount thereof shall be the amount determined by the Secretary of State.

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

Demands under the Season Ticket Bond

5.8

- (a) The Season Ticket Bond shall be on terms that it is payable without further enquiry by the Bond Provider to the Secretary of State in full in London on first written demand by the Secretary of State on the Bond Provider, certifying as to any one or more of the following:
- (i) that the Franchise Agreement has terminated or expired;
 - (ii) that a railway administration order has been made in relation to the Franchisee pursuant to Sections 60 to 62 of the Act; or
 - (iii) that an Event of Default:
 - (A) under paragraph 2.12(a) of Schedule 10.3 (Events of Default and Termination Event) in relation to the Season Ticket Bond; or
 - (B) under paragraph 2.12(c) of Schedule 10.3 (Events of Default and Termination Event),

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

- (b) If the Secretary of State makes a demand under the Season Ticket Bond, he shall account to the Franchisee for the proceeds of such Season Ticket Bond remaining following settlement of all liabilities or obligations of the Franchisee in respect of any Season Ticket Fares and/or Stored Credit Balance that may be transferred or is transferred whether under a Transfer Scheme (or otherwise) to a Successor Operator.

Characteristics of Season Ticket Bond Provider

- 5.9 In determining whether a Bond Provider under any replacement Season Ticket Bond is acceptable, the Secretary of State may exercise his discretion and shall not be obliged to accept a Bond Provider accepted under any previous Season Ticket Bond.
- 5.10 The Franchisee shall provide such information relating to any Bond Provider or proposed Bond Provider as the Secretary of State may require from time to time.
- 5.11 The Secretary of State agrees that, subject to receipt of a Season Ticket Bond in an amount determined in accordance with paragraph 5.3 in respect of any Bond Year, he shall release the relevant Bond Provider from any liability under the Season Ticket Bond provided in relation to the preceding Bond Year on the

expiry of such Bond Year, provided that no Event of Default has occurred and is unremedied or continuing.

Meaning of Reporting Period

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

6. Tax Compliance

- 6.1 The Franchisee represents and warrants that as at the Start Date, it has notified the Secretary of State in writing of any Occasions of Tax Non-Compliance or any litigation that it is involved in that is in connection with any Occasions of Tax Non-Compliance.
- 6.2 If, at any point during the Franchise Term, an Occasion of Tax Non-Compliance occurs, the Franchisee shall:
- (a) notify the Secretary of State in writing of such fact within five business days of its occurrence; and
 - (b) promptly provide to the Secretary of State:
 - (i) details of the steps which the Franchisee is taking to address the Occasion of Tax Non-Compliance and to prevent the same from recurring, together with any mitigating factors that it considers relevant; and
 - (ii) such other information in relation to the Occasion of Tax Non-Compliance as the Secretary of State may reasonably require.
- 6.3 For the purposes of this paragraph 6 (Tax Compliance), the following defined terms shall have the following meanings:

"Occasion of Tax Non-Compliance"

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

a Relevant Tax Authority successfully challenging the Supplier under the General Anti-Abuse Rule or the Halifax Abuse Principle or under any tax rules or legislation that have an effect equivalent or similar to the General Anti-Abuse Rule or the Halifax Abuse Principle;

the failure of an avoidance scheme which the Franchisee was involved in, and which was, or should have been, notified to a Relevant Tax Authority under

the DOTAS or any equivalent or similar regime;
and/or

- (b) any tax return of the Franchisee submitted to a Relevant Tax Authority on or after 1 October 2012 gives rise, on or after 1 April 2013, to a criminal conviction in any jurisdiction for tax related offences which is not spent at the Start Date or to a civil penalty for fraud or evasion;

"DOTAS"

means the Disclosure of Tax Avoidance Schemes rules which require a promoter of tax schemes to tell HM Revenue & Customs of any specified notifiable arrangements or proposals and to provide prescribed information on those arrangements or proposals within set time limits as contained in Part 7 of the Finance Act 2004 and in secondary legislation made under vires contained in Part 7 of the Finance Act 2004 and as extended to National Insurance Contributions by the National Insurance Contributions (Application of Part 7 of the Finance Act 2004) Regulations 2012, SI 2012/1868 made under s.132A Social Security Administration Act 1992;

"General Anti-Abuse Rule"

means:

- (a) the legislation in Part 5 of the Finance Act 2013; and
- (b) any future legislation introduced into parliament to counteract tax advantages arising from abusive arrangements to avoid national insurance contributions;

"Halifax Abuse Principle"

means the principle explained in the CJEU Case C-255/02 Halifax and Others; and

"Relevant Tax Authority"

means HM Revenue & Customs or, if applicable, a tax authority in the jurisdiction in which the Franchisee is established.

APPENDIX 1 TO SCHEDULE 12

Form of Performance Bond

[DOCUMENT "PB" - PERFORMANCE BOND]

Dated

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[BOND PROVIDER]

Performance Bond

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

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

Whereas:

- (a) you have entered into a franchise agreement dated 29 November 2005 (the "**Original Franchise Agreement**") with London and South Eastern Railway Limited of 3rd Floor, 41-51 Grey Street Newcastle Upon Tyne SW1P 4DR (the "**Franchisee**") and which is due to expire on 12 October 2014 at 01:59; and
- (b) you have entered into an interim franchise agreement dated [] (the "**Interim Franchise Agreement**") with the Franchisee which is due to expire at 01:59 on 24 June 2018, subject to any later date which it is extended in accordance with its term,

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

The Franchise Agreements require you to receive a duly executed performance bond in the amount of:

- (a) ⁴⁵² until:
- (i) where the Original Franchise Agreement has been terminated or expires and the Interim Franchise Agreement has been terminated before the Start Date (as defined under the Interim Franchise Agreement), the later of:
- (A) the date falling one month after the determination of the Purchase Price (as defined in any Supplemental Agreement under the Original Franchise Agreement) under each relevant Supplemental Agreement under the Original Franchise Agreement; and
- (B) the date falling seven Reporting Periods after the end of the Franchise Period (as defined in the Original Franchise Agreement); and
- (C) the end of the Franchise Term (as defined in the Original Franchise Agreement); or
- (ii) where the Original Franchise Agreement has been terminated or expires and the Interim Franchise Agreement has not been

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

has been terminated before the Start Date under the Interim Franchise Agreement, 2 May 2015; and

- (b) from the date thereon the amount of the performance bond will be reduced to ⁴⁵³,

(the "**Bond Value**")

to secure the performance by the Franchisee of and its compliance with its obligations under the Franchise Agreements and any applicable Supplemental Agreement under either of the Franchise Agreements (together the "**Supplemental Agreements**").

This duly executed performance bond (the "New Performance Bond") shall, from the date of its execution, replace and supersede the Performance Bond number [●]⁴⁵⁴ provided to you in respect of the Original Franchise Agreement and dated [●]⁴⁵⁵ (the "**Original Performance Bond**").

Accordingly:

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

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

You may call on us for the whole or part of the amount of our liability hereunder and you may make any number of calls on us up to a maximum aggregate amount of the Bond Value. All sums payable hereunder shall be paid free of any restriction or condition and free and clear of and (except to the extent required by law) without any deduction or withholding, whether for or on account of tax, by way of set-off or otherwise.

1. The undertaking given by us above shall operate provided that:

- (a) our maximum liability shall be limited to a sum or sums not exceeding in the aggregate the amount of the Bond Value or such lesser amount as you may notify us of from time to time in writing, separately from any demand, shall constitute the Bond Value of this Bond; and
- (b) notwithstanding anything contained herein, our liability hereunder shall expire on the earlier of:
- (i) the date falling six months after the date on which any railway administration order is made in relation to the Franchisee pursuant to Sections 60 to 62 of the Railways Act 1993; and
- (ii) where the Original Franchise Agreement has been terminated or expires and the Interim Franchise Agreement has been

⁴⁵³ **Where text has been omitted from the document, this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.**

⁴⁵⁴ Original bond number to be populated in final form bond

⁴⁵⁵ Details of any amendments to be set out in the final form bond

terminated before the Start Date (as defined under the Interim Franchise Agreement), the later of:

- (A) the date falling one month after the determination of the Purchase Price (as defined in any Supplemental Agreement under the Original Franchise Agreement) under each relevant Supplemental Agreement under the Original Franchise Agreement (as defined in the Interim Franchise Agreement); and
 - (B) the date falling seven Reporting Periods after the end of the Franchise Period (as defined in the Original Franchise Agreement); and
 - (C) the end of the Franchise Term (as defined in the Original Franchise Agreement); and
- (iii) where the Original Franchise Agreement has been terminated or expires and the Interim Franchise Agreement has been entered into and remains in force at the Start Date (as defined in the Interim Franchise Agreement), the later of:
- (A) the date falling one month after the determination of the Purchase Price (as defined in any Supplemental Agreement under the Interim Franchise Agreement) under each relevant Supplemental Agreement under the Interim Franchise Agreement; and
 - (B) the date falling seven Reporting Periods after the end of the Franchise Period (as defined in the Interim Franchise Agreement); and
 - (C) the end of the Franchise Term (as defined in the Interim Franchise Agreement); and
- (iv) where the Original Franchise Agreement has been terminated or expires and the Interim Franchise Agreement has been entered into and remains in force at the Start Date (as defined in the Interim Franchise Agreement), []⁴⁵⁶,

except in respect of any written demand for payment complying with all the requirements hereof which is received by us on or before such date for either the Bond Value, or for such lesser amount which, when aggregated with any previous demands, amounts to the Bond Value or less, after which date this undertaking shall be void whether returned to us or not.

⁴⁵⁶ To fit with the period required by paragraph 4.1 (b) (iii) of Schedule 12 which is that the first performance bond will have a duration of three years.

- 2.** Call Event means, in this Bond, any of:
- (a) the termination or expiry of the Original Franchise Agreement in circumstances where there are liabilities or obligations outstanding from the Franchisee to the Secretary of State;
 - (b) Not Used;
 - (c) the termination of the Original Franchise Agreement solely as a consequence of the occurrence of one or more Events of Default in circumstances where the Secretary of State has incurred or expects to incur additional costs in connection with termination of the London and South Eastern franchise;
 - (d) the termination or expiry of the Interim Franchise Agreement in circumstances where there are liabilities or obligations outstanding from the Franchisee to the Secretary of State;
 - (e) the termination of the Interim Franchise Agreement solely as a consequence of the occurrence of one or more Events of Default in circumstances where the Secretary of State has incurred or expects to incur additional costs in connection with termination of the London and South Eastern franchise;
 - (f) the making of a railway administration order in relation to the Franchisee pursuant to Sections 60 to 62 of the Railways Act 1993;
 - (g) the occurrence of an Event of Default under either Franchise Agreement in respect of:
 - (i) paragraph 2.13(a) of Schedule 10.3 (Events of Default and Termination Event) of the Original Franchise Agreement or paragraph 2.12(a) of Schedule 10.3 (Events of Default and Termination Event) of the Interim Franchise Agreement in relation to the Performance Bond; or
 - (ii) paragraph 2.13(b) of Schedule 10.3 (Events of Default and Termination Event) of the Original Franchise Agreement or paragraph 2.12(b) of Schedule 10.3 (Events of Default and Termination Event) of the Interim Franchise Agreement,

whether or not the relevant Franchise Agreement is, or is to be, terminated as a result thereof;
 - (h) the failure by the Franchisee to perform or comply with its obligations under any applicable Supplemental Agreement under either of the Franchise Agreements;
 - (i) the failure by the Franchisee to provide the Secretary of State with a replacement Performance Bond which complies with paragraph 4 of Schedule 12 (Financial Obligations and Covenants) of the relevant Franchise Agreement; or
 - (j) the failure by the Franchisee to procure the execution and delivery of a new Performance Bond by a Bond Provider in favour of and acceptable to the Secretary of State when required to do so in accordance with

paragraph 4.8 of Schedule 12 (Financial Obligations and Covenants) of either of the relevant Franchise Agreements.

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

Address: [Bond Provider's address]
- 6.** References in this Bond to the Franchise Agreements and the Supplemental Agreements are to the Franchise Agreements and any Supplemental Agreements as amended from time to time.
- 7.** Where used in this Bond, capitalised terms have the same meanings as in the respective Franchise Agreements and words in the singular include the plural and vice versa.
- 8.** This Bond shall be governed by and construed in accordance with the laws of England and Wales.

Executed as a deed this [day and month] of [year].

SCHEDULE TO THE PERFORMANCE BOND**SPECIMEN DEMAND NOTICE**

To: [name and address of Bond Provider]
[date of demand notice]

We refer to the performance bond issued by you on [date of Bond] (the "**Performance Bond**") in connection with:

- (a) a franchise agreement dated 29 November 2005 (the "**Original Franchise Agreement**") with London and South Eastern Railway Limited of 3rd Floor, 41-51 Grey Street Newcastle Upon Tyne SW1P 4DR (the "**Franchisee**"); and
- (b) an interim franchise agreement dated [] (the "**Interim Franchise Agreement**") with the Franchisee,

(together the "**Franchise Agreements**")

We hereby notify you that the following Call Event (as defined in the Performance Bond) occurred on [date of occurrence of Call Event]: [delete as appropriate].

[The Original Franchise Agreement has [terminated/expired] in circumstances where there are liabilities or obligations outstanding from the Franchisee to the Secretary of State;]

[the termination of the Original Franchise Agreement solely as a consequence of the occurrence of one more Events of default in circumstances where the Secretary of State has incurred or expects to incur additional costs in connection with termination of the London and South Eastern franchise;]

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

[the termination of the Interim Franchise Agreement solely as a consequence of the occurrence of one or more Events of Default in circumstances where the Secretary of State has incurred or expects to incur additional costs in connection with the termination of the London and South Eastern franchise;]

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

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

- [(a) paragraph 2.13(a) of Schedule 10.3 (Events of Default and Termination Event) of the Original Franchise Agreement in relation to the Performance Bond; or]
- [(b) paragraph 2.12(a) of Schedule 10.3 (Events of Default and Termination Event) of the Interim Franchise Agreement in relation to the Performance Bond; or]
- [(c) paragraph 2.13(b) of Schedule 10.3 (Events of Default and Termination Event) of the Original Franchise Agreement;]
- [(d) paragraph 2.12(b) of Schedule 10.3 (Events of Default and Termination Event) of the Interim Franchise Agreement]],

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

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

[the failure by the Franchisee to provide the Secretary of State with a replacement Performance Bond which complies with paragraph 4 of Schedule 12 (Financial Obligations and Covenants) of the relevant Franchise Agreement;]

[the failure by the Franchisee to procure the execution and delivery of a new Performance Bond by a Bond Provider in favour of and acceptable to the Secretary of State when required to do so in accordance with paragraph 4.8 of Schedule 12 (Financial Obligations and Covenants) of either of the relevant Franchise Agreements.]

We hereby demand immediate payment from you of [specify alternative amount if not Bond Value] or the Bond Value, whichever is smaller.

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

[account details to which Bond monies to be paid into]

Where used in this Notice, capitalised terms have the same meanings as in the respective Franchise Agreements and words in the singular include the plural and vice versa.

For and on behalf of
Secretary of State for Transport

APPENDIX 2 TO SCHEDULE 12

Form of Season Ticket Bond

DOCUMENT "STB" - SEASON TICKET BOND

Dated

20[●]

[BOND PROVIDER]

Season Ticket Bond

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

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

Whereas:

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

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

Accordingly:

We hereby unconditionally and irrevocably undertake to pay to you in full in London, immediately upon receipt of your first written demand on us in the form set out in Schedule 1 and, without further enquiry, the sum specified therein. Such written demand shall state:

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

You may call on us for the whole or part of the amount of our liability hereunder and you may make any number of calls on us up to a maximum aggregate amount of the Bond Value (as defined in clause 3). All sums payable hereunder shall be paid free of any restriction or condition and free and clear of and (except to the extent required by law) without any deduction or withholding, whether for or on account of tax, by way of set-off or otherwise.

1. The undertaking given by us above shall operate provided that:

- (a) our maximum liability shall be limited to a sum or sums not exceeding in the aggregate the amount of the Bond Value on the date of occurrence of the Call Event stated in your written demand on us; and
- (b) you may only call on us (whether on one or more occasions) in relation to one Call Event, such Call Event to be determined by reference to the first written demand which is received by us in the form set out in Schedule 1.

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

- (a) the termination or expiry of the Franchise Agreement;
- (b) the making of a railway administration order in relation to the Franchisee pursuant to Sections 60 to 62 of the Railways Act; or
- (c) the occurrence of an Event of Default under paragraph 2.12(a) (in relation to a Season Ticket Bond) or 2.12(c) of Schedule 10.3 (Events of Default and Termination Event) of the Franchise

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

- 3.** Bond Value shall mean, in respect of any date, the amount specified in Schedule 2 as being the value of this Bond for such date (provided that for these purposes the date of occurrence of the Call Event specified in clause 2(c) shall be deemed to be the last date for which a Bond Value is assigned under Schedule 2 of this Bond).
- 4.** Notwithstanding anything contained herein, but subject to clause 5, our liability hereunder in respect of any Call Event shall expire no later than the end of the Franchise Term and:
 - (a) in relation to a Call Event specified in clauses 2(a) and (b), at noon (London time) on the date falling three business days after the date of occurrence of such Call Event (business day being a day on which banks are open for business in the City of London); and
 - (b) in relation to any other Call Event, on the day falling one month after the last date for which a Bond Value is assigned under Schedule 2 of this Bond unless you notify us in writing prior to the relevant expiry time that the relevant Call Event has occurred (whether or not you call on us at the same time under this Bond).
- 5.** If you do notify us under clause 4 our liability shall expire on:
 - (a) if the Call Event in respect of which you may call on us under this Bond is the termination of the Franchise Agreement, the date falling one month after the determination of the Purchase Price (as defined in the Supplemental Agreement) under each relevant Supplemental Agreement;
 - (b) if the Call Event in respect of which you may call on us under this Bond is the making of a railway administration order in relation to the Franchisee pursuant to Sections 60 to 62 of the Railways Act 1993, the date falling three months after the making of such railway administration order; or
 - (c) if the Call Event in respect of which you may call on us under this Bond is the occurrence of an Event of Default under paragraph 2.12(a) (in relation to a Season Ticket Bond) or paragraph 2.12(c) of Schedule 10.3 (Events of Default and Termination Event) of the Franchise Agreement (whether or not the Franchise Agreement is, or is to be, terminated as a result thereof), the date falling one month after your notification to us under clause 4,

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

- 6.** This undertaking is made to you, your successors and your assigns.
- 7.** This undertaking shall not be discharged or released by time, indulgence, waiver, alteration or release of, or in respect to, the obligations of the Franchisee under

the Franchise Agreement or any Supplemental Agreement or any other circumstances that might operate as a release of a guarantor at law or in equity.

- 8.** You may make demand or give notice to us under this Bond in writing by hand or facsimile transmission to us as follows:

Address: [Bond Provider's address]

Facsimile Number: [Bond Provider's fax number]

- 9.** References in this Bond to the Franchise Agreement and the Supplemental Agreement are to the Franchise Agreement and the Supplemental Agreement as amended from time to time and terms defined therein shall have the same meaning in this Bond.
- 10.** Where used in this Bond, capitalised terms have the same meanings as in the Franchise Agreement.
- 11.** This Bond shall be governed by and construed in accordance with the laws of England and Wales.

Executed as a deed this [day and month] of [year].

SCHEDULE 1 TO THE SEASON TICKET BOND**SPECIMEN DEMAND NOTICE**

To: [Name and address of Bond Provider]
[date of demand notice]

We refer to the season ticket bond issued by you on [date of Bond] (the "**Season Ticket Bond**") in connection with the franchise agreement (the "**Franchise Agreement**") entered into between the Secretary of State for Transport (the "**Secretary of State**") and [name of Franchisee] (the "**Franchisee**") on [Franchise Agreement signature date].

We hereby notify you that the following Call Event (as defined in the Season Ticket Bond) occurred on [date of occurrence of Call Event]: [delete as appropriate].

[The Franchise Agreement [terminated][expired] on [date of [termination][expiry]].

[A railway administration order has been made in relation to the Franchisee pursuant to Sections 60 to 62 of the Railways Act 1993.]

[An Event of Default occurred under paragraph 2.12(a) (in relation to a Season Ticket Bond) or paragraph 2.12(c) of Schedule 10.3 (Events of Default and Termination Event) of the Franchise Agreement.]

We hereby demand immediate payment from you of [specify alternative amount if not Bond Value] or the Bond Value, whichever is smaller.

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

[account details to which Bond monies to be paid into]

Where used in this Notice, capitalised terms have the same meanings as in the Franchise Agreement.

For and on behalf of
Secretary of State for Transport

SCHEDULE 2 TO THE SEASON TICKET BOND

BOND VALUE

Call Event occurring in Reporting Period	Bond Value
1	
2	
3	
4	
5	
6	
7	
8	
9	
10	
11	
12	

[Dates to be specified]

SCHEDULE 13

Information and Industry Initiatives

1. General Information

Corporate Information

- 1.1 The Franchisee shall provide the following information to the Secretary of State on or before the Start Date and shall notify the Secretary of State of any change to such information within 21 days of such change:
- (a) its name;
 - (b) its business address and registered office;
 - (c) its directors and company secretary;
 - (d) its auditors;
 - (e) its trading name or names; and
 - (f) to the best of the Franchisee's knowledge and belief, having made due and diligent enquiry, the identity of all persons holding, separately or acting by agreement, directly or indirectly, the right to cast more than 20 per cent. of the votes at general meetings of the Franchisee.
- 1.2 The Franchisee shall inform the Secretary of State of any material change or proposed material change in its business (including the employment or the termination of employment of any Key Personnel, the termination of any Key Contract and any litigation or other dispute which may have a material effect on its business) and any material change in or restructuring of the capitalisation or financing of the Franchisee or the Parent or either, or both, of the Ultimate Parents.

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

- 1.3 The Franchisee shall provide to the Secretary of State the information specified in the Appendices to this Schedule 13 at the times specified therein.
- 1.4 The Appendices to this Schedule 13 shall be interpreted in accordance with any guidance issued by the Secretary of State from time to time for that purpose.

Maintenance of Records

- 1.5 The Franchisee shall maintain true, up to date and complete records of all of the information required to be provided by the Franchisee under the Franchise Agreement.
- 1.6 Each record required to be maintained by the Franchisee in accordance with this Schedule 13 shall be held for a period of six years following the date on which such record was required to be created.

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

Information to the Passengers' Council and Local Authorities

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

2. Business Plans

Initial Business Plan

- 2.1 Within three months of the Start Date, the Franchisee shall deliver to the Secretary of State its Initial Business Plan, describing its planned activities for each Franchisee Year during the Franchise Term, which shall include:
- (a) a description as to how the Franchisee will be able to meet its obligations under the Franchise Agreement for the Franchise Term, supported by operational plans demonstrating this;
 - (b) details of any investments proposed to be made or procured by the Franchisee in relation to the Franchise Services during the Franchise Term;
 - (c) a summary of the Franchisee's plans for marketing and developing the Franchise Services; and
 - (d) a profit and loss forecast, cash flow forecast and forecast balance sheet for each of the first 13 Reporting Periods following the Start Date, together with a list of assumptions on the basis of which each such forecast has been prepared.
- 2.2 Not used.

Annual Business Plans

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

its Parent or the Annual Business Plan provided by the Franchisee to its Parent does not cover the following information, the Franchisee will as a minimum include the same in the Annual Business Plan to be provided to the Secretary of State pursuant to this paragraph 2.3:

- (a) executive summary
- (b) background information
 - (i) changes since the previous Annual Business Plan (if applicable);
 - (ii) performance against the targets set for previous Franchisee Year in the previous Annual Business Plan;
 - (iii) franchise objectives for the current Franchisee Year;
 - (iv) forecasting used to underpin the Annual Business Plan; and
 - (v) details of action plans in place and progress made against the same;
- (c) market analysis
 - (i) market analysis;
 - (ii) competitor analysis;
 - (iii) demographics;
 - (iv) economic assumptions;
 - (v) traffic forecasts;
 - (vi) key changes in the last year;
 - (vii) employment sectors;
 - (viii) GDP impact;
- (d) delivery of the business objective
 - (i) KPIs and critical success factors;
 - (ii) revenue;
 - (iii) marketing campaigns;
 - (iv) customer service;
 - (v) service quality plans;
 - (vi) station activities;
 - (vii) costs control;
 - (viii) review mechanism;

- (e) risk management
 - (i) key risks in the current Franchisee Year;
 - (ii) key risks to the end of the Franchise Term;
 - (iii) risk management arrangements;
- (f) change management
 - (i) review of changing circumstances;
 - (ii) contingency arrangements;
- (g) financial
 - (i) profit & loss;
 - (ii) cash flow;
 - (iii) balance sheet;
 - (iv) revenue;
 - (v) costs;
 - (vi) investment;
 - (vii) sensitivity.

Any such Annual Business Plan shall be provided to the Secretary of State within one month of submission of same to the Parent (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).

- 2.4 The Franchisee shall, at the same time as it submits the Annual Business Plan to the Secretary of State in accordance with paragraph 2.3, provide to the Secretary of State a revised profit and loss forecast, cash flow forecast and forecast balance sheet for each of the 13 Reporting Periods in the relevant Franchisee Year and each subsequent Franchisee Year of the Franchise Term.
- 2.5 Not used.
- 2.6 The Franchisee shall not be relieved of any of its obligations under the Franchise Agreement as a result of any comment or failure to comment by the Secretary of State on any Business Plan or any agreement with or approval, implicit or explicit, of any Business Plan by the Secretary of State at any time.
- 2.7 The Secretary of State may at any time require the Franchisee to produce a Business Action Plan in respect of any aspect of the Business Plan. Such Business Action Plan may include steps relating to:
- (a) timetable and service pattern development;
 - (b) Station facility improvement;

- (c) performance management improvement;
 - (d) customer service improvement; and
 - (e) improvements in the quality of service delivery or the efficiency of delivery of the Franchise Services.
- 2.8 The Franchisee shall comply with any guidance issued by the Secretary of State about how and with whom any consultation on the content of a Business Action Plan is to take place.
- 2.9 Any proposal in a Business Action Plan shall only be implemented if and to the extent that the Secretary of State decides it is appropriate to do so and subject to any conditions which he may impose.

3. Financial And Operational Information

Accounting Records

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

Reporting Period Financial Information

- 3.2 The Franchisee shall deliver to the Secretary of State, within two weeks of the end of each Reporting Period ^{ix}:
- (a) Management Accounts for such Reporting Period, setting out a cashflow statement, profit and loss account and balance sheet for that Reporting Period and cumulatively for the Franchisee Year to date;
 - (b) written confirmation that the Management Accounts, to the best of the knowledge information and belief of the board of directors of the Franchisee, contain a true and accurate reflection of the current assets and liabilities of the Franchisee (including contingent assets or liabilities and known business risks and opportunities) and, to the extent that they do not, identify in a written report relevant issues in reasonable detail and provide such further information that the Secretary of State shall reasonably require in relation; 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 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);

- (c) a comparison of the Franchisee's performance during such period against the forecast provided by the Franchisee in the then current Business Plan;
- (d) a comparison of the Franchisee's cumulative performance during the Franchisee Year in which such period occurs against the forecast referred to in paragraph 3.3(c);
- (e) a detailed statement and explanation of any material difference between such Management Accounts and the forecast referred to in paragraph 3.3(c); and
- (f) where the level of financial performance reported in the Management Accounts is, in the reasonable opinion of the Secretary of State, materially worse than forecast by the Franchisee in its current Business Plan, the Secretary of State may require the Franchisee to prepare and submit to him, as soon as reasonably practicable, a Financial Action Plan to ensure that the level of financial performance forecast in its current Business Plan for the remainder of the currency of that Business Plan is achieved and the Franchisee shall use all reasonable endeavours to implement such Financial Action Plan.

Quarterly Financial Information

- 3.4 Within four weeks after the end of the third, sixth, ninth and twelfth Reporting Periods in each Franchisee Year, the Franchisee shall deliver to the Secretary of State the following information:
- (a) an updated version of the profit and loss forecast, cash flow forecast and forecast balance sheet provided in accordance with paragraph 2.1(d), for each of the following 13 Reporting Periods; and
 - (b) a statement of calculation demonstrating the Franchisee's performance against each of the financial covenants in paragraph 2 of Schedule 12 (Financial Obligations and Covenants) at the beginning of each Reporting Period and a forecast of performance against such covenants for each of the following 13 Reporting Periods.
- 3.5 Where any Reporting Period falls partly within one Franchisee Year and partly within another, the results for each section of such Reporting Period falling

either side of such Franchisee Year end shall be prepared on an accruals basis for each such section of such Reporting Period.

Annual Financial Information

- 3.6 Within three weeks of the end of each Franchisee Year, the Franchisee shall deliver to the Secretary of State its Annual Management Accounts for that Franchisee Year.
- 3.7 **Not used** ⁴⁵⁷
- 3.8 Not used.
- 3.9 Within four Reporting Periods after the end of each Franchisee Year, the Franchisee shall deliver to the Secretary of State the following information:
- (a) certified true copies of its annual report and Annual Audited Accounts for that Franchisee Year, together with copies of all related directors' and auditors' reports;
 - (b) a reconciliation to the Management Accounts for the same period; and
 - (c) a statement from the Franchisee's auditors confirming compliance with the financial covenants in paragraph 2 of Schedule 12 (Financial Obligations and Covenants).

Accounting Standards and Practices

- 3.10 Each set of Management Accounts and Annual Management Accounts shall:
- (a) be in the formats set out in the document in the agreed terms marked "**FF**" or in such other format as the Secretary of State may reasonably specify from time to time;
 - (b) be prepared consistently in accordance with the Franchisee's normal accounting policies, details of which shall be supplied on request to the Secretary of State; and
 - (c) identify to the reasonable satisfaction of the Secretary of State, any changes in such accounting policies from those policies that were applied in preparing each of the profit and loss account, the cashflow projection and the balance sheet contained in the Financial Model Placed in Escrow on the date of the Franchise Agreement.
- 3.11 **The Annual Audited Accounts shall:** ⁴⁵⁸
- (a) **be prepared and audited in accordance with GAAP, consistently applied and in accordance with the Companies Act 2006; and**

⁴⁵⁷ Date of change 16/03/2016

⁴⁵⁸ Date of change 16/03/2016

- (b) **give a true and fair view of:**
- (i) **the state of affairs and profits of the Franchisee for the period covered by such accounts; and**
 - (ii) **the amount of its total revenue (being all revenue whatsoever from any source obtained from any commercial or non-commercial activity or undertaking of the Franchisee, such revenue to be disaggregated by reference to revenue derived by the Franchisee from the sale of tickets, income received from Network Rail pursuant to Schedule 4 and Schedule 8 to the Track Access Agreement, income received from HS1 Limited and other income (including car park revenue) or to such other level of disaggregation as may be notified to the Franchisee by the Secretary of State from time to time) derived by the Franchisee in respect of that Franchisee Year.**

Parent Accounts/Ultimate Parent Accounts

- 3.12 The Franchisee shall, upon the request of the Secretary of State, promptly deliver to, or procure delivery to, the Secretary of State, certified true copies of the annual reports and audited accounts of the Parent and of the Ultimate Parents, together with copies of all related directors' and auditors' reports. If the Parent or either, or both, of the Ultimate Parents are domiciled outside England and Wales, the equivalent documents in the jurisdiction of residence of the Parent or the relevant Ultimate Parent(s) (as the case may be) shall be delivered to the Secretary of State.

Secretary of State Audit of calculations provided pursuant to paragraph 3.3(b) of Schedule 13 (Information and Industry Initiatives)

- 3.13 Without prejudice to paragraph 2.2 of Schedule 12 (Financial Obligations and Covenants) or to any other rights of the Secretary of State under the Franchise Agreement, the Secretary of State and his representatives shall be permitted to inspect at any time the books, records and any other material kept by or on behalf of the Franchisee in order to check or audit any item contained in or relating to the Management Accounts in so far as they relate to the statement of calculations required by paragraph 3.3(b) of this Schedule 13 and any other matter in connection with the Franchisee's obligations under paragraph 2 of Schedule 12 (Financial Obligations and Covenants).
- 3.14 The Franchisee shall make available to the Secretary of State and his representatives such information and grant such access or procure the grant of such access (including to or from third parties) as they shall reasonably require in connection with any audit to be carried out pursuant to paragraph 3.13. If any audit carried out pursuant to paragraph 3.13 reveals, in the reasonable opinion of the Secretary of State, any material inaccuracy in the Management Accounts (but only in so far as such accounts relate to the statement of calculations required by paragraph 3.3(b)) then the Secretary of State may exercise its rights as described in paragraphs 2.2(b)(i) or 2.2(b)(ii) of Schedule 12 (Financial Obligations and Covenants) and the Franchisee shall pay all reasonable costs of any such audit as a monitoring cost pursuant to paragraph 1.11 of Schedule 10.1 (Remedial Plans and Remedial Agreements).

4. Safety Information

Safety

- 4.1 The Franchisee shall co-operate with any request from any relevant competent authority for provision of information and/or preparation and submission of reports detailing or identifying compliance with safety obligations set out in the Safety Regulations including any breaches of the Safety Regulations.
- 4.2 The Franchisee shall notify the Secretary of State as soon as practicable of the receipt and contents of any formal notification relating to safety or any improvement or prohibition notice received from ORR. Immediately upon receipt of such notification or notice, the Franchisee shall provide the Secretary of State with a copy of such notification or notice.
- 4.3 The Franchisee shall participate in industry groups and committees addressing the domestic and European safety agenda of the Railway Group.
- 4.4 Not used.
- 4.5 Not used.

5. Further Information

- 5.3 The Franchisee shall:
- (a) deliver to the Secretary of State, or procure the delivery to the Secretary of State of, such information, records or documents as he may request within such period as he may reasonably require and which relate to or are connected with the Franchisee's performance of the Franchise Agreement; and
 - (b) procure that each Affiliate of the Franchisee complies with paragraph 5.1(a) in respect of any information, records or documents that relate to its dealings with the Franchisee in connection with the Franchisee's performance of its obligations under the Franchise Agreement.
- 5.4 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.

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

6. Contraventions of the Franchise Agreement

- 6.1 The Franchisee shall notify the Secretary of State, so far as possible before it may occur and in any event as soon as reasonably practicable thereafter, of any contravention by the Franchisee of any provision of the Franchise Agreement. This includes where the Franchisee is under an obligation to use all reasonable endeavours to achieve a particular result by a particular time, where such result is not achieved by such time.
- 6.2 The Franchisee shall deliver to the Secretary of State, or procure the delivery to the Secretary of State of, such information, records or documents as the Secretary of State may request within such period as the Secretary of State may reasonably require for the purpose of determining the existence, likelihood, nature or scope of any contravention of, Event of Default or Termination Event under, the Franchise Agreement.

7. Information from Third Parties

- 7.1 The Franchisee shall, if the Secretary of State so requests, use all reasonable endeavours to ensure that the Secretary of State has direct access to any information, data or records relating to the Franchisee which is or are maintained by third parties and to which the Secretary of State is entitled to have access, or of which the Secretary of State is entitled to receive a copy under the Franchise Agreement.
- 7.2 The Franchisee shall, if the Secretary of State so requests, procure the provision by RSP to the Secretary of State of such information, data and records as the Franchisee is entitled to receive under the Ticketing and Settlement Agreement, in such form as the Secretary of State may specify from time to time.
- 7.3 The obligations of the Franchisee under this Schedule 13 to provide information to the Secretary of State shall not apply if the Secretary of State notifies the Franchisee that he has received the relevant information directly from any other person (including Network Rail, HS1 Limited or RSP). The Franchisee shall, if the Secretary of State so requests, confirm or validate any such information which is received from any such other person.
- 7.4 The Franchisee shall promptly advise the Secretary of State of any changes that are to be made to its systems or processes or the systems and processes of the RSP that will, in the reasonable opinion of the Franchisee, materially affect the continuity of any of the records that are provided pursuant to this Schedule 13. Any such advice shall include an assessment of the materiality of the relevant change.

8. Compatibility of Information

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

9. Development of Industry Systems

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

10. Co-operation with Various Schemes

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

11. Co-operation with Infrastructure Manager and Alliancing

- 11.1 The Franchisee shall use all reasonable endeavours to work with the Infrastructure Manager to identify ways in which co-operation between the Franchisee and the Infrastructure Manager can be enhanced, costs can be reduced and closer working and alignment of incentives can improve value for money within the parameters of this Agreement.
- 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 the Infrastructure Manager that would require its obligations under this Agreement to be varied 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 the Infrastructure Manager and approved by the Secretary of State during the Franchise Term.
 - (b) be on terms which are commercially fair and reasonable so that:
 - (i) the incentives of the Franchisee and the Infrastructure Manager 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 the Infrastructure Manager 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 the Infrastructure Manager 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(b) 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 the Infrastructure Manager); and

- (c) the Franchisee entering into a deed of amendment to the Franchise Agreement in a form reasonably determined by the Secretary of State.

12. Sustainable construction

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

- (a) which are either being funded by the Franchisee or in respect of which the Franchisee has design responsibility; and
- (b) in respect of which the total capital cost exceeds £250,000 (indexed by the Retail Prices Index in the same way as variable costs are indexed in Schedule 8.2 (Annual Franchise Payments)),

the Franchisee shall use reasonable endeavours to achieve at least an "excellent" rating from an accredited assessor using Building Research Establishment environmental assessment methodology (or an equivalent recognised standard) at both the design stage and the post-construction stage unless the Secretary of State (acting reasonably) agrees that the relevant project is not of a suitable scale or type to be so assessed and the Franchisee shall provide to the Secretary of State such information in relation to any construction project as the Secretary of State may reasonably request.

13. Environmental Management and Sustainability Accreditation

The Franchisee shall, by no later than the date which is 18 months after the Start Date, attain and, at all times thereafter, maintain accreditation pursuant to ISO14001 and ISO50001 or equivalent standards.

14. Not Used

15. Community Rail Partnerships

The Franchisee shall, at the request of the Secretary of State, co-operate with the Secretary of State, the Infrastructure Manager, the 'Association of Community Rail Partnerships', the relevant Community Rail Partnership and/or any other person as the Secretary of State may nominate in the development of the Secretary of State's initiatives in relation to options for a more cost effective delivery of the railway passenger services operated on any Community Rail Route.

16. Station Investment

- 16.1 The Franchisee shall at all times during the Franchise Term, co-operate with the Secretary of State and any third party nominated by the Secretary of State and notified to the Franchisee in developing opportunities for financing investment at Stations and Franchisee Access Stations in order to improve the station environment at such stations.
- 16.2 In co-operating with the Secretary of State and/or any nominated third party in developing any such financing opportunities, the Franchisee shall:
 - (a) attend meetings with the Secretary of State and/or such third party to discuss such opportunities;
 - (b) provide the Franchisee's opinion on those opportunities;

- (c) review and comment on implementation timetables and programmes for any such opportunities; and
- (d) use all reasonable endeavours to achieve any necessary amendments to any Station Leases in order to facilitate the implementation of those opportunities.

17. Small and Medium-sized Enterprises

- 17.1 The Franchisee shall at all times keep accurate and complete records of its use of and interaction with SMEs in delivering the Franchise Services.
- 17.2 By no later than 31 January in each year (and within one month of the end of the Franchise Period) the Franchisee shall deliver to the Secretary of State a breakdown of the number of 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).

18. Apprenticeships

- 18.1 The Franchisee shall at all times keep accurate and complete records of the training and apprenticeships offered by the Franchisee and/or its supply chain in delivering the Franchise Services.
- 18.2 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).

19. Environmental impact monitoring and data collection

- 19.1 The Franchisee shall, by no later than three months after the Start Date, provide a report to the Secretary of State setting out:
 - (a) which measures included in the Dataset the Franchisee is unable to provide, despite using reasonable endeavours to do so ("**Excluded Data**");
 - (b) for each item of Excluded Data, the technical, operational or commercial reason why the Franchisee is unable to provide the Excluded Data; and
 - (c) a plan ("**Environmental Data Implementation Plan**") detailing, in relation to each item of Excluded Data, the actions which the Franchisee would need to take in order to be able to provide such Excluded Data, the Franchisee's best estimate of the cost of taking such action and the date by which, if such actions were taken, the Franchisee would be able to begin providing such Excluded Data to the Secretary of State.

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

- 19.2 The Secretary of State may require:
- (a) the Franchisee to implement the Environmental Data Implementation Plan in whole or in part; and/or
 - (b) the Franchisee to take such other actions as, in the reasonable opinion of the Secretary of State, would enable the Franchisee to provide any item of Excluded Data,

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

- 19.3 Where the Franchisee is:
- (a) undertaking works, whether at a station or depot or in respect of rolling stock;
 - (b) procuring rolling stock; or
 - (c) taking any other action which could enable the Franchisee to provide any item of Excluded Data in a cost effective manner,

the Franchisee will use reasonable endeavours to do so in a manner which would enable the Franchisee to provide any relevant item of Excluded Data.

- 19.4 With effect from the date which is three months after the Start Date, the Franchisee shall measure, collect and provide to the Secretary of State in accordance with this paragraph 19, that data included on the Initial Dataset so as to allow the Secretary of State and the Franchisee to understand the current environmental performance of the Franchise and any potential for improvement in terms of environmental impact.
- 19.5 The Franchisee may, in its discretion, measure and collect additional data provided that the minimum required Initial Dataset is adhered to and the Franchisee will co-operate with the Secretary of State to seek to identify improvements in the efficiency and/or cost effectiveness of the collection of the data in the Dataset.
- 19.6 The Franchisee shall ensure that the form of measurement of the Initial Dataset enables it to report a consolidated quarterly or annual (as applicable) usage figure to the Secretary of State for each reporting quarter or Franchisee Year (as applicable).
- 19.7 The Franchisee shall submit to the Secretary of State a report setting out the result of the of the data collection required by this paragraph 19 within four weeks following the end of each (i) reporting quarter during the Franchise Period and (ii) Franchisee Year (as applicable).
- 19.8 For the purpose of this paragraph 19 "reporting quarters" are 1st April to 30th June, 1st July to 30th September, 1st October to 31st December and 1st January to 31st March. The first reporting quarter of the Franchise Period for the purpose of the report shall begin on the Start Date and end on the last day of the reporting quarter in which the Start Date falls, and the final quarter shall end on the last day of the Franchise Period.
- 19.9 The Franchisee shall submit the report required by paragraph 19.7 above to the Secretary of State in such format as the Secretary of State may (acting

reasonably) from time to time specify. Such report will include the actual quarterly or annual results (as applicable) and, with effect from:

- (a) the first reporting quarter which commences at least 15 months after the Start Date; and
- (b) in respect of any measure which, as a result of an amendment to the Initial Dataset, the Franchisee subsequently becomes obliged to report against, the first reporting quarter which commences at least 12 months after the date on which the Franchisee first became obliged to report against that measure,

the average of the results for the relevant reporting quarter and the previous three reporting quarters ("**Moving Annual Average**").

SCHEDULE 13

APPENDIX 1 TO SCHEDULE 13

Environmental impact monitoring dataset

Environmental impact monitoring dataset

Environmental Impact Monitoring Dataset SUBJECT (UNIT)		GRANULARITY	REGULARITY
TRACTION	EC4T (kWh)	Total (metered and unmetered)/breakdown per distinct fleet (metered and unmetered)	4-week period
	Gas-oil (kWh)	Total/breakdown per distinct fleet	4-week period
	Gas-oil (litres)	Total/breakdown per distinct fleet	4-week period
	Traction (kWh)	Total	4-week period
	Traction (kWh/ppkm)	Total/breakdown per distinct fleet	Annual
	vehicle km/kWh or litres	Total/breakdown per distinct fleet	4-week period
NONTRACTION	Electricity (kWh)	Total/breakdown per individual site	4-week period
	Gas (kWh)	Total/breakdown per individual site	4-week period
	Gas-oil (kWh)	Total/breakdown per individual site	4-week period
	Gas-oil (litres)	Total/breakdown per individual site	4-week period

	Total non-traction (kWh)	Total	4-week period
CARBON	Carbon footprint (tonnes)	Total	Annual
	Scope 1 emissions (tonnes)	Total	Annual
	Scope 2 emissions (tonnes)	Total	Annual
	Traction (kg CO2)	Total	Annual
	Traction (kg CO2 ppkm)	Total/breakdown per distinct fleet	Annual
	Non traction (kg CO2)	Total	Annual
	Non Traction (kg CO2 ppj)	Total/breakdown per individual site	Annual
	Non Traction (kg CO2 ppkm)	Total/breakdown per individual site	Annual
	Scope 3 carbon	New infrastructure projects	Per project
WATER	Mains Water consumption (m3)	Total/breakdown per individual site	Annual
	Water recycling initiative	Narrative	Annual
WASTE	Waste generated (tonnes)	Total/per individual site	Monthly
	Waste recycled (tonnes)	Total/per individual site	Monthly
	Recycling rate (%)	Total/per individual site	Monthly
	Waste subject to other recovery (tonnes)	Total/per individual site	Monthly
	Waste to landfill (tonnes)	Total/per individual site	Monthly

ENVIRONMENTAL MANAGEMENT SYSTEM	Complaints for environmental issues	Total	Annual
	Enforcement/information Notices	Total	Annual
	Environmental fines or prosecutions	Total	Annual
	Environmental incidents reported through EMS	Per location	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; and
- (b) a printed or electronic list of all assets owned by the Franchisee from time to time (excluding, unless otherwise requested by the Secretary of State, any office furniture and consumable items).

APPENDIX 3 TO SCHEDULE 13

Operational Information

1. Information about the Performance of the Franchisee

- 1.1 The Franchisee shall at all times during the Franchise Term maintain records in relation to its operational performance under the Franchise Agreement, covering the areas and the information described in this Appendix 3. Such information shall include details as to whether or not any curtailment, diversion, delay or failure to attain any connection is attributable, in the Franchisee's opinion, to either a Force Majeure Event or the implementation of a Service Recovery Plan.
- 1.2 The Franchisee shall, subject to paragraph 1.3, provide to the Secretary of State the information set out in the following tables at the frequency specified in the column of each such table headed "When information to be provided".
- 1.3 When so requested by the Secretary of State, the Franchisee shall, within such reasonable period as the Secretary of State may specify, make such information available for review by the Secretary of State by reference to:
 - (a) such level of disaggregation (including by Route or Service Group) as is reasonably specified by the Secretary of State; and
 - (b) any particular day, week or other longer period as is reasonably specified by the Secretary of State.
- 1.4 The following key shall apply to the table in this Appendix 3:
 - A = Information to be provided on or before any Passenger Change Date;
 - B = Information to be provided for every Reporting Period within 17 days of the last day of each Reporting Period; and
 - C = Information to be provided annually within 10 days of the last day of each Franchisee Year.
- 1.5 For the purpose of this Appendix 3, a business day is any day between Monday to Friday (inclusive) excluding public holidays.

Table 1 Operational Information

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

Information to be provided	Information (format)	When information to be provided
Number of Cancellations and Partial Cancellations		
Number of Passenger Services in the Enforcement Plan of the Day which were the subject of a Cancellation	[number]	B
Number of Passenger Services in the Enforcement Plan of the Day which were the subject of a Partial Cancellation	[number]	B
Number of Passenger Services in the Enforcement Plan of the Day which were the subject of a Cancellation attributable to the Franchisee's implementation of a Service Recovery Plan	[number]	B
Number of Passenger Services in the Enforcement Plan of the Day which were the subject of a Partial Cancellation attributable to the Franchisee's implementation of a Service Recovery Plan	[number]	B
Number of Passenger Services in the Enforcement Plan of the Day which were the subject of an Infrastructure Manager Cancellation	[number]	B
Number of Passenger Services in the Enforcement Plan of the Day which were the subject of an Infrastructure Manager Partial Cancellation	[number]	B
Number of Passenger Services in the Enforcement Plan of the Day which were the subject of a Disputed Cancellation	[number]	B
Number of Passenger Services in the Enforcement Plan of the Day which were the subject of a Disputed Partial Cancellation	[number]	B
Number of Disputed Cancellations and Disputed Partial Cancellations for the 12 preceding Reporting Periods for which the attribution remains in dispute between the relevant Infrastructure Manager and the Franchisee	[minutes]	B
Number of Disputed Cancellations and Disputed Partial Cancellations from the 12 preceding Reporting Periods for which disputed attribution has been resolved or determined since the Franchisee's previous report pursuant to paragraph 2.1 of Schedule 7.1 (Performance Benchmarks) including whether each relevant	[minutes]	B

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

Information to be provided	Information (format)	When information to be provided
cancellations occurred for reasons attributable to the occurrence of a Force Majeure Event		
Number of Passenger Services in the Plan of the Day which were the subject of a cancellation and which satisfied the conditions of the term Cancellation, except that such cancellations occurred for reasons attributable to the exercise by Infrastructure Manager of its rights pursuant to the Track Access Agreement	[number]	B
Number of Passenger Services in the Plan of the Day which were the subject of a partial cancellation and which satisfied the conditions of the term Partial Cancellation, except that such partial cancellations occurred for reasons attributable to the exercise by the Infrastructure Manager of its rights pursuant to the Track Access Agreement	[number]	B
Capacity		
Number of Passenger Services that have less than the required passenger carrying capacity specified in the Train Plan	[number]	B
Number of 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 Passenger Services that have less than the required passenger carrying capacity specified in the Train Plan attributable to the occurrence of a Force Majeure Event	[number]	B
Minutes Delay and Punctuality		
Number of Minutes Delay attributable to the Franchisee	[minutes]	B
Number of Minutes Delay for such Reporting Period for which the attribution is in dispute between Network Rail and the Franchisee	[minutes]	B

Information to be provided	Information (format)	When information to be provided
Number of Minutes Delay for the 12 preceding Reporting Periods for which the attribution remains in dispute between Network Rail and the Franchisee	[minutes]	B
Number of Minutes Delay from the 12 preceding Reporting Periods for which the attribution remains in dispute between HS1 Limited and the Franchisee	[minutes]	B
Number of Minutes Delay from the 12 preceding Reporting Periods for which disputed attribution has been resolved or determined since the Franchisee's previous report pursuant to paragraph 2.11 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]	
Train Mileage		
Aggregate Train Mileage scheduled in the Timetable	[mileage]	A
Aggregate Train Mileage operated	[mileage]	B
Year to Date Loaded Train Miles (millions)	[mileage]	B

SCHEDULE 14

Preservation of Assets

Schedule 14.1: Maintenance of Franchise

Schedule 14.2: Maintenance of Operating Assets

Schedule 14.3: Key Contracts

Appendix: List of Key Contracts

Error! Not a valid result for table.4: **Designation of Franchise Assets**

Appendix: List of Primary Franchise Assets

Schedule 14.5: Dealings with Franchise Assets

SCHEDULE 14.1**Maintenance of Franchise****Maintenance as going concern**

1. The Franchisee shall maintain and manage the business of providing the Franchise Services so that, to the greatest extent possible and practicable:
 - (a) the Franchisee is able to perform its obligations under the Franchise Agreement; and
 - (b) a Successor Operator would be able to take over the business of providing the Franchise Services immediately at any time.
2. The Franchisee's obligation under paragraph 1 shall include an obligation to ensure that any computer and information technology systems of the Franchisee shared in whole or in part with Affiliates or third parties can be operated by a Successor Operator as a standalone system without continued reliance on such Affiliates or other third parties immediately from the date of termination of the Franchise Agreement without any reduction in functionality or any increase in maintenance or support costs to the Successor Operator (this obligation being without prejudice to any requirement for the Franchisee to obtain consent to such arrangements relating to sharing computer and information technology systems from the Secretary of State).
3. The Franchisee shall use all reasonable endeavours to ensure that such Successor Operator would have immediate access to all Franchise Employees and Primary Franchise Assets for such purpose.
4. The Franchisee shall maintain and manage the business of providing the Franchise Services on the basis that such business will be transferred, in the manner contemplated under the Franchise Agreement, as a going concern at the end of the Franchise Period to, and continued immediately thereafter by, a Successor Operator.
5. The Franchisee shall use all reasonable endeavours to ensure that an appropriate number of employees (having sufficient skills, qualifications and experience) will transfer by operation of Law to any Successor Operator following the expiry of the Franchise Period.
6. The Franchisee shall comply with all reasonable requirements of the Secretary of State to obtain or maintain the property and rights that a Successor Operator would require, or that it would be convenient for it to have, on the basis that the same will transfer by operation of Law to any Successor Operator following the expiry of the Franchise Period.

Post-Franchise timetables

7. Both prior to and following the selection of a Successor Operator (whether a franchisee or otherwise and whether or not subject to the satisfaction of any conditions), the Franchisee shall:
 - (a) co-operate with, where a Successor Operator has been appointed, that Successor Operator, or where not, the Secretary of State; and

- (b) take such steps as may reasonably be requested by the Secretary of State,

so as to ensure the continuity of, and orderly handover of control over of the Franchise Services.

- 8.** The steps that the Secretary of State may reasonably request the Franchisee to take pursuant to paragraph 6 include:

- (a) participating in any timetable development process that takes place during the Franchise Period, but which relates to any timetable period applying wholly or partly after the expiry of the Franchise Term ("**Successor Operator Timetable**"), including bidding for and securing any Successor Operator Timetable, whether or not:
 - (i) the Successor Operator has been identified; or
 - (ii) there is in place an Access Agreement relating to the period over which that Successor Operator Timetable is intended to be operated;
- (b) using reasonable endeavours to seek amendments to and/or extensions of Access Agreements which can be transferred to the Successor Operator on expiry of the Franchise Period;
- (c) assisting the Secretary of State or the Successor Operator (as the case may be) in the preparation and negotiation of any new Access Agreement relating to any Successor Operator Timetable; and/or
- (d) entering into that Access Agreement in order to secure the relevant priority bidding rights required by the Successor Operator to operate that Successor Operator Timetable, provided that the Franchisee shall not be required to enter into any such Access Agreement unless the Secretary of State has first provided to it confirmation in writing that he will include that Access Agreement in any Transfer Scheme pursuant to paragraph 3.1 of Schedule 15.4 (Provisions Applying on and after Termination).

SCHEDULE 14.2**Maintenance of Operating Assets****1. Operating Assets**

- 1.1 The Franchisee shall maintain, protect and preserve the assets (including any intellectual property or intangible assets employed in the performance of its obligations under the Franchise Agreement (the "**Operating Assets**") in good standing or good working order, subject to fair wear and tear.
- 1.2 The Franchisee shall carry out its obligations under paragraph 1.1 so that the Operating Assets may be transferred at the end of the Franchise Period to a Successor Operator and used by such Successor Operator in the provision or operation of similar services to the Franchise Services.
- 1.3 Where any Operating Asset is lost, destroyed or otherwise beyond repair, the Franchisee shall replace the Operating Asset with property, rights or liabilities in modern equivalent form to the Operating Asset to be replaced. The Franchisee shall at all times maintain an appropriate volume of Spares, and/or an appropriate level of access to Spares from a third party, to enable it to perform its obligations under the Franchise Agreement.
- 1.4 The Secretary of State may at any time require the Franchisee to provide to the Secretary of State a schedule specifying the condition of any asset or class of assets that he specifies for this purpose. Such schedule shall cover such aspects of asset condition as the Secretary of State may reasonably require. If the parties are unable to agree the content of such schedule of condition, either party may refer the dispute for resolution in accordance with the Dispute Resolution Rules. Until such dispute is resolved, the Franchisee shall comply with the Secretary of State's requirements in respect of such schedule of condition.
- 1.5 The Franchisee shall keep vested in it at all times during the Franchise Period all Franchise Assets designated as such pursuant to schedule 14.4 (Designation of Franchise Assets) as it may require in order to comply with:
 - (a) the Licences;
 - (b) any contracts of employment with Franchise Employees;
 - (c) any relevant Fares;
 - (d) any Key Contracts; and
 - (e) any applicable safety legislation regulations or safety standards and the Safety Certificate,

in order to ensure that the Secretary of State may designate such assets as Primary Franchise Assets.

2. Brand Licences And Branding

Brand Licences

- 2.1 The Franchisee shall comply with its obligations under each of the Brand Licences.

Branding

- 2.2 Subject to any applicable obligations or restrictions on the Franchisee (including the terms of the Rolling Stock Leases), the Franchisee may apply registered or unregistered trade marks (including company names, livery and other distinctive get-up) to any assets owned or used by it in the operation and provision of the Franchise Services.

- (a) Subject to paragraphs 2.2(c) and (g), the Franchisee may:
- (i) in respect of unregistered Marks, provide or procure the provision of an irrevocable undertaking to any relevant Successor Operator to the effect that neither it nor the owner of the Marks will enforce such rights as it may have or may in the future have in respect of such Marks against such Successor Operator and its successors; and
 - (ii) in respect of registered Marks, grant or procure the grant of an irrevocable licence to use such Marks to such Successor Operator and its successors.
- (b) Any such licence or undertaking under paragraph 2.2(a) shall be in such form as the Secretary of State shall reasonably require except that the terms of any such licence and, to the extent appropriate, any such undertaking shall accord with the provisions of paragraph 8.3 of Schedule 15.4 (Provisions Applying on and after Termination).
- (c) Subject to paragraph 2.2(g), to the extent that:
- (i) the Franchisee does not provide a relevant undertaking or licence in accordance with paragraph 2.2(a);
 - (ii) the Secretary of State considers the relevant Marks to be so distinctive or otherwise such that a Successor Operator could not reasonably be asked to use the relevant assets to which the Marks are applied; or
 - (iii) the Franchisee has not otherwise removed or covered such Marks in such a way as may be reasonably acceptable to the Secretary of State prior to the expiry of the Franchise Period,

then the Franchisee shall pay to the relevant Successor Operator such amount as may be agreed between the Franchisee and such Successor Operator, as being the reasonable cost (including any Value Added Tax for which credit is not available under Sections 25 and 26 of the Value Added Tax Act 1994) of covering such Marks or otherwise removing all indications of or reference to the Marks in a manner reasonably acceptable to the Secretary of State. Such amount shall not in any event

exceed the cost to the Successor Operator of replacing such Marks with its own. If the Franchisee and the relevant Successor Operator fail to agree such cost within 28 days of the expiry of the Franchise Period, the Franchisee shall submit such dispute for resolution in accordance with such dispute resolution procedures as the Secretary of State may require.

- (d) The amount to be paid to a Successor Operator under paragraph 2.2(c) may include the reasonable cost of:
 - (i) removing or covering Marks from the exterior of any rolling stock vehicle;
 - (ii) removing or covering interior indications of the Marks including upholstery and carpets;
 - (iii) replacing or covering all station or other signs including bill boards; and
 - (iv) otherwise ensuring that such removal, covering or replacement is effected with all reasonable care and in such manner that the relevant assets may reasonably continue to be used by a Successor Operator in the provision of the Franchise Services.
- (e) The Franchisee shall, in addition to making a payment under paragraph 2.2(c) grant or procure the grant of a licence or undertaking complying with paragraphs 2.2(a) and (b) except that such licence shall only be for such period as may be agreed between the Franchisee and the Successor Operator as being reasonably required by the Successor Operator to remove the Marks from all relevant assets without causing excessive disruption to the operation of services similar to the Franchise Services provided by such Successor Operator. If such period cannot be agreed, the Franchisee shall submit such dispute for resolution in accordance with such dispute resolution procedures as the Secretary of State may require.
- (f) The Secretary of State shall determine at or around the end of the Franchise Period, and after consultation with the Franchisee, the maximum liability of the Franchisee under paragraph 2.2(c) and the maximum length of licence or undertaking under paragraph 2.2(e);
- (g) The provisions of paragraphs 2.2(a) to (f) shall not apply to the extent that the relevant asset is not to be used by a Successor Operator in the provision of services similar to the Franchise Services. The Secretary of State shall notify the Franchisee as soon as he becomes aware of whether or not any such asset is to be so used.

Non-designation of New Brands

- 2.3 The Secretary of State agrees not to designate as a Primary Franchise Asset any registered or unregistered trade mark which is developed by the Franchisee.

SCHEDULE 14.3**Key Contracts****1. Key Contracts**

- 1.1 The provisions of this Schedule 14.3 apply to all contracts designated as Key Contracts from time to time.
- 1.2 The Key Contracts as at the date of the Franchise Agreement are set out in the Appendix (List of Key Contracts) to this Schedule 14.3. The Franchisee shall, in respect of any category of agreement, contract, licence or other arrangement which, by virtue of the provisions of this paragraph 1.2, is a Key Contract and to which the Franchisee, as at date of the Franchisee Agreement, is not already a party:
- (a) inform the Secretary of State from time to time of any such agreement, contract, licence or other arrangement which it may be intending to enter into; and
 - (b) the provisions of paragraph 5.1 shall apply in respect of any such agreement, contract, licence or other arrangement.
- 1.3 Without prejudice to the provisions of paragraphs 2, 3 and 4 of this Schedule 14.3, the Appendix (List of Key Contracts) to this Schedule 14.3 shall be amended as considered necessary from time to time to take account of any:
- (a) designation by the Secretary of State of any actual or prospective agreement, contract, licence or other arrangement or any category of agreement, contract, licence or other arrangement, to which or under which the Franchisee is (or may become) a party or a beneficiary pursuant to paragraph 2 of this Schedule 14.3; or
 - (b) de-designation by the Secretary of State of any Key Contract pursuant to paragraph 3 of this Schedule 14.3; or
 - (c) re-designation by the Secretary of State pursuant to paragraph 4 of this Schedule 14.3.

2. Designation of Key Contracts

- 2.1 Where the Secretary of State considers that it is reasonably necessary for securing the continued provision of the Franchise Services or the provision of services similar to the Franchise Services by a Successor Operator in accordance with the Franchise Agreement, he may make a designation pursuant to paragraph 2.2.
- 2.2 The Secretary of State may at any time, by serving notice on the Franchisee, designate as a Key Contract:
- (a) any actual or prospective agreement, contract, licence or other arrangement; and/or

- (b) any category of agreement, contract, licence or other arrangement, to which or under which the Franchisee is (or may become) a party or a beneficiary,

with effect from the date specified in such notice.

- 2.3 Key Contracts may include any agreement, contract, licence or other arrangement whether in written, oral or other form, whether formal or informal and whether with an Affiliate of the Franchisee or any other person and may include any arrangement for the storage of assets (including electronic systems or Computer Systems) or accommodation of employees.

3. De-Designation of Key Contracts

The Secretary of State may at any time, by serving a notice on the Franchisee, de-designate any Key Contract from continuing to be a Key Contract with effect from the date specified in such notice.

4. Re-Designation of Key Contracts

The Secretary of State may at any time, by serving notice on the Franchisee, re-designate as a Key Contract anything which has ceased to be designated as a Key Contract in accordance with paragraph 3 with effect from the date specified in such notice.

5. Direct Agreements

- 5.1 Unless the Secretary of State otherwise agrees, or unless directed to do so by the ORR, the Franchisee shall not enter into any prospective Key Contract unless the counterparty to that prospective Key Contract:

- (a) is a Train Operator; or
- (b) has entered into a Direct Agreement with the Secretary of State in respect of that prospective Key Contract, providing on a basis acceptable to the Secretary of State, amongst other things, for the continued provision of the Passenger Services and/or the continued operation of the Stations and Depots in the event of:
 - (i) breach, termination or expiry of such Key Contract;
 - (ii) termination or expiry of the Franchise Agreement; or
 - (iii) the making of a railway administration order in respect of the Franchisee.

- 5.2 Where the Secretary of State designates or re-designates as a Key Contract:

- (a) any agreement, contract, licence or other arrangement to which the Franchisee is already a party; or
- (b) any category of agreement, contract, licence or other arrangement where the Franchisee is already a party to a contract, licence or other arrangement which, by virtue of the Secretary of State's designation or re-designation, is classified in such category,

the Franchisee shall use all reasonable endeavours to assist the Secretary of State in entering into a Direct Agreement as envisaged by paragraph 5.1(b).

- 5.3 The Franchisee shall pay to the Secretary of State an amount equal to any losses, costs, liabilities, charges or expenses which may be suffered or incurred by the Secretary of State under the provisions of any Direct Agreement and which may be notified to the Franchisee as a result of, or in connection with:
- (a) any breach by the Franchisee of the terms of the Key Contract to which the relevant Direct Agreement relates; or
 - (b) any unsuccessful claim being brought by the Franchisee against the counterparty of any such Key Contract in relation to the termination of such Key Contract.

6. Emergencies

Where any emergency may arise in connection with the provision and operation of the Franchise Services, the Franchisee:

- (a) may enter into on a short-term basis such contracts, licences or other arrangements as it considers necessary or appropriate to deal with the emergency;
- (b) need not procure that the relevant counterparty enters into a Direct Agreement in respect of such contracts or use all reasonable endeavours to assist the Secretary of State in entering into the same;
- (c) shall promptly inform the Secretary of State of any such emergency and contracts, licences or other arrangements which it proposes to enter into; and
- (d) shall take such action in relation to such emergency, contracts, licences or other arrangements as the Secretary of State may request.

7. No Amendment

The Franchisee shall not without the prior consent of the Secretary of State (which shall not be unreasonably withheld) vary, or purport to vary, the terms or conditions of any Key Contract at any time, unless directed to do so by the ORR.

8. ⁴⁵⁹Replacement of Key Contracts

The Franchisee shall:

- (a) **(other than in respect of the MSP Agreement described at paragraph 14 of the Appendix (List of Key Contracts) to Schedule 14.3 (Key Contracts)) prior to the scheduled expiry date of any Key Contract (or, if earlier, such other date on which it is reasonably likely that such Key Contract will terminate), take all reasonable steps to enter into an**

⁴⁵⁹ 08/12/2016 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

appropriate replacement contract (whether with the counterparty to the existing Key Contract or not); and

- (b) comply with the reasonable instructions of the Secretary of State in relation to such replacement contract.**

9. Termination of Key Contracts

The Franchisee shall, to the extent so requested by the Secretary of State, exercise its right to terminate any Key Contract on the Expiry Date.

APPENDIX TO SCHEDULE 14.3**List of Key Contracts**

The following items have as at the date of the Franchise Agreement been agreed between the parties to be Key Contracts:

- 1.** any Access Agreement to which the Franchisee is a party other than in its capacity as a Facility Owner;
- 2.** any Property Lease;
- 3.** any Rolling Stock Related Contract including the Rolling Stock Leases listed in Table 1 and Table 2 of Schedule 1.7 (The Train Fleet);
- 4.** any contract for the maintenance and renewal works at Stations including any framework delivery contracts for the provision of building and civil engineering works, mechanical and electrical works at Stations;
- 5.** any contract or arrangement for the lending, seconding, hiring, contracting out, supervision, training, assessment, or accommodation by another Train Operator of any train drivers, conductors or other train crew used by the Franchisee in the provision of the Passenger Services;
- 6.** any contract or arrangement for the subcontracting or delegation to another Train Operator of the provision of any of the Passenger Services (whether or not the consent of the Secretary of State is required to such subcontracting or delegation under paragraph 1 of Schedule 2.3 (Third Party Delivery of Passenger Services and Other Franchisees));
- 7.** any contract or arrangement with a Train Operator (other than an Access Agreement) for the provision to the Franchisee of train dispatch, performance or supervision of platform duties, security activities, evacuation procedures, advice or assistance to customers, assistance to disabled customers, operation of customer information systems, cash management or ticket issuing systems administration;
- 8.** any contract or arrangement with a Train Operator for the provision of breakdown or recovery, and track call services to assist in the provision of the Passenger Services;
- 9.** any contract or arrangement for the supply of spare parts or Spares;
- 10.** any contract or arrangement for the maintenance of track and other related infrastructure;
- 11.** any licences of Marks to the Franchisee;
- 12.** any licence of any CRM System or Yield Management System;
- 13.** any contract or arrangement for the provision or lending of Computer Systems (other than the CRM System and Yield Management System) used by the Franchisee for the delivery of the Franchise Services;

14. Licence for use of Railtrack Software dated 8 December 1995; and
15. RT Computer Services between RT and Operator dated 27 March 1995.
16. **MSP Agreement entered into between the Franchisee and Icomera UK Limited dated on or around 7 December 2016 relating to the provision of the On-Train Wi-Fi Services; and**⁴⁶⁰
17. **any OTW Network Provider Agreement entered into by the Franchisee relating to the provision of the Network for On-Train Wi-Fi Services.**⁴⁶¹
18. **[REDACTED]**⁴⁶²⁴⁶³

⁴⁶⁰ 08/12/2016 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

⁴⁶¹ 08/12/2016 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

⁴⁶² **29/01/2018 (Date of Redactions Approval) – Where text has been omitted from the document this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.**

⁴⁶³ 06/12/2017 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

SCHEDULE 14.4**Designation of Franchise Assets****1. Franchise Assets**

- 1.1 Subject to paragraph 1.2, all property, rights and liabilities of the Franchisee from time to time during the Franchise Period shall be designated as Franchise Assets and shall constitute Franchise Assets for the purposes of Section 27(11) of the Act.
- 1.2 The rights and liabilities of the Franchisee in respect of the following items shall not be designated as Franchise Assets and shall not constitute franchise assets for the purposes of Section 27(11) of the Act:
- (a) any contracts of employment;
 - (b) the Franchise Agreement and any Transfer Scheme or Supplemental Agreement;
 - (c) the Ticketing and Settlement Agreement;
 - (d) any sums placed on deposit with a bank or other financial institution;
 - (e) such other property, rights and liabilities as the Franchisee and the Secretary of State may agree from time to time or as the Secretary of State may de-designate as Franchise Assets under paragraph 10.2; and
 - (f) any Rolling Stock Leases.

2. Primary Franchise Assets

- 2.3 The following property, rights and liabilities shall (to the extent that they constitute Franchise Assets) be designated as Primary Franchise Assets with effect from the following dates:
- (a) the property, rights and liabilities listed as such in the Appendix (List of Primary Franchise Assets) to this

- (b) SCHEDULE 14.4 (which constitute Primary Franchise Assets agreed between the parties as at the date of the Franchise Agreement), on the Start Date;
- (c) any additional property, rights and liabilities designated under paragraph 3 during the Franchise Period, on the date of such designation;
- (d) any property or right which is vested in the Franchisee and used for the purpose of maintaining, replacing, repairing or renewing any property designated as Primary Franchise Assets and which forms or replaces part or all of such designated property on completion of such maintenance, replacement, repair or renewal, on the date of its use for such purpose;
- (e) the rights and liabilities of the Franchisee under any Key Contract designated under paragraph 5, on the date of such designation;
- (f) the rights and liabilities of the Franchisee in respect of the terms of any Fare or Discount Card designated under paragraph 6, on the date of such designation;
- (g) any CRM Data and/or Yield Management Data and, to the extent that any CRM System and/or Yield Management System is the property of the Franchisee, such CRM System and/or Yield Management System on the later of the Start Date and:
 - (i) in relation to CRM Data or Yield Management Data, the date on which such CRM Data or Yield Management Data (as applicable) is collected; or
 - (ii) in relation to any such CRM System or Yield Management System, the date on which such CRM System or Yield Management System is created,

save, in relation to CRM Data and Yield Management Data, any data in respect of which the Data Subject has not consented to such data being disclosed and Processed by any Successor Operator and/or the Secretary of State;

- (h) any licence of any CRM System and/or Yield Management System, on the date of such licence; and
- (i) ⁴⁶⁴ **any RV Asset on the date on which the Secretary of State issues the Franchisee a Certificate of Completion in respect of that RV Asset.**

3. Designation of Additional Primary Franchise Assets

Subject to paragraph 2.2(f) the Secretary of State may at any time and from time to time during the Franchise Period, by serving notice on the Franchisee, designate any or all of the Franchise Assets as Primary Franchise Assets. Such designation shall take effect from the delivery of such notice and may refer to all or certain categories of property, rights or liabilities. Any such notice shall specify the reasons for such designation. On or before designation of any Franchise Asset as

⁴⁶⁴ 19/09/2017 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

a Primary Franchise Asset, the Secretary of State may agree not to subsequently de-designate such Primary Franchise Asset without the prior written consent of the Franchisee. If the Secretary of State so agrees, the notice designating the relevant Franchise Asset as a Primary Franchise Asset shall state that the Secretary of State shall not de-designate such Primary Franchise Asset without the prior written consent of the Franchisee.

4. Designation during last 12 Months of Franchise Period

If the Secretary of State designates a Franchise Asset as a Primary Franchise Asset under paragraph 3 at any time during the last 12 months of the Franchise Period then, within 28 days of such designation, the Secretary of State may de-designate such Primary Franchise Asset by serving notice on the Franchisee provided that, in relation to any Primary Franchise Asset in respect of which the Secretary of State agreed pursuant to paragraph 3 that he would not de designate without the prior written consent of the Franchisee, such consent has been obtained. Such de-designation shall take effect upon delivery of such notice.

5. Designation of Key Contracts as Primary Franchise Assets

The Secretary of State shall, subject to paragraphs 1.2(b) and 7, be entitled to designate any Key Contract as a Primary Franchise Asset at any time during the Franchise Period by serving notice on the Franchisee. Such designation shall take effect from delivery of such notice.

6. Designation of Fares and Discount Cards

The Secretary of State may designate any Fare or Discount Card as a Primary Franchise Asset at any time during the Franchise Period by serving a notice on the Franchisee. Such designation shall take effect from delivery of such notice.

7. Rights and Liabilities

The Secretary of State, in designating the rights and liabilities of the Franchisee (whether under a particular contract or other arrangement) as a Primary Franchise Asset may, in his discretion, elect to designate some but not all of the rights and liabilities under a particular contract or other arrangement, or to designate only those rights and liabilities arising after or otherwise relating to a period after a particular time (including the period after the expiry of the Franchise Period) or to those relating only to the Franchise Services or a particular part thereof.

8. Disputes over Designation

- 8.1 The Franchisee may object in writing to the Secretary of State to any designation pursuant to paragraph 3 or 4.
- 8.2 Such objection may be made solely on the grounds that the designation of the relevant property, rights or liabilities specified in the objection is not, in the Franchisee's opinion, reasonably necessary to secure the continued provision of the Franchise Services by a Successor Operator on the expiry of the Franchise Period on a basis reasonably acceptable to the Secretary of State or to facilitate the transfer to such Successor Operator of the provision of the Franchise Services at such time.
- 8.3 Any such objection may only be made within 28 days of a designation made more than 12 months prior to the end of the Franchise Period or 14 days of a designation made during the last 12 months of the Franchise Period.

- 8.4 The Secretary of State shall respond to any such objection as soon as reasonably practicable and shall take account of any representations made by the Franchisee regarding the use of the relevant Primary Franchise Asset otherwise than in the provision and operation of the Franchise Services.
- 8.5 If the Franchisee's objection cannot be resolved by agreement within a period of 14 days from the date of submission of that objection, the Franchisee may refer the dispute for resolution in accordance with the Dispute Resolution Rules.
- 8.6 Anybody duly appointed to resolve such dispute shall determine whether or not the designation of the relevant property, rights or liabilities was reasonably necessary for securing that the Franchise Services may continue to be provided by a Successor Operator on the expiry of the Franchise Period on a basis reasonably acceptable to the Secretary of State or otherwise facilitating the transfer of the provision of the Franchise Services at such time, and accordingly whether or not they should cease to be so designated.
- 8.7 If any dispute as to any designation pursuant to paragraph 3 remains outstanding on the expiry of the Franchise Period, then such dispute shall be deemed to cease immediately before the expiry of the Franchise Period and the relevant Franchise Assets shall continue to be designated as Primary Franchise Assets on and after the expiry of the Franchise Period.

9. Provision of Information to the Secretary of State

- 9.1 The Franchisee shall provide such information as the Secretary of State may reasonably require in order to satisfy the Secretary of State that any Franchise Assets which are to be designated as Primary Franchise Assets after the Start Date under this Schedule 14.4 will at the time of such designation be vested in the Franchisee. Such information may include details of any Security Interests over such property, rights and liabilities.
- 9.2 The Franchisee shall further provide such information as to the property, rights and liabilities of the Franchisee as the Secretary of State may reasonably require in connection with the designation of Primary Franchise Assets. Such information shall be supplied to the Secretary of State within such timescale as the Secretary of State may reasonably require.

10. De-Designation of Franchise Assets and Primary Franchise Assets

- 10.1 The Secretary of State and the Franchisee may agree in writing at any time during the Franchise Period that a Franchise Asset shall cease to be so designated as a Franchise Asset or that a Primary Franchise Asset shall cease to be so designated as a Primary Franchise Asset, and the relevant Franchise Asset or Primary Franchise Asset (as the case may be) shall cease to be designated upon such agreement coming into effect.
- 10.2 The Secretary of State may in addition at any time during the Franchise Period, by serving notice on the Franchisee, cause a Franchise Asset which is not a Primary Franchise Asset to cease to be so designated as a Franchise Asset. Such Franchise Asset shall cease to be so designated on the date specified in such notice.
- 10.3 The Secretary of State may in addition, at any time during the Franchise Period, by serving notice on the Franchisee, cause a particular Primary Franchise Asset to cease to be designated as such provided that, in relation to any Primary Franchise Asset in respect of which the Secretary of State agreed pursuant to

paragraph 3 that he would not de designate without the prior written consent of the Franchisee, such consent has been obtained. Such Primary Franchise Asset shall cease to be so designated on the date specified in such notice. Such right may be exercised, in respect of any rights and liabilities in respect of a Fare or Discount Card, at any time and, in respect of any other Primary Franchise Asset, no later than one year prior to the expiry of the Franchise Term.

11. Amendment of the Appendix to this Schedule 14.4

The Appendix (List of Primary Franchise Assets) to this shall be amended as the Secretary of State considers necessary or desirable from time to time to take account of designation and de-designation of Primary Franchise Assets pursuant to this Schedule 14.4.

12. Spares

The obligation of the Franchisee to maintain, preserve and protect Primary Franchise Assets under this Schedule 14.4 shall, in respect of Spares, include the obligation to replace any Spare which has been designated as a Primary Franchise Asset, which subsequent to its designation ceases to be part of the stock of Spares available to the Franchisee for use in the provision of the Franchise Services, with an equivalent Spare of equal or better quality than the Spare so replaced.

13⁴⁶⁵ Provisions relating to RV Assets

13.1 The provisions of paragraphs 3, 4 and 7 to 11 shall not apply in respect of any RV Asset.

13.2 The Secretary of State shall designate as a Primary Franchise Asset each RV Asset on the date on which the Secretary of State issues the Franchisee a Certificate of Completion in respect of that RV Asset. The Secretary of State may, at any time during the Franchise Period, by serving notice on the Franchisee cause a particular RV Asset designated as a Primary Franchise Asset to cease to be designated as such on the occurrence of any of the following:

- (a) such RV Asset is lost, destroyed or otherwise beyond repair after the date upon which it is designated as a Primary Franchise Asset and such RV Asset is not replaced; or**
- (b) the Secretary of State and the Franchisee agree in writing at any time during the Franchise Period that such RV Asset shall cease to be so designated as a Primary Franchise Asset.**

Such RV Asset shall cease to be designated as a Primary Franchise Asset with effect from the date specified in any notice served by the Secretary of State pursuant to this paragraph 13.2 and table 1 in Appendix 2 to this Schedule 14.4 shall be deemed to be amended and thereafter shall be amended to take account of any such de-designation.

⁴⁶⁵ 19/09/2017 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

Process for issue of a Certificate of Completion**13.3 The process for issuing a Certificate of Completion is as follows:**

- (a) Within 20 days of the date upon which an RV Asset is brought into operational use the Franchisee shall provide to the Secretary of State such information as is required by the Secretary of State for, and in the detail needed for demonstrating that such RV Asset has been brought into operational use and evidencing the actual capital cost incurred by the Franchisee on the procurement of such RV Asset including the following:**
 - (i) the information described in paragraph 9, including such information as the Secretary of State may require pursuant to paragraph 9.2;**
 - (ii) information which shows the actual date upon which such RV Asset was brought into operational use (including photographic evidence or any other kind of record which shows that such RV Asset has been brought into operational use);**
 - (iii) in respect of an RV Asset that is a Network Rail Fixture Asset, written confirmation from Network Rail that:
 - (A) such RV Asset will be owned by the Franchisee and remain the unencumbered asset of the Franchisee for the duration of the Franchise Period;**
 - (B) the Franchisee has the responsibility under the Station Access Conditions or the Depot Access Conditions (as the case may be) applicable in relation to such Station or Depot (as the case may be) to maintain, repair and renew such RV Asset from the date upon which such RV Asset property is brought into operational use for the duration of the Franchise Period;****
 - (iv) information evidencing the actual capital cost of procuring such RV Asset (including receipts and other supporting evidence);**
 - (v) information which shows that such RV Asset satisfies the requirements of the Committed Obligations to which it relates;**
 - (vi) the information required by paragraph 13.5; and**
 - (vii) such other information as the Secretary of State may reasonably require for the purposes of satisfying himself that such RV Asset has been brought into operational use by a date that is no later than the Staplehurst Delivery Date and**

verifying the actual capital costs incurred by the Franchisee on the procurement of such RV Asset.

- (b) Subject to receipt of the information required in paragraph 13.3(a) and none of the events described in paragraph 13.2 having occurred, the Secretary of State shall issue to the Franchisee a certificate of completion ("Certificate of Completion") which shall specify for the purposes of this Franchise Agreement the date upon which the relevant RV Asset was brought into operational use provided that nothing in this paragraph 13.3(b) shall oblige the Secretary of State to issue a Certificate of Completion in respect of any RV Asset:
- (i) if the Secretary of State, acting reasonably is not satisfied that such RV Asset will at the time of such designation be vested in the Franchisee;
 - (ii) if the Secretary of State reasonably determines that such RV Asset does not satisfy the requirements of the Committed Obligation to which it relates;
 - (iii) where the confirmation from Network Rail referred in paragraph 13.3(a)(iii) has not been issued
- (c) The Secretary of State may, prior to the issue of a Certificate of Completion in respect of an RV Asset, by exercising his rights under paragraph 5 (Right of Assessment or Inspection) of Schedule 11 (Agreement Management Provisions) inspect an RV Asset for the purposes of satisfying himself that such RV Asset satisfies the requirements of the Committed Obligation to which it relates.
- (d) For the avoidance of doubt in relation to the Staplehurst RV Asset, the Franchisee shall be entitled to apply for a Certificate of Completion in respect of the number of units (car parking spaces) comprised in the Staplehurst RV Asset which have been brought into operational use notwithstanding that not all of the number of units (car parking spaces) specified in the relevant Committed Obligation comprised in the Staplehurst RV Asset have been delivered into operational use at the relevant time.

Adjustments to the Transfer Value

13.4 ⁴⁶⁶The Secretary of State shall adjust the RV Asset Transfer Value for depreciation in accordance with and by reference to table 2 at Appendix 2 to this Schedule 14.4 and so that the Revised RV Asset Transfer Value on a particular Expiry Date as set out in column 1 of such table 2 will be the residual value of the RV Asset on such Expiry Date as set out in column 2 of the applicable row of such table 2.

Maintenance Requirements for RV Assets

⁴⁶⁶ 13 June 2019 (Date of DOA) Contract variation agreed by the Secretary of State and Franchisee.

- 13.5** At the same time as the Franchisee provides the information required pursuant to paragraph 13.3(a) in respect of any RV Asset, the Franchisee shall submit to the Secretary of State a schedule of condition specifying the condition of such RV Asset as at the date upon which such RV Asset was brought into operational use as specified in the applicable Certificate of Completion. Such schedule of condition must be approved by the Secretary of State and shall be in respect of such aspects of an RV Asset as the Secretary of State may reasonably require. The Franchisee shall ensure that each RV Asset is maintained, preserved and protected in at least the same condition, subject to fair wear and tear, as specified in the applicable schedule of condition as approved by the Secretary of State in respect of such RV Asset pursuant to this paragraph 13.5. In respect of any RV Asset that is a Network Rail Fixture Asset the Franchisee shall ensure that any schedule of condition prepared as required by this paragraph 13.5 shall comply with the Franchisee's maintenance obligations relating to such Network Rail Fixture Asset under the applicable Station Access Conditions and/or Depot Access Conditions (as the case may be).
- 13.6** Subject to paragraph 13.7, where the Franchisee has failed to demonstrate to the reasonable satisfaction of the Secretary of State that it has complied with its maintenance obligations in paragraph 13.5 in respect of any RV Asset then the Secretary of State may by notice in writing to the Franchisee require that the RV Asset Transfer Value payable by a Successor Operator required pursuant to the Supplemental Agreement to pay to the Franchisee the RV Asset Transfer Value for such RV Asset (Relevant Successor Operator) is adjusted downwards by an amount that is equal to the amount that is agreed by the Franchisee and the Relevant Successor Operator (or on failure to agree, as reasonably determined by the Secretary of State) as being the amount reasonably expected to be incurred by the Relevant Successor Operator for putting such RV Asset in the condition required pursuant to paragraph 13.5.
- 13.7** The provisions of paragraph 13.6 shall not apply in circumstances where the Franchisee and the Relevant Successor Operator agree that the Franchisee shall either:
- (a) rectify any relevant non-compliance with the requirements of paragraph 13.5; or
 - (b) indemnify the Relevant Successor Operator (the form of such indemnity to be in a form that is acceptable to the Relevant Successor Operator) against the reasonable costs of putting the relevant RV Asset in the condition required by paragraph 13.5.

Partial delivery of RV Assets

- 13.8** The RV Asset Transfer Value set out in Column 7 of table 1 in Appendix 2 to this Schedule 14.4 in respect of the Staplehurst RV Asset is on a per unit (car parking space) basis. To the extent that a Certificate of Completion is issued pursuant to paragraph 13.3 in respect of the Staplehurst RV Asset, the total RV Asset Transfer Value in respect of such Staplehurst RV Asset shall be the relevant RV Asset Transfer Value per unit as set out in Column 7 of table 1 in Appendix 2 to this Schedule 14.4

multiplied by the number of units delivered by the Franchisee (provided that this multiplier number shall not exceed the number of units to be delivered by the Franchisee in the relevant Committed Obligation in respect of the Staplehurst RV Asset).

13.9 [REDACTED⁴⁶⁷]

⁴⁶⁷ 20/11/2017 (Date of Redactions Approval) – Where text has been omitted from the document this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

APPENDIX TO SCHEDULE 14.4

List of Primary Franchise Assets ⁴⁶⁸

Scheme	Station Names	Brompton Docks	Brompton Hire Bikes	Details
Brompton Docks	Canterbury West	4	80	A Brompton dock hire station.
	Ashford International			
	Maidstone East			
	Tonbridge			
Gravesend Cycle Hub <small>⁴⁶⁹</small>	Gravesend Station			“Cycle Hub” (including a cycle maintenance/repair facility, cycle racks, secure compound for cycle storage, CCTV coverage and lighting)

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

Trademark	Registration No.	Classes	Date of filing
JAVELIN⁴⁷⁰	UK00002397248	12, 39	19 July 2005

Capitalised expressions in the table above shall have the same meaning as they do in the Previous Franchise Agreement.

Additional Cycle

⁴⁶⁸ 29/06/2015 – Contract variation agreed by the Secretary of State and Franchisee.

⁴⁶⁹ 03/06/2015 – Contract insertion agreed by the Secretary of State and Franchisee.

⁴⁷⁰ 08 March 2018 (Date of Contract Change Letter) – Contract insertion agreed by the Secretary of State and Franchisee

Scheme⁴⁷¹	Station name	parking spaces	Hire Bike Spaces	Details
Tonbridge Cycle Hub	Tonbridge	262	10	The funding will deliver a cycle hub offering 2 tier cycle parking for 262 bikes, electric bike charging points, a repair stand and bike pump, real time Customer Information Screen, CCTV and lighting, accessed by a swipe card entry system. In addition to this the Hub will provide a retail facility offering cycle hire, cycle maintenance, repair, and sales, with 10 Brompton bikes and 2 electric bikes available. The facility will be a secure covered compound with swipe card entry system. Transfer at nil value.
Orpington Cycle Hub	Orpington	150	0	The scheme will remove the existing cycle parking and create a secure hub, replacing the racks with 2 tier cycle parking for 80 bikes, a repair stand and bike pump, real time Customer Information Screen, CCTV and lighting, accessed by a swipe card entry system. In addition to this on a newly paved area at the front of the station we will provide 2 tier cycle parking for 60 bikes, covered with a shelter, repair stand and additional 5 racks will be available for different cycle types. Clear signage will be provided to ensure that the cycle parking is easily located. Transfer at nil value.
Battle Station Cycle Parking Project	Battle	48	0	To replace the existing cycle parking with 48 x 2 tier cycle parking spaces covered with a cycle shelter, with good lighting, CCTV, a bike pump and repair stand. Clear signage will direct cyclists to the improved facility and drop kerbs will be added to make access easier. In addition to this we will provide a real time Customer Information Screen adjacent to the cycle parking

⁴⁷¹ 21/06/2017 – Contract insertion agreed by the Secretary of State and Franchisee.

				to provide improved information for cyclists arriving at this station. Transfer at nil value.
Hastings Station Cycle Parking Project	Hastings	76	0	The Hastings Cycle Parking project will transform cycle parking infrastructure at Hastings Station, doubling the number of cycle parking spaces, using 'cyclepod street pods'. These will provide improved cycle parking in a location preferred by cyclists; additional CCTV, signage and a bike repair stand and bike pump will also be provided. Transfer at nil value.

Scheme⁴⁷²	Station Names	Number of Devices	Details
Tablets for Station Gateline Staff	N/A	75	The Franchisee shall keep deployed and operational for the remaining term of this Agreement not less than 68 Gateline Tablets that shall have a nil value.
Tablets for Train Crew	N/A	1300	The Franchisee shall keep deployed and operational for the remaining term of this Agreement not less than 1,200 Train Crew Tablets, that shall have a nil value, for use by Franchisee Employees working as train crew (including train drivers, train conductors and on-board managers) for the purpose of improving communications with and between such Franchise Employees and facilitating improved customer service and information provision. That shall have a nil value.
Ticket Vending Machines (TVMs)	Adisham Ashford Aylesford Aylesham Barming Bat and Ball Bekesbourne, Beltring, Brixton,	62	The Franchisee shall be treated as maintaining and keeping the ticket vending machines operational notwithstanding temporary non-availability due to accidental damage or vandalism or maintenance, repair or replacement, subject in each case to the Franchisee

⁴⁷² 23/11/2017 – Contract insertion agreed by the Secretary of State and Franchisee.

	<p> Charing, Chartham Chestfield and Swalecliffe Chilham Crowhurst Cuxton Dumpton Park Dunton Green East Farleigh East Malling Etchingam Eynsford Farningham Road Frant Gravesend Halling Harrietsham Higham High Brooms Hollingbourne Kearsney Kemsing Kemsley Lenham Maidstone Barracks Marden Martin Mill Minster New Hythe Northfleet Pluckley Queenborough Robertsbridge Rochester Sandling Selling Shepherds Well Shoreham Snodland Snowdown, Sole Street Stone Crossing Stonegate Strood Sturry Swale Swanscombe Teynham Tonbridge Wateringbury West St Leonards Westenhanger </p>		<p> using all reasonable endeavours to keep any such period of temporary non- availability to a minimum. That shall have a nil value. </p>
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	Wye and Yalding		
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Primary Franchise Asset ⁴⁷³	Commitment not to De-Designate [REDACTED⁴⁷⁴]
Each of the STNR Contracts	[REDACTED]
Those tangible assets comprised in the STNR System [REDACTED⁴⁷⁵] as part of the STNR Project (including those elements set out in Annexes B and C of the STNR Scope of Work)	[REDACTED]
Any Intellectual Property Rights [REDACTED⁴⁷⁶], in each case, in respect of the STNR System (including the database containing the data processed by the STNR System)	[REDACTED]
All data processed or generated by the STNR System	[REDACTED]

⁴⁷³ 06/12/2017 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

⁴⁷⁴ 29/01/2018 (Date of Redactions Approval) – Where text has been omitted from the document this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

⁴⁷⁵ 29/01/2018 (Date of Redactions Approval) – Where text has been omitted from the document this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

⁴⁷⁶ 29/01/2018 (Date of Redactions Approval) – Where text has been omitted from the document this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

Appendix 2 to Schedule 14.4 ⁴⁷⁷

Table 1 - List of RV Assets

Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7	Column 8
Description of the RV Asset	Assumed Amount of Capital Expenditure/Asset Value at Point of Transfer into subsequent Franchise (£)	Planned Delivery Date (dd/mm/yy)	Asset Life at Planned Delivery Date (yrs)	Not Used	Not Used	RV Asset Transfer Value at 01 September 2018 (£)	Is RV Asset a Network Rail Fixture Asset (Yes/No)
Additional 200 'At Grade' car parking spaces at Staplehurst Station	[REDACTED ⁴⁷⁸] for 200 car parking spaces	[REDACTED ⁴⁷⁹]	15 years			[REDACTED ⁴⁸⁰] per car parking space	Yes

⁴⁸¹ Table 2 – Revised RV Asset Transfer values if the Expiry Date is after 13 October 2018

Column 1	Column 2 [REDACTED ⁴⁸²]
Expiry Date	[REDACTED ⁴⁸³]
14 October 2018	[REDACTED]
11 November 2018	[REDACTED]
9 December 2018	[REDACTED]

⁴⁷⁷ 19/09/2017 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.⁴⁷⁸ 20/11/2017 (Date of Redactions Approval) – Where text has been omitted from the document this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.⁴⁷⁹ 20/11/2017 (Date of Redactions Approval) – Where text has been omitted from the document this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.⁴⁸⁰ 20/11/2017 (Date of Redactions Approval) – Where text has been omitted from the document this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.⁴⁸¹ 13 June 2019 (Date of DOA) Contract variation agreed by the Secretary of State and Franchisee.⁴⁸² 20/11/2017 (Date of Redactions Approval) – Where text has been omitted from the document this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.⁴⁸³ 05 August 2019 (Date of Redactions Approval) – Where text has been omitted from the document this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

6 January 2019	[REDACTED]
3 February 2019	[REDACTED]
3 March 2019	[REDACTED]
1 April 2019	[REDACTED]
28 April 2019	[REDACTED]
26 May 2019	[REDACTED]
23 June 2019	[REDACTED]
21 July 2019	[REDACTED]
18 August 2019	[REDACTED]
15 September 2019	[REDACTED]
13 October 2019	[REDACTED]
10 November 2019	[REDACTED]
8 December 2019	[REDACTED]
5 January 2019	[REDACTED]
2 February 2019	[REDACTED]
1 March 2020	[REDACTED]
1 April 2020	[REDACTED]

SCHEDULE 14.5**Dealing with Franchise Assets****1. Assets not Designated as Primary Franchise Assets**

- 1.1 This paragraph 1 relates to any Franchise Assets that are property or rights and are not designated as Primary Franchise Assets.
- 1.2 For the purposes of Section 27(3) of the Act, the Secretary of State consents to the Franchisee:
- (a) transferring or agreeing to transfer any such Franchise Assets or any interests in, or right over, any such Franchise Assets; and
 - (b) creating or extinguishing, or agreeing to create or extinguish, any interest in, or right over, any such Franchise Assets.

2. Liabilities not Designated as Primary Franchise Assets

- 2.1 This paragraph 2 relates to any liabilities which are not designated as Primary Franchise Assets.
- 2.2 For the purposes of Section 27(3) of the Act, the Secretary of State consents to the Franchisee entering into any agreement under which any such liability is released or discharged, or transferred to another person.

3. Franchise Assets and Primary Franchise Assets

- 3.1 This paragraph 3 relates to Franchise Assets (whether or not designated as Primary Franchise Assets) which are property or rights.
- 3.2 The Secretary of State hereby consents to the installation of Spares which have been designated as Primary Franchise Assets on any rolling stock vehicles. Any Spare which is so installed shall cease to be so designated on such installation.
- 3.3 For the purposes of Section 27(3) of the Act, the Secretary of State hereby consents to the Franchisee creating or agreeing to create any Security Interest over any of these Franchise Assets to the extent that the terms of any such Security Interest provided that:
- (a) if the relevant Franchise Asset becomes the subject of a transfer scheme made under Section 12 and Schedule 2 of the Railways Act 2005, it shall be fully and automatically released from the relevant Security Interest immediately before the coming into force of such transfer scheme;
 - (b) if the relevant Franchise Asset is assigned, novated or otherwise transferred to another person pursuant to and in accordance with the Franchise Agreement, it shall be fully and automatically released from the relevant Security Interest immediately before such assignment, novation or transfer; and

- (c) such Security Interest shall not be enforced or enforceable until the date on which such Franchise Asset ceases to be designated as a Franchise Asset.

4. Prohibition on Other Security Interests

The Franchisee shall not create or agree to create a Security Interest over any Franchise Asset except on the terms permitted under paragraph 3.3.

5. Miscellaneous

The Franchisee shall promptly inform the Secretary of State of any Security Interest arising at any time over any of its property or rights and shall provide the Secretary of State with such information in relation thereto as he may reasonably require.

SCHEDULE 15

Obligations Associated with Termination

Schedule 15.1:	Reletting Provisions
Schedule 15.2	Last 12 or 13 Months of Franchise Period
Schedule 15.3	Handover Package
	Appendix: Form of Handover Package
Schedule 15.4	Provisions Applying on and after Termination
	Appendix 1: Form of Transfer Scheme
	Appendix 2: Form of Supplemental Agreement

SCHEDULE 15.1**Reletting Provisions****1. Reletting of Franchise**

- 1.1 The Franchisee acknowledges that the Secretary of State may wish, at or before the expiry of the Franchise Period, either to invite persons to tender for the right to provide all or some of the Passenger Services under a franchise agreement or alternatively to enter into a franchise agreement in respect of the Passenger Services without having gone through a tendering process.
- 1.2 The Franchisee further acknowledges that the Secretary of State has in certain circumstances a duty under Section 30 of the Act to secure the continued provision of the Passenger Services on expiry or termination of the Franchise Agreement. The Franchisee accordingly accepts and agrees to the restrictions and obligations imposed on it under

- 1.3 SCHEDULE 1.6 (Franchise Services), Schedule 14 (Preservation of Assets) and this Schedule 15.1.

2. Preparation for Reletting

- 2.1 The Franchisee shall, if so requested by the Secretary of State:

- (a) provide the Secretary of State and his representatives and advisers with access to officers, the Franchise Employees and all books, records and other materials kept by or on behalf of the Franchisee in connection with the Franchise Services (including electronic or magnetic records, any CRM System and any Yield Management System) for the purpose of assisting such representatives and advisers:
 - (i) to prepare reports or other documents in connection with any invitation to potential Successor Operators to tender for the right and obligation to operate all or any of the Franchise Services;
 - (ii) to prepare invitations to other potential franchisees to tender for the right and obligation to provide any other railway passenger services or operate any other additional railway asset; or
 - (iii) to enter into any franchise agreement or other agreement (including any agreement entered into by the Secretary of State in fulfilment of his duties under section 30 of the Act) relating to the Franchise Services, without undergoing a tendering process,

provided that the exercise of such access rights by the Secretary of State and his representatives and advisers shall not unduly interfere with the continuing provision and operation of the Franchise Services by the Franchisee.

- 2.2

- (a) The Franchisee shall make available to the Secretary of State and his representatives and advisers such Data Site Information (as defined at paragraph (e)) as they shall reasonably require in connection with the matters referred to in paragraph 2.1.
- (b) The Franchisee shall prepare and present such information in such manner (including in disaggregated form) as the Secretary of State may require, and shall provide such assistance as the Secretary of State may require in connection with the verification of such information.
- (c) The Franchisee shall provide such confirmation in relation to the accuracy of:
 - (i) the contents of the documents referred to in paragraph 2.1; and

- (ii) any Data Site Information uploaded to such electronic data site as the Secretary of State may require pursuant to paragraph 2.2 (d),

in each case, as the Secretary of State shall require from time to time.

- (d) The Franchisee shall upload such Data Site Information as the Secretary of State may require to such electronic data site as he may specify and shall make a sufficient number of appropriate staff available for that purpose. The Franchisee shall ensure that such staff are trained in the use of such data site (such training to be at the expense of the Secretary of State). For the avoidance of doubt, the Data Site Information required by the Secretary of State under this paragraph may cover the entire Franchise Period or any part of it.
- (e) "**Data Site Information**" means information relating to any of the following:
 - (i) the Franchise or the Franchisee, any Affiliate of the Franchisee or their respective businesses (including their audited and management accounts, asset registers and contract lists);
 - (ii) past and present demand for the Franchise Services or any similar services (including passenger count data, Yield Management Data and CRM Data);
 - (iii) information required to be provided by the Franchisee pursuant to

- (iv) SCHEDULE 1.5 (Information about Passengers);
- (v) the total revenue (being all revenue whatsoever from any source obtained from any commercial or non-commercial activity or undertaking of the Franchisee) received or which the Franchisee expects to receive during the Franchise Period;
- (vi) the Franchisee's safety authorisation, safety certificate or safety management system (in each case as defined in the Safety Regulations);
- (vii) any other safety matter;
- (viii) the arrangements contained within the Railways Pension Scheme, the Pension Trust, the Franchise Section[s], or any other pension arrangement in respect of employees of the Franchisee or employees of any person who was a franchisee or franchise operator in relation to a Previous Franchise Agreement;
- (ix) the management structure of the Franchisee's business (including organograms and any planned changes);
- (x) employees and contractors (including details of responsibilities, job title, remuneration, grade, qualifications and any other personnel records);
- (xi) terms and conditions of employment and human resources policies;
- (xii) public and working timetables;
- (xiii) driver, other train crew and rolling stock diagrams;
- (xiv) rolling stock (including train and vehicle miles, restrictions of use, fleet examinations and servicing, fleet performance, casualty data and any relevant reports);
- (xv) any station (including any leases, documents of title, maintenance arrangements, station facilities, plans and contingency or security plans relating to any station);
- (xvi) health and safety, and environmental information;
- (xvii) copies of contracts (including Access Agreements, policies of insurance, property, rolling stock and other leases, catering contracts, contracts for outsourced services, and rolling stock maintenance and spares contracts);
- (xviii) the Infrastructure Manager charges and requirements (including rules of the route/plan);
- (xix) any information technology system (hardware or software) used or owned by the Franchisee or any Affiliate of the Franchisee (including any software licences);

- (xx) performance data;
- (xxi) customer service (including staffing levels, call volumes and opening hours);
- (xxii) fares and fares baskets;
- (xxiii) relationships with stakeholders (including minutes of meetings with unions, passenger transport executives, combined authorities, local authorities or Transport for London); or
- (xxiv) any other matter which the Secretary of State may specify from time to time,

and in this paragraph (e) the term "employee" includes any person engaged by the Franchisee pursuant to a contract of personal service.

- (f) The Franchisee shall:
- (i) comply with its obligations under paragraph 2.1 or this paragraph 2.2 promptly and in any case in accordance with any reasonable timetable with which the Secretary of State requires the Franchisee by notice in writing to comply; and
 - (ii) where the Secretary of State raises with the Franchisee any query in relation to any Data Site Information, make a full and substantive response to such query within five working days. Such response shall include any further information requested by the Secretary of State in relation to such query; and
 - (iii) nominate a person to whom:
 - (A) all queries or requests for information pursuant to paragraph 2.2(f)(ii);
 - (B) requests for access to premises pursuant to paragraph 4; and
 - (C) requests for access to employees,

shall be addressed and who shall be personally responsible for complying with any such queries or requests for information and such requests for access to employees and premises. The Franchisee shall notify the Secretary of State (his representatives and advisers) of the name and contact details of such person.

- 2.3 In connection with any proposal (whether or not yet finalised) to enter into separate franchise agreements and/or other agreements with more than one Successor Operator, each relating to some only of the Franchise Services (whether or not together with other railway passenger services) at or following the end of the Franchise Period, the Franchisee agrees and acknowledges that the Secretary of State may require:

- (a) that the Franchisee provides the Secretary of State with additional information and reports and analysis in respect of such Service Groups as the Secretary of State may specify. This may include:
 - (i) information relating to the operational and financial performance of the Franchisee in relation to such Service Groups; and
 - (ii) identification of those employees, assets and liabilities which relate to such Service Groups together with an indication of the extent to which the same are shared between the operation of different Service Groups; and
- (b) subject to paragraph 2.4, that the Franchisee reorganises the business of providing the Franchise Services in order to facilitate the transfer anticipated by this Schedule 15.1 on an ongoing basis of the business of providing the Franchise Services within each of such Service Groups to separate Successor Operators. This may include, to the extent reasonably practicable:
 - (i) the re-organisation of personnel such that an appropriate number of employees (having sufficient skills, qualifications and experience) will transfer by operation of Law to each Successor Operator of each such Service Group; and/or
 - (ii) entering into additional or clarificatory contractual or other arrangements so that the Successor Operator of each such Service Group will have the necessary assets and rights to operate the Franchise Services within that Service Group; and
- (c) that the Franchisee uploads Data Site Information to more than one data site.

2.4 Subject to paragraph 2.5, the Secretary of State shall reimburse any reasonable out-of-pocket expenses that the Franchisee may incur in complying with its obligations under this paragraph 2.

2.5 Without prejudice to any other rights the Secretary of State may have (under the Franchise Agreement or otherwise) in respect of any contravention by the Franchisee of its obligations under this paragraph 2, if the Secretary of State is of the reasonable opinion that the Franchisee does not have sufficient resources to enable its compliance with its obligations under this paragraph 2 he may:

- (a) require the Franchisee (at its own cost) to employ; or
- (b) after notification to the Franchisee, employ,

such suitable additional resource as may be required to ensure that the Franchisee can comply with its obligations under this paragraph 2. The Franchisee shall reimburse to the Secretary of State, by way of adjustment to Franchise Payments, any proper costs (including staff costs) incurred by him in the employment of any such additional resource pursuant to paragraph 2.5(b).

2.6 To the extent reasonably practicable, prior to taking any of the actions referred to in paragraph 2.5, the Secretary of State shall allow the Franchisee a reasonable opportunity to make representations to him concerning the exercise

by the Secretary of State of his rights under paragraph 2.5 but the Secretary of State shall not be obliged by those representations to refrain from exercising any of the actions specified under paragraph 2.5.

3. Non-Frustration of Transfer to Successor Operator

- 3.1 The Franchisee shall take no action or steps which is or are designed, directly or indirectly:
- (a) to prevent, prejudice or frustrate the transfer as a going concern of the business of providing the Franchise Services at the end of the Franchise Period to a Successor Operator; or
 - (b) to avoid, frustrate or circumvent any provision of the Franchise Agreement (including in particular the provisions of Schedule 14 (Preservation of Assets) and this Schedule 15.1) which is included in whole or in part for the purpose of preventing any such preventive, prejudicial or frustrating action or steps.
- 3.2 Subject to the restrictions set out in paragraph 3.1 and the other provisions of the Franchise Agreement, the Franchisee may take such action as it may require for the purposes of bidding to become, or becoming, a Successor Operator.

4. Inspection Rights at premises used for the provision of the Franchise Services

- 4.1 Without limiting any other rights of the Secretary of State under the Franchise Agreement and subject to paragraph 4.2, the Franchisee shall, if so requested by the Secretary of State, permit the Secretary of State (or his nominee, which for these purposes shall include potential Successor Operators, including potential bidders who have expressed an interest in tendering for the right and obligation to operate any or all of the Franchise Services) to have such access to premises owned or occupied by the Franchisee or any of its Affiliates (including Stations and Depots and which for these purposes shall include any premises used in connection with the provision of the Franchise Services by the Franchisee or any of its Affiliates) as the Secretary of State may reasonably require in connection with any Tendering/Reletting Process including for the purposes of inspecting such premises (including the taking of inventories) and undertaking such surveys as may be necessary or desirable for the purposes of ascertaining the condition of any such premises.
- 4.2 The Secretary of State shall use reasonable endeavours to ensure that any access rights required pursuant to paragraph 4.1 shall be undertaken so as not to unduly interfere with the continuing provision and operation of the Franchise Services by the Franchisee.

SCHEDULE 15.2**Last 12 or 13 Months of Franchise Period and other conduct of business provisions****1. Last 12 or 13-Month Period**

- 1.1 Where reference is made in the Franchise Agreement to the last 12 or 13 months of the Franchise Period, such period shall be deemed to commence on the earliest of the following dates:
- (a) the date which is 12 or 13 months, as the case may be, prior to the Expiry Date or if the actual date of expiry of the Franchise Period is known the date which is 12 or 13 months prior to that date;
 - (b) the date on which the Secretary of State notifies the Franchisee that such period of 12 or 13 months shall be deemed to commence on the grounds that the Secretary of State reasonably considers that an Event of Default may occur within the following 12 months; or
 - (c) the date on which the Secretary of State notifies the Franchisee that such period of 12 or 13 months shall be deemed to commence on the grounds that the Secretary of State considers it reasonably likely that the Franchise Agreement will be terminated by agreement between the parties within such period.
- 1.2 Any such period (which may be longer or shorter than 12 or 13 months, as the case may be) shall expire on the Expiry Date or, if earlier:
- (a) in the case of periods commencing under paragraph 1.1(b) or (c), the date falling 12 or 13 months after the date of any notice under paragraph 1.1(b) or (c); or
 - (b) such earlier date as the Secretary of State may determine.

2. Franchise Employees**Terms of Employment of Existing Employees**

- 2.1 The Franchisee shall not, and shall secure that each other relevant employer shall not, without the prior consent of the Secretary of State (which shall not be unreasonably withheld), vary or purport or promise to vary the terms or conditions of employment of any Franchise Employee (in particular, the Franchisee shall not promise to make any additional payment or provide any additional benefit or vary any term or condition relating to holiday, leave or hours to be worked) where such variation or addition:
- (a) takes effect in the last 12 months of the Franchise Period unless it is in the ordinary course of business and, when aggregated with any other variation or addition which takes effect during such period, represents an increase in the remuneration of a Franchise Employee of no more than the amount determined in accordance with the following formula:

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

where:

MAWE is the change in the Average Weekly Earnings between March in the preceding 12 months and the corresponding March one year before, expressed as a percentage;

JAWE is the change in the Average Weekly Earnings between June in the preceding 12 months and the corresponding June one year before, expressed as a percentage;

SAWE is the change in the Average Weekly Earnings between September in the preceding 12 months and the corresponding September one year before, expressed as a percentage; and

DAWE is the change in the Average Weekly Earnings between December in the preceding 12 months and the corresponding December one year before, expressed as a percentage;

- (b) wholly or partly first takes effect after the end of the Franchise Period;
- (c) results in any such employment not being terminable by the Franchisee or other relevant employer within six months of the expiry of the Franchise Period;
- (d) relates to a payment or the provision of a benefit triggered by termination of employment;
- (e) relates to the provision of a benefit (excluding base salary) which any such employee will or may have a contractual right to receive after the expiry of the Franchise Period; or
- (f) prevents, restricts or hinders any such employee from working for a Successor Operator or from performing the duties which such employee performed for the Franchisee.

It is agreed that the Franchisee will be permitted to make:

- (i) a decrease in the remuneration of any Franchise Employee that takes effect in the last 12 months of the Franchise Period without first obtaining the consent of the Secretary of State in circumstances where such decrease is in the ordinary course of business and when aggregated with any other variation which takes effect during such period, represents a decrease in the remuneration of a Franchise Employee of no more than the amount determined in accordance with the formula contained in paragraph 2.1(a) where a calculation pursuant to such formula gives rise to a negative percentage. In any other circumstances the prior consent of the Secretary of State will be required to any decrease in the remuneration of a Franchise Employee in the last 12 months of the Franchise Period; and/or
- (ii) an increase in the remuneration of any Franchise Employee that takes effect in the last 12 months of the Franchise Period without first

obtaining the consent of the Secretary of State ⁴⁸⁴.

- 2.2 Without limiting the foregoing, the Franchisee shall consult the Secretary of State as soon as reasonably practicable in any circumstances in which the Secretary of State's consent under paragraph 2.1 may be required. Further, it shall always be deemed to be reasonable for the Secretary of State to withhold his consent to a variation or addition which is prohibited without such consent under paragraph 2.1(a) provided the Secretary of State:
- (a) makes an overall increase in Franchise Payments equal to the amount of the direct net losses suffered by the Franchisee on the days when the Passenger Services are affected by Industrial Action taken by the Franchise Employees which is a consequence of a refusal by the Secretary of State to agree to the variation or addition; and
 - (b) agrees that, to the extent that the Franchisee would otherwise be in contravention of the Franchise Agreement as a consequence of the Industrial Action referred to in this paragraph 2.2, no such contravention shall have occurred, save where such contravention relates to safety requirements.
- 2.3 The expression "promise to vary" when used in paragraph 2.1 includes any offer or indication of willingness to vary (whether or not such offer or willingness is made conditional upon obtaining the Secretary of State's consent).

Terms of Employment of New Employees

- 2.4 The Franchisee shall not, and shall secure that each other relevant employer shall not, without the prior consent of the Secretary of State (which shall not be unreasonably withheld), create or grant, or promise to create or grant, terms or conditions of employment for any Franchise Employee where the employment of such Franchise Employee by the Franchisee or such other relevant employer may commence on or after the Start Date if and to the extent that:
- (a) such terms or conditions are, in the reasonable opinion of the Franchisee, materially different from the terms or conditions of employment of equivalent or nearest equivalent Franchise Employees at the date on which such employment is scheduled to commence; and
 - (b) if such terms or conditions were granted to such equivalent Franchise Employees already employed by the Franchisee by way of variation to their terms or conditions of employment, the Franchisee would be in contravention of paragraph 2.1.

Changes in Numbers and Total Cost of Employees

- 2.5 Subject to and excluding any increase in the remuneration of Franchise Employees permitted under paragraph 2.1, the Franchisee shall not, and shall secure that each other relevant employer shall not, without the prior written consent of the Secretary of State (which shall not be unreasonably withheld)

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

increase or decrease in the last 12 months of the Franchise Period the number of Franchise Employees such that:

- (a) the total number of Franchise Employees or the total cost per annum to the Franchisee and each other relevant employer of employing all Franchise Employees is increased; or
- (b) the total number of Franchise Employees is decreased,

in each case, by more than five per cent during such period of 12 months provided that where the last 12 months or 13 months of the Franchise Period has been deemed to have commenced under paragraph 1.1 and the period of the restriction contemplated by this paragraph 2.5 lasts longer than 12 months such restriction shall apply in respect of the longer period.

3. Fares

Reduction in Prices of Fares

3.1

- (a) During the last 13 months of the Franchise Period the Franchisee shall not, without the prior written consent of the Secretary of State (not to be unreasonably withheld), set the Price or Child Price of or sell (except to the extent required to do so under the terms of the Ticketing and Settlement Agreement as a result of the Price or Child Price of a Fare being set by another person) any Fare which would entitle the purchaser of such Fare to travel on all or any of the Passenger Services after the Franchise Period for an amount which is less than the Price or the Child Price of that Fare immediately before the commencement of such 13-month period or, in the case of a new Fare, the Price of its nearest equivalent immediately before the commencement of such period.
- (b) Paragraph 3.1(a) shall not prevent the Franchisee from giving any discount or reduction to which the purchaser of a Fare may be entitled by virtue of:
 - (i) presenting a Discount Card (or any equivalent replacement thereof) issued by the Franchisee before the commencement of such 13-month period and to which the purchaser would have been entitled before the commencement of such period;
 - (ii) presenting a Discount Card issued by another train operator;
 - (iii) the Passenger's Charter or the passenger's charter of any other train operator; or
 - (iv) any relevant conditions of carriage.
- (c) The Franchisee shall procure that persons acting as its agent (except persons acting in such capacity by virtue of having been appointed under Parts II to VI of Chapter 9 of the Ticketing and Settlement Agreement or by being party to the Ticketing and Settlement Agreement) shall comply with the provisions of paragraph 3.1(a) to

the extent that such provisions apply to the selling of Fares by the Franchisee.

Percentage Allocations

3.2

- (a) Except to the extent that the Secretary of State may consent from time to time (such consent not to be unreasonably withheld), the Franchisee shall not, in the last 13 Reporting Periods of the Franchise Period, take any action or step which may result in its Percentage Allocation (as defined in the Ticketing and Settlement Agreement) in respect of any Rail Product (as defined in the Ticketing and Settlement Agreement) being reduced.
- (b) The Franchisee shall notify the Secretary of State before taking any such action or step in the last 13 Reporting Periods of the Franchise Period and upon becoming aware of any other person proposing to take any action or step which may have the same effect. The Franchisee shall take such action as the Secretary of State may reasonably request in order to prevent any such reduction, including submitting any dispute to any relevant dispute resolution procedures.

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

3.3

- (a) It is acknowledged that the Franchisee will make available for sale prior to the end of the Franchise Period Advance Purchase Train-specific Fares which are valid for travel after the end of the Franchise Period.
- (b) In making such Advance Purchase Train-specific Fares available for purchase the Franchisee shall not change its commercial practice in terms of the number of such Advance Purchase Train-specific Fares made available or the Passenger Services on which they are valid for use when compared with its previous commercial practice in respect of Advance Purchase Train-specific Fares valid for travel prior to the end of the Franchise Period.
- (c) The Franchisee will be permitted to take into account reasonable seasonal factors in determining its previous commercial practice. In assessing reasonableness, account will be taken of the Franchisee's practice in addressing such seasonal factors in the corresponding period in the previous year.

4. Inter-Operator Schemes

Voting on Scheme Councils

4.1 Subject to paragraph 4.3, during the last 12 months of the Franchise Period the Franchisee shall give the Secretary of State reasonable notice of:

- (a) any meeting of:

- (i) a scheme council of an Inter-Operator Scheme on which the Franchisee is represented; or
 - (ii) a scheme management group of any Inter-Operator Scheme:
 - (A) in which the Franchisee has a permanent position; or
 - (B) where the Franchisee employs a member of such group;
 - (b) the resolutions to be voted upon at any such meeting; and
 - (c) the Franchisee's voting intentions.
- 4.2 Subject to paragraph 4.3, the Franchisee shall vote at any such meeting in the manner required by the Secretary of State.

Successor Operator

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

SCHEDULE 15.3**Handover Package****1. Handover Package Status**

- 1.1 The Franchisee shall:
- (a) on or before the Start Date, provide to the Secretary of State:
 - (i) the Handover Package; and
 - (ii) a letter in a form approved by and addressed to the Secretary of State confirming the details of any insurer providing insurance to the Franchisee and authorising the insurer (and any relevant broker) to release any insurance-related information to any of the Secretary of State, a Successor Operator or its agent on demand;
 - (b) maintain the Handover Package and update it at least every three Reporting Periods; and
 - (c) in respect of the information required pursuant to paragraph 1.1(a)(ii), supply revised information and/or letters to the Secretary of State as and when required in order to ensure that such information and letters remain accurate and up to date.
- 1.2 The Franchisee shall ensure that any Successor Operator will have immediate access to the Handover Package on the expiry of the Franchise Period.
- 1.3 The Franchisee shall also ensure that the Key Contacts List is provided to the Secretary of State within 24 hours of the receipt of any Termination Notice.

2. Director's Certificate

Once in each Franchisee Year, the Franchisee shall provide to the Secretary of State a certificate signed by a nominated and duly authorised director of the Franchisee, addressed to the Secretary of State, which confirms that the Handover Package contains the information and objects specified in the Appendix (Form of Handover Package) to this Schedule 15.3 and that such information is accurate as at the date of the certificate.

APPENDIX TO SCHEDULE 15.3**Form of Handover Package****1. Property**

A list of all property owned, leased, operated or occupied by the Franchisee which shall include the address and contact telephone number of each property. Where applicable, the list will also include the name, address and telephone number of the lessor and/or the party which has granted authority to use or occupy the property, and any relevant reference numbers applicable to that lease or occupation.

2. Contracts

A printed or electronic list (in a format acceptable to the Secretary of State) of all contracts (sales, purchases or otherwise including leases and licences) between the Franchisee and the counterparty or counterparties to each such contract, showing the name, address and telephone number of each counterparty; the contract reference number of the Franchisee and each counterparty (if any); and the contract price/value, term and expiry date. This requirement shall apply to all contracts unless otherwise agreed by the Secretary of State.

3. Systems

A list of the electronic systems in use by the Franchisee, together with the name, office address and telephone number of the Franchisee's Information Technology Manager (or the holder of any equivalent post) who is responsible for administration of each such system.

4. Daily Operations

A printed or electronic list (in a format acceptable to the Secretary of State) of all assets owned or operated by the Franchisee, together with their location.

5. Insurance

A list of the names, addresses and telephone numbers of all insurers and any relevant broker providing insurance to the Franchisee, together with the relevant policy numbers and other references and details of any outstanding claims or unresolved disputes.

SCHEDULE 15.4**Provisions Applying on and after Termination****1. Novation of Access Agreements on Termination of the Franchise Agreement**

- 1.1 The Franchisee shall, to the extent so requested by the Secretary of State on termination of the Franchise Agreement, in relation to any Access Agreement to which it is a party, novate its interest under any relevant Access Agreement (and any related Collateral Agreement) to the Secretary of State or as he may direct.
- 1.2 Such obligation to novate shall be subject to the agreement of any counterparty to such Access Agreement or Collateral Agreement and, to the extent applicable, the ORR.
- 1.3 Such novation shall be on such terms as the Secretary of State may reasonably require, including:
- (a) that the Franchisee shall not be released from any accrued but unperformed obligation, the consequences of any breach of the relevant agreement which is the subject of arbitration or litigation between the parties or any liability in respect of any act or omission under or in relation to the relevant agreement prior to, or as at the date of, any such novation (except to the extent that the Secretary of State or his nominee agrees to assume responsibility for such unperformed obligation, such liability or the consequences of such breach in connection with the relevant novation); and
 - (b) that neither the Secretary of State nor his nominee shall be obliged, in connection with such novation, to agree to assume responsibility for any unperformed obligation, liability or consequences of a breach referred to in paragraph 1.3(a),

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

- 1.4 The Franchisee shall, on the occurrence of any of the circumstances specified in paragraph 1.1 in relation to any other Train Operator who is a party to an Access Agreement to which the Franchisee is also party, agree to the novation of the relevant Train Operator's interest under the relevant Access Agreement to the Secretary of State or as he may direct, subject, to the extent applicable, to the consent of the ORR. The provisions of paragraph 1.3 shall apply to any such novation.
- 1.5 The Franchisee shall notify the Secretary of State on becoming aware of any circumstances which might lead to the Secretary of State being able to require the Franchisee to novate its interest or agree to the novation of another Train Operator's interest under this paragraph 1.

2. Co-Operation with Successor Operator

- 2.1 In order to ensure the continuity of, and an orderly handover of control over, the Franchise Services, the Franchisee shall co-operate with:
- (a) where a Successor Operator has been appointed, such Successor Operator; or
 - (b) where a Successor Operator has not been so appointed, the Secretary of State,

and shall take such steps as may be reasonably requested by the Secretary of State in connection therewith.

- 2.2 In satisfaction of its obligations under paragraph 2.1, the Franchisee shall:
- (a) not used;
 - (b) make appropriately skilled and qualified Franchise Employees reasonably available to attend such meetings with the Secretary of State, the Successor Operator, the Infrastructure Manager, any rolling stock lessor and/or and other relevant third party as are reasonably required in order to determine:
 - (i) those actions that are required in order to facilitate such continuity and orderly handover, in particular those actions arising under, but not limited to, the following agreements:
 - (A) Access Agreements;
 - (B) Property Leases;
 - (C) agreements in relation to Shared Facilities;
 - (D) Rolling Stock Leases;
 - (E) Rolling Stock Related Contracts;
 - (F) any other Key Contract; and
 - (ii) without prejudice to the Secretary of State's rights under this Schedule 15.4, those rights and liabilities as may be specified in any Transfer Scheme.

3. Transfer of Primary Franchise Assets

Option Arrangements

- 3.1
- (a) The Secretary of State hereby grants to the Franchisee the right to require the Secretary of State to make, and the Franchisee hereby grants to the Secretary of State the right to make, a Transfer Scheme in accordance with Section 12 and Schedule 2 of the Railways Act 2005 for the transfer of any or all Primary Franchise Assets on the expiry of the Franchise Period.

- (b) On or within 14 days before the expiry of the Franchise Period:
 - (i) either party may serve notice on the other party specifying the Primary Franchise Assets to be transferred; and
 - (ii) the other party may (within such timescale) serve a subsequent notice specifying any additional Primary Franchise Assets to be transferred.
- (c) The Secretary of State may (and shall if required by the Franchisee) make one or more such Transfer Schemes for the transfer of the Primary Franchise Assets which are, in accordance with Schedule 14.4 (Designation of Franchise Assets), de-designated as such prior to the end of the Franchise Period).
- (d) Any Franchise Assets or Primary Franchise Assets which are not so transferred shall cease to be designated as such 14 days after service of such notice.

Supplemental Agreement

- 3.2 Without prejudice to the duties, powers, rights and obligations of the Secretary of State under the Railways Act 2005 in respect of any Transfer Scheme, any Transfer Scheme shall impose on the Franchisee and the transferee an obligation to enter into an agreement substantially in the form of the Supplemental Agreement which shall provide for the determination of amounts to be paid in respect of the property, rights and liabilities which are transferred under such Transfer Scheme. The Franchisee shall enter into any such Supplemental Agreement and shall comply with its obligations thereunder.

Payment of Estimated Transfer Price

3.3

- (a) The Secretary of State may require the Franchisee to pay to any transferee under a Transfer Scheme, or may require any such transferee to pay to the Franchisee, on the day on which the Transfer Scheme comes into force such sum as the Secretary of State may determine should be so paid having regard to:
 - (i) his estimate of the sum likely to be paid under the relevant Supplemental Agreement in respect of the Primary Franchise Assets being transferred under the relevant Transfer Scheme;
 - (ii) his estimate of any other sums likely to be paid thereunder;
 - (iii) the financial condition of the Franchisee and the transferee and whether any estimate so paid would be likely to be repaid, if in excess of the sums eventually payable thereunder; and
 - (iv) such other matters as the Secretary of State may consider appropriate.

- (b) The Franchisee shall pay to any such transferee the sum determined by the Secretary of State in accordance with paragraph 3.3(a) on the day on which the relevant Transfer Scheme comes into force.

Possession of Franchise Assets

- 3.4 On the coming into force of a Transfer Scheme, the Franchisee shall deliver up to the Secretary of State (or his nominee) possession of the Primary Franchise Assets transferred under such Transfer Scheme.

4. Associated Obligations on Termination

Assistance in Securing Continuity

4.1

- (a) In order to facilitate the continuity of the Franchise Services on expiry of the Franchise Period, the Franchisee shall take such steps, both before and after the expiry of the Franchise Period, as the Secretary of State may reasonably require, to assist and advise any Successor Operator in providing and operating the Franchise Services.
- (b) In particular, the Franchisee shall provide any Successor Operator with such records and information relating to or connected with the Franchise Services as the Secretary of State may reasonably require (other than confidential financial information but including all records relating to the Franchise Employees).

Access

- 4.2 On the expiry of the Franchise Period, the Franchisee shall grant the Secretary of State and his representatives such access as the Secretary of State may reasonably request to any property owned, leased or operated by the Franchisee at such time, for the purpose of facilitating the continued provision of the Franchise Services.

Key Contracts

4.3

- (a) The Franchisee shall provide such assistance to any Successor Operator as the Secretary of State may reasonably require in ensuring that, pursuant to any Direct Agreements, such Successor Operator may enter into (or enjoy the benefit of) contracts equivalent to the relevant Key Contracts (or part thereof).
- (b) In satisfaction of its obligations under paragraph 4.3(a), the Franchisee shall terminate, surrender, cancel or undertake not to enforce its rights under any Key Contract (or part thereof) provided that nothing in this paragraph shall require the Franchisee to undertake not to enforce any rights under a Key Contract relating to the period prior to the expiry of the Franchise Period.

Change of Name

- 4.4 The Franchisee shall cease to use any trade marks which are licensed to the Franchisee under any of the Brand Licences forthwith upon expiry of the Franchise Period and shall take all necessary steps to change any company name which incorporates any such marks as soon as practicable.

Property Leases

4.5

- (a) The Franchisee shall, on the expiry of the Franchise Period, if requested by the Secretary of State, assign its interest under all or any Property Leases to the Secretary of State or as he may direct, subject where applicable to the agreement of any other party to such Property Lease or the ORR.
- (b) Such assignment shall be on such terms as the Secretary of State may reasonably require, including:
- (i) that the Franchisee shall not be released from any accrued but unperformed obligation, the consequences of any antecedent breach of a covenant or obligation in the Property Leases or any liability in respect of any act or omission under or in relation to the Property Lease prior to, or as at the date of, any such assignment (except to the extent that the Secretary of State or his nominee agrees to assume responsibility for such unperformed obligation, such liability or the consequences of such breach in connection with the relevant assignment); and
 - (ii) that neither the Secretary of State nor his nominee shall be obliged, in connection with such assignment, to agree to assume responsibility for any unperformed obligation, liability or consequences of a breach referred to in paragraph 4.5(b)(i), and the Franchisee shall indemnify the Secretary of State or his nominee, as the case may be, on demand, on an after-tax basis against any costs, losses, liabilities or expenses suffered or incurred in relation thereto.
- (c) The Franchisee shall, on the occurrence of any of the circumstances specified in paragraph 4.5(a) in relation to any other Train Operator who is a party to a Property Lease to which the Franchisee is also party, agree to the assignment of such Train Operator's interest under the relevant Property Lease to the Secretary of State or as he may direct, subject, where applicable, to the consent of Network Rail or HS1 Limited (as applicable). The provisions of paragraph 4.5(b) shall apply to any such assignment.
- (d) The Franchisee shall notify the Secretary of State on becoming aware of any circumstances which might lead to the Secretary of State being able to require the Franchisee to assign its interest or agree to the assignment of another Train Operator's interest under this paragraph 4.

5. Actions required immediately on Handover

- 5.1 The Franchisee shall immediately on the expiry of the Franchise Period make available to the Secretary of State:
- (a) information as to the status of each purchase order or contract, including its award date, anticipated delivery date, confirmation of receipt of goods or services and the payment records for each purchase order, together with any matters in dispute with the appointed subcontractor and, to the extent that the Franchisee is a subcontractor to another Train Operator, equivalent information in respect of that Train Operator; and
 - (b) information concerning any contract necessary for the continued operation of the Franchise where a procurement or bidding process has been initiated.
- 5.2 The Franchisee agrees that the Secretary of State or his agents may have access to and use free of charge any information contained in any Computer System or in hard copy format as he sees fit (for the purposes of continuing the operation of the Franchise Services).

6. Maintenance Records

The Franchisee shall immediately on expiry of the Franchise Period provide to the Secretary of State:

- (a) records of the status of the maintenance of the rolling stock vehicles used in the provision of the Passenger Services;
- (b) records of the status of the maintenance of any lifting equipment;
- (c) a list of any deferred maintenance; and
- (d) records of the status of the maintenance of any depot or station which is a Franchise Asset,

including the extent of completion of examinations and the modification status of each such rolling stock vehicle

7. Ticketing Arrangements

The Franchisee shall provide immediately on expiry of the Franchise Period a statement certifying:

- (a) all ticketing transactions with the public or credit card agencies that are in process and not yet complete, together with any allocations on multi-modal travel with other agencies or local authorities;
- (b) the extent of any outstanding claims with ticketing settlement agencies;
- (c) refund arrangements (whether under the Passenger's Charter or not) with members of the public or other Train Operators or ticketing settlement agencies that are in process and not yet complete; and
- (d) commissions owed and/or due.

8. Franchisee's Intellectual Property

8.1

- (a) On the expiry of the Franchise Period, the Franchisee will grant to any Successor Operator licences of any intellectual property which:
 - (i) is owned by or licensed to the Franchisee;
 - (ii) was not owned by or licensed to it immediately prior to the Start Date;
 - (iii) has not been designated as a Primary Franchise Asset;
 - (iv) does not represent or constitute a Mark; and
 - (v) may, in the reasonable opinion of the Secretary of State, be necessary for any Successor Operator to operate the Franchise Services on an efficient and economic basis after the expiry of the Franchise Period.
- (b) When agreeing the terms on which intellectual property is to be licensed to it, the Franchisee shall use all reasonable endeavours to ensure that such terms include the right to sublicense such intellectual property in accordance with this paragraph 8.1. The Franchisee shall not enter into a licence that does not include such a provision without first obtaining the Secretary of State's prior written consent (such consent not to be unreasonably withheld).

8.2

- (a) Any such licence shall be granted to the relevant Successor Operator for such period as the Secretary of State may determine to be reasonably necessary for the purpose of securing continuity of the provision of the Franchise Services and shall be free of charge and royalty-free for a period of one month or less.
- (b) If such licence is for a period in excess of one month, the grant of the licence shall be subject to payment of a reasonable royalty (backdated to the expiry of the Franchise Period) on the basis of a willing licensor and licensee entering into a licence on comparable terms to similar licences of such intellectual property. If the Franchisee and the relevant Successor Operator are unable to agree such royalty, the Franchisee shall submit such dispute for resolution in accordance with such dispute resolution rules as the Secretary of State may require.

8.3 Any such licence shall be in such form as the Secretary of State shall reasonably determine and shall:

- (a) be non-exclusive and limited to use solely for the purposes of the provision and operation of the Franchise Services and will not provide for any right to use such intellectual property for any other purpose (including its marketing or exploitation for any other purpose);
- (b) be terminable on material breach by the Successor Operator;

- (c) contain an indemnity from the Franchisee to the effect that to the best of its knowledge and belief it owns the relevant intellectual property or has the right to license it and the licensing of it and the subsequent use of the intellectual property will not infringe any third party intellectual property rights; and
- (d) require the Successor Operator, to the extent that it relates to any trade marks, to use such trade marks in such manner as may reasonably be required by the Franchisee provided that it shall not be reasonable for the Franchisee to require any such trade mark to be used in a manner materially different from its use during the Franchise Period.

9. Information about Passengers

The Franchisee shall immediately on the expiry of the Franchise Period make available to the Secretary of State and/or his nominee:

- (a) passenger numbers information specified in paragraph 1 of
- (b) (Information about Passengers), in such format and to such level of disaggregation as the Secretary of State and/or his nominee may reasonably require;
- (c) the CRM Data and Yield Management Data.

10. ⁴⁸⁵The Parties shall use all reasonable endeavours to agree, no later than 28 September 2019, the transfer value for the DAC3 Assets for the purposes of paragraph 10 of the Schedule to the Supplemental Agreement, on the basis of a straightline depreciation of those DAC3 Assets over a 3 year period from the date of completion of each DAC3 Asset with a cost of funding no greater than LIBOR plus 1%, and all consequential adjustments to the Financial Model. Where such adjustments are agreed, each DAC3 Asset shall be designated by the Secretary of State as a Primary Franchise Asset (with a commitment not to de-designate) in accordance with paragraph 3 of Schedule 14.4 (Designation of Franchise Assets) and the depreciated value at the end of the Franchise Period shall be used for the purposes of paragraph 10 of the Schedule to the Supplemental Agreement.

11. ⁴⁸⁶If the Secretary of State notifies the Franchisee in writing that he is considering calling Priced Option 2, the Parties shall following such notification use all reasonable endeavours to agree, no later than [REDACTION⁴⁸⁷], or if earlier, the date on which Priced Option 2 is called a transfer value for the PO2 Assets for the purposes of paragraph 10 of the Schedule to the Supplemental Agreement and all consequential adjustments to the Financial Model and adjustments to payments under paragraph 30 of Schedule 6.1, on the basis of:

⁴⁸⁵ 13 June 2019 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

⁴⁸⁶ 13 June 2019 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

⁴⁸⁷ **05 August 2019 (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) a straightline depreciation of those PO2 Assets over a 3 year period from the date of completion of each PO2 Asset with a cost of funding no greater than LIBOR plus 1%; and
- (b) holding constant the risk to each of the parties in respect of the outcome of Priced Option 2.

Where such adjustments are agreed and Priced Option 2 is called (or deemed to have been called), then in accordance with such agreement, each PO2 Asset shall be designated by the Secretary of State as a Primary Franchise Asset (with a commitment not to de-designate) in accordance with paragraph 3 of Schedule 14.4 (Designation of Franchise Assets) the depreciated value at the end of the Franchise Period shall be used for the purposes of paragraph 10 of the Schedule to the Supplemental Agreement and all consequential adjustments to the Financial Model and adjustments under paragraph 30 of Schedule 6.1 shall be made. Where such adjustments are not agreed and Priced Option 2 is called (or deemed to have been called), then the effects on the Franchise Agreement of calling Priced Option 2 will remain as set out at paragraph 2.4 of Schedule 1 to the deed of amendment to the Franchise Agreement dated 13 June 2019.

APPENDIX 1 TO SCHEDULE 15.4

Form of Transfer Scheme

Dated _____ 20[•]

**TRANSFER SCHEME
OF
THE SECRETARY OF STATE FOR TRANSPORT
MADE PURSUANT TO SCHEDULE 2 OF THE RAILWAYS ACT 2005**

**IN FAVOUR OF
[SUCCESSOR OPERATOR]**

**IN RESPECT OF
CERTAIN PROPERTY, RIGHTS AND LIABILITIES
OF
[FRANCHISEE]**

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

TRANSFER SCHEME

Whereas:

- (A) [Franchisee] (the "**Transferor**") has been providing certain services for the carriage of passengers by railway and operating certain stations and light maintenance depots pursuant to a franchise agreement with the Secretary of State for Transport (the "**Secretary of State**") dated [_____] (the "**Franchise Agreement**").
- (B) The Franchise Agreement terminated or is to terminate on [_____] and [Successor Operator] (the "**Transferee**") is to continue the provision of all or part of such services or the operation of all or some of such stations and light maintenance depots under a new franchise agreement or in connection with the performance or exercise of the duties and powers of the Secretary of State to secure the provision of such services or the operation of such stations or light maintenance depots.
- (C) Certain property, rights and liabilities of the Transferor which were designated as franchise assets for the purpose of the Franchise Agreement are to be transferred to the Transferee under a transfer scheme made by the Secretary of State under Section 12 and Schedule 2 of the Railways Act 2005.

The Secretary of State, in exercise of the powers conferred on him by Schedule 2 of the Railways Act 2005, hereby makes the following scheme:

1. Definitions and Interpretation

In this Transfer Scheme functions has the meaning ascribed to it in the Railways Act 2005 and relevant enactment has the meaning ascribed to it in paragraph 6 of Schedule 2 of the Railways Act 2005.

2. Transfer of Property, Rights and Liabilities

With effect from [_____] the property, rights and liabilities of the Transferor specified or described in the Schedule shall be transferred to, and vest in, the Transferee.

3. Statutory Functions

Subject to any amendment to the relevant enactment which comes into force on or after the date on which this Transfer Scheme is made, there shall be transferred to the Transferee all the functions of the Transferor under any relevant enactments if and to the extent that any such relevant enactment:

- (a) relates to any property which is to be transferred by this Transfer Scheme; or
- (b) authorises the carrying out of works designed to be used in connection with any such property or the acquisition of land for the purpose of carrying out any such works.

4. Supplemental Agreement

Each of the Transferor and the Transferee shall enter into the Supplemental Agreement (as defined in the Franchise Agreement) on the coming into force of this Transfer Scheme.

This Transfer Scheme is made by the Secretary of State on [_____. ____].

THE CORPORATE SEAL
OF THE SECRETARY OF
STATE FOR TRANSPORT
IS HEREUNTO AFFIXED:



.....
Authenticated by authority of the
Secretary of State for Transport

SCHEDULE TO THE TRANSFER SCHEME

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

APPENDIX 2 TO SCHEDULE 15.4

Form of Supplemental Agreement

Dated _____ 20[•]

[OUTGOING FRANCHISEE]

and

[SUCCESSOR OPERATOR]

SUPPLEMENTAL AGREEMENT

to the transfer scheme dated [•] made
by the Secretary of State for Transport in respect of
certain property rights and liabilities of
[OUTGOING FRANCHISEE]

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

This Supplemental Agreement is made on [_____] 20[___]

BETWEEN

[OUTGOING FRANCHISEE] whose registered office is at [registered office] (the "**Transferor**"); and

[SUCCESSOR OPERATOR] whose registered office is at [registered office] (the "**Transferee**").

WHEREAS

- (A) The Transferor has been providing certain services and the carriage of passengers by railway and operating certain stations and light maintenance depots pursuant to a franchise agreement with the Secretary of State for Transport (the "**Secretary of State**") dated [_____] (the "**Franchise Agreement**").
- (B) The Franchise Agreement terminated or is to terminate on [_____] and the Transferee has been selected by the Secretary of State to continue the provision of all or part of such services pursuant either to a franchise agreement with the Secretary of State or arrangements made with the Secretary of State in connection with the Secretary of State's duties and powers.
- (C) Certain property, rights and liabilities of the Transferor are to be transferred to the Transferee pursuant to a transfer scheme made by the Secretary of State on [_____] under Section 12 and Schedule 2 of the Railways Act 2005 (the "**Transfer Scheme**").
- (D) This Agreement is supplemental to the Transfer Scheme and sets out certain terms between the Transferor and the Transferee in relation to the transfer of such property, rights and liabilities under the Transfer Scheme and the transfer of certain other property, rights and liabilities at the same time.

IT IS AGREED THAT

1. DEFINITIONS AND INTERPRETATION

Definitions

1.1 The following words and expressions shall have the following meaning:

"**Business**" means such of the undertaking or part of the undertaking of the Transferor prior to the Transfer Date as may be continued by the Transferee after the Transfer Date;

"**Credit**" has the meaning assigned to that term under the Ticketing and Settlement Agreement;

"**Debit**" has the meaning assigned to that term under the Ticketing and Settlement Agreement;

"**Estimated Completion Payment**" has the meaning ascribed to that term in clause 2.1;

"**Net Asset Statement**" means the statement to be drawn up pursuant to clause 2.2;

"Net Asset Value" means the aggregate of the amounts of the Relevant Franchise Assets, the Relevant Contract Liabilities, the Relevant Debits and Credits and the Relevant Employee Liabilities as shown in the Net Asset Statement agreed or determined pursuant to clause 2.2;

"Purchase Price" has the meaning ascribed to that term in clause 2.1;

"Relevant Contract Liabilities" means such rights and liabilities of the Transferor as may be transferred to the Transferee on the expiry of the Franchise Period in relation to any Licence, Access Agreement or Property Lease under paragraphs 1 and 4.5 of Schedule 15.4 (Provisions Applying on and after Termination) of the Franchise Agreement;

⁴⁸⁸**"Relevant DAC3 Assets" means:**

(a) the DAC 3 Assets; and

(b) the PO2 Assets;

"Relevant Debits and Credits" means such Debits and Credits of the Transferor which relate to Fares sold before the Transfer Date and which may be received by the Transferee as a result of clause 11 to 33 of the Ticketing and Settlement Agreement;

"Relevant Employee Liabilities" means such rights and liabilities of the Transferor (or any other relevant employer or person) under any contracts of employment relating to the Relevant Employees which have been or are to be transferred to the Transferee by virtue of the operation of Law (including the Transfer Regulations);

"Relevant Employees" means all persons employed in the Business immediately before the Transfer Date (whether employed by the Transferor or otherwise) whose contract of employment has been or is to be transferred to the Transferee by virtue of the operation of Law (including the Transfer Regulations) or any other person employed at any time in the Business in respect of whom liabilities arising from a contract of employment or employment relationship have or will be transferred by virtue of the operation of Law (including the Transfer Regulations);

"Relevant Franchise Assets" means such of the property, rights and liabilities that are legally or beneficially owned by the Transferor and which are or are to be transferred to the Transferee under the Transfer Scheme;

"Reporting Accountants" means such firm of accountants as may be selected by agreement between the parties within four weeks of the preparation of the Net Asset Statement or, in the absence of such agreement, selected by the Secretary of State upon the request of either party;

"Season Ticket Fare" means a Fare which entitles the purchaser to make an unlimited number of journeys in any direction during the period for which, and between the stations and/or the zones for which, such Fare is valid;

⁴⁸⁸ 13 June 2019 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

"Smart Ticketing Project" means the Project (as defined in the SEFT Deed) and the STNR Project;⁴⁸⁹

"Stored Credit Balance" means any monetary amount held by the Franchisee which a passenger can apply at a future date to the purchase of a Fare (stored in any medium);

"Taxation" comprises all forms of taxation, duties, contributions and levies of the United Kingdom whenever imposed and (except in so far as attributable to the unreasonable delay or default of the Transferee) all penalties and interest relating thereto;

"TOGC" has the meaning assigned to that term in clause 6.2;

"Transfer Date" means the date and, where relevant, the time on or at which the Transfer Scheme comes into force;

"Transfer Regulations" means the Transfer of Undertakings (Protection of Employment) Regulations 2006 (as amended, replaced or substituted from time to time);

"Transferring Assets and Liabilities" has the meaning assigned to that term in clause 2.1; and

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

"Upgraded SEFT Asset" means those tangible assets [REDACTED⁴⁹⁰] as part of the Smart Ticketing Project.⁴⁹¹

Construction and Interpretation

- 1.2 In this Agreement terms and expressions defined in the Franchise Agreement shall have the same meaning and the terms "contract of employment", "collective agreement", "employee representatives" and "trade union" shall have the same meanings respectively as in the Transfer Regulations.

2. Transfer Price

Amount and Payment

- 2.1 The price for the transfer of:
- (a) the Relevant Franchise Assets;
 - (b) the Relevant Contract Liabilities;
 - (c) the Relevant Debits and Credits; and
 - (d) the Relevant Employee Liabilities,

⁴⁸⁹ 06/12/2017 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

⁴⁹⁰ 29/01/2018 (Date of Redactions Approval) – Where text has been omitted from the document this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

⁴⁹¹ 06/12/2017 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

(together the "**Transferring Assets and Liabilities**") shall (subject to adjustment as expressly provided in this Agreement) be an amount equal to the Net Asset Value (the "**Purchase Price**"). The sum of £[amount], as determined under paragraph 3.3 of Schedule 15.4 (Provisions Applying on and after Termination) of the Franchise Agreement (the "**Estimated Completion Payment**") shall be paid in immediately available funds by the Transferor to the Transferee, or by the Transferee to the Transferor, as determined under paragraph 3.3 of Schedule 15.4 (Provisions Applying on and after Termination) of the Franchise Agreement, on the Transfer Date. On determination of the Purchase Price a balancing payment (if any) shall be made by the Transferor to the Transferee or the Transferee to the Transferor (as the case may be) in accordance with clause 2.5.

Net Asset Statement

- 2.2 The Transferee shall procure that, as soon as practicable and in any event not later than two months following the Transfer Date, there shall be drawn up a statement showing a true and fair view of the aggregate of the amount of each separate asset and liability of the Transferring Assets and Liabilities as at the Transfer Date.
- 2.3 The Net Asset Statement shall be:
- (a) drawn up in the manner described in the Schedule;
 - (b) prepared on such basis as would enable the Transferee's auditors, if so requested, to give an unqualified audit report thereon to the effect that it had been drawn up in accordance with the Schedule; and
 - (c) presented, initially as a draft, to the Transferor immediately following its preparation for review in conjunction with its auditors.
- 2.4 If the Transferor and the Transferee have failed to agree the Net Asset Statement within four weeks following such presentation, the matter shall be referred to the Reporting Accountants who shall settle and complete the Net Asset Statement as soon as practicable and shall determine the amount of the Net Asset Value as shown by the Net Asset Statement.

Adjustment of Price

- 2.5 If the Purchase Price exceeds or is less than the Estimated Completion Payment, the Transferee shall pay to the Transferor or, as the case may be, the Transferor shall pay to the Transferee, in either case within 14 days of the agreement or determination of the Net Asset Value, an amount equal to such excess or deficiency together in either case with interest thereon calculated from the Transfer Date at the Interest Rate.

3. References to the Reporting Accountants

Whenever any matter is referred under this Agreement to the decision of the Reporting Accountants:

- (a) the Reporting Accountants shall be engaged jointly by the parties on the terms set out in this Agreement and otherwise on such terms as shall be agreed, provided that neither party shall unreasonably (having regard, amongst other things, to the provisions of this Agreement) refuse its agreement to terms proposed by the

Reporting Accountants or by the other party. If the terms of engagement of the Reporting Accountants have not been settled within 14 days of their appointment having been determined (or such longer period as the parties may agree) then, unless one party is unreasonably refusing its agreement to those terms, such accountants shall be deemed never to have been appointed as Reporting Accountants, save that the accountants shall be entitled to their reasonable expenses under clause 3(d), and new Reporting Accountants shall be selected in accordance with the provisions of this Agreement;

- (b) if Reporting Accountants acting or appointed to act under this Agreement resign, withdraw, refuse to act, or are disqualified for any reason from performing their duties then, except as may be agreed between the parties, the parties shall appoint a replacement in accordance with the definition of Reporting Accountants;
- (c) the Reporting Accountants shall be deemed to act as experts and not as arbitrators;
- (d) the Reporting Accountants shall have power to allocate their fees and expenses for payment in whole or in part by any party at their discretion. If not otherwise allocated they shall be paid as to half by the Transferor and as to half by the Transferee;
- (e) each of the parties shall promptly on request supply to the Reporting Accountants all such documents and information as they may require for the purpose of the reference;
- (f) the decision of the Reporting Accountants shall (in the absence of objection on the grounds of any manifest error discovered within 14 days of the issue of their decision) be conclusive and binding (and in accordance with clause 3(g) below) and shall not be the subject of any appeal by way of legal proceeding or arbitration or otherwise; and
- (g) without prejudice to clauses 3(a) to 3(f) above, either party may, prior to or during the course of the reference to the Reporting Accountants, seek a declaration from the court on a relevant point of law, including but not limited to a point of legal interpretation. Upon such application for a declaration being issued and served all applicable time limits relative to the reference to the Reporting Accountant shall be stayed pending the outcome of such application (including any appeal). The Reporting Accountants are bound to make their determination in a manner consistent with the findings of the Court.

4. WARRANTY

The Transferor warrants and represents to the Transferee that the Relevant Contract Liabilities and the Relevant Franchise Assets are, to the extent they are

property or rights, transferring to the Transferee free and clear of all Security Interests.

5. INTEREST

If the Transferor or the Transferee defaults in the payment when due of any sum payable under this Agreement (whether determined by agreement or pursuant to an order of a court or otherwise) the liability of the Transferor or the Transferee (as the case may be) shall be increased to include interest on such sum from the date when such payment is due until the date of actual payment (after as well as before judgement) at a rate equal to the Interest Rate. Such interest shall accrue from day to day.

6. VALUE ADDED TAX

- 6.1 All amounts under this Agreement are expressed as exclusive of Value Added Tax where Value Added Tax is applicable.
- 6.2 The Transferor and the Transferee shall use all reasonable endeavours to secure that the transfer of the Transferring Assets and Liabilities is treated for Value Added Tax purposes as the transfer of a business as a going concern ("**TOGC**") and accordingly as neither a supply of goods nor a supply of services for the purposes of Value Added Tax.
- 6.3 If HM Revenue & Customs direct that the transfer of the Transferring Assets and Liabilities cannot be treated as a TOGC, the Transferor shall provide the Transferee with a copy of such direction within five days of receipt thereof by the Transferor.
- 6.4 The Transferee shall thereafter pay upon the receipt of a valid tax invoice the amount of any Value Added Tax which as a result of that direction may be chargeable on the transfer of the Transferring Assets and Liabilities. If the aforementioned direction was issued as a result of any action or inaction of the Transferee then the Transferee shall in addition to the Value Added Tax indemnify the Transferor for any penalties and interest that may be incurred upon receipt of such evidence from HM Revenue & Customs.
- 6.5 If the Transferee considers the direction issued by HM Revenue & Customs referred to in clause 6.3 to be incorrect then, without prejudice to the Transferee's obligation under clause 6.4 to pay to the Transferor the amount of any Value Added Tax which as a result such direction may be chargeable on the transfer of the Transferring Assets and Liabilities, the Transferee may, within 30 days of receipt of such direction by the Transferor, give notice to the Transferor that it requires the Transferor to appeal such direction. Upon requesting such an appeal the Transferee agrees to indemnify the Transferor for all reasonable costs that the Transferor may incur in taking such action upon receipt of evidence of those costs. If such an appeal is successful the Transferor agrees to reimburse the Transferee for such reasonable costs and penalties and interest to the extent that those costs have been reimbursed by HM Revenue & Customs.
- 6.6 If any amount paid by the Transferee to the Transferor in respect of Value Added Tax pursuant to this Agreement is subsequently found to have been paid in error the Transferor shall issue a valid tax credit note for the appropriate sum to the Transferee and promptly repay such amount to the Transferee.

- 6.7 If any amount is payable by the Transferor to the Transferee in respect of the transfer of the Relevant Franchise Assets, Relevant Contract Liabilities, Relevant Debits and Credits and Relevant Employee Liabilities pursuant to this Agreement, clauses 6.3 to 6.6 inclusive shall apply mutatis mutandis to such payment substituting Transferor for Transferee and vice versa.
- 6.8 The Transferor shall on the Transfer Date deliver to the Transferee such of those records referred to in Section 49 of the Value Added Tax Act 1994 as relate exclusively to the Business on condition that the Transferee undertakes to preserve those records in such manner and for such periods as may be required by law.
- 6.9 Subject to HM Revenue & Customs so permitting, all of the records referred to in Section 49 of the Value Added Tax Act 1994 relating to the Business (being the purchase records) shall be retained by the Transferor and the Transferor shall undertake to the Transferee to:
- (a) preserve those records in such manner and for such periods as may be required by law; and
 - (b) give the Transferee as from the Transfer Date reasonable access during normal business hours to such records and to take copies of such records.

7. EMPLOYEES

Transfer Regulations

- 7.1 The parties accept that, to the extent that the undertaking or part of the undertaking of the Transferor is continued by the Transferee after the Transfer Date, this Agreement and the transfer of the Business which is effected in connection with the Transfer Scheme are governed by the Transfer Regulations and the following provisions shall apply in connection therewith:
- (a) the contract of employment of each of the Relevant Employees (save insofar as such contract relates to any occupational pension scheme) shall be transferred to the Transferee with effect from the Transfer Date which shall be the "time of transfer" under the Transfer Regulations and the Transferee shall employ each such Relevant Employee on the terms of those contracts of employment (save insofar as such contract relates to any occupational pension scheme) with effect from the Transfer Date;
 - (b) the Transferor shall perform and discharge all its obligations in respect of all the Relevant Employees for its own account up to and including the Transfer Date including, without limitation, discharging all wages and salaries of the Relevant Employees, all employer's contributions to any relevant occupational pension scheme and all other costs and expenses related to their employment (including, without limitation, any Taxation, accrued holiday pay, accrued bonus, commission or other sums payable in respect of service prior to the close of business on the Transfer Date) and shall indemnify the Transferee and keep the Transferee indemnified against each and every action, proceeding, liability (including, without limitation, any Taxation), cost, claim, expense (including, without limitation, reasonable legal fees) or demand arising from the Transferor's failure so to discharge;

- (c) the Transferor shall indemnify the Transferee and keep the Transferee indemnified against each and every action, proceeding, cost, claim, liability (including, without limitation, any Taxation), expense (including, without limitation, reasonable legal fees) or demand which relates to or arises out of any act or omission by the Transferor or any other event or occurrence prior to the Transfer Date and which the Transferee may incur in relation to any contract of employment or collective agreement concerning one or more of the Relevant Employees pursuant to the provisions of the Transfer Regulations or otherwise including, without limitation, any such matter relating to or arising out of:
- (i) the Transferor's rights, powers, duties and/or liabilities (including, without limitation, any Taxation) under or in connection with any such contract of employment or collective agreement, which rights, powers, duties and/or liabilities (as the case may be) are or will be transferred to the Transferee in accordance with the Transfer Regulations; or
 - (ii) anything done or omitted before the Transfer Date by or in relation to the Transferor in respect of any such contract of employment or collective agreement or any Relevant Employee, which is deemed by the Transfer Regulations to have been done or omitted by or in relation to the Transferee save where the thing done or omitted to be done before the Transfer Date relates to the Transferee's failure to comply with its obligations referred to in clause 7.4;
- (d) if any contract of employment or collective agreement which is neither disclosed in writing to the Transferee by the Transferor prior to the Transfer Date nor made available to the Secretary of State under Schedule 15.3 (Handover Package) of the Franchise Agreement prior to the Transfer Date shall have effect as if originally made between the Transferee and any employee (the "**Undisclosed Employee**") or a trade union or employee representatives as a result of the provisions of the Transfer Regulations (without prejudice to any other right or remedy which may be available to the Transferee):
- (i) the Transferee may, upon becoming aware of the application of the Transfer Regulations to any such contract of employment or collective agreement terminate such contract or agreement forthwith;
 - (ii) the Transferor shall indemnify the Transferee against each and every action, proceeding, cost, claim, liability (including, without limitation, any Taxation), expense (including, without limitation, reasonable legal fees) or demand relating to or arising out of such termination and reimburse the Transferee for all costs and expenses (including, without limitation, any Taxation) incurred in employing such employee in respect of his employment following the Transfer Date; and
 - (iii) the Transferor shall indemnify the Transferee in respect of any Undisclosed Employee on the same terms mutatis

mutandis as the Transferor has indemnified the Transferee in respect of a Relevant Employee pursuant to the terms of clauses 7.1(b) and 7.1(c); and

- (e) the Transferor shall indemnify the Transferee and keep the Transferee indemnified against each and every action, proceeding, cost, claim, liability (including without limitation, any Taxation) expense (including, without limitation, reasonable legal fees) or demand which relates to or arises out of any dismissal (including, without limitation, constructive dismissal) by the Transferor of any employee (not being a Relevant Employee) and which the Transferee may incur pursuant to the provisions of the Transfer Regulations.

Transferee's Indemnities

7.2 The Transferee shall indemnify the Transferor and keep the Transferor indemnified against each and every action, proceeding, liability (including, without limitation, any Taxation), cost, claim, loss, expense (including reasonable legal fees) and demand arising out of or in connection with:

- (a) any substantial change in the working conditions of the Relevant Employees to his or her detriment or any of them occurring on or after the Transfer Date;
- (b) the change of employer occurring by virtue of the Transfer Regulations and/or the Franchise Agreement being significant and detrimental to any of the Relevant Employees;
- (c) the employment by the Transferee on or after the Transfer Date of any of the Relevant Employees other than on terms (including terms relating to any occupational pension scheme) at least as good as those enjoyed prior to the Transfer Date or the termination of the employment of any of them on or after the Transfer Date; or
- (d) any claim by any Relevant Employee (whether in contract or in tort or under statute (including the Treaty of the European Community or European Union and any Directives made under the Secretary of State of any such Treaty or any successor thereof)) for any remedy (including, without limitation, for unfair dismissal, redundancy, statutory redundancy, equal pay, sex or race discrimination) as a result of any act or omission by the Transferee after the Transfer Date.

7.3 The Transferee shall indemnify the Transferor and keep the Transferor indemnified against each and every action, proceeding, liability, cost, claim, loss, expense (including reasonable legal fees) and demand which arises as a result of it not providing or not having provided, in accordance with its obligations under the Transfer Regulations, the Transferor in writing with such information and at such time as will enable the Transferor to carry out its duties under Regulation 10(2)(d) and 10(6) of the Transfer Regulations concerning measures envisaged by the Transferee in relation to the Relevant Employees.

Details of Relevant Employees

7.4 The Transferor warrants to the Transferee that it has (to the extent not made available to the Secretary of State under Schedule 15.4 (Provisions Applying on

and after Termination) of the Franchise Agreement prior to the Transfer Date) provided the Transferee prior to the Transfer Date with full particulars of:

- (a) each Relevant Employee, including name, sex, and the date on which continuity of employment began for each Relevant Employee for statutory purposes;
- (b) terms and conditions of employment of each such person;
- (c) all payments, benefits or changes to terms and conditions of employment promised to any such person;
- (d) dismissals of Relevant Employees or termination of employment effected within 12 months prior to the Transfer Date including the Transfer Date;
- (e) all agreements or arrangements entered into in relation to the Relevant Employees between the Transferor, any Affiliate of the Transferor or any other relevant employer and any trade union or association of trade unions or organisation or body of employees including employee representatives and elected representatives; and
- (f) all strikes or other Industrial Action taken by any Relevant Employee within 12 months prior to the Transfer Date including the Transfer Date.

7.5 The Transferor and Transferee shall deliver to each of the Relevant Employees letters in an agreed form from the Transferor and Transferee as soon as is practicable after the execution of this Agreement (to the extent not already delivered prior to the Transfer Date).

8. MISCELLANEOUS PROVISIONS

Variations in Writing

8.1 No variation of this Agreement shall be effective unless in writing and signed by duly authorised representatives of the parties.

Partial Invalidity

8.2 If any provision in this Agreement shall be held to be void, illegal, invalid or unenforceable, in whole or in part, under any enactment or rule of law, such provision or part shall to that extent be deemed not to form part of this Agreement but the legality, validity and enforceability of the remainder of this Agreement shall not be affected.

Further Assurance

8.3 Each of the parties agrees to execute and deliver all such further instruments and do and perform all such further acts and things as shall be necessary or expedient for the carrying out of the provisions of this Agreement.

Notices

8.4 Any notice or other communication requiring to be given or served under or in connection with this Agreement shall be in writing and shall be sufficiently given or served if delivered or sent to the registered office of the recipient or:

(a) in the case of the Transferor to [name of Transferor] at:

[address]

[fax]

Attention: [name]

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

[address]

[fax]

Attention: [name]

8.5 Any such notice or other communication shall be delivered by hand or sent by courier, fax or prepaid first class post. If sent by courier or fax such notice or communication shall conclusively be deemed to have been given or served at the time of despatch. If sent by post such notice or communication shall conclusively be deemed to have been received two business days from the time of posting.

Counterparts

8.6 This Agreement may be executed in any number of counterparts each of which shall be deemed an original, but all the counterparts shall together constitute one and the same instrument.

Third Parties

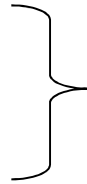
8.7 This Agreement does not create any rights under the Contracts (Rights of Third Parties) Act 1999 which is enforceable by any person who is not a party to it.

Governing Law

8.8 This Agreement shall be governed by and construed in accordance with the laws of England and Wales and the parties irrevocably agree that the courts of England and Wales are to have exclusive jurisdiction to settle any disputes which may arise out of or in connection with this Agreement.

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

SIGNED FOR AND ON
BEHALF OF THE
[**TRANSFEROR**]



DIRECTOR:

DIRECTOR/SECRETARY:

SIGNED FOR AND ON
BEHALF OF THE
[**TRANSFeree**]



DIRECTOR:

DIRECTOR/SECRETARY:

SCHEDULE TO THE SUPPLEMENTAL AGREEMENT

Net Asset Statement

The Net Asset Statement shall be drawn up (except to the extent otherwise agreed by the Transferor and the Transferee) in accordance with accounting principles generally accepted in the United Kingdom and such that the Transferring Assets and Liabilities are valued on the following basis:

1. Rights and liabilities relating to an obligation of carriage under the terms of any Fare shall be valued in accordance with the following formula:

$$(C - D) \times \frac{A}{B} + E$$

where:

C equals the Credit (exclusive of any Valued Added Tax) received by the Transferor in respect of the Fare provided that:

- (a) such Credit shall be deemed not to include any reduction in respect of a discount allowed to the purchaser of the Fare pursuant to the Passenger's Charter or any other passenger's charter of the Transferor;
- (b) if the Fare is a Season Ticket Fare, such Credit shall be the New Credit (as defined in the Ticketing and Settlement Agreement) relating to that Season Ticket Fare on the Transfer Date if different to the Credit that was in fact received by the Transferor in respect of such Season Ticket Fare;
- (c) such Credit shall be net of any Private Settlement Credit (as defined in the Ticketing and Settlement Agreement) arising in respect of that Fare; and
- (d) such Credit shall be deemed to exclude any Credit received by the Transferor in respect of any commission due to it in respect of the sale of such Fare (provided that for these purposes the amount of such commission shall not exceed the National Standard Rate of Commission (as defined in the Ticketing and Settlement Agreement) in respect of the Fare);

D equals the Debit (exclusive of any Value Added Tax) received by the Transferor in respect of the commission due in respect of the sale of the Fare (provided that for these purposes the amount of such commission shall not exceed the National Standard Rate of Commission (as defined in the Ticketing and Settlement Agreement) in respect of the Fare);

$\frac{A}{B}$ equals

- (E) in the case of a Season Ticket Fare, the number of journeys which the purchaser of the Fare is estimated to make from (and including) the Transfer Date to (and including) the last day on which the Fare is valid (including any extensions to its original period of validity) divided by the total number of journeys which the

purchaser of the Fare is estimated to make with that Fare (as determined in each case in accordance with Schedule 28 of the Ticketing and Settlement Agreement);

- (e) in the case of any other Fare which entitles the holder thereof to make more than two journeys, the number of days for which the Fare continues to be valid after the Transfer Date (including any extensions to its original period of validity) divided by the total number of days for which such Fare is valid on issue (except to the extent that it can reasonably be estimated what proportion of the journeys which could be made on issue of the Fare have not been made prior to the Transfer Date); or
- (f) in the case of any other Fare, zero; and

E equals, if $\frac{A}{B}$ is greater than zero:

the amount of any discount to which it can be reasonably estimated that the purchaser of the Fare would be entitled pursuant to the Passenger's Charter or any other passenger's charter of the Transferor on purchasing an equivalent Fare on the expiry of the relevant Fare.

2. Rights and liabilities relating to an Excess Fare, Reservation or Upgrade (as such terms are defined in the Ticketing and Settlement Agreement) shall be valued at zero unless such Excess Fare, Reservation or Upgrade involves more than two journeys, in which case they shall be valued in accordance with paragraph 1 and references to Fare in paragraph 1 shall be construed accordingly.
3. Rights and liabilities under a Discount Card shall be valued in accordance with the following formula:

$$(C - D) \times \frac{A}{B}$$

where:

C equals the Credit (exclusive of any Value Added Tax) received by the Transferor in respect of the Discount Card;

D equals the Debit (exclusive of any Value Added Tax) received by the Transferor in respect of the commission due in respect of the sale of the Discount Card (provided that for these purposes the amount of such commission shall not exceed the National Standard Rate of Commission (as defined in the Ticketing and Settlement Agreement) in respect of the Discount Card); and

$\frac{A}{B}$ equals the number of days for which the Discount Card continues to be valid after the Transfer Date (including any extensions to its original period of validity) divided by the total number of days for which such Discount Card is valid on issue, or in the case of any Discount Card listed in Schedules 12 or 39 of the Ticketing and Settlement Agreement on the Start Date, zero.

and for these purposes a Credit or Debit shall be deemed to be received when the relevant Discount Card is Accepted for Clearing (as defined in the Ticketing and Settlement Agreement).

4. Relevant Debits and Credits shall be valued at the full amount of such Debits and Credits (inclusive of any Value Added Tax) but excluding any Debits and Credits arising in respect of Adjustment Amounts (as defined in the Ticketing and Settlement Agreement) which are received by the Transferee in respect of a change to the Credit which is used to value any relevant Season Ticket Fare under paragraph 1 of this Schedule to the extent such Adjustment Amounts relate to a period after the Transfer Date.
5. **Rights and liabilities in respect of any contract (including any STNR Contract), lease (including any Station Lease), licence (including any licences granted to the Franchisee of Intellectual Property Rights in respect of the STNR System (including the database containing the data processed by the STNR System) owned by an Affiliate) or other equivalent arrangement (excluding rights and liabilities valued under paragraphs 1 to 4) [REDACTED⁴⁹²]⁴⁹³**

RIGHTS AND LIABILITIES	VALUE
Any accrued rights to receive payment	Monetary amounts so accrued, subject to any provision being made for payment not being received from any other person
Any right to receive payment in respect of goods and/or services provided by the Transferor prior to the Transfer Date where the due date for such payment is after the Transfer Date	Amount payable under such contract, lease, licence or other equivalent arrangement for the goods and/or services so provided by the Transferor, subject to any provision being made for payment not being received from any other person
Any accrued liabilities to make payment	Monetary amounts so accrued
Any liability to make payment in respect of goods and/or services provided to the Transferor prior to the Transfer Date where the due date for such payment is after the Transfer Date	Amount payable under such contract, lease, licence or other equivalent arrangement for the goods and/or services provided to the Transferor
Any rights in respect of which payment has already been made by the Transferor	Monetary amounts so paid, subject to any provision being made for such rights not being exercisable against any other person
Any liabilities in respect of which payment has already been received by the Transferor	Monetary amounts so received

⁴⁹² 29/01/2018 (Date of Redactions Approval) – Where text has been omitted from the document this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

⁴⁹³ 06/12/2017 (Date of DOA) – Contract variation agreed by the Secretary of State and Franchisee.

RIGHTS AND LIABILITIES	VALUE
Any liability resulting from any breach of or failure by the Transferor to comply with the terms of any such contract, lease, licence or other equivalent arrangement	Amount of such liability or, to the extent that such amount is not ascertained, the parties reasonable estimate of the amount of such liability
6. The Stored Credit Balance held by the Franchisee at the Transfer Date shall be valued at the monetary amount so held.	
7. ⁴⁹⁴ Any RV Asset shall be valued at an amount that is equivalent to the RV Asset Transfer Value of such RV Asset as specified in Column 7 of the table in Part 2 to the Appendix to Schedule 14.4 (Designation of Franchise Assets) of the Franchise Agreement, as such RV Asset Value may be adjusted or deemed to have been adjusted pursuant to paragraphs 13.4 or 13.6 of Schedule 14.4 (Designation of Franchise Assets) of the Franchise Agreement.	
8. In relation to any Staplehurst Station Car Parking Works Agreement, provided it has been designated as a Primary Franchise Asset pursuant to paragraph 13.9 of Schedule 14.4 (Designation of Franchise Assets) of the Franchise Agreement:	
(a) any rights, in relation to any failure to deliver and/or any incomplete delivery of the Staplehurst RV Asset on or before the Transfer Date, shall be valued as the aggregate of the Transferor's payments under any Staplehurst Station Car Parking Works Agreement and any related costs provided that:	
(i) such payments accord with the Transferor's budget for expenditure under the Staplehurst Station Car Parking Works Agreement for progressing the delivery of the Staplehurst RV Asset up to and including the actual stage of incomplete delivery of the Staplehurst RV Asset as at the Transfer Date;	
(ii) such payments are made as against an agreed schedule of works and those works have been performed to a reasonable standard; and	
(iii) in no event shall such budget for expenditure exceed [REDACTED⁴⁹⁵]; and	
(b) any liabilities under the Staplehurst Station Car Parking Works Agreement shall be valued at nil.	
9. ⁴⁹⁶ Each of:	

⁴⁹⁴ 19/09/2017 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

⁴⁹⁵ 20/11/2017 (Date of Redactions Approval) – Where text has been omitted from the document this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

⁴⁹⁶ 06/12/2017 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

- (a) (i) those tangible assets comprised in the STNR System that are newly acquired by the Franchisee; and
- (ii) the Equipment (as defined in the SEFT Deed), in each case, that are [REDACTED⁴⁹⁷] as part of the Smart Ticketing Project (which shall include those elements set out in Annex B and Annex C of the STNR Scope of Work and [REDACTED⁴⁹⁸];
- (b) (i) the upgraded tangible assets comprised in the STNR System in respect of which the relevant upgrade has been [REDACTED⁴⁹⁹] as part of the STNR Project (including those elements set out in Annex B and Annex C of the STNR Scope of Work and marked "WBWP"; and
- (ii) the Upgraded SEFT Assets shall, in each case, be valued on the basis of the valuation principles set out in paragraph 10 except that in assessing the value of such upgraded tangible asset and/or such Upgraded SEFT Asset [REDACTED⁵⁰⁰] to any benefits or any increase in the useful life of such upgraded tangible asset and/or such Upgraded SEFT Asset arising as a consequence of any upgrade and/or regular maintenance [REDACTED⁵⁰¹] as part of the Smart Ticketing Project;
- (c) the Intellectual Property Rights in respect of the STNR System (including the database containing the data processed by the STNR System) and owned by the Franchisee [REDACTED⁵⁰²]; and
- (d) all data processed or generated by the STNR System, [REDACTED⁵⁰³]

10. ⁵⁰⁴ Any Relevant DAC3 Assets shall be valued at nil, or such other value as has been agreed pursuant to paragraphs 10 and 11 of Schedule 15.4 of the Franchise Agreement.

⁴⁹⁷ 29/01/2018 (Date of Redactions Approval) – Where text has been omitted from the document this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

⁴⁹⁸ 29/01/2018 (Date of Redactions Approval) – Where text has been omitted from the document this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

⁴⁹⁹ 29/01/2018 (Date of Redactions Approval) – Where text has been omitted from the document this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

⁵⁰⁰ 29/01/2018 (Date of Redactions Approval) – Where text has been omitted from the document this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

⁵⁰¹ 29/01/2018 (Date of Redactions Approval) – Where text has been omitted from the document this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

⁵⁰² 29/01/2018 (Date of Redactions Approval) – Where text has been omitted from the document this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

⁵⁰³ 29/01/2018 (Date of Redactions Approval) – Where text has been omitted from the document this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

⁵⁰⁴ 13 June 2019 (Date of DOA) – Contract insertion agreed by the Secretary of State and Franchisee.

- 11.** ⁵⁰⁵ ⁵⁰⁶ **Any other property, rights or liabilities shall be valued on the basis of a willing vendor and purchaser and ongoing usage in the rail industry.**

⁵⁰⁵ 06/12/2017 (Date of DOA) – Contract variation agreed by the Secretary of State and Franchisee.

⁵⁰⁶ 13 June 2019 (Date of DOA) – Contract variation agreed by the Secretary of State and Franchisee.

SCHEDULE 16

Pensions

1. Franchise Sections

The Franchisee shall participate in and continue to be the Designated Employer in relation to the South Eastern Section of the Railways Pension Scheme (the "**Franchise Sections**") in respect of the Franchise Services. Subject to paragraphs 2 and 3.2(d) membership of a Franchise Section will be offered to each employee of a Franchisee only.

2. Closed Schemes

- 2.1 Subject to any requirements of Her Majesty's Revenue and Customs, the Franchisee shall take any necessary steps (including entering into any relevant deed of participation) to allow Closed Scheme Employees to continue in membership of the British Railways Superannuation Fund or the BR (1974) Pension Fund in accordance with their terms during the Franchise Period.
- 2.2 For the purposes of this paragraph 2, Closed Scheme Employees means such of the employees of the Franchisee who were, immediately prior to the commencement of their employment with the Franchisee, members of either of the British Railways Superannuation Fund or the BR (1974) Pension Fund.

3. Variations in benefits, contributions and investment

- 3.1 If a Franchisee is considering making a proposal that it considers would fall within the scope of paragraphs 3.2(a) to (f) inclusive, it shall promptly consult with the Secretary of State in relation to that proposal prior to putting such a proposal to the Pensions Committee of any Franchise Section, the Trustee of the Railways Pension Scheme (the "**Trustee**"), or to any trade union. The Franchisee must otherwise consult in good time with the Secretary of State in relation to any proposal it considers would fall within the scope of paragraphs 3.2(a) to (f) inclusive.
- 3.2 Separately, and in addition to complying with its obligations under paragraph 3.1, the Franchisee shall not, without the prior written consent of the Secretary of State (which may be given on such terms and subject to such conditions as the Secretary of State thinks fit):
 - (a) restructure or change the composition of the earnings of employees of the Franchisee in such a way as to increase the part of those earnings which qualifies as pensionable earnings under the Rules applicable to any Franchise Section or take any action (or consent to the taking of any action) which could detrimentally affect the funding of any Franchise Section, including varying or providing different or additional benefits under that Franchise Section or promising to do so, unless this change:
 - (i) is required by Law; or
 - (ii) only affects benefits payable in respect of past service of members of that Franchise Section and on or prior to the effective date of the change the Franchisee pays an additional cash payment to the Trustee which, in the opinion

of the Actuary, meets in full the additional funding cost imposed on that Franchise Section; or

- (iii) would not lead to substantial changes in the funding of any Franchise Section and is the result of the normal application of that Franchise Section's Rules in the ordinary day to day running of the business of the Franchise, for example, where individual employees are, from time to time promoted or transferred to higher paid or different employment which has a different composition of earnings;
- (b) make or consent to any proposal to change any of the provisions of the Pension Trust in respect of the Franchise Sections unless the change is required by Law;
- (c) provide retirement, death or life assurance benefits in respect of any of its employees other than under any Franchise Section or as provided in paragraph 2;
- (d) omit to provide the above-mentioned benefits in respect of its employees save that, without prejudice to any rights which any such employee may otherwise have, the Franchisee shall not under this Schedule 16 be obliged for the purposes of the Franchise Agreement to offer such benefits to any employee employed on a fixed term contract of 12 months or less;
- (e) take any action (or consent to the taking of any action) which could affect the contributions payable by Participating Employers under any Franchise Section, including exercising any discretion allowed to the Franchisee as Designated Employer arising out of any actuarial valuation of a Franchise Section, and varying or providing different or additional benefits under the Franchise Sections in respect of future service, unless such action is required by Law;
- (f) close a Franchise Section to new members; or
- (g) take (or omit to take) any action which could result in any Franchise Section being wound up, in whole or in part.

3.3 The Franchisee shall consult with the Secretary of State on:

- (a) any proposal made by the Trustee to change the statement of investment principles applicable to any Franchise Section; and
- (b) any proposal to alter the rate of contributions payable by the Franchisee or its employees under a new schedule of contributions for the Franchise Section.

3.4 The Franchisee shall also consult with the Trustee on the basis of any response it receives from the Secretary of State in relation to any such proposal.

4. Funding liabilities

4.1 The Franchisee shall pay the employer contributions required under the schedule of contributions applicable to each Franchise Section (or either of the British Railways Superannuation Fund or the BR (1974) Pension Fund in which

it participates) in respect of the Franchise Term subject to the provisions of paragraph 4.2 below.

- 4.2 Where, during the Franchise Term, Franchise Services are aggregated or disaggregated by the Secretary of State (for example, as a result of remapping) and, as a consequence, a Franchise Section of which the Franchisee is the Designated Employer is required to accept a transfer in or to make a transfer out of members, the Secretary of State shall ensure that the Franchisee has no liability for any resulting deterioration immediately arising in the funding level of the Franchise Section measured in accordance with the Franchise Sections' technical provisions in Part 3 of the Pensions Act 2004, or for any amount arising under article 7(4) of the Railway Pensions (Protection and Designation of Schemes) Order 1994. Notwithstanding the above the Secretary of State shall have no liability for any future deterioration in the funding levels of the Franchise Section linked to such transfer in or out of members.

5. Discharge of obligations

- 5.1 The Secretary of State may at any time during the Franchise Term seek information from the Trustee with a view to satisfying himself that the Franchisee and the other Participating Employers (if any) have fully discharged their respective obligations under the Railways Pension Scheme, including their obligations in respect of the payment of contributions to any Franchise Section.
- 5.2 The Franchisee shall, at its expense, promptly provide such information in relation to any Franchise Section, including actuarial advice and information, as the Secretary of State may from time to time request and shall authorise and consent to the Trustee doing so.
- 5.3 The Franchisee shall, in respect of the Franchise Term, use all reasonable endeavours to provide to the Secretary of State:
- (a) within one month of the expiry of each Franchisee Year; and
 - (b) at other times as soon as practicable following a request by the Secretary of State,

a certificate signed by the Trustee in relation to the Franchise Sections stating either that the Franchisee has fully complied with its obligations under the Railways Pensions Scheme, including its obligation to contribute to the Franchise Sections or, if it has not so complied, stating the extent to which it has not done so. Where the certificate is given pursuant to paragraph 5.3(a), it shall cover the relevant Franchisee Year. Where the certificate has been given pursuant to paragraph 5.3(b), it shall cover such period as the Secretary of State shall specify.

- 5.4 If the Trustee does not certify under paragraph 5.3 in relation to the Franchise Sections that the Franchisee has fully complied with its obligations under the Railways Pension Scheme or if the Secretary of State otherwise reasonably considers that the Franchisee has not complied with such obligations, the Secretary of State may adjust Franchise Payments payable under Schedule 8 (Payments) by an amount which is, in his opinion, no greater than the amount of any contribution that the Franchisee has thereby failed to make or avoided making.
- 5.5 The Secretary of State may, under paragraph 5.4, continue to make such adjustments to Franchise Payments payable under Schedule 8 (Payments) until such time as he reasonably determines that the relevant contributions have

been made in full by the Franchisee. Following that determination, any amounts so withheld by the Secretary of State shall become payable (without interest) on the next day on which a Franchise Payment becomes payable under Schedule 8 (Payments), being a day which falls no less than seven days after such determination or, if there is no such day, 14 days after the date of such determination. To the extent that the Secretary of State has not so determined within four weeks after the expiry of the Franchise Period, the Franchisee's right to receive the amount so withheld under the Franchise Agreement shall lapse and the Secretary of State shall not be obliged to pay such amount.

6. Termination of Franchise

The Secretary of State shall at the end of the Franchise Period ensure that the Franchisee has no liability for any deficit in the Franchise Sections (other than for contributions due and payable by the Franchisee to the Franchise Sections for any period prior to the end of the Franchise Term) and shall have no right to benefit from any surplus which may exist in the Franchise Sections. For the avoidance of doubt, this paragraph 6 shall apply where the Franchise Services are either aggregated or disaggregated (for example, as a result of remapping).

7. Definitions

Unless otherwise defined in the Franchise Agreement, terms used in this Schedule 16 shall have the meanings given to them in the Railways Pension Scheme.

SCHEDULE 17

Confidentiality and Freedom of Information

1. Confidentiality

Subject to the provisions of the Act, the Transport Act, the Railways Act 2005, the Environmental Information Regulations, the Freedom of Information Act (and any code of practice or other guidance related to the same) and paragraphs 2 to 8 and 10 of this Schedule 17 inclusive, each party shall hold in confidence all documents, materials and other information, whether technical or commercial, supplied by or on behalf of the other party (including all documents and information supplied in the course of proceedings under the Dispute Resolution Rules or the rules of any other dispute resolution procedures to which a dispute is referred in accordance with the Franchise Agreement) (all together the "**Confidential Information**") and shall not, except with the other party's prior written authority, publish or otherwise disclose any Confidential Information otherwise than as expressly provided for in the Franchise Agreement unless or until the recipient party can demonstrate that any such document, material or information is in the public domain through no fault of its own and through no contravention of the Franchise Agreement, whereupon to the extent that it is in the public domain this obligation shall cease.

2. Disclosure of Confidential Information

Each party may disclose any data or information acquired by it under or pursuant to the Franchise Agreement or information relating to a dispute arising under the Franchise Agreement without the prior written consent of the other party if such disclosure is made in good faith:

- (a) to any Affiliate of such party or outside consultants or advisers of such Affiliate, upon obtaining from such Affiliate and/or such outside consultants or advisers of such Affiliate an undertaking of confidentiality equivalent to that contained in paragraph 1;
- (b) to any outside consultants or advisers engaged by or on behalf of such party and acting in that capacity, upon obtaining from such consultants or advisers an undertaking of confidentiality equivalent to that contained in paragraph 1;
- (c) to any lenders, security trustee, bank or other financial institution (and its or their advisers) from which such party is seeking or obtaining finance, upon obtaining from any such person an undertaking of confidentiality equivalent to that contained in paragraph 1;
- (d) to the extent required by Law or pursuant to an order of any court of competent jurisdiction or under the Dispute Resolution Rules or the rules of any other dispute resolution procedures to which a dispute is referred in accordance with the Franchise Agreement or the rules of a recognised stock exchange or a formal or informal request of any taxation authority;
- (e) to any insurer, upon obtaining from such insurer an undertaking of confidentiality equivalent to that contained in paragraph 1;

- (f) to any director, employee or officer of such party, to the extent necessary to enable such party to perform its obligations under the Franchise Agreement or to protect or enforce its rights under the Franchise Agreement; or
- (g) by the Franchisee, to the ORR, the Passengers' Council or a Local Authority.

3. Publication of Certain Information

- 3.1 Notwithstanding the provisions of paragraph 1, the Secretary of State may publish (whether to the press, the public or to one or more individuals, companies or other bodies, including to any prospective Successor Operator) in such form and at such times as he sees fit, the following (irrespective of whether the same was provided to the Secretary of State by the Franchisee or a third party):
- (a) any or all of the Franchise Documents, provided that the Secretary of State will, prior to publishing the same, redact from any Franchise Document any information contained therein which the Secretary of State and the Franchisee agree or failing which the Secretary of State determines, in his absolute discretion, is exempt from disclosure in accordance with the provisions of the Freedom of Information Act and/or the Environmental Information Regulations;
 - (b) the amount of any Franchise Payments payable under the Franchise Agreement and the aggregate amount of Franchise Payments paid in each year under the Franchise Agreement;
 - (c) such information as the Secretary of State may consider reasonably necessary to publish in connection with the performance of his functions in relation to any Closure or proposed Closure;
 - (d) the amount of any payments by the Franchisee under the Passenger's Charter;
 - (e) such information (including CRM Data and Yield Management Data) as may reasonably be required in connection with any Tendering/Reletting Process or the retendering or reletting of any other railway passenger services, provided that such information may only be published during the period of, or during the period leading up to, such retendering or reletting;
 - (f) any reports and accounts delivered to him under Schedule 13 (Information and Industry Initiatives) including any analyses, statistics and other information derived from such reports and accounts;
 - (g) the results of any monitoring or measurement of the performance of the Franchisee in the provision of the Franchise Services (including any information provided under Schedule 11 (Agreement Management Provisions));
 - (h) the results, on a Service Group, Route, station or other comparable basis, of any calculation of passenger numbers under

- (i) SCHEDULE 1.5 (Information about Passengers);
- (j) the results of any survey under Schedule 7.2 (National Rail Passenger Surveys);
- (k) the results of any assessment or inspection under Schedule 11 (Agreement Management Provisions);
- (l) details of the Franchisee's plans and performance in respect of safety;
- (m) not used;
- (n) such information as the Secretary of State may reasonably require to include in his annual report in respect of the Franchisee provided that, in preparing that report, the Secretary of State shall have regard to the need for excluding, so far as is practicable, the matters specified in paragraphs (a) and (b) of Section 71(2) of the Act for this purpose, taking references in those paragraphs to the ORR as references to the Secretary of State; and
- (o) such information as the Secretary of State may reasonably require to publish at or around the expiry or possible termination of the Franchise Period in order to secure continuity of the provision and operation of the Franchise Services.

3.2 Without prejudice to any other provision of this Schedule 17, the Secretary of State may publish any other information relating to the Franchisee if he has previously notified the Franchisee and the Franchisee does not demonstrate to the reasonable satisfaction of the Secretary of State within 14 days of such notification that the publication of such information would, in the reasonable opinion of the Franchisee, be materially detrimental to its business. If the Franchisee attempts so to demonstrate to the Secretary of State but he is not so satisfied, the Secretary of State shall allow seven more days before publishing the relevant information.

4. Service Development Information

Nothing in this Schedule 17 shall be deemed to prohibit, prevent or hinder, or render either party liable for, the disclosure by either party to HS1 Limited, Network Rail, the ORR, other Train Operators, any operators of services for the carriage of goods by rail, the Passengers' Council and/or any Local Authority of any information relating to the development of the Service Level Commitment in accordance with Schedule 1.1 (Service Development).

5. Publication by Secretary Of State

Nothing in this Schedule 17 shall be deemed to prohibit, prevent or hinder, or render the Secretary of State liable for, the disclosure of any information by the Secretary of State to the ORR, the Parliamentary Commissioner for Administration, a Minister of the Crown, any department of the government of the United Kingdom, the Scottish Parliament, the National Assembly of Wales, the Mayor of London, the Greater London Authority or any department or officer of any of them or of information which is otherwise disclosed for the purpose of facilitating the carrying out of his functions.

6. Provision of Information to the ORR

The Franchisee hereby authorises the Secretary of State to provide to the ORR, to the extent so requested by the ORR, such information as may be provided to the Secretary of State in relation to the Franchisee under the Franchise Agreement.

7. Disclosure by Comptroller and Auditor General

The parties recognise that the Comptroller and Auditor General may, in pursuance of his functions under the Exchequer and Audit Department Act 1921, the National Audit Act 1983 and the Government Resources and Accounts Act 2000, disclose information which he has obtained pursuant to those Acts and which a party to the Franchise Agreement would not be able to disclose otherwise than under this Schedule 17.

8. Continuing Obligation

This Schedule 17 (and any other provisions necessary to give effect hereto) shall survive the termination of the Franchise Agreement, irrespective of the reason for termination.

9. Freedom of Information - General Provisions

- 9.1 The Franchisee acknowledges and shall procure that its agents and subcontractors acknowledge that the Secretary of State is subject to the requirements of the Freedom of Information Act and the Environmental Information Regulations and accordingly the Franchisee shall and shall procure that its agents and subcontractors shall assist and co-operate with the Secretary of State to enable the Secretary of State to comply with his information disclosure obligations under the Freedom of Information Act and/or the Environmental Information Regulations.
- 9.2 The Franchisee shall and shall procure that its agents and subcontractors shall:
- (a) transfer to the Secretary of State any Requests for Information received by the Franchisee (or its agents or subcontractors) as soon as practicable and in any event within two working days of receiving any such Request for Information;
 - (b) provide the Secretary of State with a copy of all information in its (or their) possession or power in the form that the Secretary of State requires within five working days of the Secretary of State's request (or within such other period as he may specify); and
 - (c) provide all necessary assistance as reasonably requested by the Secretary of State to enable him to respond to any Request for Information within the time for compliance set out in section 10 of the Freedom of Information Act or regulation 5 of the Environmental Information Regulations as applicable.
- 9.3 The Secretary of State shall be responsible for determining in his absolute discretion, and notwithstanding any other provision in the Franchise Agreement or any other agreement, whether Confidential Information (as such term is defined in paragraph 1 of this Schedule 17) and/or any other information is exempt from disclosure in accordance with the provisions of the Freedom of Information Act and/or the Environmental Information Regulations.

- 9.4 The Franchisee shall not and shall procure that its agents and subcontractors shall not respond directly to any Request for Information unless expressly authorised to do so by the Secretary of State.
- 9.5 The Franchisee acknowledges and shall procure that its agents and subcontractors acknowledge that notwithstanding any provision to the contrary in the Franchise Agreement the Secretary of State may be obliged under the Freedom of Information Act and/or the Environmental Information Regulations and any related Code of Practice or other guidance to disclose information concerning the Franchisee and/or its agents and subcontractors:
- (a) in certain circumstances without consulting the Franchisee (or its agents and/or subcontractors where applicable); or
 - (b) following consultation with the Franchisee and having taken its views into account (and the views of its agents and/or subcontractors where applicable),

provided always that where applicable the Secretary of State shall in accordance with the provisions of the Freedom of Information Act and/or the Environmental Information Regulations take reasonable steps where appropriate to give the Franchisee advance notice or failing that to draw the disclosure to the Franchisee's attention after any such disclosure.

10. Redactions

- 10.1 By no later than the date which is:
- (a) four weeks after the date of this Agreement (in respect of the Franchise Documents referred to in paragraph (a) and (b) of the definition thereof);
 - (b) 30 days after notification of the Secretary of State of another agreement that is required for publication (in respect of the Franchise Documents referred to in paragraph (d) to (g) of the definition thereof); and
 - (c) 30 days after the date of any document varying the terms of any published Franchise Document,

the Franchisee will provide to the Secretary of State details of any provisions of the Franchise Documents or any such variation which the Franchisee believes are exempt from disclosure in accordance with the provisions of the Freedom of Information Act, the Environmental Information Regulations and/or Section 73(3) of the Act ("Redactions").

- 10.2 For each such Redaction the Franchisee should specify:
- (a) the exact text of the Franchise Document or variation that the Franchisee proposes is redacted;
 - (b) whether the Franchisee proposes that the Redaction applies in relation to the publication of the relevant Franchise Document or variation on the website of the Department for Transport, on the register required to be maintained by the Secretary of State pursuant to Section 73 of the Act or on both such website and such register;

- (c) the reasons why the Franchisee believes that the proposed Redaction is justified in accordance with the Freedom of Information Act, the Environmental Information Regulations and/or Section 73(3) of the Act.

10.3 The Secretary of State shall consult with the Franchisee in relation to the Franchisee's proposed Redactions (provided that the same are provided to the Secretary of State in accordance with paragraph 10.1). If the Secretary of State and the Franchisee are unable to agree upon any proposed Redaction, the Secretary of State shall be entitled to determine, in his absolute discretion, whether or not to make such proposed Redaction. If the Franchisee does not provide its proposed Redactions to the Secretary of State in accordance with paragraph 10.1, the Franchisee shall be deemed to have consented to publication of the relevant document without any Redactions.

SCHEDULE 18

Additional Reporting Periods

1. Additional seven Reporting Periods

- 1.1 ⁵⁰⁷ ⁵⁰⁸ **Subject to paragraph 1.2, the Franchise Agreement shall expire at 0159 on 10 November 2019.**
- 1.2 ⁵⁰⁹ ⁵¹⁰ **If the Secretary of State gives notice to the Franchisee not less than three months before the date on which the Franchise Agreement is due to expire in accordance with Paragraph 1.1, the Franchise Agreement shall continue after such date on the terms set out in the Franchise Agreement for not less than one and not more than five Reporting Periods, as the Secretary of State may stipulate.**

Key Contracts

- 1.3 The Franchisee shall enter into any and all Key Contracts which are necessary for the Franchise Agreement to continue in accordance with Paragraph 1.2 of this Schedule 18.

⁵⁰⁷ 23 March 2018 (Date of DOA) Contract variation agreed by the Secretary of State and Franchisee

⁵⁰⁸ 13 June 2019 (Date of DOA) – Contract variation agreed by the Secretary of State and Franchisee.

⁵⁰⁹ 23 March 2018 (Date of DOA) Contract variation agreed by the Secretary of State and Franchisee

⁵¹⁰ 13 June 2019 (Date of DOA) – Contract variation agreed by the Secretary of State and Franchisee.

SCHEDULE 19

Other Provisions

1. Rights Cumulative

The rights of the Secretary of State under the Franchise Agreement are cumulative, may be exercised as often as he considers appropriate and are in addition to his rights under the general Law. The exercise of such rights shall not limit the Secretary of State's right to make payment adjustments, claim damages in respect of contraventions of the Franchise Agreement or pursue any available remedies under general Law.

2. Disputes

Disputes under the Franchise Agreement

- 2.1 Wherever the Franchise Agreement provides that the Secretary of State may reasonably determine any matter, the Franchisee may, unless the Franchise Agreement expressly provides otherwise, dispute whether a determination made by the Secretary of State is reasonable, but the Secretary of State's determination shall prevail unless and until it is agreed or found to have been unreasonable.
- 2.2 Where either party is entitled, pursuant to the terms of the Franchise Agreement, to refer a dispute arising out of or in connection with the Franchise Agreement for resolution or determination in accordance with the Dispute Resolution Rules, then such dispute shall, unless the parties otherwise agree and subject to any duty of the Secretary of State under Section 55 of the Act, be resolved or determined by arbitration pursuant to the Dispute Resolution Rules.
- 2.3 Where, in the absence of an express provision in the Franchise Agreement entitling it to do so, either party wishes to refer a dispute arising out of or in connection with the Franchise Agreement to arbitration pursuant to the Dispute Resolution Rules, the following process shall apply:
- (a) the party seeking to refer to arbitration shall serve a written notice upon the other party stating (i) the nature and circumstances of the dispute, (ii) the relief sought including, to the extent possible, an indication of any amount(s) claimed, and (iii) why it is considered that the dispute should be resolved by way of arbitration rather than litigation;
 - (b) the other party shall respond within 20 working days of service of the notice confirming whether or not referral of the dispute to arbitration is agreed. In the absence of any response, the referral to arbitration shall be deemed not to have been agreed;
 - (c) in the event that the parties agree to refer the dispute to arbitration then it shall be resolved or determined in accordance with the Dispute Resolution Rules;
 - (d) in the event that the parties do not agree to refer to arbitration then it shall be resolved or determined in accordance with Clause 8 of the Franchise Agreement; and

- (e) nothing in this paragraph 2.3 shall preclude either party from commencing, continuing or otherwise taking any step by way of litigation in pursuit of the resolution or determination of the dispute unless an agreement is reached to refer the dispute to arbitration.

- 2.4 The arbitrator in any dispute referred for resolution or determination under the Dispute Resolution Rules shall be a suitably qualified person chosen by agreement between the parties or, in default of agreement, chosen by the Disputes Secretary from a panel of persons agreed from time to time for such purposes between the Secretary of State and the Franchisee or, in default of agreement as to the arbitrator or as to such panel, selected on the application of any party by the President of the Law Society or the President of the Institute of Chartered Accountants in England and Wales from time to time (or such other person to whom they may delegate such selection).

Disputes under Other Agreements

- 2.5 The Franchisee shall notify the Secretary of State of any disputes to which it is a party under any Inter-Operator Scheme, Access Agreement, Property Lease or Rolling Stock Related Contract, or under any other agreement in circumstances where the relevant dispute could have an adverse effect on the Franchisee's ability to comply with its obligations under the Franchise Agreement or on the provision of the Franchise Services and which have been submitted for resolution either to the courts or to any other procedure for dispute resolution provided for under such agreements.
- 2.6 Such notification shall be made both:
- (a) at the time of such submission (and such notification shall include reasonable details of the nature of the dispute); and
 - (b) at the time of the resolution of the dispute (whether or not subject to appeal) (and such notification shall include reasonable details of the result of the dispute, any associated award and whether it is subject to appeal).
- 2.7 The Franchisee shall provide such further details of any dispute referred to in paragraph 2.5 as the Secretary of State may reasonably request from time to time.

3. Notices

Notices

- 3.1
- (a) Any notice, notification or other communication under or in connection with the matters specified in Schedule 10.2 (Termination and Expiry) or any dispute under or in connection with the Franchise Agreement shall be in writing and shall be delivered by hand or recorded delivery or sent by pre-paid first class post to the relevant party at the address for service set out below, or to such other address in the United Kingdom as each party may specify by notice in writing to the other party:

Name: The Department for Transport

Address: 33 Horseferry Road, London SW1P 4DR

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

Attention: Director, Rail Commercial Contracts

Name: London & South Eastern Railway Limited

Address: 3rd Floor, 41-51 Grey Street, Newcastle Upon Tyne NE1 6EE

E-mail: carolyn.ferguson@go-ahead.com

Attention: The Company Secretary

- (b) Any other notice, notification or other communication under or in connection with the Franchise Agreement shall be in writing and shall be delivered:
- (i) in accordance with paragraph 3.1(a); or
 - (ii) by electronic data transfer,

except that it shall be marked for the attention of the Contract Manager or the Franchise Manager.

Deemed Receipt

- 3.2 Any such notice or other communication shall be deemed to have been received by the party to whom it is addressed as follows:
- (a) if sent by hand or recorded delivery, when delivered;
 - (b) if sent by pre-paid first class post, from and to any place within the United Kingdom, three business days after posting unless otherwise proven; and
 - (c) if sent by electronic data transfer, upon sending, subject to receipt by the sender of a "delivered" confirmation (provided that the sender shall not be required to produce a "read" confirmation).

4. Assignment

The Franchisee shall not without the prior written consent of the Secretary of State assign, hold in trust for any other person, or grant a Security Interest in or over, the Franchise Agreement or any part hereof or any benefit or interest or right herein or hereunder (other than any right of the Franchisee to receive monies under a Supplemental Agreement).

5. Set Off

- 5.1 Save as otherwise expressly provided under the Franchise Agreement or required by law, all sums payable under the Franchise Agreement shall be paid in full and without any set-off or any deduction or withholding including on account of any counter-claim.

- 5.2 Notwithstanding paragraph 5.1 the Secretary of State shall be entitled to set-off against any amounts payable by him under the Franchise Agreement:
- (a) any amount or liability payable or due to him under or in relation to the Franchise Agreement (whether such amount or liability is present, contingent and/or future, liquidated or unliquidated); and
 - (b) any monetary penalty payable under the Act.

6. Miscellaneous Provisions

Waivers

6.1

- (a) Either party may at any time waive any obligation of the other party under the Franchise Agreement and the obligations of the parties hereunder shall be construed accordingly.
- (b) No waiver by either party of any default by the other party in the performance of such party's obligations under the Franchise Agreement shall operate or be construed as a waiver of any other or further such default, whether of a like or different character. A failure to exercise or delay in exercising a right or remedy under the Franchise Agreement shall not constitute a waiver of any right or remedy or a waiver of any other rights or remedies and no single or partial exercise of any right or remedy under the Franchise Agreement shall prevent any further exercise of such right or remedy or the exercise of any other right or remedy.

Time Limits

- 6.2 Where in the Franchise Agreement any obligation of a party is required to be performed within a specified time limit (including an obligation to use all reasonable endeavours or best endeavours to secure a particular result within such time limit) that obligation shall be deemed to continue after the expiry of such time limit if such party fails to comply with that obligation (or secure such result, as appropriate) within such time limit.

Partial Invalidity

- 6.3 If any provision in the Franchise Agreement is held to be void, illegal, invalid or unenforceable, in whole or in part, under any enactment or rule of Law, such provision or part shall to that extent be deemed not to form part of the Franchise Agreement but the legality, validity and enforceability of the remainder of the Franchise Agreement shall not be affected.

Further Assurance

- 6.4 Each party agrees to execute and deliver all such further instruments and do and perform all such further acts and things as shall be necessary or expedient for the carrying out of the provisions of the Franchise Agreement.

Rights of Third Parties

6.5

- (a) A person who is not a party to the Franchise Agreement shall have no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Franchise Agreement except to the extent set out in this paragraph 6.5.
- (b) Any Successor Operator or potential Successor Operator nominated by the Secretary of State and notified to the Franchisee for the purposes of this paragraph 6.5 may enforce and rely on the provisions of Schedule 15 (Obligations Associated with Termination) to the same extent as if it were a party but subject to paragraphs 6.5(c) and (d).
- (c) The Franchise Agreement may be terminated, and any term may be amended or waived, in each case in accordance with the terms of the Franchise Agreement, without the consent of any person nominated under paragraph 6.5(b).
- (d) The person nominated under paragraph 6.5(b) shall only be entitled to enforce and rely on Schedule 15 (Obligations Associated with Termination) to the extent determined by the Secretary of State (whether at the time of nomination or at any other time) and, to the extent that any such person is entitled to enforce and rely on Schedule 15 (Obligations Associated with Termination), any legal proceedings in relation thereto must be commenced within one year of the expiry of the Franchise Period and any such person shall not be entitled to enforce or rely on Schedule 15 (Obligations Associated with Termination) to the extent that it has consented to any particular act or omission of the Franchisee which may constitute a contravention of Schedule 15 or has been afforded a reasonable opportunity to indicate to the Franchisee that it is not so consenting and has not so indicated (the extent of such reasonable opportunity to be determined by the Secretary of State unless otherwise agreed).

Secretary of State's Consent or Approval

- 6.6 Where any provision of the Franchise Agreement provides for any matter to be subject to the consent or approval of the Secretary of State, then (subject only to the express terms of that provision as to the basis on which that consent or approval may be given or withheld) the Secretary of State shall be entitled to give that consent or approval subject to any condition or conditions as he considers appropriate, which may include the adjustment of any of the terms of the Franchise Agreement.

7. Enforcement Costs

The Franchisee shall compensate the Secretary of State for all reasonable costs incurred by the Secretary of State as a result of the Franchisee failing to perform its obligations under the Franchise Agreement in accordance with their terms in the exercise of the Secretary of State's rights under Schedule 10 (Remedies, Termination and Expiry).

8. Currency

If at any time the Bank of England or other competent monetary authority of the United Kingdom or competent organ of H. M. Government of the United Kingdom recognises the Euro as lawful currency and tender of the United Kingdom, the Secretary of State may, by reasonable notice to the Franchisee and the Franchisee may by reasonable notice to the Secretary of State, elect that all payment obligations arising under the Franchise Agreement shall be denominated and/or constituted in Euros on the basis that all outstanding amounts and obligations previously denominated and/or constituted in pounds sterling shall be translated into Euros at the exchange rate applied or recognised by the United Kingdom authority or organ which granted recognition of the Euro for the purpose of such translation on the date on which it granted recognition of the Euro.

9. Arm's Length Dealings

The Franchisee shall ensure that every contract or other arrangement or transaction to which it may become party in connection with the Franchise Agreement with any person is on bona fide arm's length terms.

10. Non discrimination

- 10.1 The Franchisee will not discriminate in seeking offers in relation to, or in awarding, a contract for the purchase or hire of goods on the grounds:-
- (a) of nationality, against a person who is a national of and established in a relevant State; or
 - (b) that the goods to be supplied under the contract originate in another relevant State.
- 10.2 For the purpose of this Clause, "relevant State" has the meaning given in the Public Contracts Regulations 2006.

DEROGATIONS/WAIVERS POST CONTRACT SIGNATIVE DATE

i By virtue of a derogation, the Secretary of State has granted the Franchisee a derogation against the requirements of Schedule 1.4, Paragraph 1.2 such that there will be a 3 week delay for Southeastern to update or publish the timetable, or update the timetable on the website 4 weeks before the leaf fall timetable.

Start date: 04/10/2015 End date: 25/10/2015

ii By virtue of a derogation, the Secretary of State has granted the Franchisee a two-week derogation against the requirements of Schedule 1.4, Paragraphs 1.2 and 1.3 to make timetable booklets available for the May 2016 timetable at least four weeks prior to the timetable change date. This derogation is provided on the condition that the timetable changes are communicated before (and on a continuous basis after) the timetable change on Southeastern's website; through social media; station posters; and on train and on station communications.

iii By virtue of a derogation, the Secretary of State has granted the Franchisee a derogation against the requirements of Schedule 1.4, Paragraph 1.3 such that there will be a 3 week delay for Southeastern to display posters of the timetable 4 weeks before the leaf fall timetable.

Start date: 04/10/2015 End date: 25/10/2015

iv By virtue of a derogation, the Secretary of State has granted the Franchisee a two-week derogation against the requirements of Schedule 1.4, Paragraphs 1.2 and 1.3 to make timetable booklets available for the May 2016 timetable at least four weeks prior to the timetable change date. This derogation is provided on the condition that the timetable changes are communicated before (and on a continuous basis after) the timetable change on Southeastern's website; through social media; station posters; and on train and on station communications.

v By virtue of a derogation, the Secretary of State has granted the Franchisee a derogation against the requirements of Schedule 1.4, Paragraph 1.4 such that there will be a 3 week delay for Southeastern to make available booklets and displaying posters on information screens of the timetable 4 weeks before the leaf fall timetable.

Start date: 04/10/2015 End date: 25/10/2015

vi By virtue of a derogation, the Secretary of State has granted the Franchisee a derogation from the requirement to comply with the relevant obligations of Paragraph 2.7(b) of Schedule 4 in relation to the development of a Minor Works Programme until 28 April 2016

Start date: 01/04/2016 End date: 28/04/2016

vii By virtue of a derogation, the Secretary of State has granted the Franchisee a derogation to Paragraph 9 of Schedule 6.1 to install a TVM at Strood Station.

Start date: 12/10/2016 End date: 31/12/2017

viii By virtue of a derogation, the Secretary of State has granted the Franchisee a derogation to Paragraph 9.2 of Schedule 6.1 to have installed ticket vending machines at all the stations listed in paragraph 9.1 of Schedule 6.1 by 12 October 2016.

Start Date : 12/10/2016 End Date: 31/12/2016

^{ix} By virtue of a derogation, the Secretary of State has granted the Franchisee a derogation against the requirements of Schedule 13, Paragraph 3.2 such that there is no requirement on Southeastern to provide the Period 1513 Management Accounts until close of business on Friday 17 April 2015.

Start date: 14/04/2015 End date: 17/04/2015